

Board of Zoning Appeals

MEETING DATE: January 17, 2023

TIME: 7:00 p.m.

LOCATION: Pendleton Town Hall

100 W. State Street Pendleton, Indiana

ORDER OF BUSINESS

I. CALL TO ORDER

Meeting was called to order by Vice President Jenny Sisson at 7:04 p.m.

II. ROLL CALL AND DETERMINATION OF QUORUM

Board members attending in person were Jerry Burmeister, James King, Jenny Sisson. Board members attending via Zoom were Kyle Eichhorn and Jamila Zafar. A quorum was established. Individuals representing the Town in person: Planning and Zoning Administrator Denise McKee, Town Attorney Jeff Graham, Town Council President Marissa Skaggs. Also attending in person: Steve Bucci.

III. ELECTION OF OFFICERS

Jenny Sisson motioned to nominate Kyle Eichhorn as President. Jerry Burmeister seconded motion. Roll call vote was taken and all members present voted in favor of said motion. Motion carried.

Jenny Sisson requested a motion for nomination of Vice President. James King made a motion to nominate Jenny Sisson as Vice President. Jerry Burmeister seconded motion. Roll call vote was taken and all members present voted in favor of said motion. Motion carried.

Jenny Sisson requested a motion for nomination of Secretary. Jamila Zafar nominated Jerry Burmeister. Jerry Burmeister nominated Jamila Zafar.

For the position of Secretary, Jeff Graham informed that it can be anyone from the Town and that it does not have to be a Board Member. The duties basically include attesting documents. Burmeister accepted the nomination.

Jenny Sisson made a motion to accept Jerry Burmeister as Secretary. James King seconded motion. Roll call vote was taken and all members present voted in favor of said motion. Motion carried.

IV. APPROVAL OF PREVIOUS MEETING MINUTES (November 15, 2022 Meeting and January 3, 2023 Special Meeting)

Kyle Eichhorn motioned to approve Meeting Minutes from the November 2022 Meeting and January 2023 Special Meeting. Jerry Burmeister seconded motion. Roll call vote was taken and all members present voted in favor of said motion. Motion carried.

V. OLD BUSINESS

A. Condemnation hearing for 116-118 W State St – Steve Bucci

- Denise McKee reviewed the steps for remediation for said property:
 - Complete structural repairs per Structural Engineer Report.
 - Meet Fire and Building Code Standards, including minimum of one (1) commercial grade fire extinguisher per building, exit sign, and safe points of ingress and egress. Inspection of the structural standards will be done by Building Inspector Brett Mabrey. Fire Code Standards will be reviewed by Fire Chief Chris Nodine, either at this time, or after the Final Inspection, but prior to relief of the order. Nodine indicated that a commercial-grade fire extinguisher is need; one per building. The Town has loaned Steve Bucci an extinguisher in the meantime. This will need to be returned and replaced.
 - Exits signs for 116-118 building, and proper ingress/egress to the front entrance
 - When Mabrey determines these items are complete, per the Structural Engineer report by Arsee Engineers, the Town will hire them to return for a final inspection
 - Once the Letter of Release is received by the Town, confirming that all items are complete, the Board will be requested to remove the remaining condemnation order
 - Bucci can request a Special Meeting if completed prior to the February meeting
- Denise McKee reported on the recent events in the timeline:
 - Structural assessment was performed in late December 2022 by Fritz Herget of Arsee Engineers per Mr. Bucci request. Herget reported 120 W State is structurally sound upon completion of few minor details. Fire and Building Code Standards were inspected and deemed met after a few remediations installed.
 - Amendment of the condemnation order was approved at January 3, 2023 Special BZA Meeting, allowing occupancy for only 120 W State St due to meeting structural and fire codes.
 - Certificate of Occupancy was issued on January 4, 2023 by Brett Mabrey for 120 W State St.
- Denise McKee provided the Staff Recommendation:
 - Continue progress on the structural repairs on 116-118 W State St.
 - Report repair and remediation progress in 30 days at February 21, 2023 Meeting, or a Special Meeting upon request if before February Meeting.
- Jenny Sisson asked how all the buildings in town are being handled. How is it determined that all buildings are meeting codes such as proper fire extinguishers? Does the Town do the inspections? Jerry Burmeister informed that the Fire Department is having a meeting to address such issues; building inspections will be done for all buildings. Sisson wants to ensure that all building owners are held to the same standards are treated equally. McKee indicated the new iWorqs system

can assist in tracking remodeling efforts, building permits, COA's, contractor information, etc.

