

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
DECEMBER - 2023 REGULAR MONTHLY MEETING
AGENDA**

DATE: December 28, 2023

**PLACE: Commissioners Court Room
3rd Floor, Delaware County
Building**

TIME: 6:00 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

	Jim Fowler	
	Ellen Brannon	Sue Kaiser
	Delaney Fritch	Leslie Mathewson
	Mike Jones	Allen Wiseley

MINUTES: Consideration of the October and November, 2023 regular monthly meeting minutes.

OLD BUSINESS:

BZA 62-23

Jurisdiction: Board of Zoning Appeals

Being a continuance of a public hearing on the matter of an application filed by **Adams Roofing and Construction, LLC and Rockie Jernigan**, 5109 South Breezewood Drive, Muncie, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased front setback build-to line, decreased rear setback, increased fence height, decreased intersection visibility, an overhead loading door facing Center Street, no greenbelt area or plantings along Willard and Center Streets, decreased buffering and landscape area, and no sustainability feature, all for a new metal warehouse on premises located at the northwest corner of Willard Street and Center Street formerly known as 410 East Willard Street, Muncie, Indiana, as more accurately described in the application.

NEW BUSINESS:

BZA 63-23

Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Jason and Katie Wray**, 11601 East Edgewater Road, Albany, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance and the Delaware County Subdivision Ordinance to allow a decreased lot width and decreased lot area for a property split to create a new building site in a Farming Zone on premises located on the south side of Edgewater Road 1200' east of County Road 700 East, Delaware Township, Delaware County, Indiana, as more accurately described in the application.

BZA 64-23

Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Carrie Oren and Josh Morris**, 14100 East Windsor Road, Selma, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance to allow business storage and a decreased side setback for construction of a new shop and lean-tos in a Farming Zone on premises located at 14100 East Windsor Road, Perry Township, Delaware County, Indiana, as more accurately described in the application.

BZA 65-23

Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **KPM, LLC**, 920 West 14th Street, Jasper, Indiana, requesting a variance of use from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow two dwellings on one parcel for conversion of a detached garage into an apartment on premises located at 408 West Centennial Avenue, Muncie, Indiana, as more accurately described in the application.

STAFF REPORT:

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
DECEMBER - 2023 REGULAR MONTHLY MEETING
MINUTES**

The Delaware-Muncie Metropolitan Board of Zoning Appeals held its regular monthly meeting on Thursday, December 28th, 2023, at 6:00 P.M., in the Commissioners Court Room of the Delaware County Building, Muncie, Indiana. Chairman James Fowler called the meeting to order.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Mr. Daniel called roll and the following members were present: Ms. Brannon, Mr. Fowler, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Absent: Ms. Fritch. Also present: Mr. Wright, attorney for the Board.

MINUTES:

Mr. Jones made a motion to approve the October 2023 and November 2023 regular meeting minutes. Mr. Wiseley seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, minutes approved.

Ms. Mathewson stated that before moving on to regular BZA business, she would like to recognize Mr. Fowler for his time on the Board. She stated that he had been a member since 2006, and had served as Chairman since 2018, and that the Board had a plaque to present him with for his service. She stated that all of his time on the Board was greatly appreciated.

Mr. Fowler stated it was a pleasure being on the Board, and that he had learned a lot from Mr. Neal who served as the Chairman before him.

OLD BUSINESS:

Mr. Fowler stated that it was his understanding that nothing had changed regarding BZA 62-23, and was not sure if there was anything to discuss.

Eric Welch, attorney with Welch and Company, appeared to represent Mr. Jernigan and Adam's Roofing and Construction, LLC. He stated that he understood that there were some questions as to whether Mr. Jernigan could execute an affidavit in favor of Adam's

Roofing and Construction. He stated that he had prepared documentation that should address that issue, and would like to issue that to the Board now.

Mr. Daniel asked why it had not been submitted to the Plan Commission prior to this meeting.

Mr. Welch was told that now was the time to consider that information.

