

Minutes - Goshen Board of Zoning Appeals
Tuesday, January 23, 2007, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

I. The meeting was called to order with the following members present: Jay Rounds, Ardean Friesen, Angela McKenna, and Karen Fairfield. Also present was City Planner Joe Hauflaire and Attorney James Kolbus.

II. Election of Officers for 2007

Action

A motion was made and seconded, Fairfield/McKenna, to keep the same officers from 2006. The motion carried unanimously, 4-0.

Laura Coyne entered the meeting (4:06 pm)

III. Approval of Minutes from 11-28-06 – Friesen/Fairfield, 5-0 unanimous.

IV. The Zoning/Subdivision Ordinances were unanimously filed into Record – Friesen/Coyne, 5-0 unanimous.

V. Withdrawals/Postponements – Mr. Hauflaire said petition 07-01DV was a request for a fence with barbed wire at the environmental center on County Road 19. The applicant has agreed to meet the requirements of the ordinance, so they will not need a variance. There will be a 6' fence, but with no barbed wire and the fence will be +/- 70' from the center of the road. A fence to a height of 6' is permitted but it must be behind the front yard setback. He would ask that they withdraw the request. Mr. Friesen asked if they would meet all of the requirements. Mr. Hauflaire said they would. There were also people in the Planning Office to ask about the petition, and there may be some here. Mr. Friesen asked if the old fence would come down. Mr. Hauflaire said it would.

A motion was made and seconded, Friesen/McKenna withdraw petition 07-01DV. The motion passed unanimously, 5-0.

VI. Mr. Rounds said that for those people who may be here for the first time, he would go over the procedures of the Board meeting. He said first, he reads the petition, and then the petitioner comes up to speak. Anyone who came up to speak must first state their name and address and after the petitioner's presentation, any supporters could come up to speak, and after that people with questions, concerns or in remonstrance will be able to speak. He said that the Board would do their best to find the answers. He said that after people with questions or concerns, then the petitioner can speak again and then Mr. Hauflaire presents his staff report, and the Board may have further questions of the petitioner. The public hearing will be closed after that and once the public hearing is closed, there will be no further audience comment and if there are any remaining questions, they should be directed to the Planning Office.

Lela Santos, 20164 County Road 19 said they live right next door, and asked if they have any say in this fence. Her feeling is once this is approved, it will go all the way around the property. The fence

that is there already has barbed wire and when she cuts the grass, she has to watch out. She has asked the man that's renting the property have the City fix it or remove the barbed wire completely, but nothing has been done.

Mr. Hauflaire said this is the first he has heard of this and he will look into it.

Ms. Santos said she has grandkids and she doesn't want there to be barbed wire all the way around.

Mr. Hauflaire asked how long the fence has been there for.

Ms. Santos said it's been there for a very long time.

Mr. Kolbus said if they are going to have this kind of conversation it should take place at the end of the meeting.

Mr. Hauflaire said this is the first time he has heard anything about this and they he will look into this.

Ms. Santos said she doesn't mind having a fence there; they just don't want barbed wire there.

Mr. Hauflaire said he already stated that that was not happening.

Ms. Santos said she thinks that eventually they will want to put the fence around the whole property. She asked if the fence was chain link.

Mr. Hauflaire said he would assume it to be a chain link fence, but they have a right to put a fence up on their property.

Ms. Santos said she understands that, but she doesn't want barbed wire there.

Mr. Rounds said it's already been stated that there will be no barbed wire.

Ms. Santos said she doesn't want for them to fence in the whole thing and have barbed wire. She also doesn't want to see a privacy fence.

Mr. Rounds said they would have to come back to the Board of Zoning Appeals if they want to do something outside the ordinance.

Ms. Santos asked if they had it bordered where they wanted to put the fence.

Mr. Hauflaire said the City is doing what is in compliance with the ordinance. They are doing what they have a right to do.

Ms. Santos asked if they had a say-so in the matter.

Mr. Rounds said as long as they meet the ordinance and don't need a variance, they are doing what they are permitted to do.

Mr. Kolbus asked what department was responsible for putting the fence up.

Mr. Hauflaire said it was being done through a contract with the Legal Department. He said Ms. Santos could call the Planning Office tomorrow to get more information on the matter.

Tom Obringer, 20097 County Road 19 said that he lives across the street from the site, and the notice they got said that 4' was allowed and the fence they are putting up is 6' tall and said they should still need a variance.

