

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

**DATE:** July 25, 2019

**PLACE:** Commissioner's Court Room  
3<sup>rd</sup> 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 June, 2019 regular monthly meeting minutes.

**NEW BUSINESS**

**BZA 20-19 Jurisdiction: Board of Zoning Appeals**

**Special Use** Being a public hearing on the matter of an application filed by **Pamela K. Terhune**, 4220 North County Road 500 West, Muncie, Indiana, requesting special uses under the terms of the Delaware County Comprehensive Zoning Ordinance to allow a new animal rescue charitable institution and a veterinary hospital on premises located on the east side of County Road 500 West beginning 1314 feet north of McGalliard Road, Harrison Township, Delaware County, Indiana, as more accurately described in the application.

**BZA 21-19 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Escamilla Holdings, LLC and Take 5 Indiana, LLC**, 1555 West Oak Street, Suite 100-3, Zionsville, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased setback from McGalliard Road, decreased parking, decreased car stacking capacity, decreased foundation landscape area, decreased buffering, decreased distance to the ROW for 2 ground signs, and a decreased distance between ground signs, all for a new oil change business on premises located at the northwest corner of Locust Street and McGalliard Road, Muncie, Indiana, as more accurately described in the application.

**BZA 22-19 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Muncie Property Holdings, LLC**, 12701 Covered Bridge Road, Sellersburg, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow bright white lighting rather than warm white lighting and modifications to approved variances regarding landscape plantings and pedestrian walkways, all for 2 new auto dealerships on premises located at the southeast corner of Nebo Road and McGalliard Road, Muncie, Indiana, as more accurately described in the application.

**BZA 23-19 Jurisdiction: Board of Zoning Appeals**

Being an automatic continuation on the matter of an application filed by **Indiana ABC Apprenticeship Trust**, 5001 North Shadeland Avenue, Indianapolis, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a decreased side setback for a new general retail building on premises located on the east side of SR 67, approximately 750' south of the intersection with County Road 300 West, Salem Township, Delaware County, Indiana, as more accurately described in the application.

**REPORT FROM DIRECTOR:**

**ADJOURNMENT:**

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

The Delaware-Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday, July 25, 2019 at 6:30 P.M., in the Commissioners' Court Room of the Delaware County Building, Muncie, Indiana. Vice Chairman Kelly Watson called the meeting to order.

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

Ms. Moody called roll and the following members were present: Mr. Bishop, Ms. Carey, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Absent: Mr. Fowler and Ms. Kennison. Also present: Ms. Quirk, attorney for the Board.

**MINUTES:**

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

**NEW BUSINESS**

**BZA 20-19 Jurisdiction: Board of Zoning Appeals**

**Special Use** Being a public hearing on the matter of an application filed by **Pamela K. Terhune**, 4220 North County Road 500 West, Muncie, Indiana, requesting special uses under the terms of the Delaware County Comprehensive Zoning Ordinance to allow a new animal rescue charitable institution and a veterinary hospital on premises located on the east side of County Road 500 West beginning 1314 feet north of McGalliard Road, Harrison Township, Delaware County, Indiana, as more accurately described in the application.

Ms. Quirk stated that she was listed as the attorney representing the applicant however her legal representation was only to give business advice and to help with the development of the non-profit organization. She stated that all questions about zoning and land use had been referred to Ms. Moody and the Plan Commission staff. She stated she would recues herself for this request.

Ms. Moody stated that since several people would want to speak on this matter the process would involve the applicant to speak and then asking for those in favor to speak and then those in opposition to speak. She stated that 20 minutes for each side would be given and in order to hear from as many people as possible, 3 minutes per person would be given.

