

# Board of Zoning Appeals

MEETING DATE: November 15, 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 President Kyle Eichhorn at 7:00 p.m.

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

Board members attending in person were Kyle Eichhorn, Jerry Burmeister, Jenny Sisson, James King and Jamila Zafar. A quorum was established. Individuals representing the Town in person were Planning and Zoning Administrator Denise Mckee, Planning Director Hannahrose Urbanski, Town Attorney Jeff Graham. Also attending in person: Steve Bucci, Heather and Jeff Upton of Real Estate Pros 6929 S State Road 67, Becca Harbert and Steve Wills of Pendleton Lock-Up 201 E Water St, Kevin Bisor of 222 Hallowell Dr, Becky Perry of 7031 S 300 W.

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

**Kyle Eichhorn entertained a Motion to Approve the October 18, 2022 Meeting Minutes. Motion made by Jenny Sisson; seconded by Jerry Burmeister. Roll call vote was taken and all members present voted to approve the October Meeting Minutes; motion so carried.**

### **V. OLD BUSINESS**

A. Condemnation hearing for 116-120 W State St – Steve Bucci

- Denise McKee provided a progress report: the sealing of the rear building has been completed, including the panels for the sawtooth windows, which have been done with the same siding as the rear siding. The Town has not yet been requested by Steve Bucci to perform an inspection for structural repairs. McKee recommended the Board provide extension to the December Meeting for Bucci to continue structural repair, and to provide an update at that time.
- Kyle Eichhorn asked Bucci if he had any questions or comments. Bucci stated he is making good progress, with exceptions for employee shortages and weather. Bucci inquired about contacting the Structural Engineer about the repairs he has already completed to confirm he is proceeding satisfactorily, and who would pay for that. Eichhorn iterated that the contract includes a final inspection at the Town's expense.

Any expenses for additional inspections at Bucci's request would be the responsibility of Bucci. Bucci inquired what that expense might be and Eichhorn encouraged him to contact the engineer for that information. Bucci disputed the relevance of this, and Eichhorn repeated that additional site visits are not within the scope of the contract. Hannah Urbanski reminded Bucci that he could call the engineer to ask questions. Bucci continued to state his opinion that the engineer should return for additional inspections for free. Eichhorn and Jerry Burmeister also encouraged Bucci to call the engineer.

- James King inquired about any Town Official that may be able to inspect the structural progress. Urbanski said Scott Reske can assess structural engineering issues. Bucci stated Reske will not set foot in his building.

**Kyle Eichhorn requested a motion to continue to the December 20 meeting to reassess the structural repairs. Motion made by Jenny Sisson; seconded by James King. Roll call vote was taken and all members present voted to approve said motion. Motion carried.**

## **VI. NEW BUSINESS**

A. VLU11152022-01: Variance in Land Use to allow for storage unit expansion – 201 E. Water St, Pendleton LockUp Storage, BexBiz LLC via Becca Harbert

Denise McKee introduced the Variance in Land Use, stating these are not common requests so that it is unusual to have two at the same time. McKee provided a general review of Land Use Variances: changes in zoning are not being requested but rather requesting approval to utilize the land in a different way than what is currently outlined in the UDO. McKee stated the first petitioner's request is to expand the storage facility area, which became a non-conforming, but legal use at the time of the December 2021 rezone. Petitioner is required to come before the Board and seek a variance to allow the expansion. The second petitioner's request VLU11152022-02 is currently a legal use but requesting to modify the general business use to a mixed-use property, which also requires petitioner to seek approval for a land use variance.

Jeff Graham commented that generally these changes are difficult to obtain; changes in use are typically done through a rezone. Requests are rare and the standards are high for variances to be adopted. Two standards in particular that are often unattainable: the ordinance has to be so restrictive that it makes the property practically worthless, whereas the Board is obligated to approve the variance of use, and when the strict application of the terms of the zoning ordinance cause an unnecessary hardship.

McKee stated that both of these petitioner's are highly invested in the community, and appreciates that they are wishing to make improvements to the aesthetics and services provided to the community.

McKee presented the first petitioner's request by BexBiz, LLC represented by Becca Harbert and Steve Wills: (Detail site information available on Google Drive)

- Property approximately 1.67 acres on Water St, bordering The Park playground
- Rezoned Neighborhood Business in December 2021 from Planned Business

- Legally non-conforming use of land
- Prior Planned Business Zoning District - mini-storage/warehousing permitted; contractor/auto-vehicular storage allowed by conditional use
- Petitioner seeks Variance in Land Use to allow for expansion of current storage facility by 3 additional buildings [26 units]
- Outdoor RV & Boat Storage to replace current outdoor contractor equipment storage at southeast corner of parcel (permitted use)
- Proposed Site Enhancements- perimeter fencing inside existing landscape; storyboard faux play windows on rear walls along park side; 2 security gates; future resurface of front office parking lot
- The Board can choose to have commitments and conditions on the Findings of Fact if variance request is granted.

