

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
NOVEMBER - 2020 REGULAR MONTHLY MEETING
AGENDA**

DATE: November 19, 2020

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

TIME: 6:30 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Jim Fowler

Zane Bishop

Kelly Watson, Jr.

Kathryn Kennison

Allen Wiseley

Leslie Mathewson

Vacancy

MINUTES: Consideration of the October, 2020 regular monthly meeting minutes.

OLD BUSINESS

BZA 33-20 Jurisdiction: Board of Zoning Appeals

Being a continuation of a public hearing on the matter of an application filed by **Shannon McCormick**, 1623 South Pierce Street, Muncie, Indiana, requesting a variance of use and variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow a new 3-unit dwelling, reduced parking and decreased street setback on premises located at the northeast corner of Elliott Street and 11th Street, Muncie, Indiana, as more accurately described in the application.

BZA 39-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Cindy D. Baker (Tuttle)**, 5015 East State Road 28, Muncie, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a 6' tall privacy fence located in front of the house on premises located at 5015 East State Road 28, Delaware Township, Delaware County, Indiana, as more accurately described in the application.

BZA 40-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Wiltshire Properties, LLC and O'Reilly Automotive Stores, Inc.**, 233 South Patterson Avenue, Springfield, Missouri, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased street setback and build-to line for a new O'Reilly's Automotive store on premises located at the southwest corner of Morrison Road and Bradburn Drive, Muncie, Indiana, as more accurately described in the application.

NEW BUSINESS

BZA 34-20 Jurisdiction: Board of Zoning Appeals

Special Use Being a public hearing on the matter of an application filed by **Rene Church**, 2100 North Glenwood Avenue, Muncie, Indiana, requesting a special use under the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an accessory dwelling in an existing building on premises located at 2100 North Glenwood Avenue, Muncie, Indiana, as more accurately described in the application.

BZA 41-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Whitney Rumfelt and Michelle Rumfelt**, 401 West County Road 500 South, Muncie, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a one-chair beauty salon in an existing barn on premises located at 401 West County Road 500 South, Monroe Township, Delaware County, Indiana, as more accurately described in the application.

BZA 42-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Campus Crest At Muncie, LLC**, 3015 North Oakwood Avenue, Muncie, Indiana, requesting a modification of a condition of approval placed on BZA 06-12 to allow the apartment complex residents to use the driveway to Winston Drive as an entrance/exit on premises located at 3015 North Oakwood Avenue, Muncie, Indiana, as more accurately described in the application.

BZA 43-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **BSB Enterprises, LLP**, 1717 North Wheeling Avenue, Muncie, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased front build-to line, decreased rear buffer yard and side yard plantings and no parking lot island for an expansion of an existing building for a new tire store business on premises located at 504 West McGalliard Road, Muncie, Indiana, as more accurately described in the application.

OTHER BUSINESS

Continuation of a consideration of a request for a rehearing of **BZA 16-20** based on new evidence submitted by the applicant, **Annette Caldwell**.

REPORT FROM DIRECTOR:

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
NOVEMBER - 2020 REGULAR MONTHLY MEETING
MINUTES**

The Delaware Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday November 19, 2020 at 6:30 P.M., in the Commissioner's Court Room of the Delaware County Building, Muncie, Indiana. Chairman James Fowler called the meeting to order.

PLEDGE OF ALLEGIANCE:

MEMBER INTRODUCTION:

Ms. Moody introduced new member Mike Jones who was appointed by the County Commissioners. She read the Oath of Office, and Mr. Jones responded in agreement with "I do".

ROLL CALL:

Ms. Moody called roll and the following members were present: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Absent: Ms. Kennison. Also present: Mr. Rhetts.

MINUTES:

Mr. Watson made a motion to approve the October, 2020 regular monthly meeting minutes. Mr. Bishop seconded the motion. Voting in favor: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, October, 2020 minutes approved.

OLD BUSINESS

BZA 33-20 Jurisdiction: Board of Zoning Appeals

Being a continuation of a public hearing on the matter of an application filed by **Shannon McCormick**, 1623 South Pierce Street, Muncie, Indiana, requesting a variance of use and variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow a new 3-unit dwelling, reduced parking and decreased street setback on premises located at the northeast corner of Elliott Street and 11th Street, Muncie, Indiana, as more accurately described in the application.