Pamela Terhune, 4220 N. CR 500 W, Muncie, Indiana appeared. She stated that she had purchased the 38 acres next to her property and since it was zoned farming the animals would be permitted. She stated that the special use request was for the businesses which would include a retail area with a coffee shop, ice cream shop, café, gift shop, pet lodging and a veterinary clinic that will spay & neuter pets at a low cost. She stated that another program would offer free of charge pet lodging for active military personnel while on deployment or training and for those effected by homelessness or domestic abuse that might not accept services if they have to leave

their pets behind. She stated that the fees to the general public for the pet lodging, grooming services and retail village would help to financially support the non-profit organization. She stated that Wasson's Nursery and Ed McKibben, two of the nearby neighbors had given their support of the request and that Pet Pals TV which airs on channel 8 had also expressed their support and that she would be a regular guest. She stated that they would have the full support and access to Best Friends Sanctuary where they had received training and that since they were a network partner, Grateful Sanctuary would be operating under their guidelines. She stated that at the Plan Commission meeting some of the comments had been unexpected and that she would like to address some of those at this time. She stated that they had other properties they could have purchased but they went to the Reno's and with their blessing, moved forward with the purchase of this property and that they had offered to screen their property or buy it from them since it was in the middle of the development. She stated that Mr. Reno had mentioned concerns about the increase in traffic, but that happened when Wasson's moved in so the traffic was already there and that she was still willing to purchase the Reno's home at fair market value if he was worried about his property value decreasing and they could continue to live there. She stated that Mr. Ritchie, another neighbor, had concerns about hearing all of the dogs barking and that they had plans to sound proof as much as possible so that would not be an issue. She stated that the music that was planned would be light jazz and bluegrass music, nothing loud because this was meant to be a peaceful sanctuary with a picnic area to listen to the music and relax. She stated that another neighbor had concerns about the orchard because they have a bee allergy so they had decided to take out the orchard and replace that with an organic garden instead. She stated that bringing the dogs in at night was discussed at the Plan Commission meeting. She handed out a picture of a dog she had adopted and discussed how some animals can go kennel crazy and that she wanted them to be able to come and go and not be restricted.

Mr. Watson asked what restriction she was referring to.

Ms. Terhune stated that she received a notification that mentioned putting the dogs inside early at night and that does not fit with the plan of the sanctuary to be a stress free place.

Ms. Moody clarified that the restriction regarding putting the dogs in at a certain time was brought up at the Plan Commission meeting to try to help with the potential noise. She stated that was mentioned in the case analysis but was not part of the applicant's application.

Ms. Terhune stated that it would be almost 12 hours that the dogs would be put inside and she really did not want to do that to the animals.

Ms. Moody stated that the Board can place conditions in the motion to address issues.

Ms. Terhune stated that the zoning does allow the animals and that they would be coming, but the special use would help make it a nicer place and provide the funds to keep the sanctuary running.

Mr. Carson, 4220 N. CR 500W, Muncie, Indiana, appeared. He stated that it was wonderful to see so many people come to hear about this development because there was nothing like this in the Midwest. He stated that a sanctuary was a new way to manage the problem of homeless and unwanted pets that deserve better and that it would take a lot of pressure off the shelters because they could take more animals. He stated that they found the Best Friends organization that has been in business for over 35 years. He stated that the staff was professional and friendly and that the animals were well taken care of, relaxed, and calm. He stated that they are close to having the animals on the property and that they are very excited about the plans for the development and that it would take a lot of people and money to run everything. He stated that he had a

presentation that would show all of the different elements and phases of the development and would answer any questions. He stated that they planned the development around the Reno residence to make it as comfortable for them as possible. He stated that the south entrance would be the welcome area, an area for behavioral assessments, the educational area for several of the outreach programs and the clinic and that all of those buildings would have cameras and be monitored. He stated that the clinic would monitor and record the health and diet of all of the animals that were on site. He stated that the first phase of development would take approximately a year and that they have 3 phases planned in total because of the size of the development. He stated that another area would be for a pet cemetery and that the on-site chapel would hold a monthly service for any animals that were lost that month. He stated that there would be an area for cats and another area for wildlife, like bunnies and birds. He stated that the largest building would be for the animal lodging that included a grooming center and that all animals are spayed neutered, chipped, groomed and given their shots as soon as they arrive. He stated that the 10 buildings for the dog kennel would be 70' long and 36' wide and would be located at the far back of the property. He stated that even when the dogs were outside it would be an enclosed covered porch area that they could come in and out of and that they do not want to restrict that movement overnight. He stated that there would also be a maintenance building with room for all of the ground crew equipment to be stored. He stated that the development would be a beautiful area with trails and that people would want to stay longer and enjoy the scenery, a cup of coffee, the gift shop, pies, and other retail areas. He stated that there would be a small stage that the employees could use for informational demonstrations and that light soothing music would be enjoyed. He stated that the music would not be loud, but would be light jazz and some bluegrass with a free symphony once per month and that area faces away from the residential area. He stated that they had replaced the orchard with an organic garden and that the whole site could be used for field trips so as many people as possible can enjoy it. He stated that the only way to take care of the animals would be to have the retail village to help fund everything. He stated that there were also many trails in different lengths so that the dogs and people could enjoy them. He stated that the elevations and hills on the property and around the lake would help to lessen the sounds from the animals and activities. He stated that there would be 145 full time and 149 part time staff and 240 volunteers to run everything.

