

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
FEBRUARY - 2022 REGULAR MONTHLY MEETING
AGENDA**

DATE: February 24, 2022

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

TIME: 6:00 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Jim Fowler

Mike Jones

Leslie Mathewson

Kathryn Kennison

Kelly Watson Jr.

Taylor Marshall

Allen Wiseley

MINUTES: Consideration of the January, 2022 regular monthly meeting minutes.

NEW BUSINESS:

BZA 02-22 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Ramon Escamilla and Puerto Vallarta Restaurant**, 3505 North Wheeling Avenue, Muncie, Indiana, requesting a variance of use and variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow restaurant parking use in the BL Limited Business Zone and for decreased sidewalk width, decreased buffering and three road access points for an expansion of an existing restaurant on premises located at 3505 North Wheeling Avenue, Muncie, Indiana, as more accurately described in the application.

REPORT FROM DIRECTOR:

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
FEBRUARY - 2022 REGULAR MONTHLY MEETING
MINUTES**

The Delaware-Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday, February 24, 2022 at 6:00 P.M., in the Delaware County Commissioner’s Court Room of the Delaware County Building, Muncie, Indiana.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

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

MINUTES:

Mr. Watson made a motion to approve the January 2022 regular monthly meeting minutes. Mr. Wiseley seconded the motion. Voting in favor: Mr. Fowler, Mr. Jones, Ms. Marshall, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, January 2022 minutes approved.

NEW BUSINESS:

BZA 02-22 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Ramon Escamilla and Puerto Vallarta Restaurant**, 3505 North Wheeling Avenue, Muncie, Indiana, requesting a variance of use and variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow restaurant parking use in the BL Limited Business Zone and for decreased sidewalk width, decreased buffering and three road access points for an expansion of an existing restaurant on premises located at 3505 North Wheeling Avenue, Muncie, Indiana, as more accurately described in the application.

Kathy Vannice, Ashton Land Surveyors, 325 W. Washington St., Muncie, Indiana, appeared to represent the applicant. She stated that the first variance was that the north part of the parking lot was zoned BL-Limited Business and does not qualify for restaurant parking under that zone and that the second variance was concerning the reduction in planting area from 25’ to 15’ on the rear of the property to accommodate the semitrucks.

She stated that the third variance was regarding the entrances to the property and that they would be closing one and adding one to the south side of the building to continue having 3 entrances. She stated that the final variance would be to keep the existing 4' wide sidewalks since the 6' requirement would move them closer to Wheeling Avenue and they would not have enough room for the plantings in front of the restaurant. She stated that they were trying to make sure that the site would be in compliance with the planting and drainage requirements.

Ms. Moody asked if they had completed a drainage plan.

Ms. Vannice stated that they were in the preliminary stage of the drainage plan but that no additional water would be leaving the site and that they were trying to solve the issue with the north end of the lot that currently sheds a lot of water.

Ms. Moody stated that on the map provided along the north line of the parking lot adjacent to the Anderson and Reed properties, the drawing states a 15' landscape buffer but that it was really 25' which meets the requirements.

Mr. Fowler asked if they were redoing all of the entrances would they be able to keep the current sidewalk or would they need to replace those.

Ms. Vannice stated that they had 2 entrances that would not be changed and they would be moving the one that goes to the south, continuing to have 3 entrances.

Ms. Moody stated that they should consider the ramps at the driveways need to be satisfactory to the City Engineer and meet ADA requirements.

Ms. Vannice stated that they have added some ramps on the drawings on the north sidewalk also connecting to the City Fire Department.

Ms. Mood stated that another requirement was that every 200' there should be a 5'x5' turnaround area on the sidewalks and should not be a driveway, but that would be up to the City Engineer to interpret.

Mr. Fowler asked if the semi entrance that was one way would be blocked off and only be used for those deliveries and what would keep pedestrians from using it.

Ms. Vannice stated that the only part of the building at that entrance was the loading and unloading dock to the kitchen so they would just be walking right into the kitchen.

Mr. Fowler asked how they would keep customers from driving down that entrance.

Ms. Moody stated that the way it was designed there was no angled parking to stop someone from using that entrance.

Ms. Vannice stated that most of the deliveries would not occur during the restaurant's high traffic times.

Mr. Fowler asked if there could be a gate or signage at that entrance.

Ms. Vannice stated that they could try signage.

Ms. Moody stated that they would need a driveway permit for the new entrance and that the City Engineer, Adam Leach, would be able to help with this issue.

Mr. Jones asked about the 4' sidewalk versus the 6' being an ADA requirement.