Shannon McCormick, 1623 S Pierce St, Muncie, Indiana, appeared. He stated that he had a new drawing to help show his parking for the 3-unit dwelling.

Mr. Fowler stated that he still had some concerns with this being a 3-unit dwelling.

Mr. McCormick stated that he would be willing to reduce to a 2-unit dwelling or even a single-family dwelling.

Mr. Fowler stated that a 3-bedroom single unit would be better for the parcel.

Mr. McCormick stated that he wanted to work with the Board and the neighbors in the area.

Mr. Fowler asked for thoughts on the new parking layout.

Ms. Moody stated that she applauded his efforts, but that it was still a lot in terms of the size of the lot and fitting with the surrounding area.

Mr. Fowler stated that he agreed and that a single unit dwelling would fit the area much better.

Mr. McCormick stated that he was willing to do that, but that he would still need the variance for the setback.

Ms. Moody stated that the Board could deny the variance of use for the 3-unit dwelling but grant the setback request. She also stated that 2 of the surrounding property owners had sent letters of concern regarding the parking and number of units.

Mr. Watson made a motion to deny the request for a 3-unit dwelling and to grant the setback request. Mr. Wiseley seconded the motion. Voting in favor: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 33-20 approved.

BZA 39-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Cindy D. Baker (Tuttle)**, 5015 East State Road 28, Muncie, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a 6' tall privacy fence located in front of the house on premises located at 5015 East State Road 28, Delaware Township, Delaware County, Indiana, as more accurately described in the application.

Joseph Blackmer, 8811 W. CR 400N, Gaston, Indiana appeared to represent the applicant.

Mr. Fowler stated that at the last meeting there had been discussion of snow possibly causing an issue when plowed if piled along the fence. He stated that he had driven past this property, and feels there is enough room between the road and the fence. He asked if they would be leveling off the fence post along the tops.

Mr. Blackmer stated yes.

Mr. Bishop asked what the staff recommendation was.

Ms. Moody stated that to be 6' tall the setback in this zone would be 30' for a building, but that in this situation the house sits farther back than that.

Mr. Blackmer stated that at the curve the fence is 28' feet from the road.

Mr. Watson stated that was only 2' from what would be required.

Mr. Fowler stated that it appeared to be right on the property line.

Ms. Moody stated that when a fence is built right on the property lines, there was always an issue of ownership and that there should be room for maintenance to occur from your own property.

Judy Mansfield, 4917 E. SR 28, Muncie, Indiana, appeared in opposition. She stated that the fence makes the 2-acre property look like a fort and that she did not think it should be 6' tall. She stated that this had been an ongoing problem and had a hard time believing that homes in the area would sell with this property looking this way.

Mr. Jones made a motion to approve BZA 39-20 the appeal of Cindy Baker (Tuttle) with the hardship as stated in the application. Mr. Watson seconded the motion. Voting in favor: Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: Mr. Bishop. Motion carried, BZA 39-20 approved.

BZA 40-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Wiltshire Properties, LLC and O'Reilly Automotive Stores, Inc.**, 233 South Patterson Avenue, Springfield, Missouri, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased street setback and build-to line for a new O'Reilly's Automotive store on premises located at the southwest corner of Morrison Road and Bradburn Drive, Muncie, Indiana, as more accurately described in the application.

Bob Deats, 645 Swift Rd., Kirksey, Kentucky appeared. He stated that they would like to build the new O'Reilly's 136' from the road to allow room for the raingarden and retention pond between the building and sidewalk.

Mr. Fowler stated that the Honda building was around 100' and asked if they would be willing to move up to meet that building.

Mr. Deats stated that they could move to 100', but that would change the retention pond and raingarden.

Ms. Moody stated that was not mentioned at the last meeting and that if it was the sustainability feature they had to keep that.

Mr. Deats stated that they could redesign the raingarden and move the building closer to the road.

Ms. Moody stated that it was hard to see on the maps, but the parking on the street side of the building needs a semi opaque screening and they would need to add some shrubs to meet the planting requirements.

Mr. Fowler asked what the plans were for the rest of the property.

