

Board of Zoning Appeals

MEETING DATE: November 17, 2020
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 7:07 p.m.

II. ROLL CALL AND DETERMINATION OF QUORUM

Board members in attendance were Tammy Bowman, Kyle Eichhorn, Jamila Zafar, Kirby McCrocklin and Carol Hanna. A quorum was established. Individuals representing the Town were Planning and Zoning Administrator Kayla Hassett, Town Attorney Jeff Graham and Town Manager Scott Reske. Also, in attendance, were Brad Brown, Lee Ann Brown, Michelle Skeen, Rita Teeters and Willie Boles.

IV. APPROVAL OF MINUTES OF PREVIOUS MEETING

A motion to accept the minutes from the October meeting as written was made by Tammy Bowman and seconded by Kirby McCrocklin. Roll call vote was taken with all members giving approval except Carol Hanna as new member. The motion was carried.

Jeff Graham swore in Carol Hanna as the newest member of the Board of Zoning Appeals. Carol Hanna signed Oath of Office.

V. OLD BUSINESS

No Old Business to report.

VI. NEW BUSINESS

- A. CU11172020-01: 525 E. State St. (B&L Brown Construction Services, LLC, dba Swackhamer Masonry & Concrete) – Concrete and masonry contractor relocating in the Planned Business zoning district.

(Presentation provided in Google Drive)

Board and Staff Member roles in relation to Board of Zoning Appeals – Planning and Zoning Administrator Kayla Hassett reiterated the following before discussions of agenda item:

- BZA Board member duties include the following:
 - Review information provided to them by Town Staff at the BZA meeting, not independently and/or investigate before the meeting
 - Review matters such as improvement permit applications, variances from development guidelines, appeals and interpretations as well as use regulations
 - Make decision by vote to either approve, approve with modification, deny, or table/continue Petitioner's request
- Town Staff duties include the following:
 - Review Petitioner's application and analyze against Ordinances established by the Town
 - Serve as investigative party for Board Members to determine requests that are not allowed per rules
 - Provide leg work for BZA

Staff Findings – Planning and Zoning Administrator Kayla Hassett presented the following:

- Petitioners, Swackhamer Masonry and Concrete, represented by Brad and Lee Ann Brown, both present at meeting.
- Applicant petitioned to combine shop (located on State Road 36) and office (located at 7558 S. State Road 67) into one location at 525 East State Street.
- Application submitted for Conditional Use with Petitioners seeking Conditional Use approval.
- Improvement Location/Building Permit Application also submitted.
- Petition good use of current site and drawings provided.
- Petition to add dumpster, to be located on the westside of the building, but mostly just plans for general maintenance of site.
- Site located in Planned Business and Downtown Business zoning districts.

- Planned Business location near State Road 67, yet close to neighborhood Stohler subdivision.
- Presenting Conditional Use to determine if request appropriate or need to incorporate safeguards.
- Following details shared along with image of aerial view of site on zoning map:
 - Contractor use –
 - Conditional Use in Planned Business.
 - Not permitted in any district.
 - All contractors must receive BZA approval before locating in the Town of Pendleton.
 - Conditional Uses are those that, because of the 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. [Unified Development Code, Section 154.07]
 - Approval depends upon the petition meeting a specific set of standards and the weighing of the public need and benefit against the local impact.
 - Petitions that make up for or do not have adverse impacts, through special site planning and development techniques, are generally approved.
- Provided image of West Central Way of Stohler subdivision from property and raised the following four questions for consideration:
 - Will this use fit in with the neighborhood and be maintained and operated in a harmonious manner?
 - Will any functions be hazardous or disturbing to the surrounding neighbors?
 - Will this use at this location be well-served by public roads, utilities and public safety personnel?
 - Will this use produce too much traffic, noise, smell or light?
- BZA has the following options in regards to Petitioners' request:
 - Grant
 - Grant with modifications
 - Deny
- The additional information was also noted:
 - Building and Site Improvements
 - Petitioner must acquire permits for any work that would require them.
 - Improvements, like dumpster enclosure and signs, must be in compliance with Planned Business Design Guidelines.

- Planning staff did receive concerns from the residents of East and West Central Way regarding the type of traffic this use would produce, and if such traffic would be using their residential streets on a regular basis.
- Petition will go through Planning Department and Building Inspector will work through the design guidelines.
- Lee Ann Brown provided additional information to Planning staff via email, such as number of employees and day-to-day operations in which Petitioners will provide in their presentation,

Petitioner presentation – Brad Brown, Owner of Swackhamer Masonry & Concrete, presented the following:

- Swackhamer Masonry & Concrete have been in the Town of Pendleton for a long time. Brown has been a part of Swackhamer for twenty years, in which he purchased the business in 2008 from Doug Swackhamer after being employed for eight years. Now ten-year resident of Pendleton.
- Current business office located south of Anytime Fitness and shop located on State Road 36 and have outgrown both spaces.
- Plan to relocate office and production to new building, but plans to keep building on State Road 36.
- Proposed property details:
 - Will serve as location for employees to gather to get into crew/work vehicles to go off site for jobs.
 - No onsite business except for office and storing of equipment.
 - All vehicles/materials on the road, with an 8-12 hours work day usually starting around 5:30 am and lasting until dark time. Winter hours during sunlight hours only.
 - Equipment to be stored at building include single axil Bobcat (largest piece of equipment), small dump truck with backhoe, standard 18- foot trailer.
 - Supplier does not come often, not on a daily basis; buys own lumber, but do have some steel deliveries.
 - Office staff consists of approximately 3 staff members, owner and along with 3-4 superintendents from time-to-time when calculating quotes before getting back on the road for work projects.
 - Seek to have a total of two outdoor enclosures, first for dumpster and second for storing lumber, cones and miscellaneous items; image of two enclosure locations provided.
 - First goal is to get the exterior improvements up and running to jazz up the site.

- Will first move over production crew and then office into the dome shape portion of the building with open concept.

Open discussions – the following discussions took place:

- Carol Hanna asked how many production workers are employed. Brad Brown replied 18 plus 2 subs.
- Jamila Zafar asked for location of business. Kayla Hassett replied site located at corner of State Street and Central Way. Zafar then asked how trailers will enter/exit the site. Brown replied the following:
 - Two entrances at the front of the building, one off Central Way and one close to the train trestle. Prefers far west drive near train trestle for business vehicles to enter/exit.
 - Has a one-ton truck with flatbed that requires larger radius to turn; therefore, will use far west driveway.
 - Will use State Street to get to 69, but will also take State Road 67 towards Ingalls/Fortville to reach work sites.
 - Will emphasize/remind employees to reroute only if necessary to bypass accidents, etc.
- Kirby McCrocklin asked Petitioner of plans to store couple of items that will not fit inside the building. Brad Brown replied that most of the equipment will fit inside the building, but if not, will be a trailer and possibly dump truck or two stored outside. Brown added that they will hold a practical and efficient approach, considerate of how the building looks and will value how others view it.
- Kyle Eichhorn asked where featured building to store materials will be located. Brad Brown shared image and replied that they will have a 20-yard dumpster to hold items such as skids/miscellaneous materials and will look similar to what Riley & Sons has on their property. Jones also stated that the feature will match the building as well as have wheels, gate and designed to hide the dumpster. Kyle Eichhorn and Kayla Hassett advised that the dumpster will need to follow Planned Business Design Guidelines, mandating the same material as what is used for the main building at least on side(s) facing the public. Hassett added that she can work with Petitioner when it comes to designing the enclosure and open to sliding gate. Brown added that the sides facing the residents will be painted, cleaned up and will look nice.
- Rita Teeter, resident of 127 West Central Way shared the following comments and concerns:
 - Concerned with heavy equipment bigger than single axil traveling down East and West Central Ways as road residential and very narrow road and may beat up the road.
 - Blind corner at Riley & Sons, difficult to see at turn.
 - Children often playing on residential roads.
 - Concerned with increase traffic as people already deter onto Central Way to bypass accidents on State Road 67 or State Street.
 - Noise level a concern if extend work hours into the evening.

- Black top near personal property has broken down over time and with larger vehicles and larger amount of traffic coming through neighborhood will create additional wear and tear.

Brad Brown replied the following to expressed concerns:

- Will respect concerns shared and honor requests presented from the neighborhood.
- Will keep business and larger traffic to the east/west accesses.
- Employee hours are staggered and will not be a large amount of personal traffic coming and going at the same time. Will ask employees to use the three ins/outs and do best to encourage avoiding East and West Central Ways.

Rita Teeter replied that Riley & Sons employees come off State Street, but understands that personal traffic cannot be policed. Teeter reiterated that her two main concerns are in regards to heavy equipment and large amount of traffic at the same time.

Brad Brown provided the additional information to the Board:

- Late spring to early summer, very rare two trucks/crews are traveling at the same time and will not have towers, conveyors, piles of sand as not suppliers.
- Appreciates being able to use the building and improving it; just as concerned how it will impact the neighborhood with a lot of elderly and children in the homes.
- Rebar will be pre-cut order and not cut on site.
- Will address employees as necessary and believes the neighbors will be surprised how little the business will affect the neighborhood. As have accounts all over the State, no need to have business traffic cut through the neighborhood to get gas. Employees will use good judgment.
- Will not have daily traffic as not retail business.
- Kyle Eichhorn commented that with the information given, employees should be gone and out before high morning traffic. Eichhorn reminded Board members that they need to focus on the four questions previously outlined by Kayla Hassett.
- Tammy Bowman expressed concern in regards to the design plan. Specifically, concerned about access to the dumpster area and asked if can approach from State Street versus Central Way to avoid use of East and West Central Way with consideration of landscaping plan to block entry to the neighborhood. Brad Brown replied that he can ask supplier companies/drivers to use west entrance to access dumpster. Bowman asked if landscaping plan can be added to the plan.
- Rachel Christenson suggested that the Board can add as condition to site to follow Business Design Guidelines. Christenson also stated that the Board will need to determine if need to flip this petition over the Plan Commission or if feels appropriate to deal within the Board of Zoning Appeals. Kayla Hassett added that

the BZA can incorporate maintenance as a condition, such as painting and parking deadlines.

