

# Board of Zoning Appeals

MEETING DATE: January 16, 2024

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 Kyle Eichhorn at 7:00 p.m.

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

Board members attending in person: Kyle Eichhorn, Jenny Sisson, Rob Williams, Robert Jones.  
Board member attending via Zoom: James King. A quorum was established. Individuals representing the Town in person: Assistant Planning Director Denise McKee, Planning Director Hannahrose Urbanski, Town Counsel Jeff Graham. Also attending in person: Attorney Zach Yoder of Adler Attorneys, Devin Norrick of 407 Romine Rd in Anderson, Jodi Norrick of 1020 Winding Way in Anderson

### **III. ELECTION OF OFFICERS**

President - Robert Jones nominated Kyle Eichhorn  
Vice President - Robert Jones nominated Jenny Sisson  
Secretary – Jenny Sisson nominated James King  
Secretary – Robert Jones nominated Stephanie Buck

Roll call vote was taken for each position, with Eichhorn for President, Sisson for Vice President and King for Secretary being selected by Majority Vote

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

**Kyle Eichhorn requested a motion to approve Meeting Minutes from the December 2023 Meeting, motion made by Rob Williams, seconded by Jenny Sisson. Roll call vote was taken and all members voted in favor of said motion. Motion carried.**

### **V. OLD BUSINESS**

A. CU12192023-01 : 120 Blue Spruce Drive – Austin Feipel

Denise McKee presented a summary of the Findings of Fact for signatures

### **VI. NEW BUSINESS**

- A. A01162024-01: Administrative Appeal by Life Church Assembly of God, Inc. located at 6501 S. State Road 67

Jeff Graham summarized the Appeal Process, with BZA's recommendation to go before Town Council to Uphold, Overturn, or Modify, all with or without conditions.

Denise McKee presented an overview of the Administrative Appeal Current Use and Site Details: (Images on Google Drive)

- Location: 6501 S SR 67
- Zoned: General Business (GB) and used as a church (permitted use)
- Southern adjacent parcel is zoned GB and used as an Edward Jones Financial Advisor office
- Shares recorded cross-access easement with southern property since 2009 (purple line), however, this access style has been present since at least 2005 according to historic aerial image
- Construction of an un-permitted driveway cut began in summer of 2022. Town contacted church to stop driveway construction until necessary steps to apply for a driveway permit per the UDO/AMCO were taken. Permits from both the Town and INDOT are required.

Denise McKee provided following background information: (Images on Google Drive)

- Petitioner applied for a 24' wide, full motion commercial driveway permit directly to their property from SR 67 in November 2023 (classified as primary arterial via Pendleton Thoroughfare Plan and principal arterial via INDOT) located where the initial cut was made. Part of this permit application included an agreement for Edward Jones to close their northern driveway and to vacate the cross- access easement between the two parcels
- Staff analyzed adopted plans and ordinances relevant to this permit application. The driveway permit was denied December 2023 based on the following non-compliances with the UDO and AMCO:
  - Non-residential lots are permitted one access point on the lowest possible road designation (UDO Chapter Three (D, 16., c, ii). The cross-access easement is considered the lowest designation and the additional driveway would also give the site two access points
  - To prevent/reduce the number of cuts onto arterial roadways, tracts shall be accessed via collector or local roads, or access easement when possible (UDO Chapter Three (D, 18., a). The cross-access easement on this site fulfills adequate access to the site without an additional driveway cut
  - Minimum spacing between access points is 300' on a 40-mph roadway (AMCO, 1.4, D, 1, a). New driveway would only be spaced 302' from nearest access point (based on engineers drawing, measured centerline to centerline) if northern Edward Jones driveway closes. However, these

are minimums, and speeding/accidents are prevalent on SR 67 and taken into consideration

