

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
APRIL - 2011 REGULAR MONTHLY MEETING
AGENDA**

The Delaware-Muncie Metropolitan Board of Zoning Appeals (BZA) held its regular monthly meeting on Thursday, April 28, 2011 at 6:30 P.M., in the Commissioners' Court Room of the Delaware County Building, Muncie, Indiana. Chairman Jack Neal called the meeting to order.

PLEDGE OF ALLEGIANCE:

ROLL CALL

Ms. Moody called the roll and the following members were present: Mr. Fowler, Ms. Kennison, Mr. Mantock, Mr. Neal, and Mr. Rich. Absent: Mr. Ellis. Also present was Mr. DeWeese, attorney for the Board.

MINUTES:

Mr. Fowler made a motion to approve the March, 2011 regular monthly meeting minutes. Mr. Mantock seconded the motion. Voting in favor: Mr. Fowler, Ms. Kennison, Mr. Mantock and Mr. Neal. Voting against: None. Abstention: Mr. Rich. Motion carried, March, 2011 minutes approved.

UNFINISHED BUSINESS:

BZA 03-11 Jurisdiction: Board of Zoning Appeals

Being a continuation of a public hearing on the matter of an application filed by **RICKY LEE SMITH**, 18220 North State Road 3, Eaton, Indiana 47338, requesting a variance of use and variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow the selling of guns and outdoor fishing and hunting equipment in a detached accessory building with a 4' X 6' sign on premises located at 18220 North State Road 3, Union Township, Delaware County, Indiana, as more accurately described in the application.

Ricky Smith, 18220 N. SR 3, Eaton, Indiana appeared. He stated he understood Ms. Ford's concerns about the current condition of the drive but she needed to realize that all gravel roads have potholes at the end of the winter months. He stated as for her concerns about a shooting range, he wanted to restate that no customers would be allowed to test fire any guns on his property. He stated Mr. & Mrs. Lowery were opposed to the request but he spoke to them about the request and received a letter from Mrs. Lowery withdrawing their objection. He stated the request was the talk of Eaton, so he created a petition of support with a hundred signatures.

Mr. Neal asked Mr. Smith to clarify the rules for internet sales of guns.

Mr. Smith stated it was illegal to sell & ship guns to individuals; the seller has to find a FFL licensed dealer to ship the guns to, if the buyer is rejected by that FFL dealer the guns would not be shipped.

Mr. Smith submitted the letter from Mrs. Lowery and the petition for the record.

Mr. Rich stated any approval would be contingent upon Mr. Smith obtaining his state license.

Mr. Smith stated he already has his state license.

Ms. Moody stated she was in contact with the Alcohol Tobacco & Firearms (ATF) and they prefer that all local approvals are in place prior to anyone applying for their federal license.

Dave Hutchison, 1321 E. Eaton Wheeling Pike, Eaton, Indiana, appeared in favor. He stated he had spoken to Mr. Smith and they would be willing to place speed limit signs or any other kind of sign to help alleviate Mrs. Ford's concerns.

Burt Sargent, 18240 N. SR 3, Eaton, Indiana, appeared in favor. He stated he is in full support of Mr. Smith.

Christine Ford, 18250 N. SR 3, Eaton, Indiana, appeared in opposition. She submitted pictures to the Board. She stated the pictures show where someone had driven into her yard trying to miss small potholes. She stated the minutes from the last meeting indicated Mr. Smith wanted the hours of operation to be Monday - Friday, 9:00 a.m. to 5:00 p.m. and Saturday, Noon to 9:00 p.m. She stated the hours are late into the evening and the all day Saturday hours are even worse. She stated at the last meeting, Mr. Fowler asked who maintained the drive and Mr. Smith stated he did. Ms. Ford stated it is not well maintained. She stated a business will make the traffic worse. She stated she is not anti-gun, but a business would have a negative impact on the neighborhood and increase the possibility of break-ins. She stated in an article from the Star Press it stated Indiana only has 15 inspectors for over 1,200 licensed gun dealers and they do not have the ability to inspect every gun store annually, therefore she would not feel safe having a gun shop in her neighborhood.

