

# Board of Zoning Appeals

MEETING DATE: February 20, 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, 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 Zechariah Yoder of Adler Attorneys, Ray Adler of Adler Attorneys, Devin Norrick of 407 Romine Rd in Anderson, Jodi Norrick of 1020 Winding Way in Anderson, Marissa Skaggs, Brent and Karen Justice of 1607 E 43<sup>rd</sup> St in Anderson, several other church members

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

**Kyle Eichhorn requested a motion to approve Meeting Minutes from the January 16, 2024 Meeting, motion made by James King, seconded by Jenny Sisson. Roll call vote was taken and all members voted in favor of said motion. Motion carried.**

### **IV. OLD BUSINESS**

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

Denise McKee presented a review and the details of the Administrative Appeal as filed by the Life Church Assembly of God and provided the basis for the decision made by the Planning Dept to deny the Driveway Permit Application as filed:

- McKee thanked Counsel Zechariah Yoder for representing Life Church on this matter and the members of the congregation for attending these hearings and showing support
- McKee emphasized that the Planning Dept is charged with analyzing any and all submitted development requests, including Zone Map Changes, Site Development Plans, Primary/Secondary Plats, Conditional Use, Variance of Land Use from Development Standard, and Appeals against the adopted Plans and

Ordinances as deemed necessary for overall public safety and welfare as set forth by the Plan Commission, Town Council and State of Indiana

- This appeal was first heard at the January 16<sup>th</sup> BZA Meeting in which this body voted to continue to allow more time for board members to review the large amount of information and facts in comparison to the Planning Documents that are very detail-oriented
- A quick review of the current use/site details: The subject property is located at 6501 S SR 67, the property is zoned General Business and used as a church, which is a Permitted Use within General Business Zoning District
- The southern adjacent parcel is zoned General Business as well and used as an Edward Jones Financial Advisor Office & Farm Bureau Insurance Office, both Permitted uses
- This site shares a recorded cross-access easement with the southern property since 2009, but this means of access has been present as early as 2005
- Permits for a driveway are required from both the Town of Pendleton to review and require the driveway permit process, as the property falls with the jurisdiction of Pendleton, and also INDOT as the roadway (SR 67) is owned and maintained by the State of Indiana
- This process started in September of 2022 as noted on the Google image; communication took place over the course of a year, and ultimately on November 15, 2023 the church did file a driveway permit application with the Town, in which it had been denied upon review of the Planning documents, and an Administrative Appeal was filed on December 4, 2023 and set for the January 2024 hearing
- Mckee stated Planning Staff must do their due-diligence in giving adequate time, care and accountability in thorough and comprehensive research to all petitions presented
- It is their duty to dissect each Planning Document as it relates to requests made and to take into consideration many factors, provisions and even projections as determined by the Town through our Planning and Zoning processes
- The Plan Commission and Legislative Body (Town Council) are given authority and responsibility to establish/amend the Zoning Ordinance. In 2021, the Plan Commission adopted the Unified Development Ordinance which is one single document for Zoning Ordinance/Development Standards per Zoning District and the Subdivision Control Ordinance (Chapters 5,6,7)
- The same year the Plan Commission approved the Access Management Control Ordinance which establishes the standards for new roads, driveways, shared access, parking lot cross-access and service roads
- Both Planning documents are to assist in the implementation of the goals and objectives of the Comprehensive Plan and the Thoroughfare Plan
- In addition, the Thoroughfare Plan, by establishing a roadway classification system and design standards for roadways throughout the community, and looking out at least a 10-year planning horizon, the Plan aims to result in

effective multi-modal connectivity and efficient movement of vehicles, people and goods