- Maintain functional classification hierarchy: primary, collector, local, cross/shared access (AMCO,1.4, B, 10). The existing cross-access easement is maintaining functional hierarchy. Cross-access is also highly encouraged in the AMCO
- Traffic study can be performed to determine if a second driveway is warranted on an arterial when a second access point is not possible on a side street, service drive or shared access (AMCO,1.4, C, 5). Traffic study not performed, and ingress/egress point is already on a cross-access easement (shared access)

Denise McKee entertained the Board for questions and discussion:

- Robert Jones asked if this was involved with the INDOT project and had they indicated what kind of impact this would have. Hannahrose Urbanski stated INDOT is considering continuing the 36 Project further north with medians, due to traffic and accidents issues on 67, but this is still far off as far as a timeline. McKee also noted there are AG properties just north of this parcel that will likely be developed within the next ten years. Urbanski added this would also involve the extension of Candlewood Dr. to the west, which is part of the Thoroughfare Plan to connect to the Park.
- Kyle Eichhorn asked what the distance is from the driveway cut in question to Candlewood Dr. McKee said approximately 150 feet, just past the next parcel to the north. Robert Jones inquired about this road extension being an alternate access for the church. Urbanski answered that there could be an access road placed there.
- Jenny Sisson asked if INDOT will widen 67. Urbanski said that is not known at this time.
- Eichhorn asked if the church had permission from anyone at the time of initial construction in 2022. Urbanski said not that she was aware of.
- Robert Jones asked if there have been any comments from anyone from the property rear / west of that location regarding too much traffic. Urbanski stated there have been none

Zach Yoder, Counsel representing Life Church Assembly of God presented:

- Appreciation for the Board for listening and being diligent in this matter
- Yoder asked the Board to use their good old Hoosier common sense and stated the proposed driveway that was denied by the Planning Staff is beneficial to Life Church and its parishioners, and the surrounding properties and businesses. The proposed driveway will eliminate congestion, promote better flow of traffic and increase safety along 67 corridor.
- Life Church is proposing a driveway that would provide direct access to SR 67. If granted the access they would close the drive directly to the south and relinquish their access easement.

- The project already received approval from INDOT, in February 2023 and is a large part of their case. The specifics were included in their application to INDOT. To his knowledge the actual technical aspects of the proposed driveway have not been analyzed or denied by the Planning Staff.
- Life Church's proposal is better than what currently exists; there are four curb cuts within 200 feet of each other. What they are proposing is closing the north Edward Jones curb cut; not adding one, but closing one and moving it further north. The current cuts create safety hazard and congestion on Sundays when people are entering and exiting the two churches simultaneously via the two drives. Yoder believes that by moving the drive north it would make 67 safer and decongest the area. The proposed curb cut fits the Town's UDO better than what exists, which does not comply with the UDO and AMCO. Yoder acknowledged the existing layout was there prior to the UDO. Yoder stated there has been a lot of focus on strict adherence to the UDO and AMCO, and the utmost priority of safety, which he believes the best way to maximize safety is by adding the proposed curb cut and putting 300 feet between entrances.
- Yoder claims the Staff is taking a form over substance approach placing the emphasis on the letter of the ordinance versus the purpose of them; too much weight is being placed on classifications and reducing curb cuts. Yoder restated they are not adding a curb cut by increasing the space between the two curb cuts. Leaving it the way it is is more dangerous.
- Yoder addressed statements from the Staff and provided following information:
  - AMCO 1.4b1 for access approval; prior approval has to come from the Planning Director on a Town street or INDOT on a State highway. Life Church received approval from INDOT
  - AMCO 1.4f2 states shared driveways are encouraged and sometimes required, required only when there are issues of spacing requirements (1.4d). Yoder says spacing problems go away if the north drive is closed.
  - Every other church in Pendleton has direct access from the street, with the exception of Solid Rock Church to the west because they no longer have frontage.
- Yoder summarized they are not asking for an additional cut, but just shifting it to a safer place and distance and eliminating congestion, and it meets the 300 feet requirement.
- Yoder stated this proposal fits the objectives of the UDO and AMCO regarding access.
- Yoder referenced the traffic study and said he does not believe it is necessary because of the low volume of traffic on Sunday mornings by the two churches. He also said the Planning Staff never requested one during the preliminary filing for a permit.