Mr. Rich made a motion to approve BZA 03-11 the appeal of Ricky Lee Smith with the hardship as stated in the application with the following conditions: 1) That all Federal and State licenses be obtained; 2) That the identification sign be reduced to 2' x 3'; 3) That the open-to-the-public hours of operation will be Tuesday through Friday 9:00 a.m. to 5:00 p.m. and Saturday 10:00 a.m. to 4:00 p.m.; and 4) That the variance is for the applicant, Ricky Lee Smith, only. Mr. Fowler seconded the motion. Voting in favor: Mr. Fowler, Ms. Kennison, Mr. Mantock, Mr. Neal and Mr. Rich. Voting against: None. Motion carried, BZA 03-11 approved.

NEW BUSINESS:

BZA 07-11 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **BILLY D. ADAMS**, 6200 West Jackson Street, Muncie, Indiana 47304, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow the square footage of a new accessory building with an increased height to exceed the square footage of the dwelling on premises located at 6200 West Jackson Street, Muncie, Indiana, as more accurately described in the application.

Billy Adams, 6200 W. Jackson St., Muncie, Indiana appeared. He stated he would like to have the building for storage. He stated there were other buildings on the property but due to deterioration they were removed. He stated he owns a couple antique cars and is planning to purchase a travel trailer, which he would like to store inside the building.

Ms. Kennison asked if the new building would replace the old ones.

Mr. Adams stated he had already lost 2 of the original 4 out-buildings and the remaining 2 buildings are not in the best of condition.

Mr. Fowler stated he had driven by the property and it looked well maintained. He asked Mr. Adams if he planned to have any business activity.

Mr. Adams stated there would be no business activity; the building would be for personal storage.

No one appeared in opposition.

Mr. Fowler made a motion to approve BZA 07-11 the appeal of Billy D. Adams with the hardship as stated in the application. Ms. Kennison seconded the motion. Voting in favor: Mr. Fowler, Ms. Kennison, Mr. Mantock, Mr. Neal and Mr. Rich. Voting against: None. Motion carried, BZA 07-11 approved.

BZA 08-11 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **ALAN L. POE**, 8480 West Bethel Avenue, Muncie, Indiana 47304, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow auto sales and repair in an existing accessory building with a 2' x 4' sign on the wall of the building on premises located on the west side of the 8200 block of North County Road 600W, Harrison Township, Delaware County, Indiana, as more accurately described in the application.

Alan Poe, 8480 W. Bethel Ave., Muncie, Indiana, appeared. He stated he would like to be able to have a used auto sales and repair business in the pole building located in the 8200 block of CR 600W. He stated he was told he needed to apply for a variance in order to have the business.

Mr. Neal asked if he had spoken to his neighbors.

Mr. Poe stated he had spoken to Mr. Mattucci two days before the meeting, who has a straight shot view of the his building and he didn't have a problem with the request. He stated he is a standup guy and tries to help others when he can. He stated he has let the little league cross his property to get the baseball diamonds and let them park on his property for 4 years. He stated that recently there have been some incidents, like cars speeding through his parking lot and out the drive, his truck almost got hit and he has been receiving obscene gestures from individuals parking at the site.

Ms. Kennison asked if all the people who were opposed were neighbors.

Mr. Poe stated they were not.

Ms. Spoonemore asked if he had seen the petition.

Mr. Poe stated no, he hadn't seen it.

Mr. Rich asked how the building was currently being used.

Mr. Poe stated he uses it for his own auto repairs and on occasion does work on friends cars.

Mr. Fowler asked how long he had owned the property.

Mr. Poe stated 4 years.

Mr. Fowler asked what he had used the property for since he owned it.

Mr. Poe stated storage and working on his own cars and occasionally on a friend's car.

Mr. Fowler stated if little league has to cross his property to get to the ball diamonds, how would they be able to do that if there were 10 cars parked outside for sale.

Mr. Poe stated the cars for sale would not be located on the same part of the property. He stated the ball diamond participants are supposed to use the drive south of the building.

Mr. Fowler asked if the drive, owned by Mr. Poe, would be left open to the ball diamonds.

