

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
NOVEMBER 2018 REGULAR MONTHLY MEETING
AGENDA**

DATE: November 29, 2018

PLACE: Commissioner's Court Room
3rd Floor, Delaware County
Building

TIME: 6:30 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Jim Fowler

Zane Bishop

Leslie Mathewson

Kathy Carey

Kelly Watson, Jr.

Kathryn Kennison

Phyllis Zimmerman

MINUTES: Consideration of the October, 2018 regular monthly meeting minutes.

NEW BUSINESS:

BZA 31-18 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Christopher Berebitsky**, 520 North Manhattan Avenue, Muncie, Indiana, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow temporary placement of a tiny house next to an existing dwelling for the duration of need of Christopher Berebitsky on premises located at 520 North Manhattan Avenue, Muncie, Indiana, as more accurately described in the application.

BZA 32-18 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Meijer Stores Limited Partnership and Clearwater Muncie, LLC**, 2929 Walker Avenue NW, Grand Rapids, Michigan, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow a new carwash with reduced parking lot trees, reduced buffer yard plantings on the north, south and east buffer areas, and to allow along Nebo Road a partial 5' wide sidewalk and for the 20' wide Perpetual Highway Easement to serve as a greenbelt and no greenbelt tree plantings on a lot to be platted on premises located on the east side of Nebo Road, 600' north of McGalliard Road, Muncie, Indiana, as more accurately described in the application.

BZA 33-18 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Matthew and Paula Dirksen**, 1864 West County Road 300 North, Winchester, Indiana, requesting variances from the Delaware County Subdivision Control Ordinance and the Delaware County Comprehensive Zoning Ordinance to allow a property split located along a Major Road to result in a ~1.36 acre parcel including a house and accessory structures, for the total floor area of the accessory buildings to exceed the floor area of the dwelling, and for an increased height for the existing barn on premises located at 911 West County Road 600 South, Monroe Township, Delaware County, Indiana, as more accurately described in the application.

REPORT FROM DIRECTOR:

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
NOVEMBER 2018 REGULAR MONTHLY MEETING
MINUTES**

The Delaware-Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday November 29, 2018 at 6:30 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

Ms. Moody called roll and the following members were present: Mr. Bishop, Ms. Carey, Mr. Fowler, Ms. Kennison, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Absent: none. Also present: Ms Quirk, attorney for the Board.

MINUTES:

Mr. Watson made a motion to approve the October, 2018 regular monthly meeting minutes. Ms. Zimmerman seconded the motion. Voting in favor: Ms. Kennison, Mr. Fowler, Mr. Watson, and Ms. Zimmerman. Voting against: none. Abstaining: Mr. Bishop, Ms. Carey, and Ms. Mathewson. Motion carried, October 2018 minutes approved.

NEW BUSINESS:

BZA 31-18 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Christopher Berebitsky**, 520 North Manhattan Avenue, Muncie, Indiana, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow temporary placement of a tiny house next to an existing dwelling for the duration of need of Christopher Berebitsky on premises located at 520 North Manhattan Avenue, Muncie, Indiana, as more accurately described in the application.

Chris Berebitsky, 520 N. Manhattan Ave., Muncie, Indiana, appeared. He stated that he had health issues and that he would be living in the tiny home next to his daughter so she could help take care of him.

Mr. Fowler asked what the time frame would be for the temporary placement.

Mr. Berebitsky stated that he was under treatment at this time.

Mr. Watson asked if the tiny home would only be for Mr. Berebitsky.

Mr. Berebitsky stated yes.

Ms. Kennison asked if it had running water inside.

Mr. Berebitsky stated yes.

Mr. Fowler asked if the home was currently on the site.

Mr. Berebitsky stated yes.

Ms. Zimmerman asked what still need to be done to the home.

Mr. Berebitsky stated that it needed to be anchored and connected to the sewer lines.

Ms. Moody stated that this was a variation of a temporary mobile home placement and that if it had been a mobile home it would need to meet the requirements that it had to meet the provisions for sanitary facilities, ground anchoring, and setbacks. She stated that his proposed location meets the setbacks and he would be connecting to the sanitary sewer and doing the required anchoring.

Mr. Fowler stated that he would need to obtain all of the necessary permits and this would be included in the annual mobile home check.

Ms. Moody asked if Mr. Berebitsky and Mr. Daniel talked about the postcard mailed in the spring each year as a check up on temporary placement homes to verify you are meeting all the requirements from the Board.

Mr. Berebitsky stated no, but that it was not unexpected.