Mr. Hauflaire said that depends, and asked what Mr. Obringer's question was.

Mr. Obringer said that the last time he talked to Mr. Hauflaire, they were requesting a 6' fence with 2' of barbed wire and asked if there was still going to be barbed wire.

Mr. Hauflaire said there would not be barbed wire.

Mr. Obringer asked what kind of gate there would be.

Mr. Hauflaire said that was not a matter for the Board to decide.

Mr. Obringer said they are concerned with their property values.

Mr. Rounds said that the Board appreciates that, but by them meeting the ordinance, there's nothing on the table that they cannot do legally.

Mr. Obringer said that the ordinance says 4'.

Mr. Friesen said that was for a fence in the front yard setback, and this is beyond that.

Mr. Obringer asked if it could be as tall as they wanted it.

Mr. Hauflaire said that the ordinance permits fences to a height of 8'.

VII. Developmental Variances – public hearing items

06-56DV (Tabled from November 28, 2006 meeting) Long John Silver's requests a variance to allow a face change to non-conforming roof-mount signs, to allow a face change to a non-conforming freestanding sign, to allow two wall signs facing Indiana Avenue (where one is allowed), and to allow a wall sign on the east side of the building (where none is allowed). The subject property is generally located at 924 W. Pike Street and zoned Commercial B-3.

A motion was made and seconded, Coyne/McKenna, to take petition 06-56DV off the table. The motion passed unanimously, 5-0.

Petitioner Presentation

Sam Angus, 400 N. Main Street, said he is with Premiere Signs. Long John Silver's has changed their logo. They want to reface what is there and add 3 panels of food art, which are actually pictures. They would like to change the panels in the existing freestanding sign and the two roof-mounted signs. They will put in new lamps and repaint the cabinets. There will be no change in height or sign area. This will be normal interior maintenance. The food art panels are externally lit with decorative features.

Mr. Friesen asked how big the food art signs are.

Mr. Angus said that they are 4' x 6', 4' x 8', and 4' x 10'.

Ms. Coyne asked how many feet the freestanding sign was non-conforming by.

Mr. Hauflaire said that it was 26' tall where 20' is permitted and has an area of 88 square feet where 60 is allowed.

Mr. Rounds asked if that area included the changeable copy.

Mr. Angus said it did not, but that portion was 4' x 8'.

Mr. Hauflaire said that the sign has about twice the permitted area.

Phil Chase, 371 Sand Creek Drive, Chesterton, said that he is the Director of Operations and has 39 stores in northern Indiana and Michigan. They are enhancing the signs, which is a corporate requirement. They have to conform to the parent company, and they have a limited number of years to do so. Most cities allowed the changes because the signs were existing. When Pike Street was widened, their business went down 10%, plus they lost 6 parking spaces and an entrance. They went from being an average Long John Silver's to being 12% below average. In deciding whether to remodel or close a location, they try to infuse enough of the new look to compete with new restaurants in town. They have been at this location for 24 years. The signs they are asking for are the same yellow, just a little bit cleaner and a different logo.

Staff Report

Mr. Hauflaire said that Ms. Coyne suggested thinking the roof-mounted signs and having the freestanding sign meet the ordinance. That is similar to what Carolyn Hertzler suggested. This is difficult because they are asking to change several non-conforming signs – the two roof-mounted signs, and the freestanding sign. Additionally, they are requesting to add two "food art" panels, which are signs by definition. He would suggest that the roof-mounted signs be compliant with the ordinance, which would eliminate them, and also that any wall signs be in compliance with the ordinance. Any business has the right to put up a wall sign, but there is a formula that is used to do so. He thinks the face change on the freestanding sign should be allowed. Maybe they would eliminate the changeable copy and then have only 88 square feet in area, which would only be 1/3 greater than in area and also taller than what is allowed, but the roof-mounted signs would be eliminated and the wall signs would be in compliance with the ordinance.

Ms. Coyne said that she hasn't talked to Ms. Hertzler, but her thinking behind that suggestion was that they are trying to lower the horizon of the signs to human eye level, not at toll road level. She would be willing to make a compromise with the wall signs. It isn't fair to continue the roof-mounted signs when they are calling for them to not be put up. They have almost twice as much area as permitted on the freestanding sign. This is a small building with lots of signs. Even if the freestanding sign is brought into compliance, it is still a well-lit, prominent corner. There is no chance that someone wouldn't know what it is.