## Questions / Discussion

- Robert Jones asked what the driving force was of wanting to make this cut? Zach Yoder indicated the safety concerns, congestion, and bad visibility of their sign in relation to the drive causing people to drive past and turn around
- Jenny Sisson asked, according to his reference from AMCO 1.4b1 and INDOT approval, what was the reason why the necessary construction permit was not pulled from the Town. Yoder claimed that was an oversight. Sisson referenced the work that has already been done for the cut, and whether their technical plans were provided to the Town prior to the start of construction. Yoder indicated there were plans, and they were not provided before construction began. They did not pull a permit from the Town because they believed what they had from INDOT was sufficient.
- Yoder was asked by co-counsel if the construction began in 2022 or 2023. Yoder stated it began in 2023 and that they received the INDOT permit in February 2023. Planning Department shows construction beginning in 2022.
- Robert Jones asked the Staff to clarify Yoder's statement about INDOT superseding Town authority. Jeff Graham explained that INDOT requires all local authority to be a part of their procedures as well. It is a requirement as part of the INDOT process that all necessary local permits are provided to INDOT.
- Kyle Eichhorn asked about the UDO and AMCO and where would someone know to contact the Town about it, and know to get a permit. Hannahrose Urbanski stated this is part of INDOT's process as a requirement. Denise McKee also stated the AMCO requires a site plan and a primary plat to go through the Town. Yoder interjected that was for new builds only. McKee countered by stating the petition for the site plan that was submitted for that church to be built in 2003 did not have the proposed cut in those plans. And those plans are what was approved, so a new cut would be need to be addressed as either an amendment to the site development plan or a variance request.
- Rob Williams recalled when he worked for the Town Planning Department in 2003 when this church was built; the original builder wanted a cut in this approximate location and INDOT said No, due to the access on all the existing cuts. At that time none of the businesses wanted to get rid of any of those. Yoder said that they are willing to do that now, and surrounding businesses are in favor.
- Yoder claims the church has more than doubled in the last year, so this problem will not get better. What they are proposing is better and wider.

Kyle Eichhorn opened discussion and questions from the Staff

- Denise McKee clarified the applicant has not been malicious or knowingly negligent, and also that the Town is not trying in any way to prevent them access or treat them differently than other churches in Town. With the established businesses that are already there, if there was a modification being sought today

they would still be subject to Staff analysis and review based on Town's standards and plans.