Site Considerations presented by McKee:

- Existing Prescriptive Utility Easements - primary electric & stormwater on/near parcel
- Site Development Plan/final layout & design contingent upon land survey & utility easement findings
- West development would require partial removal of railroad hillside [property owner's side]
- Variance from Development Standards (Setbacks & Architecture) are likely next steps based on conceptual plan

McKee invited Becca Harbert to comment:

- Harbert reminded the Board that the zoning was changed a year ago and they were allowed to expand the storage units up until that recent zoning change.
- Harbert commented on the positive customer feedback they receive based on the convenience of the facility's location
- Harbert iterated that storage business, even though they are renting storage space, is considered retail and operated like a retail business. If the property is zoned as retail then storage should be under that category is well.

Discussion and questions from the Board regarding the rezone, original intent, public notification and confirmation that the requested use was allowable under the recently changed zoning followed. Harbert indicated at the time of the rezone she was told by a previous individual involved that nothing would change for their property.

Resident Kevin Bisor of 222 Hallowell Drive provided comments. His backyard is adjacent to the northeast section of the property. He commended Harbert for being a good neighbor and addressing his concerns. He agrees this would be a big improvement and better for the neighborhood. His biggest concern is the lot and the entrance / exit with large amounts of dust and debris, and that he would like to see it paved.

The Board reviewed in detail the Conceptual Plan (available on Google Drive).

The function of Planning staff is to analyze the petition against the UDO and other approved plans to present facts and analysis. Based on that analysis, staff has the following comments:

- The Variance in Land Use will not be injurious to the public health, safety and general welfare of the community
- Use of adjacent property is not adversely affected
- Expansion of storage buildings consistent with the current legally non-conforming use
- Variance in Land Use would not interfere with Town's Comprehensive Plan
- Consider Land Survey and Site Development Plan, inclusive of all utility easements & set-backs to determine future variance needs
- Consider commitment to maintaining current landscape buffer, installing perimeter fencing & security gates and resurface of visible parking lot [south of fence]

Based on Town Ordinance, BZA considers the following criteria in their vote:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- The strict application of the terms of the ordinance will result in practical difficulties in the use of the property;
- The Variance granted is the minimum necessary;
- The Variance granted does not correct a hardship caused by a former or current owner of the property;
- The Variance would be in harmony with the purposes of the Unified Development Ordinance; provision from which the variance is sought and/or the purpose and intent of the Town's Comprehensive Plan.

Kyle Eichhorn indicated that all the criteria is being met, so the conditions need discussed. The petitioner is requesting two years to complete the paving. First condition is that the fenced in area is to be paved within two years once the new buildings are in place. Second, fence the site with six-foot fencing as depicted on rendering when buildings are finished. Third, back north east gate committed as a restricted use, not for general use. Harbert agreed that said gate would only be used for RV's during set business hours and would not be keypad entry.

**Kyle Eichhorn requested a motion to adopt the Findings of Fact, and to approve the petition with the three conditions: fenced in area to be paved within two years, six-foot high fencing and restricted gate access at north east entrance / exit. Motion made by Jenny Sisson; seconded by Jerry Burmeister. Roll call vote was taken and all members present voted to approve said motion. Motion carried.**

B. VLU11152022-02: Variance in Land Use of south building to allow for a residential second-floor dwelling - 6929 South State Road 67 – Jeff and Heather Upton

McKee presented the next petitioner's request represented by Jeff and Heather Upton: (Detail site information available on Google Drive)

- Zoned General Business
- Property approximately 1-acre, triangular shape
- North building - Real Estate Pros Office Building; South building - RE Pros storage & contractor tenant space
- Petitioner proposes Variance in Land Use to allow for a residential second-floor dwelling in south building, for personal use
- SE Report supports residential dwelling & complies with 2020 Indiana Residential Code
- Exterior Facade Materials and Architecture to complement building developed to the north [hardie board & stone wrap]
- Proposed Site Enhancements - Replace south entrance with landscape buffer; remove asphalt west of Office Building and at most northern peak of property & replace w/ green space

McKee noted the Downtown Business zoning district allows for second floor dwellings, so this is a very similar concept. The building is deemed structurally sound for this intention. McKee stated that the site plan and the specifics of architectural and materials are not within the scope of this meeting; that would come later, if petition is approved.