- Per the Thoroughfare Plan – Chapter 5, pg 62, it identifies Arterial Corridors primarily being owned and maintained by State and Federal Highways/INDOT. However, also states that “access to these facilities (i.e. driveways) is first managed by Pendleton and then INDOT, if located along a State road”; so that gives Pendleton jurisdiction with the matter at hand
- Primary Arterials have the highest level of access control by requiring the furthest distance between access points and greatest restriction of left-hand turning movements
- SR 67 is classified as a Primary Arterial Road by our Thoroughfare Plan and also classified as a Principal Arterial by INDOT. These roadways typically have higher speed limits (45+), offer higher level of mobility, host 20-30K vehicles per day, used to travel to/from/within the community and generally show higher traffic accident counts
- The Plan Commission, Board of Zoning Appeals and Planning Staff, through State Statutes IC 36-7-4-600 Series and IC 36-7-4-900 Series, that give the Town jurisdiction over the geographic area described in the Zoning Ordinance, are all charged with assuring the compliance to the standards and regulatory provisions as set forth in all of our Planning documents
- In this particular case, Petitioner applied for a 24’ wide, full motion commercial driveway seeking direct access to SR 67; also, as part of this permit application, included an agreement for Penn Properties/Edward Jones to close their northern driveway
- Upon review, findings, interpretations, and analysis, the driveway permit application was denied by Planning Department Staff, based on non-compliances found in the UDO
- As discussed at the last month’s meeting, which included Chapter 3 of the UDO, which is a large zoning ordinance chapter, this is under the jurisdiction and umbrella of the Board of Zoning Appeals which outlines the development standards within each zoning district; zoning and long-term planning is established so that properties, land uses, transportation all speak well together and have uniformity, providing general safe welfare for our community
- Per that chapter, non-residential lots are not permitted more than one access; the cross-access easement already is existing, functional and serves as reasonable access; the AMCO says that even though it’s reasonable, it may not be a direct access to an Arterial Road; as this existing easement is the lowest designation of road classification available for this site, that is what we gave as priority for means of access, interpreting the permit application
- Also per Ch. 3, to prevent/reduce number of cuts on arterial road; the cross-access easement fulfills the need for adequate and safe access to the site without need for direct access to SR 67

- Per UDO Ch. 2 there is an impervious surface maximum, and for GB it is limited to 60%; Site is already at 77% and with proposed driveway, it increases non-conformity to 80%
- Per Chapter 3 of the UDO, the following standards are not met:
  - Circulation standards – design considerations are not offered such as acceleration/deceleration lanes, tapers, passing lanes and left/right turn restrictions for safe travel
  - Curbs are required and it does not appear to offer such in Driveway Permit Application submitted to the Town and INDOT
  - Connectivity to adjacent parking lots and cross-access easement with adjacent property is required
  - Full access to arterial roads shall only occur at signalized intersections which was not offered as a safety feature
  - For encouraged shared access/service roads, a Developer can only be required to construct/financially support their portion of the access road. Applicant cannot therefore place this burden 100% on the unknown northern property, especially without due process and opportunity to be noticed and heard
- Page 75 of the UDO clearly outlines the requirements to obtain an improvement location permit, which is our driveway permit through the Town before a driveway is installed
- McKee pointed out the spreadsheet (on Google Drive) that provides an analysis with notation outlining the Governing Document, Standard and Variance from Development Standards; for every variance sought, they each must meet the 5 criteria as outlined in Chapter 8 of the UDO and the State Statute
- In Chapter 10 a driveway is defined as a structure and is consistent within the AMCO, which addresses regulation of Site Development Plans and Plats, but also includes driveway structures per Section 1.4; per AMCO, we are to maintain functional classification hierarchy for a good transition, and the existing Cross-Access Easement maintains this functional hierarchy
- Minimum spacing requirement between access points is 300 feet on a 40 MPH posted speed limit (AMCO, Section 1.4.D.1,a); if the north entrance is closed, it would meet that at 302 feet. However, this is the minimum standard with considerations of actual speeds traveled, high prevalence of traffic accidents, likelihood of more development to the north (on both east and west sides of SR 67) and vacant land due east of this property, and potential for heavier traffic uses in the future
- Property is zoned General Business, not Institutional; Institutional is typically associated with lighter traffic uses; therefore, should property ownership change to a heavier Permitted use, the Town would not have a solid mechanism to close the new driveway if access to Candlewood does not happen in the near future
- Simply relocating the access point farther north and allowing the abandonment of the existing cross-access easement is contradictory to the goals and

provisions of our documents, which strongly encourage, and in some cases, require shared access and connected parking lots; doing this, the applicant would create new site and structure non-conformities

- A section in the AMCO addresses waivers: for a property with less than 500 vehicle trips per day, there are three elements that must comply for waiver to be granted and the Town does not feel those would be met; also, the document states that one is not entitled for a waiver where such hardship is self-created
- And last, should the proposed driveway be permitted, the northern property once under development could not gain access to SR 67 with proper spacing requirements, should Candlewood Drive not be extended to the west. The development of Candlewood extension remains unknown and speculative; the AMCO requires the distance between a driveway cut and an intersection of an arterial and a local/collector road has to be a minimum of 200 feet; if the Candlewood Drive extension is not developed, the property to the north would have to be allowed a direct cut to 67, and that has to sit 200 ft from the potential intersection at Candlewood; if the proposed cut were approved today, the distance between that and the future driveway of the north property would only be 235 ft, where 300 ft is required; this creates a hardship or encumbrance on that northern property owner when they develop (Exhibit 1)
- McKee informed that Last Friday, Life Church Assembly of God submitted a Stipulated Modification of the Decision to deny the Driveway Permit by the Planning Department (in Google Drive)
- Staff appreciates the efforts made to reach a resolution, but based on the Planning Documents we are to follow, we do not believe there are existing conditions to justify straying from the standards in place
- Staff has looked at this property again and again and how to improve this: retaining and improving the cross-access easement, and ways to improve the rear of the Penn Property to enhance the driveway and help with the church's current issues; off-premise directional signage to their church could help and improve the aesthetics; parking could be increased as well; as far as the cut off of 67, with continued and more detailed review, the Staff has come to the same decision