Mr. Poe stated yes.

Mr. Fowler asked why an agreement was never made for ingress/egress.

Mr. Poe stated he didn't know.

Mr. Rich stated Mr. Poe is asking to be allowed to run a commercial business on property in a farming/residential zone.

Mr. Fowler stated Mr. Poe has been running a business in a Farm Zone.

Mr. Poe stated he had done work from the building but most of it was on his own cars. He stated he has friends that own their own shops and he does most of his auto repairs at their shops.

Mr. Rich asked if he was currently running the business out of the building.

Mr. Poe stated he does about 25% of the work at this location and rest at a friend's shop.

Clarence Hensley, 7514 W. Bethel Ave., Muncie, Indiana, appeared in favor. He stated he is a neighbor of Mr. Poe and his property is well taken care. He stated Mr. Poe is one of those people that will do something for someone before he is even asked. He stated Mr. Poe is a good guy and urged the Board to vote in his favor.

Travis Power, 10041 W. CR 500N, Gaston, Indiana, appeared in favor. He stated he is a neighbor to the property in question and it has never been a problem. He stated someone had come to him and asked if he would sign the petition against Mr. Poe and he declined. He stated there is more noise from the ball diamonds than what is made by Mr. Poe.

George Orcutt, 9309 W. Bethel Ave., Muncie, Indiana, appeared in favor. He stated he has known Mr. Poe for a long time and he is a good guy. He stated he had spoken to 2 people who live across the street from the property, Jim Brown and Ray Buck, and they didn't have any problem with the request.

Kevin Glaze, 6211 W. 400N, Muncie, Indiana, appeared in favor. He stated he has been involved with the baseball diamonds for about 6 years and Mr. Poe's building has been there for 4 years. He stated there had never been any problems between Mr. Poe and the ball diamonds organization until a change in leadership.

Ron Stout, 7505 N. 600W, Gaston, Indiana, appeared in favor. He stated he lives ¼ mile south of Mr. Poe's property. He stated Mr. Poe is an outstanding member of the community, is honest as the day is long and a good role model for the kids at the ball diamond.

Mike Doughty, 12132 W. SR 28, Gaston, Indiana, appeared in favor. He stated there was a lawn mower repair shop across the street from Mr. Poe's property at one time. He stated he doesn't have a problem with the request and hoped the Board would vote in favor.

Greg Benn, 9811 W. 500N, Gaston, Indiana, appeared in opposition. He stated he has been against the entire thing, the building never should have been built there and if he was going to run a business out of the building the request should have taken place then. He stated the ball diamonds would be in better shape if the building was not there. He stated at one time the Poe property looked like a junk yard but it looks nice now and if it would stay that way it would be great, but he is still against a business being ran out of the building.

Norette Barnett, 9620 W. 500N, Gaston, Indiana, appeared in opposition. She stated she lives directly across from the old Harrison School, having the school there for several years, the surrounding area developed as a small residential area. She stated since the building was completed, Mr. Poe has accumulated all kinds of old vehicles, which range from box trucks, semi trailers, and old cars that he has let sit outside the building for months. She stated her concern was that by allowing the variance it would give him free rein to bring more vehicles in and furthering the unsightly conditions. She stated residential homeowners don't want to live next to a business of any sort. She stated the unsightly condition and allowance of a used car lot will have a negative impact on property values. She stated she doesn't want a neighbor that has no respect for the community. Ms. Barnett submitted a petition with additional signatures against the request.

Sheri Chafin, 8201 N. CR 925W, Gaston, Indiana, appeared in opposition. She stated she lives in the area and has been active with the ball diamond organization. She stated prior to Mr. Poe purchasing the land there were no issues. She stated she is concerned for the children's safety, if there were people constantly coming and going from the business. She stated it is cleaned up now but the property has not been in previous years and it was only cleaned up because he was told to do so by the Building Commissioner. She stated she has never seen anyone, affiliated with the ball diamonds, do anything to Mr. Poe or his property.