Phil Dashler, 606 W. Haines Ave., Muncie, Indiana, appeared. He stated that he was a Veteran and that he does a lot of work with Veterans and Nate Jones with the Delaware County Veterans Affairs Office. He stated that service dogs and Pets for Vets and some of the other programs to be offered were very important and that a lot of veterans would benefit from this development.

Barbara Craycraft, 304 N. Redwood Lane, Muncie, Indiana, appeared. She stated that she was also a veteran and had once stayed in an abusive relationship because she could not take her dog to a shelter and that the programs that will be offered are very important. She stated that she believes property values would increase and since there was nothing like this around it would be great for Muncie.

Kathy Bland 6104 W. Bethel Ave., Muncie, Indiana, appeared. She stated that having the veterinary clinic that would offer a low cost spay and neuter program would give more opportunity to help with that issue. She stated that she attends City Council meetings and it had been a very long time since someone said they were going to bring in this many jobs to Muncie. She stated that she had many years of volunteer work and that it would not be difficult to find people that would want to help out and that this sanctuary would take a big load off the shelters that were overcrowded. She stated that she understands the Reno's concerns about traffic, but with all of the businesses in the area the traffic was already there.

Suzie Shivie, 6201 Northshore Blvd., Anderson, Indiana, appeared. She stated that she was the Director of the Madison County Human Society and she had worked in animal rescue her entire life. She stated that she had met with Pam and talked about her ideas and that she was very excited for the project.

Vickie Bevans, 5600 W. CR 200S, Yorktown, Indiana, appeared. She stated that she was the former Executive Director of the Animal Rescue Fund and that she understood the importance of this project. She thanked the Board for their time and dedication to making Delaware County a better place to live and stated that Grateful Sanctuary had those same goals. She stated that Mike and Pam had worked and trained very hard to do what was right for these animals in need. She stated that this was something that could not be found anywhere in the Midwest and that the sanctuary was for more than just the dogs and cats to enjoy. She stated that the educational programs, outreach programs and even the opportunities to volunteer could be enjoyed and used by everyone. She stated that 6.5 million animals enter shelters every year and this could be an example to other communities and shine a positive light on Delaware County.

Ryan Groves, attorney with McKinney and Malapit, 201 N. High St., Muncie, Indiana, appeared in opposition. He stated that he represents Alan and Jackie Ritchie who live south of the proposed animal rescue and are in opposition. He stated that the sanctuary had wonderful goals and that no one could argue with that, but they are asking for a special use not a rezoning of the land. He stated that the Board could approve the use of a charitable institution and a veterinary hospital but that the other buildings and their uses could not be approved. He stated that the applicant must show that the special use would not be detrimental to the public health, safety, and enjoyment of surrounding properties. He stated that dogs were pack animals and what happens when an aggressive pack was to get out and wander onto surrounding properties. He stated that the few dogs Ms. Terhune had on her property now make a lot of noise and can't imagine how loud 500 dogs together would be. He stated that the drainage facilities in the area were inadequate and that his clients had spent over \$700 in past few years to try and address the issues. He stated that the site plan indicates that the retention pond would be at the highest elevation so all of the water would run away from it and onto the neighboring properties. He stated that the applicant said she needs to operate a small village of shops including an ice cream shop, coffee shop, gift shop, concert area, animal clinic, and assorted retail shops and farmers market and concerts to fund the sanctuary. He stated that this plan was based on the Best Friends Sanctuary in Utah that was on 36,000 acres of land and in 2016 had 429 dogs, and that the proposal here was to recreate the same thing on 38 acres and have 500 dogs. He stated that his clients ask the Board to deny this request but if it was granted the applicant should be required to upgrade the tiles in the affected area and place a limit on the amount of time the dogs could be outside.