McKee opened for Questions / Discussion from the Board for the Staff

- James King asked if the Edward Jones building meets current setback requirements; McKee said it does not; King asked if those two driveways would be approved today; McKee said they would not; McKee stated the previous church requested a direct cut there in 2003 and it was not approved

Zechariah Yoder presented:

- Any improvements to the Penn Property would need to be done with the consent and approval of Penn
- The UDO, which was adopted in 2021 is a great plan, but we are dealing with properties from 20 years prior; they are starting from a point of non-compliance

- This increases safety, and that was not touched upon by the Staff, and it decreases congestion; the UDO and ACMO purpose is to promote better travel and better safety
- The Edward Jones driveways are used by congregants of both churches, and both churches meet at about the same time and leave at the same time; that inevitably creates a safety issue because of two non-compliant driveways; Sec. 1.1 of AMCO promotes safe travel, minimized hazardous conflicts and reasonable access; overarching purpose is to promote safer and better travel; we're trying to shoehorn an area that did not comply with the ordinance into the ordinance and we're creating more safety issues
- Proposed driveway would widen out the areas being used by these entities; Life Church would just use the proposed north entrance, the north Edward Jones entrance would be closed, and the congregants from Solid Rock Baptist Church and Edward Jones would use the south entrance; which would decrease traffic
- Yoder said he thinks the Stipulated Modification doesn't put any burden on the property to the north if Candlewood is developed; Life Church would work with that property owner, but this is not the current situation; current situation is a safety hazard; Life Church is not looking for something easier or their own access, but something safer; purpose is being defeated by circumstances
- Claims 1.4b gives INDOT access approval for the right to put in a driveway on a state highway, and the Town gives approval for a town road; Town may have requirements for the structure on a highway

#### Questions for Petitioner

- Kyle Eichhorn asked for clarification about the timeline:
  - Stipulated Modification says after receiving permit from INDOT construction began, but that seems in contradiction to the photo provided
  - February 2023 Life Church received INDOT permit and began construction thereafter, per Yoder; June or July 2023 the Planning Staff contacted Life Church
  - September 2022 Google Streetview shows construction in progress
  - April 2022 Life Church approved a construction bid; according to previous submitted documents by Life Church, pointed out by Denise McKee
  - Summer/Fall 2022 construction began
  - Communication with the Town, followed by suspension of work until INDOT permit was sought in 2023
  - Spring 2023 construction began again, followed by contact from the Town
  - November 2023 Code Enforcer issued a stop-work order for Life Church to seek a variance or apply for a driveway permit through the Town
- Eichhorn requested and received clarification about the Town approving cuts and INDOT approving cuts; McKee stated the provision in UDO Ch. 3 that indicates any driveway permit has to be applied for through the Town