Michael Allred, 518 N. Manhattan Ave., Muncie, Indiana, appeared. He stated that he was the next door neighbor and that he had no problem with the tiny home being there. He stated that they were quiet neighbors and the house was not an eye sore.

David Manship, 603 N. Biltmore Ave., Muncie, Indiana, appeared. He asked if the current 55 gallon drum would remain in the ground.

Ron Willis, 608 N. Manhattan Ave., Muncie, Indiana, appeared in opposition. He stated that he was concerned because the home had been sitting on the property for awhile and he just now received the notice. He stated that he was also concerned about the duration of the home and what could happen with the sewer. He stated it was a nice looking house, but it had been there for 3 or 4 months and was the variance for that house or another one.

Mr. Fowler asked about the 55 gallon buried drum.

Mr. Berebitsky stated that he had a composting toilet and that the 55 gallon was just for the grey water and he would be connecting to the sewer if his variance was approved. He stated that the 55 gallon system would go away. He stated that his family lives in the bigger house which they had remodeled and then he would be living in the tiny home. He stated that he had been sick and had applied for the variance as soon as he could.

Ms. Moody asked if Mr. Berebitsky understood that this request was for temporary placement and that once he no longer lives there it would be removed.

Mr. Berebitsky stated yes.

Mr. Kennison made a motion to approve BZA 31-18 the appeal of Christopher Berebitsky with the hardship as stated in the application with the following condition: That the house be used for the personal use of, and occupancy by, Christopher Berebitsky only and is limited to his duration of need. Ms. Carey seconded the motion. Voting in favor: Mr. Bishop, Ms. Carey, Mr. Fowler, Ms. Kennison, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Voting against: none. Motion carried, BZA 31-18 approved.

BZA 32-18 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Meijer Stores Limited Partnership and Clearwater Muncie, LLC**, 2929 Walker Avenue NW, Grand Rapids, Michigan, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow a new carwash with reduced parking lot trees, reduced buffer yard plantings on the north, south and east buffer areas, and to allow along Nebo Road a partial 5' wide sidewalk and for the 20' wide Perpetual Highway Easement to serve as a greenbelt and no greenbelt tree plantings on a lot to be platted on premises located on the east side of Nebo Road, 600' north of McGalliard Road, Muncie, Indiana, as more accurately described in the application.

James Malcolm, 2821 W. 600S., Claypool, Indiana, appeared to represent Meijer Stores and Clearwater Carwash. He stated that the issue of the perpetual easement changed the view of the greenbelt space and that if they were required to go 10' from the right of way, it would greatly affect the overall layout of the site. He stated that they had hired a new landscaper and that this layout would be the minimum and they would like to add to it. He stated that they were very apprehensive to put anything along Nebo Road because of what birds would do on a site with a car wash.

Ms. Moody asked if they would be doing a new landscape plan.

Mr. Malcolm said no, they had hired a new landscaper and this was the minimum that they would be adding to.

Ms. Moody stated that it does not meet the minimum requirements.

Mr. Malcolm stated that he understands that, and that they would add more to the site but this requests would be the minimum.

Mr. Fowler stated that he understands the point about the birds but that they are also short on shrubs for the site.

Ms. Moody stated that the case report states that the north and south buffer can be augmented with some additional plantings and meet the requirements, so that the need for those variances would no longer exist and that there was room to do so.

Mr. Malcolm stated that he agrees.

Mr. Fowler stated that if the north and south buffers were not a problem, would Mr. Malcolm no longer ask for those variances.

Mr. Malcolm asked that they remain as a minimum, but if they Board wants to take it away that was fine. He provided the Board with copies of the landscaping.

Ms. Moody stated that 8 shrubs in the north buffer area and 1 shade tree, 2 ornamentals, and 8 shrubs in the south buffer area would meet those requirements.

Mr. Malcolm stated that Meijer was very protective of the pole sign and they do not want anything that may block it.

Ms. Moody stated that they were talking about trees that would be in back of that sign in the south buffer area.

Mr. Malcolm stated that people leaving the site would have their view of the sign blocked.

Ms. Moody stated that 2 shade trees in the area north and south of the building would meet the requirement for parking lot trees and that if those things were done then 3 of the variance requests go away. She stated that it was not mentioned, but there are overhead lines along the front and that in the perpetual easement nothing can be done unless they obtain permission from the State, and the State would not give permission for trees to be placed there.

Mr. Fowler stated that would be a no by the State.

