

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
AUGUST - 2024 REGULAR MONTHLY MEETING
AGENDA**

DATE: August 29, 2024

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

TIME: 6:00 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Leslie Mathewson	
Matt Billington	Mike Jones
Ellen Brannon	Sue Kaiser
Delaney Fritch	Allen Wiseley

MINUTES: Consideration of the July, 2024 regular monthly meeting minutes.

NEW BUSINESS:

BZA 44-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Flow Solutions, Incorporated**, 2600 South Madison Street, Muncie, Indiana, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow additions to a nonconforming pole sign in the proposed right-of-way on premises located at 2600 South Madison Street, Muncie, Indiana, as more accurately described in the application.

BZA 45-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Dustin and Heather Koger**, 4700 North County Road 400 East, Muncie, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a decreased rear setback for an addition to the existing house on premises located at 4700 North County Road 400 East, Liberty Township, Delaware County, Indiana, as more accurately described in the application.

BZA 46-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Amanda Frazee Smith**, 500 North Cook Road, Muncie, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow keeping 30 chickens (including 1 rooster) in a residence zone with decreased distances between the chickens and neighboring homes on premises located at 500 North Cook Road, Liberty Township, Delaware County, Indiana, as more accurately described in the application.

BZA 47-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Bradley and Megan Richards**, 15201 North County Road 900 West, Gaston, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a new residential swimming pool in the side yard on premises located at 15201 North County Road 900 West, Washington Township, Delaware County, Indiana, as more accurately described in the application.

REPORT FROM DIRECTOR:

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
AUGUST - 2024 REGULAR MONTHLY MEETING
MINUTES**

The Delaware-Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday, August 29, 2024 at 6:00 P.M., in the Commissioners Court Room of the Delaware County Building, Muncie, Indiana. Chairmen Leslie Mathewson called the meeting to order.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Ms. Swackhamer called the meeting to order and the following members were present: Mr. Billington, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Absent: Ms. Brannon. Also present: Mr. Murphy, attorney for the Board.

MINUTES:

Mr. Wiseley made a motion to approve the July 2024 regular monthly meeting minutes. Ms. Fritch seconded the motion. Voting in favor: Mr. Billington, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, July 2024 minutes approved.

NEW BUSINESS:

BZA 44-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Flow Solutions, Incorporated**, 2600 South Madison Street, Muncie, Indiana, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow additions to a nonconforming pole sign in the proposed right-of-way on premises located at 2600 South Madison Street, Muncie, Indiana, as more accurately described in the application.

Cindy Thrasher, 1368 Echo Den, Greenwood, Indiana, appeared representing applicant. She stated that the structure of the sign would not change, only the faces as proposed.

Dan Pike, 2600 S. Madison St., Muncie, Indiana, appeared. He stated that he owned the business and that they had been there for 22 years. He stated that they had industrial sales, and the new business, and this would help increase the walk-in business. He stated that they struggle with visibility since they were setback from the road, and the new sign would help with business and deliveries. He stated that they keep the property well maintained and that they wanted to do everything the right way.

Ms. Mathewson asked if the structure of the sign would remain and if the only change was the addition of the sign face at the top.

Mr. Pike stated yes, they would only be changing the faces and that the sign had been there for longer than he could remember. He stated that they distribute industrial equipment, and that the signs were required by the manufacturers for their business exposure.

Mr. Jones asked if this request had been before the Plan Commission.

Ms. Mathewson stated no, she believed it began with the City Building Commissioner.

Mr. Wiseley asked if all of the businesses were Mr. Pike's or if he rented any of those spaces, or if he would have a need to change the signs.

Mr. Pike stated they were all his businesses, and that they had every intention of staying there. He stated that they had plans to expand the building and that their business had more than doubled over the past 5 years.

Mr. Wiseley stated that in the past when signs were in the proposed right of way, the Board had placed a condition that the owner sign a waiver of damages in case that road were to ever be expanded. He asked Mr. Pike if that would be an issue.

Mr. Pike stated that would be fine, and asked what he meant by damages.