Mr. Deats stated that they had no plans for the lot to the west, but that he had never known O'Reilly's to sell part of their property.

Mr. Bishop asked for clarification if there was anything unique about this property.

Mr. Deats stated that the drainage just needs to make it to Morrison Road, and to comply it would run east and to the south through the raingarden.

No one appeared in opposition.

Mr. Bishop stated that he wanted to note that one of the requirements for approving a variance was that the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. He stated that he had nothing in particular against this request but that he did not believe it was the purpose of this Board to make decisions based on what was currently there or how it would be better.

Ms. Moody stated that a landscape plan would need to be submitted for approval by the Plan Commission Staff.

Mr. Deats stated that he would confirm if that had been sent.

Mr. Watson made a motion to approve BZA 40-20 the appeal of Wiltshire Properties, LLC and O'Reilly Automotive Stores, Inc., with the hardship as stated in the application. Ms. Mathewson seconded the motion. Voting in favor: Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: Mr. Bishop. Motion carried, BZA 40-20 approved.

NEW BUSINESS

BZA 34-20 Jurisdiction: Board of Zoning Appeals

Special Use Being a public hearing on the matter of an application filed by **Rene Church**, 2100 North Glenwood Avenue, Muncie, Indiana, requesting a special use under the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an accessory dwelling in an existing building on premises located at 2100 North Glenwood Avenue, Muncie, Indiana, as more accurately described in the application.

Rene Church, 2100 N Glenwood Ave, Muncie Indiana appeared. He stated that the existing garage was the same size as the house, and that he would like to convert that to living space.

Mr. Fowler asked how many bedrooms there would be.

Mr. Church stated there would be 3 bedrooms.

Ms. Moody asked if this would be a single unit dwelling.

Mr. Church stated that it would be a 2-bedroom downstairs and a 1-bedroom apartment upstairs.

Ms. Moody asked if it would then be a 2-unit dwelling.

Mr. Church stated yes, with stairs inside to the apartment.

Ms. Moody stated that an accessory dwelling cannot exceed the primary dwelling.

Mr. Church stated that he was unaware of that.

Mr. Fowler asked what the Plan Commission had recommended.

Ms. Moody read the favorable recommendations from the Plan Commission.

Mr. Fowler stated that the plans show 2 bedrooms on the main floor with a bathroom and kitchen and 2 parking spaces.

Mr. Church stated that was correct.

Mr. Watson asked if the primary dwelling had 2 bedrooms.

Mr. Moody stated yes.

Mr. Bishop asked Mr. Church if he lived at 2100 N. Glenwood Avenue.

Mr. Church stated yes.

Mr. Jones stated that he had an issue with there being more than 1 unit.

Mr. Fowler stated that it would need to be just a single-family unit in the accessory dwelling.

Mr. Wiseley stated that much of this area was already student rentals and that this does fit the area.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 34-20 the appeal of Rene Church with the following condition: That the accessory dwelling shall have a maximum limit of 2 bedrooms. Mr. Watson seconded the motion. Voting in favor: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 34-20 approved.

BZA 41-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Whitney Rumfelt and Michelle Rumfelt**, 401 West County Road 500 South, Muncie, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a one-chair beauty salon in an existing barn on premises located at 401 West County Road 500 South, Monroe Township, Delaware County, Indiana, as more accurately described in the application.

Whitney Rumfelt, 401 W CR 500S. Muncie Indiana, appeared. She stated that she had an accessory building on the property near the circle drive that was the perfect area to have the salon. She stated that many of her clients were older and that due to COVID this was perfect and she would only have 1 person at a time. She stated that she had lots of support from her neighbors

Mr. Fowler asked about the hours and if it was by appointment only and if there would be any employees.

Mr. Rumfelt stated it would be by appointment only, and that there may be a 2 hour or longer gap between clients sometimes. She stated that there would be no employees, it would just be her.

Ms. Moody stated that the application mentioned that there would be no sign.

Ms. Rumfelt stated that was correct.

Mr. Fowler stated that it was a fairly rural area and that he understands the concerns about COVID. He asked if she had talked to any of the neighbors.

Ms. Rumfelt stated that she had talked to some and had letters from others, one who was a cancer patient, all in support.

