

Minutes - Goshen Board of Zoning Appeals
Tuesday, March 25, 2008, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

I. The meeting was called to order with the following members present: Ardean Friesen, Karen Fairfield, Angela McKenna, and Kelly Huffman. John King was appointed as an alternate for today's meeting in place of Jay Rounds. Also present was City Planner Joe Hauflaire and Attorney James Kolbus.

II. Approval of Minutes from 2/26/08: Mr. Friesen requested the addition of the reading of a letter provided from Lori Nafziger at Oaklawn to Pg. 6 for case 08-05UV. A motion was made and seconded, Huffman/Fairfield, to approve the minutes with the addition listed above. The motion passed, 5-0.

III. The Zoning/Subdivision Ordinances & official Staff Reports were unanimously filed into Record: McKenna/Fairfield, 5-0.

IV. Postponements/Withdrawals:

Mr. Hauflaire noted two letters from Brads-Ko Engineering & Surveying, Inc. that were submitted to the Planning Department today. He first discussed the letter regarding 08-09DV & 08-10UV for the case related to the Goshen Public Library. He advised that they are requesting that the matter be withdrawn. He stated that new notices would be sent if they decide at some point to file a new petition with the Board. Attorney Kolbus confirmed that a new application would require that the case be re-advertised and that new notification would be sent to affected property owners.

A motion was made and seconded, Huffman/McKenna, to accept the withdrawal for 08-09DV & 08-10UV. The motion passed unanimously, 5-0.

Attorney Kolbus informed the audience that the Library case had been withdrawn and that anyone present for that petition was free to leave.

Mr. Hauflaire advised that the second letter submitted is requesting that 08-10DV be tabled until the next meeting.

Attorney Kolbus noted that the affected property owners would be renotified and that they would reopen the public hearing at the next meeting.

A motion was made and seconded, Huffman/King, to accept to motion to table 08-10DV. The motion passed unanimously, 5-0.

Mr. Friesen notified the audience that anything present for 08-10DV was also free to go.

V. Tabled Items

08-05UV - (tabled from the February 26, 2008 meeting) Walnut Hill Mennonite Church requests a use variance to permit a social rehabilitation center (for up to six men from the Work Release program and staff) in a Residential R-1 zoning district where the ordinance permits them as a conditional use in R-1S, R-3 and PUD districts only. In addition, the petitioner is also requesting a variance to permit the center to be located within 1,800' of Oaklawn, another rehabilitation center, where the ordinance requires at least 3,000' of separation. The subject property is generally located at 911 N. 6th Street and zoned Residential R-1.

A motion was made and seconded, Huffman/McKenna, to bring item 08-05UV off the table. The motion passed unanimously, 5-0.

Attorney Kolbus pointed out that Mr. King was not present at last month's meeting and asked if he had an opportunity to review the minutes and the evidence that was presented for the case. Mr. King advised that he had reviewed the information.

Attorney Kolbus advised that a motion would be needed to reopen the public hearing. He also pointed out that it is up to the Board whether or not they choose to reopen it. Mr. Hauflaire added that the petitioners have submitted new documentation for review.

A motion was made and seconded, Huffman/Fairfield, to reopen the public hearing to hear additional evidence on 08-05UV. The motion passed unanimously, 5-0.

Attorney Kolbus advised that it would be best for the petitioner to come forward and explain the new information provided to the members. He reminded everyone that there can not be further discussion regarding evidence previously submitted.

Mr. Friesen clarified for everyone present that the public hearing has been reopened but only for new information. He stated that the Board will not hear the same testimony from last month's meeting.

Petitioner Presentation

Steve Thomas, 309 Hackett Road, advised that he is representing Walnut Hill. He briefly pointed out the new information provided in the packets given to the Board members. He pointed out the materials from Fresh Start, a letter from Tanya Gaby in favor of transitional housing and a letter from Sheriff Mike Books who is also in support of the concept. He stated that he also provided a letter that summarizes the new information and clarifies their request.

Attorney Kolbus requested that Mr. Thomas further summarize the information. Mr. Thomas stated that they have attempted to address the concerns that were noted at the previous meeting. He advised that Fresh Start has submitted copies of their policies and procedures for the Board's review. He advised that the letters from Tanya Gaby and the Sheriff are supporting documentation that there is a need for a model like they are proposing within the community.

The Board members briefly reviewed the documents that were given to them.

For the public's information, Mr. Friesen pointed out that they are addressing the issue of drug testing for residents within the home and are proposing to use a sensor to monitor those coming and going, including those without permission. He pointed out that no weapons will be permitted and that all residents will be subject to search by house staff. He advised that there will be no smoking allowed on the property. No violence will be tolerated. He noted that all residents will be required to agree to submit to any test requested. He stated that they are proposing to have the house monitored on a daily basis.

Ms. Fairfield asked if the new information changes the Staff recommendation. Mr. Hauflaire advised that the proposed area is currently Residential R-1 and that he is in favor of maintaining that zoning. He pointed out again that the proposed use is a conditional use that is allowed in other zoning districts (Residential R-1S and R-3). He again suggested that there are other areas in the community where this use would be permitted without a use variance.