Ms. Moody stated that the shrubs along the front were meeting a parking area buffer requirement from the street so that was a good thing. She stated that they were adding back plantings in the east buffer yard which was also good because the Board had previously granted a variance to not put anything there and now they were doing something.

Mr. Fowler stated that the north and south buffer areas were in need of more shrubs and it seems there was enough room to add those items.

Mr. Malcolm stated that he agrees to the shrubs and that the landscaper wants to see what can be done.

Mr. Fowler stated that there needs to be some agreements to what needs to be done.

Ms. Zimmerman asked what those specific numbers needed to be.

Ms. Moody stated that those numbers were in the case analysis. She stated it was 8 shrubs in the north buffer, 8 shrubs, 1 shade tree and 2 ornamentals in the south buffer, and 2 additional shade trees to the north and south of the building would meet the requirements for those areas. She stated that would leave a variance for the east bufferyard.

Mr. Fowler stated that they had planted additional shrubs in the east area.

Ms. Moody stated that they were putting in sidewalk to serve their site not sidewalk in the right of way because of the perpetual highway easement. She stated that the greenbelt trees could not be moved because of the overhead lines without approval from INDOT and they do not like trees in their right of way. She stated that the perpetual easement was basically a ditch and would remain greenspace area along with the row of shrubs.

Mr. Malcolm stated that INDOT does not like anything in their right of way and that until INDOT decides to do something it would remain greenspace.

Mr. Bishop asked if the sidewalk was for people along Nebo Road or only for the carwash and if the Meijer pole sign would need to become a monument sign in the future.

Ms. Moody stated that the sidewalk was for the carwash and the Meijer sign would not be required to become a monument sign unless there was an addition to the Meijer building of more than 25% or an expansion to the parking lot of more than 10%.

Mr. Malcolm stated that if Meijer were to develop this property under their ownership then the south and the east would not become property lines and require no buffers.

Ms. Zimmerman stated she had a concern about the traffic isle widths and how narrow they may become.

Mr. Fowler stated that it appears that the entrances are to be changed from the first request.

Mr. Malcolm stated that the south entry has been narrowed and the exit and entry on the north side all at Meijer request.

Ms. Moody stated that the drives into Meijer are not going to be impacted at all.

Mr. Malcolm stated that the easements are ready to be recorded and that they are trying to satisfy all of the plantings that they can. He stated that the report he been provided by the staff stated what they were short for the site. He stated that on the west side the report states they were short 14 ornamental trees and because of the power lines they were not short on shade trees. He stated that on the south side the report stated they were short 1 shade tree, 2 ornamental trees, and 8 shrubs. He stated that they would prefer not to put in those shade trees primarily due to objections from Meijer. He stated that on the north side they were only short by the 9 shrubs.

Mr. Fowler stated that the motion by the Board needed to reflect all of the changes and recommendations including 8 shrubs on the north side and 8 shrubs and 2 ornamentals on the south side.

Ms. Moody stated that there were still 2 shade trees in the parking area.

Mr. Malcolm stated that they would prefer to put in something other than shade trees.

Mr. Fowler stated that it could be changed in the parking to be 2 ornamental trees instead of 2 shade trees and to keep all of the shrubs.

Ms. Carey asked if all of the shade trees were being removed from the parking.

Mr. Fowler stated yes, that they were being changed to ornamental.

Mr. Malcolm stated that they were not asking for anything regarding the sign right now but they know they need to go through all of the approvals.

Ms. Moody asked if that was for a ground sign.

Mr. Malcolm stated yes. He stated that they did have an approved erosion control plan.

Michael Brown, 7210 N. Nebo Rd., Muncie, Indiana, appeared. He stated that he was the owner of Care Animal Hospital across the street from this site. He stated that he was very confused with what was being agreed upon and at this point he was not sure if he was in support or opposition. He stated that he spends a lot on trees and plants on his property to look nice and he just did not want to be looking out at nothing but a building.

Mr. Fowler stated that along Nebo Road there would be no shade trees or ornamental trees due to the power lines and that with the parking being in the front it would be the building that he saw.

Mr. Brown stated that was understandable regarding the power lines, and asked why the 2' retaining wall could not be softened by some shrubs.

Mr. Fowler stated that it was in front of the 20' perpetual right of way that nothing can be placed in.

Mr. Brown stated that he had really just lost track of what was being moved and changed and just asked that the Board make sure it would look nice.

Mr. Malcolm stated that he guaranteed that there would be no neon flashing lights and that it would be a discrete subtle carwash.