- Rita Teeter stated that when there was plans to have a restaurant in the building, curbing and lighting requirements were put in place, yet not familiar with all requirements for this business. Kayla Hassett commented that in relation to BZA, use is considered less intense as a business as not public restaurant drawing in a lot of people.
- Kayla Hassett asked Petitioner if has timeline for painting and repair of parking lot. Brad Brown replied as weather dependent with the remainder of 2020 and early 2021, hope to get exterior/cosmetic work such as gutter work and painted by the summer 2021.
- Kyle Eichhorn asked if one-year timeline for the construction of the dumpster and painting the exterior is reasonable. Brad Brown replied yes. Brown added that he has plans to add planter areas/grasses to soften up the site. Carol Hanna commented that she feels that exterior improvements will help people feel positive about the move.
- Kyle Eichhorn asked if any Board member wanted to entertain motion to approve petition and then allow Planning Staff to review permits as submitted from there. Further discussions took place.
- Carol Hanna asked if traffic flow can be minimized. Kyle Eichhorn replied that there is no way to police the traffic. Rita Teeters also commented that per the Pendleton Police Department, there is no weight limit on the road and speed limit is set at 30 miles per hour.
- Kyle Eichhorn asked the Board members for consideration to make condition that work truck must enter/exit from State Street. Carol Hanna asked Petitioner if committed to do best he can with good faith effort to limit the business traffic. Brad Brown replied yes.
- Willie Boles stated that once Swackhamer takes over, he will remove the tree trimming trucks from the site and therefore, will no longer be going down East and Central Ways.
- Jeff Graham advised that the Board will want to be careful with the request for Conditional Use and need specific findings as they will go with the land. Graham advised that these findings will stick and if property is sold, bound by such conditions approved. Graham also added that the Board will not want to just accept good faith statement.
- Kayla Hassett asked if private directional sign can be placed on the site. Jeff Graham replied that this would be a reasonable suggestion.
- Kyle Eichhorn asked Jeff Graham for confirmation that the improvements to the building need to be written down. Graham confirmed yes in the event such is challenged as to what is written. Graham recommended that the petition is tabled until get written document as to the requirements. Graham also advised that the Board can adopt the Petitioner's petition and break down the conditions.
- Brad Brown commented that his business is not retail in nature and Riley & Sons nearby have the same, if not more traffic than Swackhamer, have a dumpster with more materials delivered as well as only one way to enter/exit, all while not

subject to the same requests from BZA. Brown further acknowledged understanding of the concerns from the neighborhood.

- Carol Hanna stated that Petitioner’s application address traffic, painting and dumpster enclosure and asked if not enough to adopt these commitments outlined in the application as findings. Jeff Graham advised yes, but concerned that he is only hearing the verbal commitments and not seeing any formal written commitment to adopt as a recorded document. Graham further advised that the application is similar to a rezone and that the Board’s responsibility is to draft finding like a rezone, variance, etc.
- Kayla Hassett asked if can make terms specific enough to apply to Swackhamer only and if new owner in the future, they can then have to come before BZA. Jeff Graham advised yes, if different type of business, they can request Conditional use. Graham stated that the Board will want to consider questions such as:
 1. Is this an appropriate spot for this type of business?
 2. What kind of use should be allowed on this property?
- Willie Boles commented that should there be a use change in the future, the new owner would then come back to the Board of Zoning Appeals.
- Rachel Christenson stated that as a Board will need to determine if feels appropriate to allow this type of business on the property as once this type of business is approved, such terms will remain with the property should the Swackhamer be replaced with the same type of business.
- Willie Boles commented that he feels all matters discussed with the Board, have addressed traffic issues and if need conditions, can just spell them out.
- Kyle Eichhorn proposed to adopt the application as presented with amendments/conditions and add requirement that non-residential vehicles (heavy, wide vehicles) to access site per State Street, paint exterior and enclose dumpster. Kayla Hassett stated that she can put terms in Findings of Fact after the meeting and members can sign at the next meeting.
- Kirby McCrocklin asked if the Board approves with amendments, if okay so long as laid out. Jeff Graham replied yes so long as terms spelled out.
- Kyle Eichhorn proposed Motion to Approve Applications with the following conditions:
 - Business type listed as Masonry & Concrete services
 - Non-personal vehicles not to enter/exit to and from the neighborhood to the north on East and West Central Ways
 - Exterior painting, parking lot and dumpster enclosure to be completed in 12 months (11/17/21)
 - To include all other conditions listed in Applications