Darrel Dobbs, 4101 N. CR 500W, Muncie, Indiana, appeared in opposition. He stated that the few dogs right now are a little noisy, but having 500 dogs within 200 yards of house home won't be good.

Drew Cleveland, 264 N. SR 1, Farmland, Indiana, appeared in opposition. He stated that he was a regional manager for Indiana Farm Bureau representing 6 counties and that he had several calls from members and the main concern was that this project was that it was a competing use since it was zoned agriculture. He stated that business like the café, ice cream parlor and gift shops do not belong in an area zoned for agriculture. He stated that there were many other areas in Muncie that would be appropriate for this project and less of a conflict in use. He stated that if the BZA approves this project they might be opening themselves out to a lawsuit. He stated that planning and zoning was best done by grouping like uses together and away from competing uses and he was against this project in this location.

Julia Plate, 4500 N. CR 500W, Muncie, Indiana, appeared in opposition. She stated that she lives the closest to the applicant's residents and had several concerns. She stated that the county tiles were broken and they had sections of their pasture and hay field that can't be used due to the standing water. She stated that with all of the broken tiles across many properties there was already flooding issues. She stated that she also had concerns of safety and that she had called Ms. Terhune at least 3 times in the last 5 months to get her dogs that were loose barking the whole time. She stated that the noise was also concern since the dog housing area would be closest to her property and the few dogs they have now can be heard so they do not spend much time outside. She stated that she was also concerned about property values, pests that carry disease and other animals like raccoons and rats that would be looking for dog food and trash. She stated that she was also concerned about the smell of so many animals in a small area and the release of ferial cats. She stated that the animal shelters in Delaware County already have trouble getting volunteers and funding. She stated that she was an animal lover and could sympathize with the dogs and cats but did not see how this was going to work on just 38 acres. She stated that there were homes in the area and asked how many people in attendance actually lived in the area that were opposed to this project. (8-10 people stood up)

Steven Ritchie, 5905 N. CR 500W, Muncie, Indiana, appeared in opposition. He stated that he owned and lived on 180 acres and that Jake's Creek runs the entire length of the property and was overloaded and outside of its banks much of the year. He stated that 2 undersized clay tiles also pass through his property and that the Branson Drain from the north works but the Gaymen Drain from the south had not worked for more than 40 years. He stated that the County Surveyor's Office had insisted over the years that there was no money in the Jake's Creek watershed for those needed repairs. He stated that a county tile that had not worked in at least 10 years was running through the proposed developments property leaving unusable acreage the length of the drain and often leaving Isabella Road impassable due to the water. He asked if this was approved would the County then live up to its obligation to fix and maintain the drain and to reconstruct this drain to a sufficient size. He stated that there were 4 long established horse barns within a quarter mile of the proposed sanctuary and asked who would be held liable if dogs got out and harmed those horses. He stated that everyone loves dogs and some cats and sympathize with the stray and homeless animals but this was an area of small family farms and well maintained family homes and asks that the Board deny this request.

Jaqualine Evans, 4600 N. CR 500W, Muncie, Indiana, appeared in opposition. She stated that she lived 2 houses down from the Ms. Terhune and that she had no idea any of this was being done. She stated that she had 4 dogs and 14 cats of her own and if this was being built somewhere else she would volunteer and that she volunteers for Action for Animals and can say that so many times volunteers do not show up. She stated that if they think they are going to build a facility that no dog would escape from they are wrong, dogs are smart and will find a way to get out. She stated that she works midnights and hears their dogs barking and that if they have staff they could keep the dogs inside and let them out when they need to go during those hours. She stated that there were coyotes in the area and that a screened area would not keep them from getting to the cats. She stated that because of her work hours the concerts they are proposing would affect her schedule. She stated that her daughter was going to school to become a vet and that if this was located somewhere else they would both be happy to volunteer.

