

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
FEBRUARY 2019 REGULAR MONTHLY MEETING
AGENDA**

DATE: February 28, 2019

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 January, 2019 regular monthly meeting minutes.

NEW BUSINESS:

BZA 03-19 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Christian Davis and Bruce and Karolynn Deeds**, 11338 Loudon Lane, Indianapolis, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a used truck parts business in a new building on 5 acres in a farming zone on premises located at the northeast corner of Whitney Road and Smithfield Pike, Liberty Township, Delaware County, Indiana, as more accurately described in the application.

REPORT FROM DIRECTOR:

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
FEBRUARY 2019 REGULAR MONTHLY MEETING
MINUTES**

The Delaware-Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday February 28, 2019 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. Mathewson, Mr. Watson, and Ms. Zimmerman. Absent: Ms. Kennison. Also present: Ms. Quirk, attorney for the Board.

MINUTES:

Mr. Watson made a motion to approve the January, 2019 regular monthly meeting minutes. Ms. Carey seconded the motion. Voting in favor: Mr. Bishop, Ms. Carey, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Voting against: none. Motion carried, January 2019 minutes approved.

NEW BUSINESS:

BZA 03-19 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Christian Davis and Bruce and Karolynn Deeds**, 11338 Loudon Lane, Indianapolis, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a used truck parts business in a new building on 5 acres in a farming zone on premises located at the northeast corner of Whitney Road and Smithfield Pike, Liberty Township, Delaware County, Indiana, as more accurately described in the application.

Chris Davis, 11338 Loudon Lane, Indianapolis, Indiana, appeared. He stated that he was the owner of Indiana Super Duty LLC and that once a month he travels to Texas to bring truck parts. He stated that he currently rents a space from his brother but it was too small and that he wanted to build a residence and a 60'x80' shop to work from. He stated that after work he might deliver a part, or have someone come by to pick up a part and that he mails some of the smaller items. He stated that all of the advertising was done online and that it was something he did part time that had slowly grown into a small business. He stated that he wanted to build a nice home to add value to all of the homes in the area. He stated that he wanted to have the garage to park his truck, trailer, and all of the parts inside and that it would match the home.

Mr. Fowler asked if all of the work and storage would be inside the building.

Mr. Davis stated yes, that was why he was asking for a larger building.

Mr. Fowler asked if there would be a lot of deliveries due to the internet sales.

Mr. Davis stated that once a month he travels to Texas to pick up parts and unload them

Mr. Fowler asked how the internet sales were done.

Mr. Davis stated that everything was done through social media, and that maybe 2-3 people per week would come to pick up their part and then leave.

Ms. Carey asked if he shipped anything.

Mr. Davis stated yes he takes the small items to the post office himself.

Mr. Watson asked what kind of truck parts he sold.

Mr. Davis stated that it was for super duty trucks and that his main concentration was the beds and doors and some small parts if someone needs something. He stated that his current location was just too small and that he wanted something big enough to keep everything inside. He submitted a picture of the garage he would like to build.

Mr. Fowler asked if there would be any employees.

Mr. Davis stated no other than his fiancé who helps with social media and phone calls at home. He stated that he usually does not have much on hand and that you would not be able to tell a business was there because there would be no advertising and everything inside.

Joe Perry, 8400 Smithfield Pike, Selma, Indiana appeared in opposition. He stated that he owns one of the nearby homes and does not know how putting a used parts business here will improve the property values of homes that are worth \$350K to \$450K. He stated that the whole thing felt fishy and that some people had a letter stating that Mr. Davis got their ok to build and that was just not true. He stated that the first time he talked to Mr. Davis was Friday and that he had a picture of a smaller building and that the picture of the house looks larger than 5000 square feet. He stated that there were plenty of places to put a used truck parts business and that this lot close to all of these nice homes was not the place and that he was against this request.

Ms. Carey asked Mr. Perry if he understood that there would be no signs to indicate this was an auto parts business and that if the Board approved it, Mr. Davis would have to comply with the conditions put in place.

Mr. Perry stated that he understood that but what happens after the fact.

Ms. Carey stated that Mr. Davis would be in violation and would come back before the Board.

Mr. Perry asked if the building would have to be torn down.

Mr. Kelly stated that if Mr. Davis does not comply with the conditions he would not be allowed to continue the business use.

Mr. Fowler stated that it would be up to the Zoning Administrator to fine him if he is violation of anything.

Mr. Perry stated that their restrictions state no business.

Mr. Fowler stated this Board does not govern those restrictions.

Mr. Perry asked who does.

Ms. Moody stated that the owners of property of those 7 parcels were the enforcers of those restrictions.

Mr. Perry stated that all of those property owners were present so could they enforce them now.

Mr. Fowler stated that the Board was not here to discuss the restrictions and that would be up to the homeowners.

Ms. Carey stated that it looked like it was a nice building.

Mr. Perry stated that Mr. Davis had said one thing and shown a picture of something else.