The function of Planning staff is to analyze the petition against the UDO and other approved plans to present facts and analysis. Based on that analysis, staff has the following comments:

- Variance in Land Use for dwelling will be served adequately by essential public infrastructure & utilities
- Exterior Facade materials and architecture to complement north building which are compliant with UDO
- Site improvements will not alter and/or extend existing footprint & structurally support residential dwelling
- Residential dwelling uses/zoning districts are in close proximity to subject property
- Variance in Land Use would not interfere with Comprehensive Plan
- Consider intersection improvements at Water Street and SR 67 that may impact subject property in future, thus commitment to keeping commercial use on ground floor
- Consider landscape commitments per UDO.

Based on Town Ordinance, BZA considers the following criteria in their vote:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- The strict application of the terms of the ordinance will result in practical difficulties in the use of the property;
- The Variance granted is the minimum necessary;
- The Variance granted does not correct a hardship caused by a former or current owner of the property;
- The Variance would be in harmony with the purposes of the Unified Development Ordinance; provision from which the variance is sought and/or the purpose and intent

of the Town's Comprehensive Plan. McKee noted discussions with INDOT concerning a potential US 36 and 38 enhancement project, which may likely include an improvement to the intersection of Water St and 67. This would be something to keep in mind moving forward.

McKee stated next steps, if approved, Findings of Fact to be signed, Site Plan and Remodel Improvement Location Permit to be submitted to Planning Department for review. McKee invited Jeff and Heather Upton for comments / questions.

Discussion regarding site renderings (available on Google Drive). Jeff Upton indicated there are no renderings for the south side of the building; that it would be all windows, and they will work with the architect on that if this variance is approved. Modifications would be in keeping with the north building. They would like to remove the entrance on Water St, east of 67. Upton indicated they would like to enhance the aesthetics of the north corner as it is a focal point for heavy traffic when heading into Pendleton. This would be a residential use for them; they would not be renting out to tenants. The bottom floor would continue to be commercial.

Resident Becky Perry of 7031 S 300 W, the house south of Upton's property, indicated no issues with the proposed variance. There was discussion about traffic issues coming and going through the parking lot to cut through to 67, not realizing it's not a thru-road. Enhancements including removing asphalt and providing green spaces through Water Street may help alleviate this.

Kyle Eichhorn reviewed the BZA criteria for approval, in addition to a commitment to improve it in a similar fashion as the north building; masonry, hardie plank, etc. Uptons are in agreement. Attorney Jeff Graham stated it met the criteria for meeting a condition peculiar to the property in that the property is such that it is situated in a spot that can house hybrid residential / commercial establishment. Upton is open to the Town placing a Welcome to Pendleton type sign on the northern point. Graham also stated that applying the strict zoning ordinance prohibiting the residential development does not allow the full use of the property; similar to downtown commercial properties with residential quarters on top floor. This also has the potential to reduce overall traffic in that area and is a good transition from residential to the plaza. The approval of variance does not interfere with the Town's Comprehensive Plan.

Becky Perry inquired about water run off; her property used to have a small ditch. Upton provided brief history of the changes to that area. There are flooding issues on her property and Upton's property. Eichhorn indicated removing impervious surfaces will help, and INDOT's improvements should also help. Jenny Sisson supported Perry's comments as this is not her first time addressing the drainage issue, and it is a health and safety concern. Hannahrose Urbanski offered to contact the county engineer regarding the ditches in question. When INDOT makes improvements, this should be carefully considered.

**Kyle Eichhorn requested a motion to adopt the Findings of Fact, and to approve the request with the conditions: architectural style of the building to match remodeled building to the north, the south side of lower level to remain commercial, pavement and south west access point shown in rendering to be removed and landscaped, and asphalt on the north point to be removed. Motion made by Jenny Sisson; seconded by Jerry Burmeister. Roll call vote was taken and all members present voted to approve said motion. Motion carried.**

#### **VI. ADJOURNMENT**

**Kyle Eichhorn requested a motion to adjourn the meeting. Motion made by Jerry Burmeister; seconded by James King. Roll call vote was taken and all members present voted to approve said motion. Motion carried.**

Meeting was adjourned by Kyle Eichhorn at 8:22 p.m.

Next meeting January 17, 2023 at 7:00 pm.