Mr. Hauflaire said that he was incorrect, and the sign ordinance permits them to have a sign that is 15' in height and 50 square feet in area. This is based on the frontage they have, and being a corner lot they will use the longer of the two frontages. If you have more than 200' of frontage

Ms. Coyne asked if that meant they were 86 square feet over the maximum.

Mr. Hauflaire said that was correct.

Mr. Friesen said that the west-facing roof-mounted sign would show what's on top if it was removed, similar to the laundry mat. If the freestanding sign were in compliance, he would be inclined to allow the roof-mounted signs and the food art.

Ms. Fairfield said that is a busy corner with a lot going on and they have a right to advertise. She agrees with Mr. Friesen on the compromise.

Ms. Coyne said the front-facing roof-mounted sign and the freestanding sign are addressing the same audience.

Mr. Friesen said the only thing he can think of is if you were traveling south on Indiana from north of Pike Street, you would be able to see the roof-mounted sign but not the freestanding sign.

Ms. Coyne asked if there was anything wrong with a motion to that effect.

Mr. Hauflaire said there was not, but he asked that they look more closely at the wall signs. The freestanding sign is going to be in compliance and he thinks the wall signs should be as well.

Mr. Friesen said he would consider them decorations as long as there were no words on them.

Mr. Rounds said that he was doing the math, and this is a problem the petitioner will have to deal with, but the sign hangs over the sidewalk. It looks like there's room there, but it appears pretty close to the building. That's just an observation, but people won't be walking underneath the sign if it's lower.

Ms. McKenna said if they come into compliance they probably wouldn't be using that particular sign because it's so far out of compliance. If they have a sign that's in compliance they may not even put it that close to the sidewalk. It may be closer to the building.

Ms. Coyne asked said they could have monument sign.

Mr. Friesen said that might not be the location of the sign if they have a smaller one.

Mr. Hauflaire said the Zoning Ordinance also says the sign needs to be a minimum of 5' from the right-of-way line. If they can't meet that requirement, they may have to come back through here for a variance.

Mr. Friesen said that Mr. Rounds was right and it doesn't look like there's a lot of property there.

Mr. Rounds said that if they can't meet the requirements, they have to come back here. It's unfortunate, but that's how it is. If you subtract the height and reduce, the only other option is to put it closer to the building.

Ms. Coyne said that a monument sign is also an option.

Mr. Hauflaire said that they can always go less than the ordinance, but 15' in height and 50 square feet in area is the maximum.

Audience Comments

Keith Pletcher, PO Box 201, Lamar, Indiana, said that less than 3 years ago the City required them to move the sign because the road was being widened and it cost them \$4,000 dollars. It's not their fault that they don't have any more property than they do. They have already been inconvenienced once.

The fact that their space is so small is not their choice. They wouldn't have the sign that close to the building by their own choice. It is there by the City's mandate. You can see by that picture that there is no room to move the sign closer to the building. Either way it is going to conflict with the City sidewalk or the entry sidewalk.

Mr. Hauflaire stated that for the record, the widening of Pike Street was a state project, not a city project.

Ms. McKenna asked if there were other places for the sign. It doesn't have to be dead center in front of the building. There are other options.

Mr. Hauflaire said he is sure there are other options, but it's up to the petitioner to come up with them.

Ms. Coyne said this is a corner lot has the advantage of putting one sign on the corner and reaching two directions.

Mr. Hauflaire said there are visibility requirements they would have to meet.

Ms. McKenna said that the property extends both east and west of the sign. She feels that there are other options for the sign without being so close to the sidewalk or the building. It can serve its purpose and be in compliance.

Ms. Fairfield said it will be the same size wherever it is.

Ms. McKenna said she's not speaking of the sign as it is now; she's speaking of a sign that is compliant. Then they wouldn't have problems of being an interference with the sidewalk or the building.

Ms. Coyne said that if they just state that the freestanding sign needs to meet the requirements of the ordinance, they would have choices within the law.

The public hearing was closed.

Mr. Rounds said the corner lot is a prime location. Every time he goes by there, he notices is because there is a lot of signage, and they are asking for more. You can call it "food art" if you will, but they are adding something that's not there. It is pretty difficult to not see what's on that corner, there's nothing blocking it, and they have an open parking lot. There is room for compromise here.