Mr. Wiseley stated that if they were to ever expand Madison, he would be signing a waiver of any damages to that sign since it was placed in the proposed right of way.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 44-24 the appeal of Flow Solutions Inc., with the hardship as stated in the application with the condition that the applicant will sign a waiver of damages for the sign located in the proposed right of way. Mr. Jones seconded the motion. Voting in favor: Mr. Billington, Ms. Fritch, Ms. Kaiser, Ms. Mathewson, Mr. Wiseley. Voting against: None. Motion carried, BZA 44-24 approved.

BZA 45-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Dustin and Heather Koger**, 4700 North County Road 400 East, Muncie, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a decreased rear setback for an addition to the existing house on premises located at 4700 North County Road 400 East, Liberty Township, Delaware County, Indiana, as more accurately described in the application.

Dustin Koger, 4700 N. CR 400 E, Muncie, Indiana, appeared. He stated that they wanted to build an addition to the rear of the house and that they would be too close to the rear property line.

Ms. Mathewson stated that from the aerial, it looked like the adjacent property was farm ground.

Mr. Koger stated yes.

Ms. Mathewson asked about some of the comments from the surrounding property owners.

Mr. Koger stated that there were no negative comments.

Mr. Wiseley asked if he had made contact with the owner of the farm ground.

Mr. Koger stated that he had done work for him in the past and that he had not talked to him about this specific request, but when he had built the pole barn years ago he had no issues.

No one appeared in opposition.

Mr. Jones made a motion to approve BZA 45-24 the appeal of Dustin and Heather Koger with the hardship as stated in the application. Ms. Fritch seconded the motion. Voting in favor: Mr. Billington, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 45-24 approved.

BZA 46-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Amanda Frazee Smith**, 500 North Cook Road, Muncie, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow keeping 30 chickens (including 1 rooster) in a residence zone with decreased distances between the chickens and neighboring homes on premises located at 500 North Cook Road, Liberty Township, Delaware County, Indiana, as more accurately described in the application.

Amanda Smith, 500 N. Cook Rd., Muncie, Indiana, appeared. She stated that she had chickens 6 months ago for her 4 children for their own usage for the eggs. She stated that they just purchased an expensive coop to keep them because the old one was broken. She stated that they do not sell the eggs, and that they were willing to get rid of the rooster in order to keep the chickens.

Mr. Mathewson stated that they had pictures that show the chickens roaming the property freely.

Ms. Smith stated that they had to wait for the coop to arrive, but she had pictures that show the chickens were fully enclosed.

Mr. Wiseley asked if the chickens were in the coop full time.

Mr. Smith stated yes, they do not leave the coop. She stated that it took a little time because she built it by herself.

Mr. Jones stated that based on the pictures it looked like there were around 30 chickens there.

Ms. Smith stated that they had gotten rid of a few that they found out were roosters and that there was around 20 in the coop.

Ms. Mathewson asked Ms. Smith if she was willing to remove the rooster.

Ms. Smith state yes.

Ms. Mathewson asked if the coop was large enough to hold 20 chickens, and asked if she would anticipate having more than that.

Ms. Smith stated that the pen in the picture was attached to a secondary pen that connected to the shed, and that she would not have more than 20 chickens. She stated that this was a hobby for the kids, so that was more than enough.

Ms. Mathewson stated that part of what lead Ms. Smith to the Board was the chickens roaming free, and asked if she had reached out to any of the neighbors.

Ms. Smith stated that the neighbors directly on both sides were aware of the chickens and that in the 6 months they have had them they have not mentioned any issues.

Ms. Mathewson clarified that this would be for personal use and no business activity would take place.

Ms. Smith stated that they would be keeping the eggs for themselves.

Mark Mullins, 6912 E. Aubrey Lane, Muncie, Indiana, appeared in opposition. He stated that he had lived there or 11 years, and had no problems with Ms. Smith but that he had concerns about the number of chickens requested. He stated that there were other neighbors that had 6 chickens that were kept in coops and had no issues, but 30 seemed like a lot. He stated that another concern was the rooster because they could be so noisy. He stated that Ms. Smith had chickens previously and that they roamed around and they had even been caught on his camera walking across his porch. He stated that he would like to keep this at 6 because any of those other neighbors that had chickens would ask for more if she was granted more. He stated that he was also concerned about the property value if he were to try and sell and he asked that the request be denied, or at the least no roosters.