- Hannahrose Urbanski encouraged the Board to consider future planning and development of this corridor, and the impact with any changes to this property.
- Eichhorn summarized the points that resulted in the denial: 1) Non-residential lots are permitted one access point 2) Prevent or reduce the number of cuts 3) Minimum spacing 4) Functional hierarchy 5) Traffic study; Eichhorn noted it seems these have mostly been met
- Eichhorn asked about the lack of a Variance Request by the church; Urbanski said this is what should have been done to approve the cut
- Jeff Graham requested Urbanski to explain the thought process of approving a variance whether it's 300 feet, 302 feet, 250 feet etc. Urbanski stated examples of exterior factors need to be considered, the heavy traffic, safety issues that INDOT is addressing with the area projects such as that at the apex of State St, 67, 36, and 38 including adding deceleration/acceleration lanes and driving lanes medians from Water St to Angle Rd, and closing some driveway cuts; this is just south of this location. Graham asked if it was fair to say that the Town's position on granting driveway cuts takes these projects into consideration. Urbanski agreed that she looks at the trends with INDOT and how that it fits into the Town's standards, then that is what the Town should be doing as well. McKee added that this is similar to a commercial subdivision that would have one or two access points, and this particular location was allowed to have three. With what we have learned with our standards and over the past 20-30 years is that those need to be minimized. Keeping three access points would not be approved if a new layout or plans were presented, and extending the use of three as a non-conforming use would not be approved. Yoder responded if the permit is not approved, both current drives will stay there, and the problem will not be eliminated. He believes their plan alleviates the problem by widening the gap, creating a less dangerous situation.
- Eichhorn asked what happens with a Judicial Review; Graham replied it is a Judge in a court that reviews the case and generally upholds the Board's decision unless the Board has abused their discretion in deference to the law. Yoder countered it is upheld to the extent the Court interprets the law, in this case 1.4b1.
- Yoder cited previous case Muncie vs Pizza Hut referencing it as a Supreme Court case; business owner of a lot adjoining a street had a particular and distinct entrance right to an easement in front of his lot to the street, not a cross access somewhere down the street. Jenny Sisson asked for specifics about the location and type of street; Yoder had no specifics but cited case as 357ne2d735.
- James King referred to Yoder's reference to 1.4b1 AMCO and getting a permit from INDOT, and if that permit was received prior to construction. Yoder stated it was received in February 2023 before construction. King asked Staff which ordinance takes precedence, INDOT or the Town. McKee answered that the driveway cut permit can be issued by INDOT when it's a State road and by the

Town permitting a driveway cut permit application however, it is based on the site plan that still needs to be reviewed and approved by the Town, which is also referenced in that document. Those plans still need to be submitted to the Town for approval. INDOT manual language references it has to comply with local, state ordinances and law. Yoder disagrees in the giving of access and the actual construction of the access point: one is, can I have a driveway and the other is, what are the specifics of that driveway? He claims INDOT provides approval of the access point and Pendleton provides the approval of the specifics of what that access point looks like. They are seeking approval of the access point, and if there are specifics they would be happy to comply.

- Eichhorn reviewed Staff's points for denying the driveway permit, presented earlier; discussion and clarification was provided by Urbanski
- Sisson raised questions about the Pizza Hut court case cited and stated that due diligence was required and to determine how this fits with today; it was confirmed this was a case from 1976 and was there anything more current. Yoder said there is nothing more current. Sisson commented that this was based on Indiana statutes from that time, how would a case like this fit in today's statutes. Yoder replied this is more of a constitutional issue, that a business owner gets access to a public street and cannot be prevented access to a public street. Yoder quoted from the case "In the State of Indiana the owner of a lot abutting upon a street may have a peculiar and distinct interest in an easement into the street in front of his lot". Graham asked if Yoder believes to mean if I have a business on a state highway, I can have a driveway directly to it no matter what? Yoder agreed. Graham's interpretation is that they can have access to the road, and in the church's case, you have access. Graham asked if this is a case from Court of Appeals; Sisson confirmed this is from the Court of Appeals of Indiana, not the Supreme Court. Regardless, Graham affirmed that it is still good law, that every business has access to the road. Sisson highlighted newer developments that have interior access roads off major highways that connect multiple businesses. Graham noted that in the Pizza Hut case, there was outright denial for them to access the road at all; they had zero access. Yoder said regardless of interpretations, we have a safety issue and it does not hinge on this case. He referred back to the concerns/objectives to the access control ordinance, and safety seems to be the most important. He believes there are more safety concerns if they do not get the proposed drive because it spreads out the distance to better compliance than what it is currently.
- Eichhorn referenced the UDO Ch.3 D, 18., a. where it states full access from arterial roads shall only occur at signalized intersections. If Candlewood gets developed then all this frontage gets routed there instead of 67. He noted that just because we have an existing situation that is bad, making the drive further up is still not good and still does not comply with the UDO.
- Graham reviewed the Board's three options: Affirm the Staff decision, with or without commitments, Reverse the Staff decision, with or without commitments, Modify the Staff decision, with or without commitments. Eichhorn asked for