Mr. King requested examples of other possible locations. Mr. Hauflaire advised that any Residential R-1S or R-3 property would be suitable from a zoning aspect. Mr. Friesen clarified that both possible zonings are considered multi-family districts.

Mr. Hauflaire further clarified that not every Residential R-3 zoning district would be suited for this type of use. He stated, however, that these types of uses have been deemed appropriate for those particular districts and pointed out that Residential R-1 is not part of that list.

Mr. King stated that he feels that Walnut Hill is embracing this program. He questioned whether or not the mentors that were mentioned in the documentation would be congregation members or volunteers from Fresh Start. Mr. Thomas advised that they would likely be a mix of people from both populations.

Mr. King requested clarification that the church already provides AA meetings for the public. Mr. Thomas confirmed that they hold meetings that are open to the public three (3) times per week.

Mr. King also requested confirmation about the location of the proposed group home and it's proximity to the church. Mr. Thomas confirmed that the property is contiguous to the church and was previously used as a group home.

Mr. King stated that he is impressed that the petitioners are trying to assimilate a group that is not welcomed into most neighborhoods. He noted that the zoning is R-1 but pointed out that the church has been there for many years and has done a lot of things for the community. He stated that he sees the proposal as a cutting edge model for this community. He noted that the offenders are going to come back to this area somehow and he pointed out that this is a way to bring them back in a positive way. He stated that he feels that there is a lot of merit to the petition. He advised that he would like to see the variance granted with a change to look at the proposal again in a year. He pointed out that this would be the non-prison population and that they would be non-violent offenders. He requested additional clarification from the petitioners on whether or not education would be provided, as well.

Mr. Thomas pointed out that there is information about the education portion of their program available in the information that was provided.

Ms. Huffman inquired as to what type of education they will receive.

Mark Stamper, president of the Fresh Start Board, stated that they will be starting the education piece with the work release person. Once released from that facility, they will already be part of the education program and will have a mentor at that time, as well. He confirmed that education will be a part of what is offered to the house residents. He reminded everyone that that are only requesting permission for four (4) to six (6) individuals at this time. He added that the documentation provided is a way of showing that they are wanting a system of checks and balances and that they want due diligence.

Mr. King questioned the funding for the program. Mr. Stamper advised that it will be funded through private individuals, church support and he advised that they are also trying for grants. He advised that there is no government funding at this point in time.

Mr. King asked what the daily cost would be compared to the cost of incarceration. Mr. Stamper stated that it costs approximately \$45,000 per year in jail. He advised that they are projecting their approximate cost for six (6) individuals for a full year to be \$120,000. He pointed out that they will be providing full services for the individuals within the home.

Audience Comments

Roy Mullins, 918 N. 5th Street, stated that he lives in the subject neighborhood. He advised that there may be a better place in Mr. King's neighborhood for the proposed facility. He advised that he lives less than a block from the property location and he stated that he doesn't necessarily want this in his neighborhood. He stated that he has a six (6) year old and an eleven (11) year old and he doesn't want these people around his kids.

Ms. Huffman asked how he heard about this meeting as he wasn't at the previous meeting. Mr. Mullins stated that he forgot about last month's meeting. Mr. Mullins advised that he had forgotten about last month's meeting. He stated that he doesn't mind the church and advised that they can do what they want but pointed out that this affects his children. He advised that several people in the neighborhood have said something about the proposal. He advised that if there is some other place that they can go, then fine. He stated that they should go there instead. He again stated that this is his neighborhood and that the proposed location is close to him.

Mr. Friesen asked Mr. Mullins if he understood the selection and application process for being accepted into the program. He reiterated that it is for only non-violent offenders and that most will have completed the work release program. He also pointed out that many of them will have been incarcerated for offenses such as non-payment of child support. Mr. Mullins again stated that he would rather see the proposed use located somewhere else.

Mr. Friesen pointed out to Mr. Mullins that the same offenders will likely be relocating into his neighborhood as well

as other neighborhoods throughout the city once released from custody. Mr. Mullins responded by asking that the petitioner of the request please stand up and identify themselves. The petitioners did stand for the audience member to see.

Ms. McKenna advised that she has done some research on the type of offenders currently in the work release program. She advised that she pulled the statistics for 98 inmates currently in work release. She stated that there are a total of 1,186 offenses against them with the main offenses being theft, contempt of court, operating while intoxicated, check deception, possession of marijuana, possession of cocaine and battery. She pointed out that battery is *not* a non-violent offense. She further stated that she has no doubt that the subject offenders need help but also stated that her feeling is that by adding the many stipulations; they won't be picking the people who probably need the most help.

Ms. Fairfield stated that she would still like to focus on the neighborhood being zoned Residential R-1 and she pointed out that they would be saturating a single-family neighborhood.