Ms. Moody stated that a 4' sidewalk does meet the ADA requirement as long as every 200' there was a 5'x5' turnaround and that the 6' wide sidewalk was a zoning ordinance requirement aimed at providing a pedestrian friendly community.

Rick Anderson, 3512 N. Rosewood, Muncie, Indiana, appeared with questions. He stated that they welcomed the restaurant and that the applicant had been a good neighbor but that there had been drainage problems for a long time. He stated that since the parking lot between the restaurant and the fire department had been placed that those problems have increased and he just wondered what this would do to their properties. He stated that he had some pictures from just recently.

Mr. Fowler stated that they would have to have an approved drainage plan and that they would not be allowed to adversely affect the properties around them and that this may actually improve some of those existing issues.

Mr. Anderson stated that he had called the city when the issue began because they had put the parking lot by the fire station and that they have to fight to keep the water away from their pool.

Jeff Leist, 1607 W. Harvard, Muncie, Indiana, appeared with concerns. He stated that there was an 8' easement between the properties from Puerto to Rosewood Avenue and that when we get a hard rain the water runs down to his garage and floods his backyard and that he had pictures for the board. He stated that he agrees with Mr. Anderson and understood what had been mentioned about the drainage and that he just wanted to be sure that it would be diverted from the surrounding properties.

Ms. Vannice stated that there was a bio swell located on the southwest corner of the property diverting water from the property to the drain on the east and that they may tie into the Muncie Sanitary storm drains which would help with the flooding.

Mr. Jones asked if they did connect to the MSD storm drains would it alleviate the current flooding issues.

Ms. Vannice stated yes, that currently there is no true drainage and that this would funnel the sheet drainage to that bio swell and then out to the drains.

Mr. Leist asked if curbing would be installed because that might help too since the elevation of Wheeling Avenue was higher than that of Rosewood Avenue.

Ms. Vannice stated yes.

Ms. Moody stated that there were drainage ordinances that would take effect.

Mr. Fowler asked if they had an approved landscape plan yet.

Ms. Moody stated not yet, but that they were showing the correct amount of trees and shrubs and that they would be meeting the requirements.

Mr. Watson made a motion to approve BZA 02-22 the appeal of Ramon Escamilla and Puerto Vallarta Restaurant with the hardships as stated in the application with the following conditions: 1) That the existing 4' sidewalk will be brought into compliance with ADA standards if applicable as determined by the City Engineer; 2) That development of the site be in accordance with an approved drainage plan and all applicable permits. Mr. Wiseley seconded the motion. Voting in favor: Mr. Fowler, Mr. Jones, Ms. Marshall, Ms. Mathewson, Mr. Watson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 02-22 approved.

REPORT FROM DIRECTOR:

Ms. Moody stated that while working on the solar farm ordinance several amendments had been proposed including changing the use to a special use and that the County Commissioners had adopted those Plan Commission recommendations. She stated that the Commissioner's had also extended the moratorium for 1 year to allow the creation of a study committee to see if any further amendments should be added to the ordinance.

Mr. Fowler asked if that moratorium could be lifted if the study committee completes its review within the year.

Ms. Moody stated yes.

Mr. Jones asked what the makeup of the committee would be and if there would be Commissioner or Council member representatives.

Ms. Moody stated that it would be similar to the CAFO committee and be a group of 7-9 people having 2 against, 2 in favor, and neutral resource members. She stated that there would not be any representatives from Commissioners, Council, energy companies or attorneys other than Mr. Rhetts, and that they wanted to have a good list of names to select from that could work well through the process.

Mr. Wiseley stated that they also wanted to make it a geographically diverse group as well.

Mr. Jones asked if the moratorium included the City of Muncie.

Ms. Moody stated no. She stated that they would need to change the deadlines for filing applications for solar farms since this was now a special use since currently it was a 3-week review timeframe and that would not be enough time. She stated that it was a very good ordinance and covers a lot of information and that a staff review would need to take place before bringing those items to the BZA or Plan Commission.

Mr. Jones asked Ms. Moody if she would be the chair of the committee.

Ms. Moody stated yes. She stated that during the CAFO committee process it came down to proposals and then a vote, and that not everyone was happy with everything but that it was a success.

Mr. Wiseley asked what the maximum height would be.

Ms. Moody stated that when tilted the max would be 20' and that our ordinance prohibits the concentrated mirrors that produce heat and have caused problems.

Mr. Jones stated that he thought that the Plan Commission had done a wonderful job and that Mr. Wiseley ran the meeting very well.

ADJOURNMENT:

James Fowler, Chairman

Marta Moody, Secretary