Ed Reno, 3801 N. CR 500W, Muncie, Indiana, appeared in opposition. He stated that if you look at the proposed site, his house was the place right in the middle of the development. He stated that the northeast part of the property where they were planning the dog kennels floods every year and that the southwest corner is just as bad. He stated that there was a 3 foot drop on the southside of his property and if it was filled in all of the water would collect on his property. He stated that

he had no problems with the applicants or the dog shelter but all of the extra development was too much. He stated that if someone wanted to buy his property and live by the sanctuary fine, but they already have problems with all the traffic from Wasson's and did not want to be surrounded by this much. He stated that he was also concerned about the drainage problems and asked if this was the meeting to approve that plan.

Mr. Watson stated that this was the request for the special use and an approved drainage plan would need to be approved from a different board.

Mr. Bishop asked what the width of the road going in and out of the site would be.

Mr. Carson stated that it was 24' wide.

Mr. Bishop asked if the 72 overflow parking spaces shown on the plans were in addition to the 208.

Mr. Carson stated yes.

Mr. Bishop asked what the plan was for animal waste disposal.

Mr. Carson stated that the dog waste would be picked up and flushed through the septic system which was the most sanitary way of disposal.

Mr. Bishop asked how many visitors they expected per day.

Mr. Carson stated that around 25-75 visitors through the week and possibly a few hundred on the weekend.

Mr. Bishop asked what the animal capacity in this zone would be.

Ms. Moody stated that in the farm zone there was a permitted use for a kennel and that there were no limitations on the size of the kennel just that it needed to be at least 5 acres and any area where animals were kept needed to be 200 feet from a surrounding residence.

Mr. Bishop asked if the noise proofing plan had been provided in the packets.

Mr. Carson stated that they would be sound proofing in the dogs living space and the hallway of the kennels and that they would rely on the landscape and elevation to help cut the sound.

Ms. Moody stated that the landscaping that was shown on the plans was part of the application and it would be expected that it was done as part of the development.

Mr. Carson stated they understood that and they were also aware of the problems with the tiles and drainage in the area that need to be addressed and they will do whatever they could to fix it.

Ms. Carey asked how long the tile had been a problem.

Mr. Carson stated that the information he had shows back to 1995.

Ms. Carey asked if it was a problem when Ritchie owned what was now Wasson's.

Alan Ritchie, 3505 N. CR 500W, Muncie, Indiana, appeared. He stated that when he owned that property it was not as large as Wasson's was now and there was no water problem but they have added buildings and parking lot area and tried to contain that water.

Ms. Carey asked if the applicant fixed the issues would it still be a problem.

Mr. Ritchie stated it was a long way to the creek and there needs to be a lot of conditions to be fixed properly.

Ms. Moody stated that a professionally prepared drainage plan would need to be submitted and a drainage permit obtained and the drainage ordinance that was in effect states that they have to handle any water coming in and control what goes off of the property. She stated that unless they fix the outlet, they would have a lot of work on site to handle the drainage.

Mr. Ritchie stated that the biggest problem here was there not enough fall between the road and the ditch header to install a bigger tile.

Mr. Watson asked about the elevation changes that would shed water onto Mr. Reno's property.

Mr. Carson stated that Mr. Reno's elevations would not change and that the lake would be built 5-6 feet higher and that they would capture as much rainwater as possible.

Mr. Watson asked if there would be tiles around the property that would run to the lake since it was a higher elevation.

Mr. Carson stated that it was 15' deep in the middle.

Ms. Moody stated that as part of the drainage plan it would include the grading plan and the proposed facilities to be installed and nothing can be done that would negatively impact the neighboring properties.

Mr. Carson stated that they understand they need a complete grading job and tiles to fix the problems and that they need all of the necessary permits.

Ms. Terhune stated it was true that Ms. Plate had called her to come retrieve her dogs but not in the last 5 months. She stated that they had talked to each other while her dogs were around and they seemed fine together and did not know she was in opposition until now. She stated that the release of feral cats was not the plan, it was to trap, neuter and return, (TNR) but that means to release it in the same place they were trapped. She stated that Best Friends Sanctuary does have thousand of acres and that most of that was very rocky terrain and that this facility would have more room for the animals.

Mr. Watson asked what they would do if dogs did get out.

Mr. Carson stated that there would be a set of double doors and a solid 8' fence with a 4' deep concrete barrier they would have to get through.

