

Board of Zoning Appeals

MEETING DATE: April 19, 2022

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 Kyle Eichhorn at 7:00 p.m.

II. ROLL CALL AND DETERMINATION OF QUORUM

Board members in attendance in person were Kyle Eichhorn, Jenny Sisson, Jamila Zafar, James King and Jerry Burmeister. A quorum was established. Individuals representing the Town was Planning Director Hannahrose Urbanski, Planning and Zoning Administrator Denise Mckee, Utility Clerk Stephanie Buck, Town Attorney Jeff Graham, Town Council President Chet Babb and Town Council Member Marissa Skaggs. Others in attendance included David Gilman, Julie Schnepf, Sandi Butler, Nathan Davis, Jake Gardner, Steve Bucci, Rachel Christenson, Tim Pritchard, Fletchyr Owens, JoAnn Karaffa-Owens, Margie Norton, Mike Liotli, Aaron Carl and Attorney Bryce Owens.

III. APPROVAL OF MINUTES OF PREVIOUS MEETING

Motion to Approve the February 15, 2022 Meeting Minutes made by Jamila Zafar; seconded by Jenny Sisson; Roll call was taken and all members present voted to approve the February 15, 2022 Meeting Minutes; motion so carried.

V. OLD BUSINESS

No old business to report.

VI. NEW BUSINESS

A. V04192022-01: Variance on architectural and setback standards at 0 SR 38, southwest of Heritage Way roundabout – Three Rivers Federal Credit Union via Tim Bailey

- Hannah Urbanski presented the following information, with site plan and renderings available in presentation and on Google Drive:
 - Applicant is seeking to have variances from the following standards:
 - Building orientation to not face State Street
 - Front setback on Building A decreased from 75' to 44'
 - Allow 2 monument signs instead of one per building, one facing State Street and one facing Henderson Way

- Take eave requirement from 3' to 12''
- Mike Liotli presented information and shared design of the three buildings planned for State Road 38. Elevations presented as well as presented that Building A will be 3 Rivers Federal Credit Union and Building B will be Starbucks while Building C is TBD. Applicants Findings of Facts outlined in application.

After brief discussion from Board of Zoning Appeals members, Jerry Burmeister motioned to approve applicants four (4) variances as outlined in application and supported by Findings of Fact - V04192022-01: Variance on architectural and setback standards at 0 SR 38, southwest of Heritage Way roundabout – Three Rivers Federal Credit Union via Tim Bailey; seconded by Jenny Sisson. Roll call was taken and approved by all members present; motion carried.

B. CU04192022-02: Conditional use for indoor/outdoor boat storage at 8843 W 700 S – Indy Boat Co via David Gilman

- Hannah Urbanski presented the following information:
 - Resent rezone to Heavy Business (HB).
 - Applicant is asking for a conditional use on an HB parcel to allow for indoor/outdoor boat storage. This is permissible by conditional use only, under “automobile and vehicle storage (not junk or salvage) per the UDO.
 - The parcel was split from the original 14 acres into an approximately 5-acre parcel, which is in the process of being recorded.
 - Parcel fits everything for HB, but just needs the conditional use to use land as desired.
 - David Gilman representing applicant presented the following:
 - Represents Wake Development LLC
 - Plans for dry detention pond, but if wet, will enclose.
 - First phase is the eastern 5 acres and second phase is the western 9 acres. First phase will consist of 6 buildings 60 x 160 square feet.
 - Shared access for customers; very seasonal in nature.
 - Will use earth-tone material with green roof and tan siding.
 - Will have some State Plan Review and will use non-combustible buildings.
 - Will establish tree growth right-of-way.
 - Neighbor James Riffey at 6857 S. State Road 13, Pendleton, expressed concerns for surface water run-off, fence and landscape buffer needs as well as lighting. David Gilman shared options that Developer will provide to address these concerns.
 - Julie Schnepf of 427 East State Street, Pendleton, expressed concern with market value decrease with commercial development in middle of agriculture. Kyle Eichhorn and Jenny Sisson confirmed that the type of development was complimentary of the Comprehensive Plan.
 - Hannahrose Urbanski explained that next steps included Site Development Review by the Technical Committee including landscape and buffer requirement.

Jenny Sisson motioned to approve Applicant’s application as supported by Findings of Fact - CU04192022-02: Conditional use for indoor/outdoor boat storage at 8843 W 700 S – Indy Boat Co via David Gilman; seconded by Jamila Zafar. Roll call was taken and approved by all members present; motion carried.

C. V04192022-03- Variance from architectural standards for indoor/outdoor boat storage at 8843 W 700 S - Indy Boat Co via David Gilman

- David Gilman presented the following information with renderings available in presentation and on Google Drive:
 - Applicant is asking for a variance on required architecture standards including:
 - Building orientation – will not face 700 S
 - Window requirements – will not have windows
 - Façade Design on long facades (longer than 60 feet) – will not be broken up with different materials
 - Building finishes – uses standing seam metal
 - Eaves

Jamila Zafar motioned to approve Applicant’s application as supported by Findings of Fact as presented by Petitioner to approve variances in architectural standards - V04192022-03- Variance from architectural standards for indoor/outdoor boat storage at 8843 W 700 S - Indy Boat Co via David Gilman; seconded by James King. Roll call was taken and approved by all members present; motion carried.