- Burmeister applauded the work that Bucci has done. Bucci expressed again that he thinks the building was not getting ready to fall down because it is still standing a year later. Sisson reiterated that the Board was presented with evidence on his buildings, but they have not received like evidence on other buildings, but that is why she asked about building inspections moving forward. It remains that no other buildings in structurally unsound condition have been brought to the Board's attention. It is the Town's intention to be consistent.
- Bucci continued to disagree as to why his buildings were targeted. McKee referenced the report that had been completed with previous staff, and once brought to their attention, needed to a response.
- McKee stated in agreement that there should be consistent standards that apply to all property owners. Proactive measures need to be taken to identify these issues.

Jenny Sisson requested a motion for a continuation for repairs. Motion made by Jerry Burmeister; seconded by James King. Roll call vote was taken and all members voted to approve said motion. Motion carried.

B. VLU11152022-01 – Findings of Fact – 201 E Water St – Pendleton LockUp Storage, BexBiz LLC via Becca Harbert

- McKee summarized the Board approved the expansion of legal non-conforming land use on November 15, 2022. Approval was given to expand current storage unit business for three (3) additional buildings.
- McKee reported the Findings of Fact needed to complement the UDO, and since land use variances are very uncommon it is important to ensure it is accurate before presenting. Each criterion should be supported in that each one addresses specifically how that criteria is met. The Findings of Fact and Conditions set forth at the previous meeting are attached. The following criteria was deemed met by this Board:
 - Not injurious to public health, safety, morals & general welfare of community as no change to existing business and traffic pattern
 - Use and value of adjacent properties not adversely affected as provides no disruption to surrounding properties
 - Need for variance arises from condition peculiar to property as subject to 2021 Zoning Map which eliminated prior ability to expand use
 - Strict application would be hardship as 2021 Town-wide rezoning was not contemplated by property owner
 - Record does not show substantial interference with Comprehensive Plan as current use will be expanded in an orderly manner
- McKee presented additional supporting facts:
 - Previous *Planned Business Zoning* District would have permitted expansion
 - No objections and/or opposition presented; neighbor Kevin Bisser expressed support of petition based on agreed upon fencing condition

- McKee presented conditions set forth by BZA:
 - Petitioner shall fence site as presented and in accordance with standards of the Unified Development Ordinance
 - Petitioner shall pave inside of fenced area as presented within two (2) years of building completion
 - Petitioner to enforce restrictive use of north/rear gate, limiting to property owner, law enforcement and fire services
- Sisson inquired if there were any additional comments or concerns from the Board based on previous discussion. There were none; all agreed that necessary information has been captured. Per Jeff Graham, since this has already been approved by the Board and there are no additional concerns, the Findings of Fact can be signed by members present this evening. Kyle Eichhorn to come into Town Hall next day to sign.

C. VLU11152022-02 – Findings of Fact – 6929 South State Road 67 – Jeff and Heather Upton

- McKee summarized the Board approved the Change in Land Use for the south building on November 15, 2022. Approval granted to change the use from Commercial. Contractor Facility to mixed-use of Commercial Contractor Facility/Residential Dwelling Single-Family on second story.
- McKee reported the Findings of Fact needed to complement the UDO, and since land use variances are very uncommon it is important to ensure it is accurate before presenting. Each criterion should be supported in that each one addresses specifically how that criteria is met. The Findings of Fact and Conditions set forth at the previous meeting are attached. The following criteria was deemed met by this Board:
 - Not injurious to public health, safety, morals & general welfare of community as no significant physical changes to site and improvements to reinforce functionality & public safety
 - Use and value of adjacent properties not adversely affected as improvements to result in positive enhancements to site
 - Need for variance arises from condition peculiar to property as multi-structure and mixed-use property lends well to Residential Dwelling SF on south building second story & fitting to surrounding area
 - Strict application would be hardship as proposed expansion of land use is in harmony with surrounding legal non-conforming land uses
 - Record does not show substantial interference with Comprehensive Plan as requested change is harmonious with surrounding properties
- McKee presented additional supporting facts:
 - Adjoining & properties in close proximity are zoned for Residential Dwelling SF Land Uses
 - No objections and/or opposition presented; nearby neighbor Becky Perry expressed support of petition as presented
- McKee presented conditions set forth by BZA:

- Petitioner shall make improvements to exterior facade of south building similar to architecture of north building
- Petitioner shall remove southwest access point & replace w/ landscaping as well as remove asphalt on west side of north building along SR 67
- Petitioner shall maintain ground level commercial space/use for south portion of south building along East Water Street
- Sisson inquired if there were any additional comments or concerns from the Board based on previous discussion. There were none; all agreed that necessary information has been captured. Being previously approved, the Findings of Fact can be signed by members present this evening. Kyle Eichhorn to come into Town Hall next day to sign.

VI. ADJOURNMENT

Meeting was adjourned by Jenny Sisson at 7:39 p.m.

Next meeting February 21, 2023 at 7:00 pm.