BZA 62-23

Jurisdiction: Board of Zoning Appeals

Being a continuance of a public hearing on the matter of an application filed by **Adams Roofing and Construction, LLC and Rockie Jernigan**, 5109 South Breezewood Drive, Muncie, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased front setback build-to line, decreased rear setback, increased fence height, decreased intersection visibility, an overhead loading door facing Center Street, no greenbelt area or plantings along Willard and Center Streets, decreased buffering and landscape area, and no sustainability feature, all for a new metal warehouse on premises located at the northwest corner of Willard Street and Center Street formerly known as 410 East Willard Street, Muncie, Indiana, as more accurately described in the application.

Eric Welch, attorney with Welch and Company, LLC, 400 N. High St., Muncie, Indiana, appeared to represent the applicant.

Mr. Fowler asked Mr. Welch to hand in his documents for the record and for review.

Mr. Daniel stated that both documents provided were dated 2016, and it had been noted at the past meeting that Mr. Murphy indicated that the LLC had been dissolved in 2018, which was after both documents were dated and did not see the relevance to the current situation.

Mr. Welch stated that purpose of the documents provided was to show that Adam's Roofing and Construction LLC was an Indiana Liability Company, created in 2015 with Mr. Jernigan as the sole member and agent. He stated that there was some confusion between Adam's Construction LLC and Adam's Roofing and Construction LLC, and that confusion started years ago when the LLC for Adam's Roofing and Construction was created. He stated that confusion caused a lawsuit between the 2 companies, and that this document goes to show that Circuit Court 1 did acknowledge the existence of Adam's Roofing and Construction, LLC and Mr. Jernigan as the member of that LLC. He stated that he was hoping this would clear up any of the confusion with regards to Mr. Jernigan's authority over the company.

Mr. Fowler stated the issue still remains that the documents were dated 2015 and the corporation was dissolved in 2018, therefore that corporation cannot file an application.

Mr. Welch stated that he appreciates that position, and he had read Mr. Murphy's email with regards to ownership. He stated that as far as an LLC being administratively dissolved, that does not end the LLC and that Indiana Code 23-18-9-3 states that the dissolution of an LLC does not terminate the authority of a registered agent of a limited liability company, and that it would allow them to commence proceedings in the name of the company. He stated that the LLC cannot transact business on daily basis, but that they could take whatever steps necessary to continue as a registered agent.

Ms. Mathewson stated that she read 28-18-9-3, and it talks about the powers of a dissolved company only having the powers to liquidate the business affairs, and that Mr. Jernigan was seeking to carry on with business operations and she did not believe he had legal authority to do what he was asking to do.

Mr. Wiseley stated that another concern was that the deed giving Adam's Roofing and Construction this property, was executed after the state had dissolved the LLC, so this was not finishing up the business.

Mr. Welch stated that there was some case law on that situation and the legal argument can be made that Mr. Jernigan was the equitable title holder of the property. He stated that his request at this time would be to allow Mr. Jernigan time to have the property deeded to his name since the BZA application was in the company name and Mr. Jernigan's name. He stated that it was his understanding that no objections had been filed for this request.

Mr. Fowler stated that this needs to be under Mr. Jernigan and not the company, and then as far as the application process, it would be resolved. He stated that all of his variances may not be approved, but his request could proceed and be heard by the Board.

Mr. Jones stated he would like to table the issue to the next meeting to allow Mr. Jernigan time to complete any of his paperwork.

Mr. Wiseley asked Mr. Welch if they could get that accomplished in 30 days since that was the reason for the continuation at last month's meeting and clearly that did not happen.

Mr. Welch stated he did not see why it could not be done, and it sounded like the Board was looking for a deed to be executed and recorded in Mr. Jernigan's name to clear things up.

Mr. Jones made a motion to continue BZA 62-23, the appeal of Adam's Roofing and Construction, LLC and Rockie Jernigan to the January 25, 2024 regular monthly meeting. Mr. Wiseley seconded to the motion. Voting in favor: Ms. Branon, Mr. Fowler, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 62-23 continued to January 25th 2024 meeting.

Mr. Daniel requested that any new documents be submitted prior to the January meeting for review by counsel.

Mr. Fowler asked the applicant to meet with the staff regarding the number of variances being requested to see if there were any that could be eliminated.