Mr. Fowler stated that it was a generic picture of a building that he wants to build.

Mr. Perry stated he had a copy of what was proposed and that building size was 80' x 120'.

Mr. Daniel stated he gave Mr. Perry a picture of the house that Mr. Davis had provided with the application.

Mr. Watson stated it was the 9600 square foot building and a 5000 square foot home.

Gregory Smith, attorney in Muncie representing Mr. Perry, appeared. He stated that there were covenants and plat restrictions on this property and this request would violate those and that was one of the reasons they were in opposition. He stated that the covenants and plat restrictions start by saying that each parcel shall be for one single family dwelling and no business shall be conducted. He stated that the fact that there would be a business violates those restrictions. He stated that a covenant was a contract between the property owners. He stated that at the end of the document it says that the restrictions would run with the land and be binding and extended by successive periods of 10 years, unless changed by a majority vote by the owners of the property. He stated that he disagrees that the Board can change these restrictions.

Ms. Moody stated that the Board does not change or enforce those restrictions.

Mr. Smith stated that he agrees that the Board does not enforce them but they also can't allow someone to do something different by making a change in zoning.

Mr. Fowler stated that this Board was not the enforcers of the restrictions.

Mr. Smith stated that he agrees with that.

Mr. Watson stated that a zoning variance would have nothing to do with those restrictions.

Mr. Smith stated that the covenants and plat restrictions do not allow for a business so what was being done here means nothing. He stated that as his client stated, putting a business here would damage the owners of the other properties and that was why they were in opposition.

Arlie Parson, 1818 S. Whitney Rd., Selma, Indiana, appeared in opposition. He stated that he shares the northern property line with the land in this petition. He stated that question #13 in the petition asked if this request had been discussed with the surrounding property owners and what was their opinion. He stated that the answer was false and that he had not discussed this with anyone and that he was not in favor. He stated that he had no desire to have a junkyard in his front yard and that there were houses in that area ranging from \$300K to well over \$400K and this would depreciate the value of those homes and make them difficult to sell. He stated that he purchased his property from a local realtor and was informed of the covenants and how they would protect his investments, and that was one of the major reasons he purchased the property. He stated that he would like to ask the Board to deny this request to protect the homeowners in this area and uphold the covenants on this property.

Mr. Fowler stated that saying it was a junkyard seemed a little harsh since everything was going to be stored inside.

Mr. Parsons stated that you could go to the south end of Muncie and find a business that sold used parts and the name of the business was a junkyard.

Ms. Mathewson asked if he had obtained information from a realtor or an appraiser that stated that the value of the property would decrease with this type of business nearby.

Mr. Parsons stated that he had not talked to them directly as far as the values.

Ms. Mathewson asked how he could claim that the value of properties would be reduced and that sometimes having a business nearby could actually increase the property value.

Mr. Parsons stated that he would find it hard to believe that this type of business would not reduce the property values and that he had no proof of the impact.

Mr. Watson asked if the lawn care business across the street was inside the covenants or not.

Mr. Parsons looked at the map and indicated it was not.

Jim Sears, 1800 S. Whitney Rd., Selma, Indiana, appeared in opposition. He stated that he lived in the second house in the addition and that they were against this request and did not want it in their neighborhood. He stated that he had talked to a realtor who was present and he stated that it would decrease the value of the other homes.

Brian Van Matre, 3905 S. Whitney Rd., Selma, Indiana, appeared in opposition. He stated that he was a local real estate agent with Coldwell Banker and he lived down the road from this location. He stated that he just recently sold a home in this area and those homeowners are also against this request but could not be here tonight. He stated that in his professional opinion that the type of building that was proposed would decrease the property values in this area. He stated that the picture that was presented was a steel building and that the covenants stated any building need to be made of the same material as the house, which needs to be brick. He stated that if the building was built from brick material that may help the property values. He stated that he understands the Board does not enforce these covenants, but feels that they could use them as a basis of their decision.

Robert Cook, attorney, 116 Washington St., Winchester, Indiana, appeared to represent Miles Huston. He stated that Mr. Huston owns the property to the east of the property involved and that he was opposed to this request. He stated that the applicant can secure the reasonable use of this property which was single family residence, not commercial use and that although the Board does not enforce the restrictions, by allowing this request it would be allowing the violation of the restrictions. He stated that all of the properties adjoining the subject property are under the same zoning and same restrictions and that there was nothing particular about this property to claim a hardship. He stated that the hardship was a result of the applicants' own actions because he wants to build a commercial building that the zoning ordinance would not allow. He stated that people had purchased these homes with an understanding that there were no commercial uses and by allowing this request, it would be changing the character of the neighborhood.

Allen Dudley, 7818 E. Smithfield Pike, Selma, Indiana, appeared in opposition. He stated that he lived across the street and to the west of this property. He stated that they had a drainage problem in this area that he had been fighting for 30 years and that this proposed building site was a very low area. He stated that they would have to build anything up to be out of the standing water and that the water would go to the surrounding properties.