Ms. Mathewson stated that the applicant had taken action to keep the chickens in a pen and asked if they had been seen roaming free recently.

Mr. Mullins stated that they had been roaming free for a long time, and that the pen was installed in the past week. He stated that she definitely had more than 6 chickens and at least 2 roosters.

Jan Reed, she stated that she lived 2 doors down from the applicant and appeared to speak in opposition. She stated that she had no ill feelings towards Ms. Smith, but there were times when 25 chickens had been over in her yard. She stated that Ms. Smith worked very hard to install the pen and that had been done recently. She stated that there were 2 roosters because they had both been in her backyard. She stated that there were other neighbors that had 6 chickens but they were always in a pen and there had been no issues with them. She stated that she had submitted a letter explaining everything, but she was concerned about how close they would be kept to the neighbors' houses. She stated that her kids had been to her house looking for the chickens before and they mentioned that 6-7 had been killed by coyotes. She stated that she would prefer that there were no chickens, but certainly no roosters and that if they were only raising eggs for themselves, 6 chickens should be more than enough. She stated that she had heard complaints from some of the other neighbors as well, and detailed her concerns in the email she had sent.

Ms. Mathewson stated for the record that the Board had received the email outlining Ms. Reed's concerns about the request.

Ms. Reed stated that she would like to add that she had been approached about the possibility of this decreasing the property value, and she believes it might. She stated that she had listed a house down the road for sale, and received an offer within 4 days. She stated that when there are changes to the property they must disclose that, and after the notice was received regarding this meeting, they added that to the seller's disclosure. She stated that this could affect the outcome of the sale of that house, considering the fact that there are 30 chickens being requested.

Ms. Smith stated that she did not know she could not have chickens when she got them, and as soon as they found out she took immediate action. She stated that she had spent almost \$1000 trying to get things under control and that the roosters would be gone. She stated that she had a neighbor 3 doors down that had 3 turkeys that roam their yard and she did not understand why they were not here but she was. She stated that she had lived here for 10 years, and that there were many neighbors that had chickens, so she had no idea it was not permitted.

Ms. Fritch asked realistically what would be the lowest number of chickens she feels would still supply her family with eggs.

Ms. Smith stated that she had 10 laying chickens now and if she had to go down to that number she would. She stated that she got married last year and this house was not big enough and they planned to move soon and that the chickens would go with them and were really only temporary.

Mr. Jones asked if they butchered the chickens.

Ms. Smith stated no, she considered them pets.

Ms. Swackhamer stated that it had been remarked that many neighbors had chickens, and that maybe 6 was the maximum number allowed, but that the Ordinance does not allow for chickens in a residence zone without a variance.

Mr. Wiseley asked if it was known if any of the neighbors had variances for chickens.

Mr. Daniel stated they did not.

Mr. Wiseley made a motion to approve BZA 46-24 the appeal of Amanda Frazee Smith with the hardship as stated in the application with the following conditions: 1) That the maximum number of chickens shall be 20 and there will be no rooster; 2) That the chickens must be kept in an enclosure on the applicant's property at all times; 3) That there shall be no business activity; and 4) That the variance is for the applicant only and does not transfer with the property. Ms. Fritch seconded the motion. Voting in favor: Mr. Billington, Ms. Fritch, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: Mr. Jones. Motion carried, BZA 46-24 approved.

BZA 47-24 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Bradley and Megan Richards**, 15201 North County Road 900 West, Gaston, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow a new residential swimming pool in the side yard on premises located at 15201 North County Road 900 West, Washington Township, Delaware County, Indiana, as more accurately described in the application.