- McKee also said that the cut was denied by INDOT at the Primary Plat phase
- McKee noted that part of INDOT's policy is that the applicant has to follow all local rules, and receive Town approval; their protocol to review that was mishandled
- Zechariah Yoder agreed that proper procedure was not followed for obtaining a permit, but reiterated that his interpretation is INDOT gives approval for the access point and the Town gives approval for specifications of that access
- Hannahrose Urbanski stated they have had discussion with INDOT and they agreed that all Town ordinances need to be followed
- Jenny Sisson referenced the INDOT 2018 Driveway Manual; McKee explained that is outlined in the driveway permit guidelines in 3.4 with a permit process flowchart which requires INDOT to get Town approval prior to issuing a permit
- Sisson stated the AMCO is a document that needs to be considered as a whole, with purpose and intent, and not just focusing on one sentence or piece of it
- Yoder said they don't just want a driveway cut, but their position is this is better for safety and flow of traffic; he agreed the entire ordinance needs to be followed but claimed there are glaring ambiguities in the ordinances; their proposal improves safety for congregants and travelers on 67
- Discussion regarding the recorded access and egresses being used and involvement with Penn Properties; possible alternate remedies and solutions
- Rob Williams said the fundamental decision tonight is the Planning Staff has submitted information and that putting this driveway in is out of compliance, it varies from our standards, Life Church thinks INDOT has control and you are not varying from the standards; the decision is whether we agree with the Planning Staff that it is out of compliance or we agree with you that it is not; all talk of modifications is a variance and we are not going through the variance process with all those proper procedures of notification
- Yoder disagreed that the Staff can modify with their decision
- Jeff Graham clarified that the Board determines yes or no, is it Pendleton jurisdiction; the modifications are minor details
- Williams asked Yoder if the driveway was originally approved with the property, and you wanted a second driveway onto 67 would you only have to go to INDOT to approve even though the Town's ordinances say you can only have one, would INDOT's decision override the Town's decision on the number of street cuts you can have; if INDOT was giving the go ahead, based on 1.4b the Town has given INDOT permission over access points but the Town would require specifications; Yoder was not quite sure; Williams said we're kind of at the same point, what the Planning Department is saying is that you have access therefore you don't qualify for the other access onto 67; INDOT does have a say in the matter, but they don't have full authority
- Raymond Adler said INDOT can say you can have two cuts, or they can say you can have two cuts if Pendleton allows it; final authority is with INDOT under Home Rule; McKee said the AMCO clearly states the provisions set forth by the

Town supersede INDOT; Adler said your plan can say that, but that was crazy; McKee clarified that it is if our standards are higher, not lower

- McKee said the Stipulation agreement that was submitted stated congregation members access through the north access, Solid Rock accesses through the south; that alone negates congestion and traffic flow issues, both congregations have staggered their start times which eliminates some of that cross congestion; given the speed limits and requests for additional cuts, and our standards are to eliminate cuts as much as possible, McKee agreed this is a perplex situation and a legal non-conforming use that cannot be taken away, but they cannot be enlarged upon, intensified or moved unless a variance is obtained
- Yoder said the stipulation says congregants use both entrances; it may not be the right thing but it is what goes on
- Adler said real estate is a bundle of sticks and one of the inherent rights you get is direct access to 67, which they don't have but this seems like a reasonable alternative; McKee stated that higher courts have determined that properties have reasonable access to a road frontage within their sight; she referenced the Pizza Hut case, originally cited by Yoder in January, stating that was a situation that would have removed any access, and it was deemed not dangerous or a public threat to add access to the main road; Adler disagreed, stating you can take access but you have to compensate for it; he thinks Life Church has a right to that access and if you shut it down you buy it; Williams asked Adler that by shutting down this access that they built without a permit, you think we're violating their rights; Adler disagreed that the picture showing the gravel is a recent picture
- Sisson said at the time this was built, there was INDOT and planning approval for the driveway as is now, which would be considered reasonable access; this particular congregation purchased the church after it was developed, they purchased it as is, with the access that was originally provided; Adler said when they got the warranty deed, one of the sticks was the right to get on 67 until somebody wants to buy it; Graham asked Adler if it is his position that any regulation that prevents direct access to any road you want is subject to compensation; Adler said no, if you want to regulate curbing, whether it's gravel or asphalt, but if you totally restrict direct access, then yes; Graham indicated that was absurd stating that every parcel on every state road would have direct access to state highways and that is not what that case means; Adler said that is exactly what it means and why the state bought access along 31, 69 and 65 to put up fences
- Sisson stated that this request is still nonconforming and puts a hindrance on the other owners who are not represented here; Eichhorn said the decision tonight is to uphold, modify or overturn staff decision, and reviewed the staff presentation and analysis; to overcome the noncompliances would require multiple variance requests with notification to appropriate properties, traffic study; Sisson indicated the church has the burden of proof for being a safety issue, and there has been none; Adler said what they are proposing is safer than



what is there now, based on the table of distances; Eichhorn pointed out that the recorded access is not the one they are using, and that they are creating a traffic problem by not using the legal access, which is the safer, recorded access to the parcel