Action

A motion was made and seconded, Coyne/Friesen to approve petition 06-56DV as amended, to require:

1. The freestanding sign be in compliance with the ordinance.
2. The non-conforming roof-mounted signs are permitted a face change.
3. The two wall signs facing Indiana Avenue are permitted
4. The wall sign facing the east is permitted

Ms. Coyne said she would like to amend the motion so that in order to do the face changes on the non-conforming roof-mounted signs, the freestanding sign must first be brought into compliance.

A motion to amend the previous motion was made and seconded, Coyne/McKenna. The amended motion will require that:

1. The non-conforming roof-mounted signs are permitted a face change. No additional sign area is permitted.
2. The two wall signs facing Indiana Avenue are permitted as depicted in the drawing provided and there shall be no wording on the "food art."
3. The wall sign facing the east is permitted as depicted in the drawing provided and there shall be no wording on the "food art."

4. As a condition of the permitted face changes, the freestanding sign be in compliance with the ordinance before any of the face changes are allowed.

The motion carried, 4-1 (Fairfield, no).

06-58DV Simon Yoder requests a variance permit a sign area of 80 square feet where a maximum of 60 square feet is permitted. The subject property is generally located at Southside Park Industrial Subdivision at Kercher Road and zoned Industrial M-1.

Petitioner Presentation

Michael Schmucker, 1721 Longwood Court, said that they want a main sign instead of one for each building. There will be about 4 buildings.

Mr. Friesen asked where the sign would go.

Mr. Schmucker showed Mr. Friesen the location on the map.

Staff Report and Discussion

Mr. Hauffaire said they asked for an increase in the square footage allowed from 60' to 80'. This is a good exchange from what is allowed. The lots would all be permitted freestanding signs up to 20' in height and 60 square feet in area. With this, they end up with one slightly larger sign for the whole subdivision. He would request approval of the variance as requested.

Mr. Rounds asked Mr. Schmucker if he read the staff report and conditions.

Mr. Schmucker said he did.

Mr. Friesen asked how many lots were in the subdivision.

Mr. Schmucker said there were four.

Mr. Friesen asked if there were two buildings on each lot.

Mr. Schmucker said there is only one building on each lot, but they plan on dividing them in half.

Ms. Coyne asked if Mr. Schmucker worked for the sign company.

Mr. Schmucker said he did not. He is buying the first building and they are putting up the second.

Eventually they will own all four lots.

Ms. Coyne asked if the sign would be illuminated.

Mr. Schmucker said there would be no interior lights. It will be an aluminum-faced sign and there will be no electric out there.

Mr. Kolbus said to include that in the motion.

Action

A motion was made and seconded, Friesen/Fairfield, to adopt the staff analysis and recommendations as amended to state there shall be no lighting on the sign, as the findings and conclusions of the Board, and based on these findings and conclusions, approve 06-58DV. The motion passed unanimously, 5-0.

07-02DV South Side Soda Shop requests a variance to allow permit the display of a sandwich board sign in a residential district outside the downtown Historic District. The subject property is generally located at 1122 S. Main Street and zoned Residential R-1.

Petitioner Presentation

Nick Boyd, 20516 County Road 36 said that he and his wife own the South Side Soda Shop and they are asking for approval of a variance to permit a 36" x 48" sandwich board sign to be placed out during business hours. Since it's been on display, they have noticed an increase in sales, and they

are just trying to compete with all the chains in town. This sign is no different than what is downtown, but they are just not in the historic district. They have read through the information that was sent and if this is approved, they will meet all of the provisions.

Audience Comments

Jason Samuel, 421 S. 7th Street, said he is a resident of the neighborhood. He appreciates the sign because it is a cue for him. It's also convenient. He feels that it fits with the Soda Shop. The signs are brought in at night and are not a hindrance. He is in support of the petition.

Karen Miller, 1111 S. 7th Street, AUDIO

The public hearing was closed.

Staff Report and Discussion

Mr. Hauflaire said he would recommend approval of the request. It has been mentioned that they are in a residential area, and they are there by a variance from this board. Any sign that they would propose would require a variance because of the location. Sandwich boards are permitted in the downtown area and this particular piece of property fits into that uniqueness. The requirements that apply downtown should apply to the Soda Shop. They have agreed to those, and the key ones are that there be one per zoning lot and the sign shall only be displayed during business hours. He expects that to be taken in during non-business hours.