NEW BUSINESS:

BZA 63-23

Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Jason and Katie Wray**, 11601 East Edgewater Road, Albany, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance and the Delaware County Subdivision Ordinance to allow a decreased lot width and decreased lot area for a property split to create a new building site in a Farming Zone on premises located on the south side of Edgewater Road 1200' east of County Road 700 East, Delaware Township, Delaware County, Indiana, as more accurately described in the application.

Jerry Highly, 1804 S. O'Hare Blvd., Yorktown, Indiana, appeared to represent the applicant. He apologized to the Board since they had been presented this request a few different times. He stated that the Wray's had misunderstood the process and how important it was to have all of the facts to do what they wanted to do. He stated that the Wray's had hired him to build a new home on the property next door to where they live. He stated that Ms. Wray had been told to combine the parcels to better meet the setback requirements for the county, and when he tried to apply for the building permit, the problem was discovered. He had only seen the survey which still showed the 2 parcels, and that they new home was to be built on the empty property next door to her home. He stated that after the last variance granted to Ms. Wray, she combined the parcels, but if she had not done so, everything may have been ok. He stated that he had some drawings to share with the Board, showing on Beacon that there had been a home on the parcel just before Ms. Wray purchased the property, so he assumed that the lot was a buildable lot. He stated that he had the property split back to the 2 parcels with a new deed written and recorded, and he would like to build a new home on the 90' wide parcel.

Mr. Fowler asked if this would be a rental or just for the in laws.

Mr. Highly stated that was correct.

Mr. Daniel stated that if the Board granted this request, it would create a new building site separate from Ms. Wray's home and could be sold on its own.

Mr. Highly stated that it was 2 parcels again.

Mr. Wiseley asked if he knew when the house had been torn down.

Mr. Highly stated that the aerial showing that home was from 2019, so after that and before the Wray's purchased the property in 2022.

Mr. Wiseley asked if there was a separate septic for that lot.

Mr. Highly stated yes.

Mr. Fowler stated the drawings provided did show the septic location.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 63-23 the appeal of Jason and Katie Wray, with the hardship as stated in the application. Mr. Jones seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 63-23 approved.

BZA 64-23

Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Carrie Oren and Josh Morris**, 14100 East Windsor Road, Selma, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance to allow business storage and a decreased side setback for construction of a new shop and lean-tos in a Farming Zone on premises located at 14100 East Windsor Road, Perry Township, Delaware County, Indiana, as more accurately described in the application.

Josh Morris, 14100 E. Windsor Rd., Selma, Indiana, appeared. He stated that he wanted to add a garage and lean-to in order to protect some of his work trucks, since they were diesel and needed to be inside. He stated that this would be for personal items and some business tools, but that the look of the property would remain residential. He stated that there would not be customers coming to the property and that he did not want any signage, only to organize his equipment and keep better track of his investments.

Mr. Fowler asked if employees come to the property and if they would be stacking their vehicles and coming on going all of the time.

Mr. Morris stated that the employees might meet at his property for a weekly meeting, but that they drive to the job sites.

Mr. Fowler asked if everything would be inside and sheltered and not everywhere.

Mr. Morris stated yes, he likes things neat and organized. He stated that he had done work for many of his neighbors, and that it was mostly farm ground all around.

Mr. Fowler asked if the 32' x 24' lean to at the back of the property would just be a 4 post structure with a roof and if it would be enclosed or open sided.

Mr. Morris stated that it would be a post frame, 3-sided shelter, with sliding doors on the front and that the siding would match the existing garage and house.

Mr. Fowler asked if he had talked to any of his neighbors.

Mr. Morris stated that he had talked to everyone except the neighbor across Stanley Road, and they were all ok with the request. He stated that the neighbor to his east was allowing him to use one of his buildings for storage for now, and that he really had great neighbors.

No one appeared in opposition.

Mr. Jones made a motion to approve BZA 64-23 the appeal of Carrie Oren and Josh Morris, with the hardship as stated in the application. Mr. Wiseley seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 64-23 approved.