#### Kyle Eichhorn invited Public Comment

- Jody Norrick stated concerns with people missing the church's sign and turning around, and opposing turns by exiting cars
- Daniel Peternel stated concerns about slowing speed on highway because people do not know where to turn
- Josephine Alcorn stated concern that people use current driveways as a turn around
- Nathan Peternel, Lead Pastor, stated concern about confusion with parking behind Edward Jones; the likelihood of adding a second service and that this will only get worse; people drive by constantly and turn around, likely to cause an accident
- Denise McKee said the Staff would be happy to sit down with property owners and take a look at this parcel and come up with some positive options to provide good flow and safety
- Ross Steele, Campus Pastor, stated concerns about people slowing down and turning around, and not being able to find the church
- Devin Norrick said the property has always been out of compliance and Staff has the opportunity to help them help Pendleton; what is proposed is better than what they have now; shared concern for safety; only viable option is to move the access down and close the other one; Staff is able to make solutions, but they will take this as far as they need to; Staff has the ability not just to deny but deny or modify with conditions; Planning Staff did what they were supposed to do, but you have the responsibility to do more; Norrick expressed appreciation to the Staff for their time, research and communication
- Zechariah Yoder pointed out new information was provided regarding impervious surface, which was not provided at the last meeting
- Zachary Garner stated concern about the growth of church population, from 50-150 in about a year
- Robert Jones agreed this is a tough decision; he can appreciate their position and with a growing church can understand why you want that cut, he also understands the Staff's position and the way the UDO is written, there needs to be solid reason to differentiate from the UDO; Jones acknowledged their concern about people missing the drive, but that becomes an issue about signage
- Rob Williams addressed Jeff Graham asking if the Board can turn this into a variance request; Graham said they cannot, due to requirement of a petition from the landowner for a variance; Graham acknowledged wanting to problem-solve but the Board is limited to what they can do at this meeting; the Board can invite petitioner to file a variance; Williams said the concerns and hardships are

all more like variances than an appeal; those things would be taken into consideration in a variance; Jenny Sisson added that it also considers the landowners surrounding the property

- Ray Adler said that since the church bought the property as is, a variance does not work, the Board needs to make a reasonable decision to a practical problem; Sisson stated doing so would impede on another property owner's rights regarding their access when that land is developed, which is why a variance would be appropriate so that owner has a voice; McKee noted they would be able to work with the current property owner about off-premise signage; Adler argued the problem is an ingress/egress easement, not a sign easement and the bundle of sticks don't include a sign stick, only driving sticks
- McKee said they would not seek to move the current sign, but add additional way-finding signs to provide more direction to the church, and improvement options that would meet the needs of all parties involved
- Steele said hypothetically if they acquired the property to the north, then there is no issue; McKee answered that even if they own that lot, contiguous properties are considered as one lot; if two adjacent properties are owned by one ownership, it is looked at based on the standards for one parcel
- Eichhorn recapped that they are talking about a lot of things that affect adjoining property owners, and agreeing with Williams, seems more like a variance discussion; Staff made this decision based on these criteria because of these reasons; tonight, our decision is did they make the correct decision and are we going to uphold, overturn it, or modify it; Sisson added the modifications are light and not the kind that become variances

**Kyle Eichhorn requested a motion. Jenny Sisson made a motion to uphold the Staff decision regarding A01162024-01 Administrative Appeal based on the record provided at the January 16 and February 20 meeting and the information provided by both parties. Motion was seconded by Rob Williams.**

James King noted the timeline discrepancy. Ross Steele commented when they acquired the property, an engineer that was working on it said a permit was filed; Steele affirmed they did not do their due diligence to confirm that, but once they were made aware of it, they took the proper steps and INDOT approved it; King said it is the Staff's duty to comply with the ordinances, and he understands the purpose of the UDO, along with the other related plans, and every single one of those would be a reason for not approving this, but the reality is this was built this way and those two access lanes were already there; looking at it, that can be very confusing and probably does cause traffic issues and concerns; King stated he would like to reverse the Staff decision, and with compliance to all things noted in the Stipulation, let them move forward with the new driveway.

Robert Jones commented that this is a difficult situation, he can see where they are coming from; the church is growing and that is a great thing for the church and for Pendleton. The ordinances are well-written and can also see where James King is coming from, but would vote

to uphold the Staff Decision; there are other options that can be considered like signage and easements; Jones stands with the motion as presented.

**Roll call vote was taken: Robert Jones, Kyle Eichhorn, Jenny Sisson, Rob Williams voted Yes. James King voted No. Motion carried.**

#### **V. NEW BUSINESS**

#### **VII. ADJOURNMENT**

Meeting was adjourned by Kyle Eichhorn at 8:33 p.m.

Next meeting March 19, 2024 at 7:00 pm.

EXHIBIT 1

Future North Driveway direct access placement per AMCO - Drive Extension on west side of SR 67 not be developed.

← 200 feet

← 235 feet,  
(minimum distance between access points standard met)

← 302 feet  
(minimum distance between access points standard met)

Encumbrance on northern property illustration.