Ms. McKenna asked what the maximum size was.

Mr. Hauflaire said it was 3' x 4'.

Action

A motion was made and seconded, McKenna/Fairfield, to adopt the staff analysis and recommendations as the findings and conclusions of the Board, and based on these findings and conclusions, approve 07-02DV. The motion passed unanimously, 5-0.

07-03DV Mick Morgan requests a variance to allow the construction of a loading dock within the front yard setback of Denver Street. Further, access shall be from Denver Street, a local or residential street not from a collector or arterial street. Maneuvering shall be within the public right of way or walkway of Denver Street, and not on site as required. Finally, construction within the Floodway Fringe is proposed with the loading dock. The subject property is generally located at 711 W. Lincoln Avenue and zoned Residential R-3.

Petitioner Presentation

Mick Morgan, 711 W. Lincoln Avenue, said that the situation with Denver Street is that there is both residential and commercial and they want to make the area user friendly. It is imperative that he has a dock; they sell retail and wholesale furniture. They will have one truck per day. He has been at that site for 38 years. Denver Street represents a mix of commercial and residential, but the sidewalk along the building is in poor shape. People walk in the street. In reference to the variance, we will make that user friendly. We want to level the side of the building where the parking area is ant and make it even with the building inside and make it so we can go either way at the store. Truck drivers are tying up traffic for 30-40 minutes when they unload, and it irritates people mad. The attorney behind me, his sign was ripped out, the company that hit it will replace it, but because traffic patterns, the City, people and many other factors have changed we need to make some changes at the business. Denver Street was supposed to be shut off to inbound traffic when Kroger's remodeled, but the drivers didn't like that. Due to being in the flood fringe and the water problem, he does not want

the dock to be in the ground. He has been through enough floods. He has a cement "sea wall" which is 4' both above and below ground to keep the water out of the building. The best avenue for him is to do it in that fashion. It will be easier to unload because it's parallel. The dock will be a few feet from the existing doors. The light pole will have to be removed, but they will put a curb in if they need to and they will replace the sidewalk. The sidewalk needs replaced because it is in terrible condition. People could get hurt on that. He's asking to put a dock in. People will still be able to see the stop sign. It's frustrating to see what's going on over on Denver Street because of what's going on with commercial and residential. This building is over 100 years old and it was probably there before the houses were. It is imperative to enhance his business with the dock. If this is not granted, they will have to install the dock at the back of the building and it is not as user friendly. They will have to pull across the street to back in, and they will block his wife's business in the back. She's been there 16 years. There is a sign on Denver Street that says "No Trucks." They unload on the side of the building unless there are more than 100 pieces. Some of the drivers can pull into the back, but most can't. If there are any questions about construction, please ask Mr. Moore who is here with him. In his opinion it would be the right thing to do to put this on Denver Street. He said Mr. Bloss is here, and they have been neighbors for years and he is here to speak to this matter.

Ms. McKenna said they have 2 different pictures and asked if there were 2 different options.

Mr. Morgan said that that was correct, one is 85' from the stop sign and the other is 80'.

Mr. Friesen asked if there would be room for a 4' sidewalk.

Mr. Morgan said that was correct. He would be afraid to walk on the sidewalk.

Ms. McKenna asked what the drivers were doing now.

Mr. Morgan said they are pulling in on the side.

Ms. McKenna asked how this would be different than what they are doing now.

Mr. Morgan said that now they basically unload in the street, which block on full lane of the street.

Mr. Friesen asked if the trucks would drive down and back up to the dock.

Mr. Morgan said that was correct and that it would be a pretty easy approach. They have to have a dock whether it's on Denver Street or in back of the store.

Ms. Coyne said his business is growing and that is a good thing.

Mr. Morgan said it was, and that he was born and raised in Goshen. There are a lot of good people in this community.

Ms. Coyne asked if all growth was within this building.

Mr. Morgan said they were going to stay in retail, but they would close two showrooms.

Ms. Coyne said she didn't understand and asked Mr. Morgan to show her on the drawing what the trucks were doing currently.

Mr. Morgan showed Ms. Coyne on the drawing how

Ms. Fairfield asked what kind of traffic his business generated.