Ms. Mathewson asked how often they expected to have deliveries.

Mr. Carson stated that there would be weekly food deliveries and trash removal and that there was also a company that would be taking away the cat waste to compost.

Ms. Terhune stated that the animals would not be close to any residents.

Mr. Carson stated that the closest animals would be to any residents would be Mr. Reno and that was over 675' to the dogs and over 450' to the cats.

Ms. Carey asked for a show of hands for those in favor that lived in the area. (8-10 people raised their hands)

Ms. Zimmerman asked about the exotic animals in phase 2 and what they would be.

Ms. Terhune stated they would be birds, turtles, rabbits or a snake that would be taken care of until they could go somewhere else. She stated that wild animals like deer and squirrels that were found and injured could be rehabbed as well.

Joy Dobbs, 4101 N. CR 500W, Muncie, Indiana, appeared. She stated that the location of all the shops and stores would be located right in her front yard almost and that she would be living in a parking lot. She stated that they purchased her home to be in the country and enjoy the peace and quiet and she did not want all of the added noise and drainage problems and asked the Board not to grant this request.

Ms. Plate stated that in defense of earlier statements she had talked to Ms. Terhune this spring and that the loose dog was not aggressive but was luring her dogs out to the street. She stated that she was not afraid of dogs, but they were loose on her property and it was this spring.

Randall Evans, 4600 N CR 500W, Muncie, Indiana, appeared in opposition. He stated that the concerns are with the traffic coming from 500 W to get into the development and cars are traveling too fast. He stated that there was a light at the intersection of McGalliard Road and 500 W but no turn lane and it already had too many accidents. He stated that the reason they moved to that area was to get away from some of the traffic and noise and this would be bringing it too close.

Mr. Bishop made a motion to approve BZA 20-19 the appeal of Pamela L. Terhune with the hardship as stated in the application. Ms. Carey seconded the motion. Voting in favor: Ms. Carey, Ms. Mathewson, and Mr. Watson. Voting against: Mr. Bishop and Ms. Zimmerman. Motion failed, no official action. BZA 20-19 automatically continued to the August 29, 2019 regular monthly meeting.

Ms. Moody stated that 4 votes were required for official action and that with a 3-2 vote this matter would be continued to the next regular monthly meeting which was August 29, 2019 at 6:30 P.M.

**BZA 21-19 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Escamilla Holdings, LLC and Take 5 Indiana, LLC**, 1555 West Oak Street, Suite 100-3, Zionsville, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased setback from McGalliard Road, decreased parking, decreased car stacking capacity, decreased foundation landscape area, decreased buffering, decreased distance to the ROW for 2 ground signs, and a decreased distance between ground signs, all for a new oil change business on premises located at the northwest corner of Locust Street and McGalliard Road, Muncie, Indiana, as more accurately described in the application.

Elliot Smith, 10884 Greshman Place, Nobelsville, Indiana, appeared. He stated that he was working on some final approvals from the franchisor and would like to continue the request to next month's meeting. He stated that he wanted to do everything correctly and apologized for the last minute request to continue.

Ms. Zimmerman made a motion to continue BZA 21-19, the appeal of Escamilla Holdings, LLC and Take Indiana, LLC to the August 29, 2019 regular monthly meeting. Ms. Carey seconded the motion. Voting in favor: Mr. Bishop, Ms. Carey, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Voting against: none. Motion carried, BZA 21-19 continued to the August 29, 2019 regular monthly meeting.

**BZA 22-19 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Muncie Property Holdings, LLC**, 12701 Covered Bridge Road, Sellersburg, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow bright white lighting rather than warm white lighting and modifications to approved variances regarding landscape plantings and pedestrian walkways, all for 2 new auto dealerships on premises located at the southeast corner of Nebo Road and McGalliard Road, Muncie, Indiana, as more accurately described in the application.