Brad Carmin, 19119 N. CR 700W, Gaston, Indiana, appeared in support of the ball diamond. He stated he was concerned for the safety of the children with no fence or barrier to separate the properties. He stated people coming to the ball diamonds don't know the boundaries. He stated the ball diamond has placed some fence post and tape to try and keep people off the grass because of the rain. He stated they are appreciative of the driveway that he allows them to use. He stated they had approached Mr. Poe about an exchange of land, so the driveway would be part of the ball diamond property, but they were unable to come to an agreement.

Mr. Fowler asked Mr. Poe why the semi trailers were located on the property.

Mr. Poe stated he used them to transport parts and furniture. He stated they are plated and legal.

Mr. Fowler asked what the hours of operation would be for the business.

Mr. Poe stated he would like to operate from 8:00 a.m. to 5:00 p.m. or maybe 6:00 p.m.

Mr. Fowler stated he would like to see the hours scaled back to 4:00 p.m. because of the children being at the ball diamonds. He asked if 8:00 a.m. to 4:00 p.m. would be okay.

Mr. Poe stated yes.

Mr. Fowler asked if he needed to be open on Saturday.

Mr. Poe stated no, not really.

Mr. Fowler asked if Monday through Friday, 8:00 a.m. to 4:00 p.m. would be okay for the business.

Mr. Poe stated yes.

Mr. Fowler stated he would like to limit the number of cars to be displayed.

Mr. Poe stated the State requires an area large enough to display at least 10 cars. He stated he doesn't have to display 10 cars for sale he just needs to have the space for 10.

Mr. Fowler asked if he needed to have any vehicles outside over night.

Mr. Poe stated it helps to sell cars if customers can see them when they drive by but it would not have to be that way.

Mr. Fowler stated he was concerned about the safety of the children and the community.

Mr. Poe stated if an area needed to be fenced off to keep people safe he would do that or just keep the cars inside if that was what the Board wanted.

There was some discussion among the Board members whether they could put a limit on what could be left outside overnight because the request had 2 parts; 1 being the auto repairs and the other being auto sales.

Mr. Poe stated if it was a car he was working on he would keep it inside at night and if it was a car for sale it could be outside.

Mr. Fowler stated he would like to have the cars being repaired kept inside at night.

Mr. Poe stated that would be fine. He stated he would keep the property cleaned up as it was now.

Ms. Moody stated that would be good and that we have pictures of what it currently looks like.

Mr. Fowler asked if a maximum of 5 cars on display would be okay.

Mr. Poe stated yes.

Mr. Fowler made a motion to approve BZA 08-11 the appeal of Alan Poe with the hardship as stated in the application with the following conditions: 1) That the hours of operation will be Monday through Friday 8:00 a.m. to 4:00 p.m.; 2) That a maximum of 5 vehicles permitted to be on display overnight; 3) That there will be no outside storage other than the display vehicles and the current fenced area; 4) That the property be maintained in its current condition; and 5) That the variance is for the applicant, Mr. Poe only. Ms. Kennison seconded the motion. Voting in favor: Ms. Kennison and Mr. Neal. Voting against: Mr. Fowler, Mr. Mantock and Mr. Rich. No official action, BZA 08-11 was continued to the May 26, 2011 meeting.

BZA 09-11 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **RANDALL J. & DEBRA L. SHOOK**, 6010 West Jackson Street, Muncie, Indiana 47304, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance and the City of Muncie Subdivision Ordinance to allow a property split for an un-platted lot containing less than 5 acres in a residence zone with decreased road frontage on premises located just north of 6010 West Jackson Street, Muncie, Indiana, as more accurately described in the application.

Randall Shook, 6010 W. Jackson St., Muncie, Indiana, appeared. He stated he would like to have his daughter and son-in-law build their home behind his. He stated he has an acre that all he does is mow.

Mr. Neal asked if they have a septic system or sanitary sewers.

Mr. Shook stated they have city sewer.

Ms. Moody stated the existing home was on a platted lot that was only about 70' x 150' and the parcel to be split was approximately 1.77 acres.

Mr. Fowler asked where access to the property would be located.

Mr. Shook stated it would be located along on the north property line.