Mr. Morgan said if they can get it generated how they hope to in the near future, they would hope for one truck per day, Monday – Friday between 8:00 and 9:00 am. They would like to unload them before the store opens in the morning. There's not a lot of activity that early in the morning.

Ms. Fairfield asked how many trucks for Kroger's traveled the street.

Mr. Morgan said it was hard to tell because it's too busy, but they have box trucks and semis.

Ms. Coyne asked if residents park along the street.

Mr. Morgan said they do, but beyond his business. The attorney that is behind him is having a problem because they have no parking. A lot of the attorney's clients park in his lot, and he doesn't know how he can police that, so they have just agreed that they can both use the lot.

Ms. Coyne thanked Mr. Morgan for being so nice.

Mr. Haufaire said that the use of the property as a furniture store is not permitted in the B-1 district, but it is a lawful non-conforming use. Now it seems that there is a shift from retail to wholesale and asked Mr. Morgan how much of a shift it is.

Mr. Morgan said they have four showrooms and they are closing two, with the option of re-opening the third one if retail picks up.

Mr. Hauflaire said this is a shift in the use.

Ms. Coyne asked if it was a less intense use inside.

Mr. Kolbus said that the Ordinance says a furniture store is permitted in the B-1 district, but commercial warehousing is permitted in the B-3, M-1, and M-2 districts, so this is increasing the intensity of the use.

Audience Comments

Bill Bloss, 605 Lexington Drive, said he is the owner of 708 W. Lincoln and they have owned it for 24 years. He has walked that sidewalk to Kroger's many times, and there are always so many trucks. He thinks the proposal is an ideal situation. He supports Mr. Morgan's request. He has been there for many years and he doesn't want to see a business like that leave the area.

Mr. Rounds asked what the anticipated change in traffic would be. He asked if Mr. Morgan anticipated more traffic than the retail use draws now.

Mr. Morgan said he did not.

Mr. Kolbus said the Board could add that as a condition.

Mr. Hauflaire said he has a memo from Mary Cripe in Engineering and asked Mr. Rounds to read the memo.

Mr. Rounds read the memo.

Staff Report and Discussion

Mr. Hauflaire said he would recommend a denial of the request. As discussed, there will be a significant impact for vehicles on Denver Street. He thinks the tie-ups will be more than what was touched on, and it is troublesome because it will be detaining traffic. There is a sidewalk there, and the city has put a significant emphasis on sidewalks. It is not good to intermingle the large trucks with pedestrian traffic. Mr. Morgan described other options, and they would be less in conflict with the pedestrian traffic, but would impact his business more. Placing the dock behind the building, not adjacent to the right of way seems like a good option.

If this happens, they will still have to allow for maneuvering of trucks on Denver Street. There has been some discussion on Kroger's and he will have to look into that. The trucks are not supposed to come straight out of there, but based on the pedestrian/truck conflict, he doesn't think it's in the best interest of the Board to approve this request. He would recommend a denial of the request.

Mr. Friesen asked if the trucks park in the street and unload.

Mr. Hauflaire said that if you had to rule on one issue, the pedestrian issue is the king and the maneuvering issue is the queen.

Mr. Rounds said that the current testimony says that the sidewalk is minimal at best. The current situation with the semi maneuvering in the right-of-way is a lot heavier than this. Mr. Morgan said that delivery would be restricted to 8:00-9:00 am. This makes more sense than what is going on there now. If the dock is in back they will still be maneuvering in the street. He thinks there are ways to accommodate this request.

Mr. Friesen said he is in favor of the request, but his concern is for skateboarders going off the loading dock. He would also request that Mr. Morgan reconstruct the sidewalk with this dock to increase pedestrian safety.

Ms. McKenna said that Mr. Morgan suggested curbing and if there is curbing along the loading dock it will help protect pedestrians.

Mr. Friesen said he would be in favor of the request.

The public hearing was closed.

Mr. Rounds said that from a safety standpoint with the dock beside the sidewalk, maybe they should require some signage to warn pedestrians so that they know there is possible activity. This is a better situation than what he comes up on with a place on 3rd Street. They take deliveries at the curb. This is different though; the speed is not the same. For him, this seems safer than backing into the store.

Ms. McKenna asked how the trucks would get out.

Mr. Friesen said they would just pull out to Lincoln Avenue.

Mr. Rounds said he would anticipate the trucks turning left at the stop sign and going up to Chicago Avenue.

