

# Board of Zoning Appeals

MEETING DATE: March 16, 2021

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 Chairperson Jenny Sisson at 7:00 p.m.

### **II. ROLL CALL AND DETERMINATION OF QUORUM**

Board members in attendance were Jamila Zafar, Kirby McCrocklin, Jenny Sisson and Aimee Parker. Individual representing the Town was Planning Director Kayla Hassett and Town Attorney Jeff Graham. Also, in attendance, were Silverthorne Homes Representative Caitlin Dopher, Courtney Galyan, Scott Beck, Anthony Cocca, Steve Hughes, Jeff Friend, Cyndee Friend, Becky Perry, O'dell Cantrell, Teresa Gause and Chris Boots.

### **III. OATH OF OFFICE**

No Oath of Office was taken.

### **IV. APPROVAL OF MINUTES OF PREVIOUS MEETINGS**

**Motion to Approve the February 16, 2021 Meeting Minutes made by Kirby McCrocklin; seconded by Jamila Zafar; Roll was taken and all members present voted to approve the February 16, 2021 Meeting Minutes; motion so carried.**

### **IV. OLD BUSINESS**

A. CU01212020-01: 103 W. High St. (West High Street, LLC) – Sign finding of fact.

Kayla Hassett reported the following:

- Finding of Fact ready to sign and in Google Drive folder.

Jeff Graham advised of the following in regards to Finding of Fact:

- Finding of Fact by Ordinance to make for appeals, variances, conditional use and have to sign to approve.
- Must be substantial findings in the recording and can be based on testimony, material, material against project and staff report.

- Not like Court; hearsay is permissible. Just requires to be substantial and enough information to base decision on the record.
- Under emergency, as provided by the Governor of Indiana, can vote via email and finding of fact can be signed on behalf of Planning Staff.

Kayla Hassett asked the Board of Zoning Appeals to approve the Finding of Fact regarding 103 West High Street as was an issue from 2020 that is ready for signing. The FOF addresses a Conditional Use involving multiple businesses downtown and would like to pass the FOF to move project forward.

**Jenny Sisson Motioned to Table Old Business Agenda Items A- D until the next meeting; Seconded by Jamila Zafar; motion so carried.**

B. CU01212020-02: 228 S. Pendleton Ave. (West High Street, LLC) – Sign finding of fact.  
**TABLED TO NEXT MEETING; SEE ABOVE.**

C. CU11172020-01: 525 E. State St. (B&L Brown Construction Services, LLC, dba Swackhamer Masonry & Concrete) – Sign finding of fact.  
**TABLED TO NEXT MONTH; SEE ABOVE.**

D. V11172020-01: 739 N. Pendleton Ave. (Ronald R. Jones) – Sign finding of fact.  
**TABLED TO NEXT MONTH; SEE ABOVE.**

E. V01192021-01: The Falls Subdivision (Silverthorne Homes) - Increased lot coverage request for 56 lots.

Kayla Hassett, Planning Director, presented the following regarding The Falls Subdivision Variance Application, with documents available in Google Drive for review.

- Petitioner submitted Variance Application in January 2021 for The Falls in Pendleton.
- Developed by Coronado Homes in 2008. Infrastructure began in 2018.
- Silverthorne Homes recently took over the construction of the homes and found that 9000 square feet lot is too small for most of their floor plans.
- 30% lot coverage is maximum lot coverage allowed per Zoning Ordinance and with building/driveway, very tight.
- Petitioner asking for variance up to 50% for all lots in subdivision.
- Some feed-back have been received from future residents of the subdivision as well as from residents of neighboring subdivision.
- Concern of increase in lot coverage for fire and public safety.
- Landscape plans for landscape screen in the back of The Falls not received and no time-line given. Plan does now exist and Caitlyn Dopher representing Silverthorne Homes will include in her presentation.
- Last month had concern that Coronado had not signed off on authorization to increase lot coverage. Coronado has since then given written authorization.

Caitlyn Dopher, Entitlement Manager for Silverthorne Homes presented the following information:

- Petitioner asking for variance.
- Shared 'Who We Are' and informed that Silverthorne Homes has been in business for 25 years.
- Mission is to build great neighborhoods, offer 11 floor plans.
- Neighborhood located off of Old 132 and sits on 20 acres of land.
- Subdivision features 56 lots, all single family and lots are now on hold due to coverage issue.
- Architectural standards had been approved in 2007.
- Variance approved in 2008 to reduce lot size with primary plat at March 2008 Plan Commission meeting, but an error as lot coverage was not addressed.
- Coronado Developer began land development in 2018.
- Silverthorne Homes agreed to buy developed lots in 2018.
- Community Map and images of floor plans provided for review, including Tudor, Farmhouse and craftsman styles. Floor plans range from 1800 to 3300 square footage with basement option. Special features include 9 feet ceilings, hardi plank siding and garage storage.
- Architectural Guidelines and Codes, Covenants and Restrictions provided. No trampolines or playhouses, above-ground pools, portable basketball goals/sports equipment are allowed.
- Ranch style homes are experiencing issues as total square footage of 9500, with 30% lot coverage, only leaves 28 square footage for impervious surfaces, such as the home, deck, driveway and garage.
- Post customization by homeowner will be difficult with the 30% lot coverage limit.
- 2/3 of total lots would exceed the 30% lot coverage cap. All other development standards are met.
- If variance not passed, left with ranch Arbor Homes, but not what Pendleton is expecting for their community.
- Many residents are seeking to include a 3<sup>rd</sup> car garage, porch as well as extend the rear patio, all pushing the 30% lot coverage.
- 10% of lot width will not change. Minimum setbacks requirements will not change.
- The following discussions took place:
  - Jenny Sisson expressed concern for landscape commitment plans to buffer along side the Pines at Deerfield. Caitlyn Dopher stated that she was not aware of the concern and will look into this concern to address. Sisson stated that a letter had been provided previously outlining this concern.
  - Jenny Sisson reminded BZA members that lot coverage variance was issued to Carrick Glen due to commitments they had given such as neighborhood buffering with the Pines at Deerfield, shared space and stormwater. Sisson stated that BZA will want to make sure they are consistent as what is done affects what is done going forward.
  - Jenny Sisson asked if there were any changes as to density. Caitlyn Dopher replied that there will be no change as to density as keeping to 56 lots.
  - Kirby McCrocklin asked if 40% lot coverage would be enough as was mentioned at the last meeting. Caitlyn Dopher replied that this would be the bare minimum and would

- only address the base floor plan. Dopher stated that she believes that the minimum variance would be close to 45% with all of the elevations and minimum options.
- Kayla Hassett stated that one main concern is stormwater management and asked how Silverthorne Homes plans to address. Caitlyn Dopher replied that they have consulted with an engineer and confident that the lot coverage will have negligible impact on stormwater. Dopher also added that residents will not be able to develop in the 20 feet drainage easement on the back of the lot, such as fences and sheds. Hassett clarified that residents will not be able to develop in the 30 feet setback and the 20 feet stormwater/draining utility easement.
  - Chris Boots spoke and shared the following information:
    - Lifelong resident of Pendleton.
    - In real estate business as profession and new resident in The Falls.
    - Purchase one of the larger lots and would like to install an inground pool, but 30% lot coverage puts dream in jeopardy.
    - One-half of the lots could accommodate a pool, should lot coverage be increased.
    - 50% lot coverage not out of the norm with other neighborhoods, with homes being even closer than at The Falls.
    - Encourages BZA members to pass the variance. If not, will have a lot of empty lots.
    - Increase in lot coverage will be good for home values and the school system.
    - Wish to be on equal plying ground with competitive neighborhoods.
  - Kirby McCrocklin stated that for the smaller lots, he is concerned how it will look overall.
  - Chris Botts stated that he and his wife are not concerned with the lot coverage, yet concerned with the two different types of models – Silverthorne Homes and Arbor Homes which if have to go with more Arbor Homes, this option will not be best for resell value.
  - Jamila Zafar asked about lot size. Caitlyn Dopher replied that the lot size ranges from .22 acre to .32 acre. Dopher also provided the following information:
    - Many buyers are seeking a third garage.
    - Letter to residents at Pines at Deerfield was provided to the Planning Department last month and all residents within 300 feet have been notified. Kayla Hassett confirmed that 132 residents did receive notice.
  - Kayla Hassett conveyed the following thoughts/concerns:
    - Lot coverage having a negligible impact on stormwater infiltration.
    - New UDO will be looking at all impervious structures, including sheds, but pools exempt.
    - May want to look at outdoor living/hardscapes – considering building allotment with a certain percentage reserved/allowed for landscape/outdoor features or in the alternative reduce to overall 45% lot coverage variance.
  - Jenny Sisson stressed that Carrick Glen was very different as based on shared common spaces, large detention ponds, designed homes more-dense but the rest of the area was not dense. Carrick Glen also provided landscape buffer for the Pines at Deerfield. Ordinance in place prior to any acquisition and therefore want record to be clear. Sisson went over checklist:

- Coronado has signed off on authorization.
  - Have commitment to entry landscape, but no buffer by Pines at Deerfield yet to be presented.
  - Can go with option of 40% home; 10% outdoor features.
  - Need something on the record confirming that stormwater is not an issue.
  - Need side and rear setbacks followed.
- Caitlyn Dopher stated that the proposed 40% + 10% would not resolve issues with buyers that want a third car garage or sunroom for most floor plans.
  - Kayla Hassett asked if there could be consideration of increasing the lot size and reduce the number of total lots. Caitlyn Dopher replied that utility plans already in place make this not an option.
  - Kayla Hassett stated that the limit to 20 lots due to stormwater plans not being addressed is making good progress.
  - Jeff and Cyndee Friend stated that they had purchased their home at The Falls two months ago, but cannot sell their current home until the lot coverage matter is resolved. Jeff and Cyndee Friend explained that they need one story home due to health issue and trying to be patient; therefore, reason for submitting a letter to the Planning Department.
  - Jenny Sisson explained that BZA will need to look at precedence and Ordinances as well as all factors in place. Sisson stated that it was unfortunate with the oversight years ago and unexpected delays in the stormwater management plans. Sisson added that BZA need to also be mindful to neighboring subdivisions and look at all factors.
  - Kirby McCrocklin stated that his concern is not for today, but 10-15 years from now; therefore, does not wish to slip and create an area all are not proud how it turned out.
  - Jenny Sisson stated that there are processes in place, such as the permit process. Kayla Hassett added that the permit process will apply to accessory structures such as mini-barns, but HOA will need to address drainage easement care and assure that Stormwater Detention Area in good shape. Cailyn Dopher stated that the increased lot coverage will have a negligible impact on the community as well as HOA maintenance will make sure all is well maintained. Dopher added that they will follow State guidelines. Dopher will also look into any draining of mud caused by construction.
  - Jenny Sisson suggested marking certain lots for certain floor plans. Scott Beck commented that each lot is noted for allowed floor plans, however, at this point, many floor plans cannot be accommodated. Beck also added that the drainage issue is being handled by Coronado and not Silverthorne Homes.
  - Jeff Graham asked for explanation of the practical difficulties caused as outlined on Petitioner's application – that being commercial feasibility. Caitlyn Dopher explained that the variance approved 10 years ago reduced the lot size, but it did not increase the lot coverage; therefore, making it difficult for a home originally approved not approvable due to lot coverage restriction.
  - Jeff Graham asked for confirmation that the Town of Pendleton's previous action caused the issue and that the oversight is creating unsellable lots. Caitlyn Dopher confirmed yes.

- After discussion of motion options by BZA members, the following motion and conditions were approved:

Jenny Sisson proposed Motion to Approve V01192021-01: The Falls Subdivision (Silverthorne Homes) - Increased lot coverage request for 56 lots to allow 45% lot coverage with an additional 5% for hardscape, to include the following commitments:

- Old 132 screen including entry way landscape
- As an anomaly situation due to past oversights, in the future will continue to look at the Unified Development Ordinance for guidance
- HOA to assure that the easement area is maintained
- All conditions discussed at the BZA meeting, deemed as material evidence
- Compliance with all conditions called out in presentation that have been presented
- Findings of fact that are required to be adopted, there are findings that were submitted by the Petitioner and are also adopted by this motion

**Motion made by Jamila Zafar; seconded by Aimee Parker; roll call taken and approved by Aimee Parker, Jenny Sisson, Jamila Zafar, opposed by Kirby McCrocklin; motion carried.**

This motion was proposed by Jenny Sisson with a few confirmations made by Jeff Graham (last 3 items above) before being approved.

## V. NEW BUSINESS

A. CU03162021-01: 3104 West US Highway 36 (Fall Creek Corners) – Discount store (Dollar Tree) in the Planned Business zoning district.

- Kayla Hassett presented the following information, with application and images provided in Google Drive:
  - Site recently subdivided in three lots.
  - Located at US 36 and 300 West.
  - Petitioner filed an Application for Conditional Use for Dollar Tree.
  - Discount Store is listed as a Conditional Use in the Planned Business Zoning District in the Town of Pendleton.
  - Anthony Cocca is owner of Dollar Tree which is present as well as lot owner, Steve Hughes.
  - Hassett gave overview of the application and went over questions #1-9 of Petitioner's application.
  - Conditional Use request will comply with UDO. Materials used will be consistent with the Comprehensive Plan.
  - Planned Business Design Guidelines will be followed, but Petitioner will still need to submit Site Development Plans to Plan Commission. Jeff Graham confirmed that all standards will need to be complied even if BZA approves the Conditional Use application.
  - Some communities are holding off on discount stores like Dollar Tree to allow more full range grocery stores for the community.
  - If market cannot support (2) dollar stores in close proximity, the town will still be left with good building for resale.