There was discussion about how large each lot would be if the split was approved. It was determined that each one would have approximately one acre.

Warren Jackson, 2414 S. Walnut St., Yorktown, Indiana, appeared in favor. He stated he was the son-in-law and they need a larger home now that they have custody of his son and they are very fortunate that his in-laws are giving them the property.

Ms. Moody stated there have been other requests for property splits along Stockport Road. She stated the northern portion of Stockport Rd. is a private road. She stated with the other split requests there had been an easement for highway purposes granted. She stated if they would have platted the property, instead of asking for a variance, dedication of road right-of-way would have been required. She stated that a type of easement or dedication for highway purposes should be included as a condition of the variance, along the entire west side of the parcel.

Mr. Shook stated he had no problem with the easement/dedication.

Mr. Fowler made a motion to approve BZA 09-11 the appeal of Randall J. & Debra L. Shook with the hardship as stated in the application with the following condition: That dedication of a 25' easement/dedication be recorded for Stockport Drive. Mr. Rich seconded the motion. Voting in favor: Mr. Fowler, Ms. Kennison, Mr. Mantock, Mr. Neal and Mr. Rich. Voting against: None. Motion carried, BZA 09-11 approved.

BZA 10-11 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **HELMS PROPERTIES, LLC**, 207 West Jackson Street, Muncie, Indiana 47305, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow decreased greenbelts and foundation treatments for a new Muncie Music Center business on premises located on the east side of the 600 block of South Mulberry Street, Muncie, Indiana, as more accurately described in the application.

Dave Helms, 207 W. Jackson St., Muncie, Indiana, appeared. He stated he would like to be able to reduce the greenbelt requirements for a new building to be located at the old Salvation Army location. He stated the reduced greenbelt would make it similar to the YMCA and the DeFur, Voran Building recently constructed at Walnut & Charles Streets. He stated part of the property to the west is owned by the City of Muncie and will remain greenspace. He stated the area to the east and south of the building will be greenspace with trees planted. He stated Muncie Music Center has been around for 70 years and he hoped the business would be around another 70 years.

No one appeared in opposition.

Ms. Moody stated this property, along with all of downtown, is zoned Central Business which allows a zero setback. She stated when the development standards were incorporated into the Ordinance there was not an exception for Central Business District. She stated therefore it would not be unusual to have request for variances, such as this, in exchange for them doing other enhancements in other areas on the property.

Mr. Rich made a motion to approve BZA 10-11 the appeal of Helms Properties, LLC with the hardship as stated in the application. Ms. Kennison seconded the motion. Voting in favor: Mr. Fowler, Ms. Kennison, Mr. Mantock, Mr. Neal, and Mr. Rich. Voting against: None. Motion carried, BZA 10-11 approved.

BZA 11-11 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **LONN L. FRIEND & TONYA D. HARRIS**, 9801 North County Road 300E, Muncie, Indiana 47303, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow the square footage of a new accessory building to exceed the square footage of the dwelling on premises located at 9801 North County Road 300E, Hamilton Township, Delaware County, Indiana, as more accurately described in the application.

Lonn Friend, 9801 N. CR 300E, Muncie, Indiana, appeared. He stated he has a passion for cars and when they purchased the property they thought about putting a building there at some point in the future. He stated it is hard to take a car completely apart and try to put it back together in a 2 car attached garage. He stated he is not going to build a barn but a well landscaped beautiful building.

Mr. Neal asked if working on cars were a hobby, or a business.

Mr. Friend stated it was strictly a hobby and he has been working on a car for the last 6 years. He stated there won't be any noise because he doesn't do any bodywork or sanding. He stated he has run out of room in the existing garage.

Mr. Fowler asked how he planned to deal with the terrain.

Mr. Friend stated there is a valley that runs diagonally through the property. He stated he planned to place the building in the side of the hill and use that soil as fill for the driveway in the front and also put in a perimeter drain.

Ms. Kennison asked if he would like to address the letter received from Alexander and Company regarding the property values.