Bill Hughes, attorney with Beasley and Gilkison, 110 E Charles St., Muncie, Indiana, appeared to represent the applicant. He stated that the new Ford and Hyundai dealerships under construction had previously received several variances and that the property had sold since that time. He stated that the new owners were able to adapt and comply with many of those original requests in 2017, and that there were just a few items that needed to be considered. He stated that in the original request they were to plant larger 6" caliper trees since they were asking for a reduced number of trees so that the larger trees would have a bigger impact on the site. He stated that the landscape firm advised that the larger trees were slower to grow and had a higher mortality rate and take longer to develop a root system than the smaller trees. He stated that the 4" caliper shade trees they were requesting would still be larger than what the ordinance requires. He stated that since a car dealership does not get a lot of pedestrian traffic, direct sidewalk access from the road to the building was not needed. He stated that there was a condition placed in 2017 to plant 5 trees on the southside of Hometown Boulevard, but the applicant does not own or control that property. He stated that the final request was for a lighting change and that Ms. Burkhart could give that information and answer any questions.

Janine Burkhart, Light Source Indy, 8719 Castlepark Dr., Indianapolis, Indiana, appeared. She stated that she specialized in auto dealership lighting which in this case called for warm white lighting. She stated that a rating of 5000 Kelvin was used for car dealerships and that referred to the color and not how bright it was. She stated they only use Visionaire Lighting and that all they did was exterior lighting with their focus being auto dealerships. She stated that all of the light fixtures have full cut off at the property line and that no light would go off the property and effect surrounding properties.

Mr. Watson asked if the lighting would match the other car dealerships nearby.

Ms. Burkhart stated yes. She stated that the maximum to minimum calculations are all low which means the lights are very even on the entire parking lot with very little fluctuation.

Ms. Zimmerman asked if pedestrians were in the area would they be able to move around easily.

Matt Maple, HWC Engineering, 135 N. Pennsylvania Ave., Indianapolis, Indiana, appeared. He stated that there was a perimeter sidewalk for Hometown Boulevard with continuous sidewalks starting at Nebo Road. He stated that there would be onsite sidewalks just not from the buildings to the right of way to maximize space for parking and cars.

Ms. Mathewson made a motion to approve BZA 22-19 the appeal of Muncie Property Holdings, LLC with hardship as stated in the application. Ms. Carey seconded the motion. Voting in favor: Mr. Bishop, Ms. Carey, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Voting against: none. Motion carried, BZA 22-19 approved.

**BZA 23-19 Jurisdiction: Board of Zoning Appeals**

Being an automatic continuance on the matter of an application filed by **Indiana ABC Apprenticeship Trust**, 5001 North Shadeland Avenue, Indianapolis, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a decreased side setback for a new general retail building on premises located on the east side of SR 67, approximately 750' south of the intersection with County Road 300 West, Salem Township, Delaware County, Indiana, as more accurately described in the application.

Ms. Moody stated that since this was an automatic continuance no action was needed by the Board and that notice was sent to the surrounding property owners.

**REPORT FROM DIRECTOR:**

Ms. Moody stated that she had previously reported to the Board that the BZA decision that was appealed by the Light's was decided in their favor. She stated that the surrounding property owners had filed an appeal of the court decision and want to know if the BZA would join in that appeal to the Indiana Court of Appeals. She presented that letter to the Board and stated that the court had made their decision and the Board typically does not pursue a case beyond that decision.

Ms. Carey asked if the court stated why they ruled in favor of the Light's.

Ms. Moody stated that the court was not like a trial, they looked at the record and the basis of the decision and they make their ruling as to whether a sound reasoning was behind the Board's decision. She stated that the court found that the Light's case held merit, and ruled in their favor. She stated that she was presenting this to the Board to see what they wanted to do, however the resources were not available for this.

Mr. Watson asked what past practices of the BZA would be in these situations.

Ms. Moody stated that once the court made its decision that was the end.

Ms. Zimmerman asked if there had ever been an exception.

Ms. Moody stated not that she could remember.

Ms. Zimmerman stated that the resources to be financially involved were meager.

Ms. Moody stated yes.

Ms. Mathewson made a motion not to join in the appeal. Ms. Carey seconded the motion. Voting in favor: Mr. Bishop, Ms. Carey, Ms. Mathewson, Mr. Watson, and Ms. Zimmerman. Voting against: none. Motion carried, BZA will not join in the appeal.

**ADJOURNMENT:**

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Kelly Watson, Vice-Chairman

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Marta Moody, Secretary