Ms. Moody stated that was similar to a home occupation for a 1 chair salon, but the difference is that this was in an accessory building and not the primary dwelling. She stated that a home occupation request would allow for a 1' x 1' sign which the Board could allow in this case as well.

Mr. Fowler asked if that could just be added to the request.

Ms. Moody stated yes, it would allow Ms. Rumfelt a 1' x1' square informational sign to show clients where to enter if she desired.

No one appeared in opposition.

Mr. Watson made a motion to approve BZA 41-20 the appeal of Whitney Rumfelt with the hardship as stated in the application with the following conditions: 1) That signage shall be limited to a 1' x 1' wall identification sign; 2) That the variance is for the applicant, Whitney Rumfelt only; 3) That there shall be no employees; and 4) That the hours of operation be limited to Monday-Friday 8AM-8PM and Saturday 8AM to Noon. Mr. Wiseley seconded that motion. Voting in favor: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 41-20 approved.

BZA 42-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Campus Crest At Muncie, LLC**, 3015 North Oakwood Avenue, Muncie, Indiana, requesting a modification of a condition of approval placed on BZA 06-12 to allow the apartment complex residents to use the driveway to Winston Drive as an entrance/exit on premises located at 3015 North Oakwood Avenue, Muncie, Indiana, as more accurately described in the application.

Brock Davis, 3015 N. Oakwood Ave., Muncie, Indiana, appeared. He stated that he was the property manager at Varsity House, and that the request was to allow the gated drive be open and not just for emergency use.

Mr. Fowler stated that it did not appear it was being used as emergency only right now.

Mr. Davis stated that they had all of the proper signage and that additional signs had been placed on Winston Road.

Mr. Fowler stated that a condition of the original request stated that the gate was to remain locked at all times.

Mr. Davis stated that he cannot find where it states that, and asked if it was locked, how would it be accessed during an emergency.

Mr. Fowler stated that as part of their emergency plan a staff member should be available to unlock the gate in an emergency.

Mr. Davis stated that they have an onsite security officer but they may not be available in the event of an emergency.

Mr. Fowler stated that the concern is that tenants will chose to use the drive no matter what the signs state if it is a shorter path for them to use. He stated that this was intended to be locked to not cause any problems for the neighborhood.

Mr. Davis stated that their goal was to be a good neighbor and that if the gate was to remain open they still would not want the residents to turn left into the neighborhood. He stated that they were the only major apartment complex in Muncie that only had one entrance/exit for 600 residents.

Mr. Fowler asked how many parking spaces were available and how many of those were filled.

Mr. Davis stated that there were 584 spaces and that they were at about 90% capacity.

Mr. Jones asked if the complex had grown in size.

Mr. Davis stated that since the original application that they had not added any more bed spaces.

Mr. Watson stated that before the complex had been built it had been agreed to use one entrance and exit.

Mr. Davis stated that he reads it to state that the gated drive leading to Winston Road be marked with appropriate signage that it was for emergency use only.

Mr. Jones asked how many residents use that emergency exit now.

Mr. Davis stated that they had not done a traffic study, so he can't answer that accurately. He stated that as a management standpoint they use it for a service entrance for deliveries and landscape crews since the other entrance was not large enough to use, including a fire truck.

Mr. Watson asked if that it was to remain closed or just have the signage posted.

Ms. Moody stated that the original approval in 2012 was for a special use for a multi-unit development and the site plan as submitted. She stated that the site plan notes that it was a locked emergency gate, and that it was always intended to be locked.

Mr. Wiseley asked if that was per the site plan that the developer had submitted.

Ms. Moody stated yes, from 2012.

Ms. Mathewson stated that she did not see in the minutes where it stated the gate was to remain locked, only that it was to be marked emergency.

Ms. Moody stated that the Board does not have a copy of the original site plan, and that was where it was marked to be locked and used for emergencies only and that the intent was not to use it as a regular entrance for the complex.

Mr. Bishop asked if McGalliard was a limited access road in this area.

Ms. Moody stated no.

Mr. Watson stated that there was no traffic light.

Mr. Fowler stated that traffic can turn west onto McGalliard from Winston Road, but there was no light there.

Mr. Watson asked if there had been many accidents at that location.