Mr. Friend stated he is not building a pole barn and understood pole barns can be an eyesore but he is building a garage not a barn. He stated as far as the grade he shot the elevation with his transit and it was approximately 8' from his barn to the end of his property. He stated he didn't understand the claim of it being a negative impact because when you develop your property it is worth more not less.

Mr. Rich asked if there would be any business activity or employees.

Mr. Friend stated it would be only for him and that most of the building would be used for storage. He stated he owns an enclosed car hauler, which is not currently stored on the property, and was one of the reasons for the large size of the garage. He stated once the garage was complete the 2 other small buildings would be removed.

Kimberly Rybarczyk, 9815 N. CR 300E, Muncie, Indiana, appeared in opposition. She stated she lives directly north of the proposed structure and has lived there for 28 years. She stated all the homes were built on a sand and gravel ridge, the area was an old quarry so it was unusable farm ground. She stated she has spoken to all of the resident neighbors and she is representing them. She stated every one of them had signed a petition against the request, which the Board has received. She stated she is concerned about the stability of her home when the side of the hill is removed, the value of her home and the quality of her neighbor's homes. She stated the request was filled with flaws that would jeopardize her property. She asked the Board to please deny the request.

Mr. Fowler asked why she said her home would be unstable.

Mrs. Rybarczyk stated the building would be a commercial size building and less than 55' from the side of her home. She stated the area is a sand and gravel hill and when they built their homes they hit sand at 3' deep. She stated no one changed the terrain because of this and that is why the home Mr. Friend lives in is so close to the road.

Mr. Rich asked if there had been issues or problems with Mr. & Mrs. Friend as neighbors.

Mrs. Rybarczyk stated there was a noise issue when they first moved in but no issues in recent years.

A handout was given to the Board members.

James Rybarczyk, 9815 N. CR 300E, Muncie, Indiana, appeared in opposition. He stated he lives adjacent to the applicant's property. He stated he based the remonstrance on the criteria of the zoning ordinance that the granting of a variance should not be detrimental to the other property owners in the same neighborhood. He stated it was also based on technical and engineering facts and the fact that the case does not rise to the level to merit a hardship appeal. He stated it is about hardship and jeopardy

imposed on adjoining property. He requested that the Building Commissioner and Drainage Board be informed because they need to understand what is involved. He stated it was his understanding a variance was to be very special and used in an exceptional situation and any square footage variances should protect property so small residences and neighborhood units were not overwhelmed disproportionately by a commercial sized structure. He referred to the handout and stated the first map was an aerial view of the region showing very few homes that are all in a row, which are surrounded by farm land. He stated there was a wetland to the east which floods and the land to the north and west also flood. He stated drainage in the area is a problem except for on the ridge where they live. He stated there are large swales on the properties which is why no one has any drainage problems and stated he was concerned if the ground was excavated that would change. He stated he surveyed the surrounding neighborhood and no one has a large building, like the one Mr. Friend wants to build next to their homes. He stated the accessory buildings are located elsewhere on the property. He stated the second map shows the property owners who signed the petition. He stated when the homes were built in the neighborhood minimal bulldozing was done to maintain the scrub grass which holds the sand in place. He stated they have a tree wind break to the north but not to the south because when they built their home that property was pasture. He stated due to engineering considerations the current home, which was built in 1984, was located to the front of the property, which required back filling for the home and driveway. He stated because of the land constraints no new construction has been done in 20 years until four weeks ago when the stakes showed up on the side of the hill. He stated the request goes against the traditional character and intent of the neighborhood. He stated the third map shows all the buildings with the sheds in back. He stated there are barren patches of ground on their property, which they have tried to grow grass on for 20 years, due to the sand and gravel soil conditions. He stated the natural drainage swales meet at the proposed garage location. He stated the request is for a very large building on a hill that supports his home. He stated the fourth map shows the two swales converge and then drain to the farm land behind his property. He stated Mr. Friend wants to undercut the hill to build the proposed garage and he has very real concerns about the structural stability of the soil. He stated there are other areas where the building might be placed. He stated next are some photos showing the hilly topography, the drainage and where the stakes are located for the building. He stated several years ago INDOT refurbished the intersection of SR 28 and CR 300E and they wanted to take 40' of ROW to deal with drainage. He stated he explained to INDOT they didn't have any drainage issues and therefore no ROW was needed.