Mr. Friesen said there would be trucks there with or without this.

Ms. Coyne said the tipping point for congestion passed long ago. They never anticipated having businesses, the strip mall, and residential uses all in the same area. Trucks are bigger and there are more electronics, more furniture, more everything. This is a temporary bandage for the situation in this area. She asked Mr. Hauflaire to look into the situation at Kroger's, and also the signage and curbs.

Mr. Hauflaire said that if they were leaning towards approval, he would suggest they require that at least 50% of the business remain retail at a minimum.

Ms. Coyne asked what would happen.

Mr. Hauflaire said that if more than half is for the wholesale portion, it's shifting the use towards being a warehouse and that is not permitted in the B-1 district.

Mr. Rounds said that there are two options and there is a difference of 5' to the stop sign.

Mr. Friesen said that the further from the stop sign the better. He would agree to the 90' site plan.

Mr. Morgan said it would be a totally covered 10' x 12' structure, the drivers can pull right up to that.

Ms. Coyne said that it sounds like the Goshen News' pick up area. She asked what the railing would do out there.

Mr. Rounds said the raised dock would be enclosed. It won't just be a pad out there. What Mr. Friesen was looking for was to keep the skateboarders off there, but it will be enclosed.

Ms. Coyne asked if this would be in the right-of-way.

Mr. Hauflaire said it would be completely on the petitioner's property.

Action

A motion was made and seconded, Coyne/Friesen to approve petition 07-03DV as modified to require that:

1. At least 50% of the business must remain retail sales.
2. There shall be a sign on the north side to warn pedestrians.
3. The drawing showing 90' from the dock to the stop sign shall be the accepted site plan.
4. The sidewalk shall be replaced by the petitioner, built to City specifications.
5. Deliveries are permitted between 8:00 – 9:00 am

The motion passed unanimously, 4-0.

VIII. Appeal and Developmental Variance – public hearing item

07-01AP & 07-04DV

SBD LLC Appeals a decision of the Zoning Administrator. The Petitioner's position is that the property is not a non-conforming use of land, structure, or building and not subject to the provisions of the Non-Conforming Use Section of the Zoning Ordinance. The Zoning Administrator's position is that the addition of an accessory building is an expansion of a non-conforming use and therefore not permitted by right. The subject property is non-conforming because it is an industrial zoning district, not having access on a collector or arterial street. If the appeal is not granted, the petitioner requests a variance to permit the construction of an accessory building on

a non-conforming industrial property. The subject property is generally located at 1223 Chicago Avenue and zoned Industrial M-1.

Petitioner Presentation

Phil Barker, 1002 Zollinger road said that this is an industrial corridor and their request is to build a new building. This is an industrial corridor with an R-1 in the middle. This R-1 area was rezoned in December 2004 from M-1, so this has been an M-1 corridor from Indiana Avenue, all the way down to what is now Excel Rubber. This is a legal M-1 use in an M-1 zone and he doesn't think they need a variance. It is already zoned M-1, so how can it be non-conforming. The Old Bag Factory has done lots of work without a variance. They have a dock there and there is a dock for the Depot on Harrison Street. There is another M-1 property between the Old Bag Factory and the subject property that accesses off of Cosmo Street, and Excel Rubber accesses entirely off Chicago Avenue. Basically what staff is saying is that all of these properties are non-conforming and other than normal repair, they would all require a variance.

Mr. Hauflaire said that was correct

Mr. Kolbus asked if they would be using the new building for warehousing and assembly.

Mr. Barker said that was correct.

Ms. Coyne asked what the business does.

Mr. Barker said that they bid on government projects – they receive orders and package them. They are expeditors.

Mr. Kolbus said that if someone needs 100 hammers, they would receive the order and package them in the manner specified and then ship them.

Ms. Coyne asked how many trucks would come to the site per day.

Mr. Barker said that would depend on how many contracts they have, but he goes by there every day and he would say there would be one per day.

Mr. Kolbus said it was too bad the owner wasn't here. He understands that they can bid on thousands of projects per day via the internet.

Mr. Friesen said he had no idea you could do that.

Ms. Coyne asked what the potential for growth is.

Mr. Barker said that they would grow no more than the property allows. They want to build a 9000 square foot facility on side and this will be the extent of their expansion. This was the old Cobb Hatchery. It's been a manufacturing building as long as the Old Bag Factory has been.