Ms. Moody stated that they had looked at the traffic accident records for 2017 for Winston and McGalliard and that there had been 5 accidents reported but that for 2018-2020 there were none reported.

Mr. Bishop asked if there had been issues with the original landscaping, such as dying plants.

Ms. Moody stated that when a landscape plan was approved, you must maintain that by replacing dead plants or trees and that early on there had been some discussions with the managers of the complex.

Mr. Davis stated that they had recently replanted some trees that had to be removed and that they try to keep on top of things and be a good neighbor. He stated that they cannot completely stop left turns from happening, but that they hope to accomplish this by more signs and sending reminders so that they can use that entrance. He stated that they had a petition signed by over 100 people in support of the gate remaining opened.

Ms. Moody stated that there were no addresses for those individuals who signed the petition.

Mr. Davis stated that they were all residents of the complex.

Amy Ryder, 3004 N. Winston Dr., Muncie, Indiana, appeared in opposition. She stated that she lived adjacent to the gate and that keeping it opened was only inviting possible crime and more traffic to the area. She stated that anyone can enter and exit the gate, and that during football season there were many extra cars adding to trespassing, accidents, and vandalism. She stated that her youngest child was in a wheelchair, and that many people in the neighborhood enjoy riding bikes and taking walks and play and the open gate makes all of that dangerous. She stated that the gate had been opened in August, long before the application and been filed and that it was a safety hazard and needed to remain closed. She stated that the neighborhood association had gone through all of the proper channels to get the gate closed and to keep the neighborhood safe, and that the complex management had not followed what was to be done.

Jerry Dishman, City Councilman 2817 N. Reserve St., Muncie, Indiana, appeared in opposition. He stated that he was the district's Councilman when the original request was heard, and that he was in favor of keeping the gate closed and for emergency use only. He stated that the neighborhood had been upset about the development from the beginning, but the developer agreed to keep the gate closed as part of their agreement and that was stated in the meetings. He stated that he and attorney Scott Shockley, and Brad Polk were on the Council and that the complex was to have someone on duty that had a key in case of an emergency, otherwise the gate was to be closed. He stated that the entrance on Oakwood had a sign now that may be causing a problem for the complex, but that was not the neighborhood's fault and should not be their problem.

Jeff Robinson, current District 2 Councilman, 1812 N. Riley Rd., Muncie, Indiana, appeared in opposition. He stated that Mr. Dishman and Mr. Polk had worked very hard with the neighborhood and the developer to come up with compromises that would work for everyone, and they all knew what the agreements would be. He stated that those compromises were a large part of the original rezoning being accepted, and that as city and a Board, we need to uphold those decisions. He stated that it was now less than 10 years later and they were wanting to make a change that would be a safety issue and be dangerous, and asked that the Board vote to keep it closed.

Brad Polk, District 4 Councilman, 4104 N. Manchester Rd., Muncie, Indiana, appeared in opposition. He stated that when the original request occurred, they were afraid that these very issues would happen. He stated that he witnessed three cars just last night turning into the complex where the gate should be closed. He stated that it is a safety concern for the neighborhood, and he urged the Board to keep the gate closed. He stated that his son just purchased a house in this neighborhood, and that it was a nice quiet area. He stated that the signs were currently not followed and that keeping the gate open would create more traffic and safety issues.

Aaron Neff, President of Anthony Neighborhood Association, 2737 N. Winston Dr., Muncie, Indiana, appeared in opposition. He stated that he had 87 signatures from residents of the neighborhood as well as emails all requesting that the gate remain closed, and that he would read his statement for the record. He stated that the Anthony Neighborhood Association asked the Board to deny the request and for Campus Crest to close the gate immediately as was the original agreement. He stated that the tenants in the complex would only be living here temporarily and that the residents of the neighborhood want a safe area for their families. He stated that it was a very active neighborhood and that traffic was sometimes backed up due to traffic using the Winston Drive exit and ignoring the no left turn signs. He stated that the gate needed to remain closed as promised, and if changes were to be made a traffic study should be done first to determine the impact to the area and the roads. He stated that before some of the trees were recently replaced, the management always had excuses for not getting it done as far back as 2014. He stated that no amount of signs would prevent people from turning left and that there have been many instances of cars not stopping and passing on the curve. He stated that he would show a video that was just an example of cars trying to turn left onto McGalliard, going too fast, not stopping, and using the neighborhood as a shortcut.