D. Condemnation hearing for 116-120 W State Street – Steve Bucci

- Hannahrose Urbanski, advised the following:
 - Town has found building at 116-120 W State Street in violation of Section 4-6-7-8-12-15 and provided the following additional information:
 - UNSAFE BUILDING ORDER
 - The Town finds the buildings at 116-120 W State Street to be in violation of the Unsafe Building Law (155.02). Specifically section 155.02.06 “Minimal Standards for Building Condition or Maintenance” in the following areas:
 - 4. Whenever any portion, member, or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse and thereby injure persons or damage property;
 - 6. Whenever any portion thereof has cracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of a similar new construction;
 - 7. Whenever the building or structure, or any portion thereof, becomes unsafe because of dilapidation, deterioration, or decay; faulty construction; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay, or inadequacy of its foundation; or any other cause is likely to partially or completely collapse;

- 8. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;
- 12. Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this Town, or of any law or ordinance of this state or Town relating to the condition, location, or structure of buildings;
- 15. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistant construction, faulty electrical wiring, gas connections, or heating apparatus, or other cause, is determined by the Planning Director to be a fire hazard.
- Images showing comparisons of pictures taken in 2019 versus 2022, included:
 - Decayed windows
 - Bowed Supports
 - Moss has spread and wood decking still deteriorated
 - Worsening conditions of wood ceiling beams
 - Holes in roof
 - Holes in floor
 - Bowed/broken joists
 - Evidence of an unsealed building
 - Evidence of pests
 - Roof damage by water pooling
- October 2021, Scott Reske, Hannahrose Urbanski, Assistant Fire Chief Gardner and Brett Mabrey did walk-thru of building along with Steve Bucci. Upon no resolution and/or repair efforts, condemnation order was sent in March 2022. Walk-thru was not for purpose to look for additional issues, but only to compare with images taken in 2019 to detect improvement and remediation.
- 2019 Engineering Report outlined areas in need of attention, including several pictures. Report also concluded that at the time, vacate of the building was not necessary as not immediate danger due to fact building was not occupied. Town Staff believes PE was mistaken as building was occupied at the time of the report by two commercial tenants.
- After October 2021 inspection, Mr. Bucci was given a copy of the 2019 Engineer Report as well as given information in regards to the Historic Preservation Commission Local Façade Grant.
- Jeff Graham asked if Owner, Steve Bucci was present. Upon reply from Mr. Bucci that he was present and represented by Counsel, Bryce Owens, Mr. Graham conducted formal hearing on the condemnation of property. Tim Pritchard opened the Public Hearing. Jeff Graham advised of hearing procedure, including cross-examine opportunity by Bryce Owens, Counsel representing Owner Steve Bucci. Hearing documented and available per Public Records Request.

- Comments and questions were taken from Board of Zoning Appeals members, Planning Director Hannahrose Urbanski, Building Inspector Brett Mabrey, Town Manager Scott Reske, Assistant Fire Chief Jake Gardner and Owner Steve Bucci. Cross-examine also conducted by Counsel Bryce Owens and witness testimony taken from Owner Steve Bucci.
- Requests for 'On The Record' comments included:
 - Planning Director Hannahrose Urbanski – Items listed in Engineer Report are items that need to be addressed. Further noted, Engineer Report addressed structural issues yet did not address fire safety issues. Will need to bring up to structural standards which should put in compliance with fire safety standards.
 - BZA Member Jenny Sisson – 2019 Engineer Report was taken for the purpose to address the damage from the 2019 Memorial Day Tornado and asked Owner Bucci if he, as an owner of commercial business, was aware of his rights and obligations.
 - Building Inspector Brett Mabrey – Stated that there is no one in the room that wants the building to be empty as well as no bad feelings. Mabrey further expressed that he likes open line of communication and believes can work through this. Mabrey also stated that the Town Staff does not wish to see the building empty, but that if the building caught on fire and/or had heavy snow, the building would likely come down.
- After close of hearing and discussions, Tim Pritchard moved to close the Public Hearing. Motion made by James King; seconded by Jerry Burmeister; roll call was taken and all members voted in favor of closing the public hearing; motion carried.
- Jeff Graham advised BZA members that they can either affirm, deny or modify the condemnation order as well as assess a civil penalty, set for a period of time to get work completed, in addition to ordering progress reports.

Motion to Modify Order of Condemnation/Unsafe Building Order dated March 31, 2022 made by Jamila Zafar with the following additional terms:

- **30 days to seal the building.**
- **6 months to make repairs outlined by the Town.**
- **Not allowed occupancy until approved by Building Inspector, Fire Marshall and Licensed Structural Engineer.**
- **Timeframe to vacate the building in effect set by April 22, 2022 at 9 pm.**
- **Progress reports due within 30 days and Substantial Improvements Report as well as Owner to appear at each Board of Zoning Appeals until all work is completed. If all work is not completed by October 19, 2022, there will be a civil penalty of \$100.00 per day and the Town of Pendleton Board of Zoning Appeals can extend if appropriate by vote as well as suspend the civil penalty fee.**
- **Once all three – Building Inspector, Fire Marshall and Licensed Structural Engineer are satisfied that the building meets structural and fire safety standards, the Town can issue a Certificate of Occupancy.**

Seconded by James King. Roll call was taken and all members present voted in favor of said motion; motion carried.

VI. ADJOURNMENT

Meeting was adjourned by Kyle Eichhorn at 9:28 p.m.

Next meeting May 17, 2022 at 7 pm.