Brad Richards, 15201 N CR 900W., Gaston, Indiana, appeared. He stated that he had applied for the pool permit and found out he needed a variance since it was located in the side yard. He stated that this was the only good location since they only had around 23' in the back yard, and he tried to show that in his drawings. He stated that they were far away from their neighbors and that there were plenty of trees and hedges along with a double fence on that side of the house. He stated it would measure 16' x 32' and be an in-ground pool.

Ms. Swackhamer stated that an email had been received from Jami Wormer who lives across the road from Mr. Richards. He stated that he had concerns about the small tile ditching that will be cut when they dig for the pool, and that there were flooding issues already, and asked about his course of action. She stated that this would be addressed during the permitting process as far as that Building Commissioner's review.

Mr. Richards stated that he was not sure as far as the layout of the tiles, but at one time they were told that it was an old tile from 1936, and maybe the County Surveyor would have that information.

Mr. Jones stated that the County Surveyor had records of all ditches and tiles.

Ms. Mathewson stated it would be addressed during that permitting process.

Ms. Swackhamer stated that the Building Commissioner Mr. Fouch would require approval from the County Surveyor Mr. Borchers in order to issue the permit.

Mr. Wiseley made a motion to approve BZA 47-24 the appeal of Bradley and Megan Richards with the hardship as stated in the application. Ms. Fritch seconded the motion. Voting in favor: Mr. Billington, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 47-24 approved.

REPORT FROM DIRECTOR:

Ms. Swackhamer reported that she had given the Board an update on the building permits, revenue, and inspections for the year to date. She stated that a draft of an updated floodplain ordinance was prepared to stay in compliance for the county to participate in the NFIP (National Flood Insurance Program) and that Mr. Daniel and Mr. Fouch and herself worked on that document. She stated that DNR was requiring some training and since Mr. Fouch was also the Floodplain Manager, he would go through that training and that she was also completing that online. She stated that the TPC (Transportation Policy Committee) had a new member from City Council, Sarah Gullion.

Mr. Wiseley asked if that committee was now complete.

Ms. Swackhamer stated that she would need to double check, but that TPC was close to being full now that they had County Council and City Council members. She stated that the ADA Transition Plan for the county was underway and she had been working with Selma and Yorktown to gather information. She stated that the TIP (Transportation Improvement Plan) was the 4-year plan that was still being worked on, and would be completed in the spring. She stated that the SS4A grant was still underway, and that an RFQ had been released and in a few weeks they would be reviewing those responses to find a consultant to help on the project. She stated that this Regional Transportation Safety Action Plan once completed would help in many ways including additional funding for construction for safety improvements. She stated that she had included a breakdown of the land use side of the office for the year to date for variances, rezonings, and plats. She reported that 4 more letters had been sent to the owners of the properties on Jackson Street that Mr. Jones had asked about. She stated that Mr. Fouch would also be sending violation letters if they had not been mowing the grass or if the house was not properly secured. She stated that she attended a few solar training opportunities along with Mr. Daniel and that Ms. Fritch had also attend the Power Hour that was held recently. She stated that these were informational sessions and that they were just trying to learn as

much as they could. She stated that she would continue to keep the Board updated with any of those opportunities as they become available. She stated that 4 companies had been in contact with the office but that no pre-application meetings had been held at this time, so no applications had been submitted. She stated that there had been a lot of public comment at the Commissioner's Meetings and at County Council, and that she had informed them on how the application process would work including the BZA and MPC Board's involvement. She stated that no information should come directly to the Board members, but should all be submitted to the office, and she would keep everyone updated.

Mr. Jones asked if the solar company that had sent letters had acknowledge their error.

Ms. Swackhamer stated that that they acknowledge that they did not follow the directions that were asked of them.

Mr. Murphy stated that if any member of the Board received any communication directly from an applicant, they should bring that to the staffs' attention because that was inappropriate to receive that outside of the application process.

Ms. Swackhamer stated that budget hearings begin soon, and that we were early on the agenda. She stated that last year was a little bit of shock since Marta had always handled that, so we were better prepared this year.

ADJOURNMENT:

Leslie Mathewson, Chairman

Kylene Swackhamer, Secretary