- **Purpose** – Conditional Use are those uses that, because of their potential adverse impact upon the immediate neighborhood and the Town, as a whole, require a greater degree of scrutiny and review of site characteristics and impacts to determine their suitability in a given location. As such, the determination of conditional uses as appropriate shall be contingent upon their meeting a set of specific standards and the weighing, in each case, of the public need and benefit against the local impact, giving effect to the proposals of the applicant for ameliorating adverse impacts through special site planning and development techniques and contributions to the provisions of public improvements, sites, right-of-way and services.
- This board may approve or approve with conditions or deny.
- The **next step** is going to the Plan Commission for Site Development Plan Review, where the site will be compared to the Planned Business Design Guidelines.
- The following discussions took place:
  - Jenny Sisson commented that the Town of Pendleton is experiencing good growth. Sisson also asked if there were landscape guidelines in place. Kayla Hassett stated that BZA can require a buffer between the business and residents to the north.
  - Anthony Cocca stated that the landscape plans can be addressed in the presentation by Steve Hughes and Courtney Galyan.
  - Courtney Galyan provided the following information:
    - Represents Anthony Cocca and Dollar Tree as the Broker in the deal.
    - Dollar Tree is a single dollar point price item versus varying prices like Dollar General.
    - Dollar Tree features items like balloons, utensils, school supplies and 10% packaging/grocery items, but rest household goods.
    - Dollar Tree offers a better architectural design than the other (3) dollar stores.
    - Have discussed features that have a lot of architectural design in plans without compromising budget.
    - Going with a multi-faceted façade design.
    - Plans for a dumpster closure as a lot of materials are delivered on a daily basis. Proposed dumpster enclosure will mitigate exposed trash on site and properties to the north.
    - Unsure of plans to address screen/fencing between business and properties to the north. Anthony Cocca mentioned that Steve Hughes, land owner, had plans to plant shrubbery on back side to shield properties to the north.
  - Becky Perry, home owner of property at 7031 S 300 West which sits north of proposed site for the Dollar Tree shared the following:
    - Concerned shrubs will not suffice as a buffer.

- Seek permanent fence to go down the entire property at Fall Creek Corners and not just behind Dollar Tree.
- Did not receive notice of petition.
- Asked if Dollar Tree will face US 36 or new coffee shop. Caitlyn Dopher replied entry will face US 36. Dopher also stated that rear-loading dock for delivery trucks will be off 300 West, but only one entrance for customers. Perry expressed concerns for second entrance due to already high traffic on 300 West.
- Perry understands Dollar Tree will still need to go to Plan Commission, but wants drainage plan to go to US 36 versus to the north. Also, wants all (3) lot owners to agree on the draining plan.
- Jenny Sisson asked if BZA can accept requests from residents. Kayla Hassett replied that BZA can include higher buffer requirements such as larger shrubs and fencing.
- Jenny Sisson asked if drainage plans was up to Plan Commission or if BZA can play part in the modification. Kayla Hassett replied that Plan Commission will look at the Site Plan in detail and make sure all is in compliance and follows drainage easement. Sisson added that for tonight's meeting, decision can include modification regarding landscape buffer and limited site development plan, adhere to drainage plans as well as compliance with access management plan.
- Kayla Hassett stated that general drainage plan has been addressed, but the Site Development Plan will need to show how drainage system at Dollar Tree will tie into the overall drainage plan.
- Kayla Hassett asked about the site/building orientation. Courtney Galyan stated that she cannot address at this time. Hassett stated that they will look into these details when Plan Commission reviews the Site Development Plan.
- Becky Perry stated that she will continue to attend public meetings regarding properties at Fall Creek Corners to let her position be known and to express concerns about drainage and fence.
- Steve Hughes stated that he has been working with a company regarding landscaping plans from Highway 67 to 300 West. Hughes confirmed that these plans will be included in the Site Development Plan.
- Steve Hughes stated that he also has drainage plans which include a dry well retention pond as well as has been working with Town Manager Scott Reske about running across 300 West to the field which will then run east to the creek.
- Kayla Hassett asked if any plans to widen 300 West with sidewalks and possibly turn lane for large truck deliveries. Anthony Cocca replied that 1-2 trucks per week expected and road plans can accommodate the size. Kayla Hassett asked if they would consider a sign to direct large truck traffic to go south on 300 West versus north.



- Steve Hughes asked if there is a plan in place for a turn lane on Highway 67 to US 36. Kayla Hassett replied yes.

**Motion to approve CU03162021-01: 3104 West US Highway 36 (Fall Creek Corners) – Discount store (Dollar Tree) in the Planned Business zoning district with the following conditions: 1. Sign on road for truck traffic; 2. Landscape buffer between property and residents to the north made by Jamila Zafar; seconded by Kirby McCrocklin; roll call taken and all members present voted in favor of motion; motion so carried.**

#### **VIII. ADJOURNMENT**

Meeting was adjourned by Jenny Sisson at 9:14 p.m.

Next meeting June 15, 2021