A Motion to approve Applications CU11172020-01: 525 E. State St. (B&L Brown Construction Services, LLC, dba Swackhamer Masonry & Concrete) – Concrete and masonry contractor relocating in the Planned Business zoning district.

with the following conditions:

- **Business type listed as Masonry & Concrete services**

- **Non-personal vehicles not to enter/exit to and from the neighborhood to the north on East and West Central Ways**
- **Exterior painting, parking lot and dumpster enclosure to be completed in 12 months (11/17/21)**
- **To include all other conditions listed in Applications**

was made by Carol Hanna and seconded by Kirby McCrocklin. Roll call vote was taken with all members giving approval. The motion was carried.

Kayla Hassett will prepare Finding of Fact and present at next meeting for signatures.

- B. V11172020-01: 739 N. Pendleton Ave. (Ronald R. Jones) – 1,500 square-foot addition to an accessory building, which is larger than allowed, in the Single-Family zoning district.

(Presentation provided in Google Drive)

Staff Findings – Planning and Zoning Administrator Kayla Hassett presented the following:

- Variance Application in the Single-Family zoning district for an addition to a pole barn where variance was approved years back in 2004 for a 2400 square-foot pole barn “to store vintage vehicles”. In October 2004, permit was issued on 2400 square-foot pole barn and in 2009 a permit was issued for carport addition to garage (950 sq. ft).
- Petitioner, Ronald Jones, present.
- Provided application and images of site plan for review showing the requested 1500 square foot addition to the already existing 2400 square foot barn.
- Property is a Single-Family zone site sitting north of the railroad tracks with agricultural zoning east of property and Single-Family residents before 360 West.
- Requested variance is for personal use.
- Petitioner wishes to store RV/car inside the new addition and plans for 16 feet wall and height of 21 feet to match the existing barn.
- Seeks approval of the following proposed variances to current development standards for accessory buildings:
 - Proposes 13% lot coverage versus permitted 30%
 - Proposes 21 height versus permitted 15’
 - Proposes 1500 square feet addition versus permitted 1200 total square feet
 - Proposes 55’ setback versus permitted 90’ (50’ + 40’)
- Accessory building works well with odd shaped lot.

- The intent of development standards for accessory structures and uses is to ensure that they are incidental and subordinate to the principal use of the lot, which in this case is a single-family home.
- Board of Zoning Appeals options include:
 - Approve
 - Approve with modifications (including, but not limited to modifications such as lower height, add residential feature windows, rood overhang and/or landscape to soften)
 - Deny
- The following discussions took place:
- Jamila Zafar asked if the exterior will match the existing color of blue. Ronald Jones confirmed yes and plans to have matching windows as well, three groups of two.
- Kayla Hassett asked Petitioner if received any response from neighbors. Ronald Jones replied that he had not received any issues/concerns. Jones further confirmed that he has a total of about 2¾ acres and will follow same line as current front, yet higher walls at 16 feet to accommodate motorhome.
- Kayla Hassett shared the following information:
 - Variances are a little different and Board needs to consider if wish to approve things such as:
 - the additional square footage when the design guidelines carry a 1200 square foot maximum for any accessory building unless agricultural
 - the 21 feet height when Development Standards cap at 15 feet.
 - Development Standards and variance application process in place to assure accessory building remains subsidiary versus primary single-family residential
 - Have allowed some variances in the past to accommodate motor homes and have left decision up to the Board/public
 - Variance being presented as does not conform to the Ordinance
- Jeff Graham advised that the Board will need to outline specific conditions if decide to approve. Kayla Hassett added that the Board can approve with conditions such as paint to match, require overhang.
- Ronald Jones stated that the building will have an overhang. Jones also confirmed the following:
 - No plans for new entrance to the property and that the current horse shoe drive will be cut off by the addition
 - Windows will be approximately 40-48 inches with three sets of 2, each set being on the two sides and front
- Kyle Eichhorn entertained a motion with stipulation that the addition be built per sketches provided and color and character match the existing building.

A Motion to approve V11172020-01: 739 N. Pendleton Ave. (Ronald R. Jones) – 1,500 square-foot addition to an accessory building, which is larger than allowed, in the Single-Family zoning district per petition and to be built per sketches provided and color and character match the existing building was made by Jamila Zafar and seconded by Kirby McCrocklin. Roll call vote was taken with all members giving approval. The motion was carried.

VI. ADJOURNMENT

Meeting was adjourned at 8:43 p.m.

Next meeting December 15, 2020