Mr. Watson made a motion to approve BZA 32-18 the appeal of Meijer Stores Limited Partnership and Clearwater Muncie, LLC with the hardship as stated in the application with the following conditions: That development of the site be done according to the submitted landscape plan with the following additions: 1) 8 additional shrubs in the north buffer: 2) 8 additional shrubs and 2 additional ornamentals in the south buffer: and 3) 2 additional ornamentals in the parking area. Ms. Zimmerman seconded the motion. Voting in favor: Ms. Carey, Mr. Fowler, Ms. Kennsion, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Voting against: Mr. Bishop. Motion carried, BZA 32-18 approved.

BZA 33-18 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Matthew and Paula Dirksen**, 1864 West County Road 300 North, Winchester, Indiana, requesting variances from the Delaware County Subdivision Control Ordinance and the Delaware County Comprehensive Zoning Ordinance to allow a property split located along a Major Road to result in a ~1.36 acre parcel including a house and accessory structures, for the total floor area of the accessory buildings to exceed the floor area of the dwelling, and for an increased height for the existing barn on premises located at 911 West County Road 600 South, Monroe Township, Delaware County, Indiana, as more accurately described in the application.

Mathew Dirksen, 1864 W. CR 300N, Winchester, Indiana, appeared. He stated that he purchased the property 3 years ago and had been using the house on the property as a rental. He stated that he runs a dairy farm in Randolph County and that he wanted to continue to farm this ground but wanted to sell the property with the house and accessory buildings.

Mr. Fowler stated that it looks like they wanted the split to follow the grass line and he asked if it was connected to sewer or where the septic was located.

Mr. Dirksen stated that it had a well and septic which was located behind the house.

Mr. Fowler stated that he had concerns if the current septic failed would there be room to replace it.

Mr. Dirksen stated that if the septic would ever fail it could be connected to the sewer in the area.

Mr. Watson stated that the sewer system there was not completed yet.

Mr. Fowler stated that by reducing this property to less than 5 acres and having the large accessory buildings, a future owner would not be allowed to have animals without their own variance and that maybe they could extend the line to the south and make it 2 acres or more.

Mr. Dirksen stated that if the property was any larger than the request that it would take away more of the farm ground.

Ms. Moody stated that a property division under the Subdivision Ordinance would have the Right to Farm Act added as a deed restriction so that any future buyer understands that they are buying a residential property next to farm use.

Mr. Dirksen stated that once he sells the property he would have no rights to farm any of that sold land so that was the reason for not making it a larger area.

Andy Irving, 10901 S. CR 50W, Muncie, Indiana, appeared with questions. He asked if the barn would remain with the house or be part of the field and wanted to know what the intended use of that field would be. He stated that the property was across from Cowan Elementary and was concerned that it may become a type of livestock operation right in town. He also stated that he was unsure of how the property was zoned.

Mr. Fowler stated that the barn was to stay with the house on the 1.36 acres and animals would not be permitted on that property without a variance.

Ms. Moody stated that the property was in a Farm Zone and that this variance would only allow for a residential use on the property if granted.

Carrie Irving, 10901 S. CR 50W, Muncie, Indiana, appeared with questions. She stated that she was more concerned with the larger farm field that would be left and that it may become some type of commercial farming operation.

Mr. Fowler stated that it would just be farm ground and that the property split was all that was being discussed right now.

Mr. Dirksen stated that he had heard that there were concerns of him operating a large dairy on this farm and that he has no intentions of doing that. He stated that his intentions were to grain farm the remaining ground. He asked if anyone who bought the smaller property would be able to have 4-H animals.

Mr. Fowler stated no, they would need to file for their variance to allow animals since the property was less than 5 acres.

Mr. Dirksen stated that he would be sure to inform any potential buyers.

Mr. Fowler asked Mr. Dirksen if he wanted to stay with the 1.36 acres or try to increase to 2 acres.

Mr. Dirksen stated yes, he wanted to stay with the 1.36 acres split.

Mr. Bishop made a motion to approve BZA 33-18 the appeal of Matthew and Paula Dirksen with the hardship as stated in the application. Ms. Kennison seconded the motion. Voting in favor: Mr.

Bishop, Ms. Carey, Ms. Kennsion, Ms. Mathewson, and Ms. Zimmerman. Voting against: Mr. Fowler and Mr. Watson. Motion carried, BZA 33-18 approved.

Ms. Moody stated that they should go ahead and split the property just in case they do not sell the property right away, the variance was only good for a short time.

ADJOURNMENT:

James Fowler, Chairman

Marta Moody, Secretary