Mr. Neal stated the Board appreciated the packets. He asked if the last pages from the phone book were supposed to show that Mr. Friend doesn't live at the address.

Mr. Rybarczyk stated yes and he would cover that shortly. He stated the remaining pictures show erosion two years after the intersection was redone. He stated concerns about the property values because of the change in their view they will have from their home. He referred to several renderings showing before and after views if the building

was allowed to be built. He stated they have had architects, planners and builders out to review the area and they all say no reputable builder would touch the project. He stated he believed there are many misrepresentations in the application, it states the property is zone F-1 but it is being used residentially, so commercial size building doesn't belong in a residential area. He stated only two neighbors were approached by Mr. Friend and they were told the other neighbors were on board with the request. He stated the application was marked as owner occupied and he thought it to be untrue. He stated Mr. Friend doesn't live there but lives in Chesterfield, Madison County. He stated he can count on two hands the number of times he has seen Mr. Friend on the property over the last 7 years. He stated he has never seen him working on a car.

Mr. Neal explained to Mr. Rybarczyk that seeing Mr. Friend on the property was not an issue.

Mr. Neal asked if Mr. Friend lived at the property.

Mr. Friend stated he does live at the property and has for about a year.

Mr. Rybarczyk stated he was an absentee owner who lives in a different county and wants to impose problems. He asked the Board to please deny the variance, there was overwhelming opposition by the property owners, it was a commercial size building, it endangers property values, physically endangers the adjoining structure and no hardship was stated. He stated the burden of proof had not been met.

Amanda Rybarczyk, 9815 N. CR 300E, Muncie, Indiana, appeared in opposition. She stated she was speaking as a graduate landscape architect and professional. She passed out a handout to the Board. She stated the first page shows the slope of the hill at 8.9% which is where Mr. Poe would like to have the garage and the surrounding area slopes are 13.8%, 12.4 % and 11%, which are not suitable for building. She stated the structural integrity of sand is never the same after it is disturbed. She stated the location was at the stress point of the drainage and using the rational method she had calculated the amount of rainfall during a light rain, to be 18.77 gallons per second and during a heavy rain to be 40 gallons per second going through the stress point. She stated erosion would be inevitable with the amount of displaced water from the proposed building. She stated a minimum 21" culvert should be installed for the driveway. She stated the size and elevation of the proposed building would endanger the integrity of the building, it may take 5 years but his building will have structural damage. She stated she has reviewed other possible locations for the building and in her professional opinion and the opinion of the 20 colleagues she had consulted there are no viable locations for a building of this size on the property.

Mr. Friend stated he has been a carpenter for 10 years and knew sand and gravel was used for a base when building a home. He stated perimeter drains would bring the rain to the valley in the middle of his yard.

Mr. Rich asked if he was set on the proposed location of the building.

Mr. Friend stated he might be able to move the building to the west some but the land gets very low and he was concerned about security. He stated he planned to plant trees as a wind break.

Mr. Rich asked if the building was placed at the current location of the shed, would that be acceptable.

Mr. Friend stated that location would present a problem because he would have to drive over his septic system.

Mr. Rich made a motion to approve BZA 11-11 the appeal of Lon L. Friend and Tanya D. Harris with the hardship as stated in the application with the following conditions: 1) That the building is for personal storage only; 2) That there will be no business activity; and 3) That there shall be no adverse impact of the natural drainage for the surrounding properties. Mr. Fowler seconded the motion. Voting in favor: Ms. Kennison, Mr. Mantock and Mr. Rich. Voting against: Mr. Fowler and Mr. Neal. No official action, BZA 11-11 was continued to the May 26, 2011 meeting.

REPORT FROM DIRECTOR:

Ms. Moody stated she would send weekly reminders to the Mayor regarding the vacancy on the Board.

Ms. Kennison informed the Board she would be out of state for the next meeting.

ADJOURNMENT:

There being no further business the meeting was adjourned.

Jack Neal, Chairman

Marta Moody, Secretary