BZA 65-23

Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **KPM, LLC**, 920 West 14th Street, Jasper, Indiana, requesting a variance of use from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow two dwellings on one parcel for conversion of a detached garage into an apartment on premises located at 408 West Centennial Avenue, Muncie, Indiana, as more accurately described in the application.

Scott Mick, Property Manager with Cedars Property Group, 2100 W. White River Blvd., Muncie, Indiana, appeared to represent the applicant, Pete Massat.

Mr. Fowler asked if there were any other drawings to show the inside of the building.

Mr. Mick stated that they did not have any drawings for the inside, only the outside to show parking.

Mr. Fowler stated that he would like to see the layout, since it stated it would be a 1 bathroom, 2 bedroom.

Mr. Mick stated that he did not have that information with him at this time.

Mr. Fowler stated that a layout would need to be submitted to the Plan Commission.

Mr. Daniel stated that he spoke to Mr. Selvey, the City Building Commissioner, and he stated that a stop work order had been placed on the property on December 6, 2023. He stated that the order had been placed because a considerable amount of the conversion had already occurred, without permits, and that Mr. Selvey stated it was hard to determine if that work had been done to meet code. He asked Mr. Mick if they were willing to correct any issues if the building commissioner was not ok with the work done so far without those permits.

Mr. Mick stated that would be up to Mr. Massat, he was only here to represent him and had been brought to the project late. He stated that Mr. Massat had already begun the project when he took over the property management from Middletown Property Group, so they were not involved in the beginning. He stated that he knew there had been a considerable amount of work done to the space, and did not believe he had any permits. He stated that Mr. Massat had hired a contractor that was to take care of all the permitting, and had a family emergency, so Mr. Massat hired a different contractor. He stated that obviously that contractor did not pull any permits, and Mr. Massat just needs to know how he should proceed from here.

Ms. Mathewson stated that if the Board granted his request for the variance, it would be a requirement that he follow all building codes.

Mr. Fowler, stated yes, they would need to get all of their permits and following building code. He stated that if the building inspector found things were not up to code, they should be corrected. He asked Mr. Daniel for his input on the proposed parking.

Mr. Daniel stated that they were using their greenspace for hard surface parking.

Mr. Fowler asked where they were currently parking for 408 W. Centennial Avenue.

Mr. Mick stated that it was directly behind the house, between the house and the garage.

Mr. Fowler asked if there was a small concrete pad there.

Mr. Mick stated yes and that there was some gravel but that had mostly been overgrown with grass.

No one appeared in opposition.

Mr. Wiseley asked for clarification that approval would allow the applicant to apply for building permits.

Mr. Daniel stated yes.

Mr. Wiseley made a motion to approve BZA 65-23 the appeal of KPM, LLC with the hardship as stated in the application. Ms. Mathewson seconded the motion. Voting in favor: Ms. Brannon, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: Mr. Jones, and Mr. Fowler. None. Motion carried, BZA 65-23 approved.

STAFF REPORT:

Mr. Wiseley reported that interviews had been conducted and that they were impressed with both candidates. He stated that they had contacted their references and that the hiring committee met and decided on a candidate, and that she had accepted, and at this point it needs to be official approved by the Plan Commission at the January meeting. He

stated that the offer was made to Kylene Swackhamer, who currently works as the Principle Planner, and she will be officially hired at that Plan Commission meeting, and if all goes well, at the next BZA meeting there will be a new Director.

Mr. Fowler stated it would be nice for the office to have some normalcy again.

Mr. Daniel stated that this may be the last time that he sits in the chair as the Acting Secretary, and that it had been his pleasure to assist this Board. He stated that he had the great pleasure to witness Mr. Fowler and Mr. Neal Chair this Board, and that he was thankful to both of them.

Mr. Fowler stated that it had been a pleasure to serve on this board for all these years and that he had met a lot of friends, and that he had learned a lot, and that it was time for someone else to take the lead for a while.

Mr. Jones stated that he had served on many boards, and that Mr. Fowler was well versed in the position and that he had learned a lot in his time on the Board. He stated that it was the best board he had ever been on and that Mr. Fowler would be greatly missed.

ADJOURNMENT:

James Fowler, Chairman

Fred Daniel, Acting Secretary