Mr. Friesen asked if there was room to maneuver.

Mr. Barker said there was.

Mr. Hauflaire asked if Mr. Barker was just thinking about the appeal.

Mr. Barker said that is correct, he doesn't think he should need a variance.

Mr. Kolbus said to present them at the same time.

Mr. Barker said he pretty much did, but he knows they can't consider them both at once.

Audience Comments – there was no one to speak to the petition

Staff Report

Mr. Hauflaire said that this would be an expansion of a non-conforming use under Section 4230.12.A says that all uses must have access on an arterial or collector street. No access points will be allowed on a residential street. Per the subdivision ordinance, Chicago Avenue is a local street. He can think of two cases in the immediate area where expansion took place – Quality Glass, which was allowed to expand through the zoning process, but they had frontage on Indiana Avenue, which is an arterial street, and Thompson's Towing, which fronts on the oblique triangle area at the intersection of Chicago Avenue and Bashor Road, which Bashor Road is a collector or arterial road. He is not aware

of any permits for the Old Bag Factory since he has been here, and that would trigger this process. They just talked about Mr. Morgan's property and accessing on a collector street. Doug's Alignment had to come before the Board when they expanded. This issue is addressed when it comes up. There have been conversations in the office as to whether this is an accessory structure or a primary structure, and by definition it is an accessory building. As he sees it, this is an industrial use on a local street, and therefore, non-conforming by definition. Any expansion would require a variance.

Ms. Coyne said they have dealt with a few properties in here and asked if there had been downzoning in the area.

Mr. Kolbus said that the downzoning was because the resident that was there in the M-1 there could get better financing with residential zoning.

Mr. Hauflaire said he didn't see the relevancy because it has nothing to do with the property they are talking about.

Ms. Coyne said that this is a local street, and she recognizes that it is industrial manufacturing, but because it is a local street, it can't be expanded without a variance. She was confused at first because she thought Mr. Hauflaire recommended a denial because it was M-1 surrounded by R-1. But it's about the status of the road.

Mr. Rounds said that building has been there and maybe the status of the road has changed.

Ms. Coyne asked if the status was changed or anything with the change in Bashor Road wrapping around Martin's like it does now.

Mr. Hauflaire said the road hasn't been updated, but maybe that's a reason for granting a variance instead of the appeal because he thinks it is black and white.

Ms. Coyne said she agrees with that.

Ms. Fairfield said they do that first.

Mr. Kolbus said Mr. Hauflaire doesn't want the appeal granted because he wants them to come in for the variance.

Ms. Coyne said she sees cause for the variance.

Mr. Kolbus said they should allow Mr. Barker to respond.

Petitioner Response

Mr. Barker said that if he can't have the appeal, he wants the variance.

Mr. Rounds asked what the detriment was with the appeal vs. the variance.

Mr. Barker said he has no problem with the variance, so long as it's granted. They are asking for something that is a permitted use. This is existing zoning. It's not like they are asking for the property to be rezoned. This is a case of the chicken and the egg, which one came first. He thinks the manufacturing zone has been there longer than the road classification system.

Ms. Coyne said this is a good reason for a variance.

Mr. Barker said that was fine, he was just going through his logic.

The public hearing was closed.

Action

A motion was made and seconded, Friesen/Coyne to adopt the staff analysis and recommendations as the findings and conclusions of the board, and based on these findings and conclusions, deny petition 07-01AP and approve petition 07-04DV. The motion carried unanimously, 5-0.

IX. Audience Items – none

X. Staff/Board Items

02-17DV 601 W. Wilkinson, Request for Extension of Variance

Mr. Hauflaire asked who was on the Board in 2002. Jared Yoder came before them and wanted to place some parking at the turn on Wilkinson at the 5-plex.

Mr. Friesen said they are already building it.

Mr. Hauflaire said he needed to get approval from the Board again since it has been longer than 6 months. He is asking permission to allow him to go ahead and do that. He doesn't think the neighborhood has changed that much and that they should allow him to continue to do that.

Ms. Coyne asked if that would be a nice improvement.

Mr. Friesen said yes, it was dirt and gravel.

Action

A motion was made and seconded, Friesen/Coyne, to grant a 6-month extension for petition 06-17DV. The motion passed unanimously, 5-0.

XI. Adjournment - 6:23 p.m.