Mr. Fowler stated that he would not be allowed to adversely affect any surrounding properties.

Ms. Moody stated that was under State Law, unless the Board said he needed to obtain a drainage permit from the County Engineer's Office.

Mr. Fowler stated that he would need to obtain a driveway permit from the County Engineer anyway.

Vic Hellis, 2501 S. Whitney Rd., Selma, Indiana, appeared in opposition. He stated that he lived just south of this property. He stated that he had been friends with GW Pierce for 50 years and that this was considered a salvage yard since he was salvaging these parts. He stated that if his internet sales are increasing what was to keep him from putting the parts outside even if for a day or a week and that it puts it on the neighbors to call to complain. He stated that Mr. Davis also stated that there would be no signs but that he would have 3-5 people per night increasing the traffic.

Mr. Fowler stated that the 3-5 people would be per week not per night.

Mr. Hellis stated that there was only one person here in favor and 20 or more against the request. He stated that he had pictures of his outside storage.

Mr. Fowler asked if they were of this property.

Mr. Hellis stated no, that they were of his current location. He stated that there were many other properties in Delaware County that Mr. Davis could use for inside storage instead of creating a business in a residential area.

John Craig, 2500 S. Whitney Rd., Selma, Indiana, appeared in opposition. He stated that he was here not too long ago with Bailey's Place request and that he thought he purchased property in a residential area and found out that the Board can say otherwise. He stated that he lives 1150' south of this property and that he was opposed to the request. He stated that there was no justification to be able to buy a residential lot and come before the Board to change the rules. He stated that several Board members voted no to the Bailey's Place and that this was not right either. He stated that 1 mile north of this property there was a property zoned for commercial use that he could build his business to be close to his home. He stated that there was no hardship here for this applicant.

Mr. Watson asked if he lived next door to the Ridge's, which was the Bailey's Place property and was across from the golf course.

Mr. Craig stated no, that was Mr. Moynihan and that the golf course was an existing business before many of the houses were built. He stated that he hoped the Board would be more objective about this request.

Ms. Moody stated we needed to stay on topic.

Mr. Fowler asked Mr. Davis if he would like to respond to any of the comments.

Mr. Davis stated that in the bylaws it does allow for an accessory building as long as it was built from the same materials as the house. He stated that the picture he presented asked for a larger building because he understood he could go smaller in size. He stated that he only wants the 60' x 80' building which would still be within the county guidelines. He stated that he runs his business from home as the Doctor may do by answering phone calls and emails.

Mr. Fowler stated that comparing used car parts and a doctor office was not a fair comparison.

Mr. Davis stated that even if he built his shop somewhere else he would still be doing business from home through emails and phone calls. He stated that he wants to follow all of the rules and that the shop would be just for storage and that he would have maybe 2-3 people per week coming by to pick up a part and leave.

Mr. Fowler asked Mr. Davis if he would be willing to obtain a drainage permit.

Mr. Davis stated that he would do whatever he needed to do.

Ms. Moody read a letter from Mike and Ann Armstrong who live at 8401 E. Smithfield Pike, Selma, Indiana and are in objection to the request and who questioned what would happen if he never built the house, only the storage building, the additional traffic, and loss of property values in the area. She stated that a phone call was received from Tony Brinkman who was also against the request. She stated that the Board might want to consider a condition that the house must be built first.

Mr. Fowler stated that when considering a motion the Board should look at the recommendations in the case summary and also include the conditions of the house being built first and obtaining a drainage and driveway permit.

Mr. Watson made a motion to approve BZA 03-19 the appeal of Christian S. Davis and Bruce and Karolynn Deeds with the hardship as stated in the application with the following conditions: 1) That there be no outside storage and no work performed outside; 2) That the used truck parts business use be for the applicant only; 3) That there be no employees; 4) That the applicant adhere to the driveway regulations of the County Engineer; 5) That a drainage permit be obtained; 6) That the business storage building be limited to 80' x 60'; 7) That the house be built prior to the storage building; and 8) That the exterior of the storage building match the house exterior. Mr. Bishop seconded the motion. Voting in favor: Mr. Bishop, Ms. Carey, Ms. Mathewson, and Mr. Watson. Voting against: Mr. Fowler and Ms. Zimmerman. Motion carried, BZA 03-19 approved.

Ms. Moody stated for clarification that the Boards action does not do away with the restrictive covenants, and they can be enforced by the property owners through the courts should they choose do so.

REPORT FROM DIRECTOR:

Ms. Moody stated that the office had been working on an amendment to the zoning ordinance to change the language so that the Plan Commission would now be doing the publication of legal notice. She stated that the filing fees would be raised to cover that cost and that it would actually cost less for the applicant this way. She stated that it would be the filing fee for a variance plus an additional \$50 for every request over one, which may provide some incentive for the applicant to find a way around some of those multiple requests.

ADJOURNMENT:

James Fowler, Chairman

Marta Moody, Secretary