clarification on Modifying the decision; Graham replied that is if you were constructing a solution to the problem. The overarching view is, did Staff follow the UDO. Then once that decision is made then you decide what to do about that. The BZA is the only governmental entity that can craft solutions. Eichhorn commented that it does seem that they followed the UDO. Sisson commented that the Staff's job is to be prescriptive; when they analyze plans it is part of the due process. Either it meets it or it does not and then it comes to the BZA; it is not their decision, but it is the BZA's. Sisson emphasized that the Staff did their job. Yoder questioned the clarity of the UDO based on Staff comments. Eichhorn asked what exactly was not clear.

- Rob Williams asked if INDOT contacts the Town when they give approval. Urbanski said they do not, but Staff is trying to improve that process. Williams asked Yoder if he had any reason to believe they would not approve it again. Yoder replied no. Williams asked Staff if the cut is approved would the cross access be closed. Urbanski said it would, but could still have emergency services access. Williams said this situation is thorny due to all the grandfathered accesses. He said in 2003 when he worked for the Town, the same builder for the church, which was not given a cut at that time, was simultaneously looking at a potential residential development for the east side of 67 across from the church, and they also were not given a cut to 67, but told to use Candlewood or Market St. Williams noted INDOT's inconsistency with their approvals. Urbanski agreed noting the current expansion projects. McKee added in about 2021 INDOT denied a residential cut request in that area on the east side of 67.
- General discussion followed regarding Candlewood Dr and the possibility of having access out to Candlewood to 67. Graham cautioned that the Board may be handling this like a Variance Request. Eichhorn commented that they seem to be looking at a master plan that probably will come to fruition, in the interim this proposal does look better but may not ultimately be the best. Ultimately routing everything to Candlewood would be the safest.
- Sisson asked if the Board could take a recess to discuss all the information, being a lot to digest. Graham replied that they cannot.
- Urbanski inquired if the denial is upheld, can they come back for a Variance; Graham agreed that they could, but that is up to them to file for a Variance. Eichhorn said it seems like a Variance Request to allow the cut until Candlewood develops. Yoder added that the Board could do that tonight, by adding conditions. Graham agreed, even though it is different than granting a variance.
- Eichhorn agreed that Staff made the right call, but he questioned what the Board thought about allowing the cut, closing the one to the south and eliminating the cross access, except for emergency vehicles until Candlewood Dr is developed. Yoder also pointed out the additional access to the small mall further south of the church, and that there is also cross access that has been created through that parking lot. There are parking bumpers, but there is an opening. Eichhorn inquired if the property to the north is developed will all those properties have to their access moved to Candlewood. McKee stated that would only be the



case if Candlewood Dr was already developed. If that northern property is developed before that, they are entitled to one cut to 67 which would then require modification to the church's proposed cut.

- General discussion about responsibility of a potential developer of the field to the north and the development of an access road to Candlewood if/when it is developed. Mckee questioned whether that burden can be placed on a potential owner. Impact Fees were brought up, however McKee indicated those could not be used for Candlewood Dr.
- Robert Jones recommended a continuance to review all the information against the UDO; he understands their request and sees their vision; we do not know when Candlewood will come through there; the Staff has done their job and there have been some good points raised
- Urbanski said they may need to look at a variance; Sisson asked if this would set some kind of precedent; Graham said that real estate is always unique and not likely to affect future cases
- McKee added that going through the variance process would be recorded in Findings of Fact so that if the church sold the property, it would remain with the land and the new owner.

**Kyle Eichhorn requested a motion to continue A01162024-01 to the February 20 meeting. Motion was made by Rob Williams; seconded by Jenny Sisson. Roll call vote was taken and motion approved by all. Motion carried.**

## **VII. ADJOURNMENT**

Meeting was adjourned by Kyle Eichhorn at 8:56 p.m.

Next meeting February 20, 2024 at 7:00 pm.