Mr. Watson stated that if the trees were dead in 2014 and they were just replaced, that was a long time.

Mr. Bishop asked if Mr. Neff considered Campus Crest as part of the neighborhood.

Mr. Neff stated that it was within the neighborhood association boundary.

Ms. Moody stated that the Board had the minutes from the original City Council and BZA meetings with the Certification that states "with the site plan approval as submitted" in the application. She stated that they also had emails and signatures from the neighbors and a statement from Mr. Neff, which he read.

Mr. Bishop asked for clarification if the Board denied this request, would things revert back to the original request and who would enforce that.

Ms. Moody stated that if denied, the gate would need to be closed and not used, and it would be up to the City Building Commissioner's Office to enforce.

Mr. Jones asked if they would be required to lock the gate.

Ms. Moody stated yes.

Comments via Facebook: Sara Humphrey stated that the gate should remain closed.

Mr. Davis stated that the video shown does not indicate if the drivers turning left were residents of the apartment complex or the neighborhood. He stated that anyone could access the neighborhood during games to park and to tailgate and that many college students rent houses in the area. He stated that the apartment complex was part of the neighborhood and a tax payer as well. He stated there was nothing currently to prevent people from turning into the neighborhood from McGalliard Road. He stated that this was not a high traffic accident area and if the gate were left open, it would likely not add any problems, but if it did traffic signals would be needed.

Mr. Fowler stated that if that much traffic would be added then the developer should be responsible for any needed improvements.

Mr. Wiseley stated that the driveways at both gates looked the same size, but on the Oakwood Avenue entrance it appeared that it had been turned into a double gate.

Mr. Davis stated that the Oakwood gate was turned into a one way in and one way out to prevent accidents.

Ms. Wiseley stated that other than the changes the developer made to that gate, there was no reason why emergency vehicles could not use that entrance.

Mr. Davis stated that it could still be used by emergency vehicles, but the entrance from Winston would be an additional and easier way to access the area.

Mr. Fowler asked if there was an additional entrance to the neighborhood from Oakwood Ave.

Ms. Moody stated yes, further south there were connections to Oakwood from the subdivision.

Mr. Fowler stated that a major concern was that if the gate was opened, the students could be driving through the neighborhood to the back gate, and from the gate turning left onto McGalliard Road.

Ms. Moody stated that there was the potential for that.

Ms. Ryder stated that Campus Crest was part of the neighborhood association by legality, but that no one from there has ever attended meetings or volunteered during any functions. She stated that they had many eyewitnesses and videos that can prove they do not obey the signs, and even one instance of a Campus Crest resident turning in front of a school bus, which was illegal behavior. She stated that she had lived in her home since before the apartments, and that she had seen very few emergencies that required the gate be used, but each time it was able to be accessed. She stated that she had never witnessed residents back up to enter the apartments on Oakwood, and that there were even shuttles that would transport the students to campus.

Mr. Bishop made a motion to approve BZA 42-20 the appeal of Campus Crest at Muncie, LLC, with the hardship as stated in the application. Mr. Watson seconded the motion. Voting in favor: None. Voting against: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Motion failed, BZA 42-20 denied.

Ms. Moody stated that when the Board denies a request, the applicant can submit new evidence and request a second hearing, and that if granted the applicant would file a new application and request. She stated that the applicant could also file a writ of certiorari with the courts, or wait 1 year and file a new request.

BZA 43-20 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **BSB Enterprises, LLP**, 1717 North Wheeling Avenue, Muncie, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased front build-to line, decreased rear buffer yard and side yard plantings and no parking lot island for an expansion of an existing building for a new tire store business on premises located at 504 West McGalliard Road, Muncie, Indiana, as more accurately described in the application.

Becky Feigh, 530 E. Ohio St., Indiana, appeared. She stated that there was a newer traffic signal, so they would have difficulty meeting the build to line, and that due to the lot being very narrow, adding any parking lot islands would make it difficult for delivery trucks. She stated that the property to the east of this lot was a substation and that there were many existing plantings and that the owner would still be screening the dumpsters. She stated that the north property line would remain as it was with no changes and that it had 7-8 trees and other coverage creating that buffer

Mr. Fowler asked if the staff had been working with the applicant on the planting requirements since this was such a narrow lot.

Ms. Moody stated that the staff had been reviewing the site plans, and that according to the notes the west side buffer yard was short a few plantings, but the idea was that they would be added to meet the requirements.

Ms. Feigh stated that they were short 1 shrub, which they would add.

Ms. Moody stated that the back part of the property meets residential use so they have more planting requirements. She stated that on the east side they would end up with 15' in width, but they were asking to utilize existing plants and add 4 evergreens near the dumpster location. She stated that they were also asking to not have a parking lot island in the middle of the back lot.

Mr. Fowler asked what the reason for not doing anything on the east side since they had the 15', especially since they were asking to not have the parking lot island.

Ms. Feigh stated that some of that was to allow for the drainage.

Mr. Fowler stated that they were adding onto the building and asked if any of the existing shrubs on their property would be removed.

Ms. Feigh stated no, it would all remain.

Mr. Fowler asked if a retention pond was required.

Ms. Moody stated that would be up to the City Engineer since they would need to obtain a drainage permit.

Ms. Friegh stated that they were actually reducing some of the impervious lot, and that they did have an approved drainage permit.

No one appeared in opposition.

Ms. Moody stated that the variances being requested were specific, and that in the motion the Board could add that all requirements for the development be met other than those for which a variance was granted.

Mr. Watson asked if the variance on the west side was only for the one bush and the east side would be for the trees to stay.

Ms. Moody stated that they were not asking for a variance on the west side, the understanding was that they would meet the requirements. She stated that the variance was specific to the east side, rear buffer area, parking lot island and front setback and that everything else would meet the requirements.

Mr. Watson made a motion approve BZA 43-20 the appeal of BSB Enterprises, LLP with the hardship as stated in the application with the understanding that all regulations that are not specifically covered by the variances will be met. Mr. Wiseley seconded the motion. Voting in favor: Mr. Bishop, Mr. Jones, Mr. Fowler, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 43-20 approved.

OTHER BUSINESS

Continuation of a consideration of a request for a rehearing of **BZA 16-20** based on new evidence submitted by the applicant, **Annette Caldwell**.

Mr. Fowler stated that this was a request to file for a rehearing based on new evidence. He stated that new information had been provided regarding the hours of operation, parking area, buffering, and a client contract, which she did not have at the first meeting.

Ms. Moody stated that saying yes to a rehearing was in no way an indication that the second request would be approved. She stated that this was simply to grant or deny the request for a new hearing.

Mr. Watson stated that his concerns were still the number of residents in the area, and that she had an opportunity to present this information at the last meeting.

Mr. Bishop asked if the question was just did she provide new evidence, not approval or denial of the request.

Mr. Fowler stated yes, and if granted she would need to refile an application with new notice to the surrounding property owners and the newspaper.

Mr. Jones asked if she had a specific time to make that request.

Mr. Fowler stated that she had a year, and that she had waited about a month to make the request. He stated that he understood the concerns about the music and traffic, and that he did not have an issue granting a second hearing since she has more information now.

Ms. Moody stated that the Board was only determining if sufficient new evidence had been provided to allow Ms. Caldwell to have a second hearing, and that it meant nothing in terms of being approved or not.

Ms. Mathewson stated her issue was now applicants who were not prepared the first time would come back 60 days later with new evidence that they should have had the first time, so how many denied cases are they going to keep revisiting.

Mr. Fowler stated that an applicant does have the right to ask for that second hearing if denied.

Mr. Jones asked if the applicant could have asked to be continued until she had better information.

Mr. Watson stated that she was given that opportunity since she had to come back and she still did not come prepared. He stated that if they denied the second hearing, she could just wait the full year and come back again.

Mr. Bishop made a motion to approve a second hearing for Annette Caldwell based on new evidence. Mr. Jones seconded the motion. Voting in favor: Mr. Bishop, Mr. Jones, Mr. Fowler, and Mr. Wiseley. Voting against: Ms. Mathewson and Mr. Watson. Motion carried, request for a second hearing approved.

ADJOURNMENT:

James Fowler, Chairman

Marta Moody, Secretary