Mary Marlow, 923 N. 7th Street, stated that she has lived at that address for 28 years. She advised that she currently has three (3) children in the home. She stated that she does not feel that this type of place should be in a residential neighborhood and that she doesn't think it's a good thing. She pointed out that there are a lot of kids in the neighborhood. She also advised that there a lot of neighbors who couldn't be at the meetings to tell their opinions because of work schedules. She advised that she took off work to be there and wasn't present at the last meeting because she had forgotten. She pointed out that she is present now, however, to say her opinion.

John Watkins, 301 Walnut Street, stated that he was present and spoke at last month's meeting. He advised that, despite all the new information, that he is still opposed to the request. He made the comment that the proposal would never have even made it to a meeting if it were proposed on the other side of town. He agreed that the concept is a good thing but that there are many empty houses and other buildings available in Goshen. He advised that he feels that it should be a building that is suitable in a neighborhood that is suitable. He stated that he was given a letter last night by neighbors, Mr. & Mrs. Lumas, who could not make it to today's meeting and he stated that they are also opposed. (The letter was taken for the file.) He advised that he has met many of his neighbors since this request has been made.

Ms. Huffman asked if he has been going around and talking with the neighbors about the petition. Mr. Watkins advised that he has.

Dixie Robinson, 1106 Highland Drive, stated that she represents the subject area on the Common Council. She advised that she is not against the concept but does not believe that an R-1 district is where it should be. She pointed out that it will affect property values in the area. She again stated that she is not opposed to the idea but feels that this is the wrong place for this to be. She also reiterated that there are many people in the neighborhood who do not want this petition granted.

Jeremiah Valencourt, 307 Walnut Street, stated that he is present as a voice of opposition. He advised that he has a thirteen (13) year old son and advised that if anything happened to his son, it would be the end for him. He advised that it is his one and only child and that he is against the petition as a way of protecting his child.

Adam Scharf, 1631 ½ S. Main Street, spoke in support of the petition. He advised that he has a rental property on North 7th Street that is located two doors away from the existing Work Release Center. He stated that a main pedestrian walk way for the work release offenders runs right by his rental property. He advised that there are currently three apartments on his property and that they are all occupied by single women. He advised that one of the women has been there for 18 years and has recently asked for a street light to be put up. When asked if she was doing it out of concern for her safety, she instead advised that she is afraid that the many people that use the alley will slip and fall on the ice. He stated that her comment is evidence that she is not afraid and that she has never had any problems there. He further pointed out that having hope and trust is important with this type of request.

Terry Haney, 918 N. 6th Street, stated that he also owns 917 N. 6th Street. He applauded the church and its efforts and stated that he feels that they have a great idea. He further stated, however, that he is not sure that he wants it in his front yard and stated that he feels that there are better places for it. He advised that he was not one of the people within 300' that was contacted about the proposal. He also pointed out that there are many times where there is no one present

at the church facility. He again stated that he is for the idea but against the proposed location.

Ms. Huffman asked why Mr. Haney was not at last month's meeting. He advised that he was out of the country at the time. She further asked if he was present because the neighborhood was working to make an effort to have people speak. Mr. Haney advised that he was there on his own behalf.

Attorney Kolbus asked if there was any petitioner response to the remonstrators. Mr. Thomas stated that they had indicated that they went door to door for even more than the 300'. He advised that not everyone was home but advised that they left literature about the proposal for those individuals. Regarding the parking, he advised that their entire parking lot will be available for the residents of the home to prevent any parking problems at the house. He pointed out that the issues that were raised today could also be raised by the residents in an R-3 or R-1S district. He reiterated that the type of offenders that they allow into the home will be strictly limited by the criteria that they have talked about. He advised that it will be available only for work release offenders and that there will be a selection process for choosing who will be permitted.

Ms. Fairfield asked how they will address parking for the resident's family and guests. Mr. Thomas advised that they currently have a four (4) car driveway plus the church lot will be available. He advised that there will be no on-street parking.

Jane Stoltzfus stated that she is the wife of one of ministers at Walnut Hill. He stated that she regrets that they were not able to have more conversations with the residents in the neighborhood. She advised that they want to be able to work with them and to address the potential issues with them.

Daniel Ellsworth, 1638 W. Indiana Avenue, Elkhart, stated that people see him as a clean cut young man. He stated, however, that he used to be addicted to cocaine. He advised that the grace of God saved him from prison. He noted that he was part of a program in Elkhart for 13 months followed by service with a street ministry for another 13 months. He advised that he ran a halfway house for another 13 months and was an administrative assistant for another 9 months. He pointed out that God can heal and cure the lost and hurt. He advised that many people have misconceptions about the fact that addicts cannot be cured and that methamphetamine addicts always go back. He stated that many believe that homosexuals cannot be cured. He stated that he has seen all of them cured. He reiterated that this home will not be dealing with violent or sexual offenders. He also pointed out that those offenders are not the majority. He stated that they will be doing evidence based work within the group home and that a majority of offenders are convicted of theft and white collar crimes. He stated that people would not be so afraid if they stepped back and looked at the statistics.

Public hearing was closed.

Staff Report & Discussion

Mr. Friesen advised that most or a majority of the decisions made by the Board are based on facts. He stated that the comments and concerns of those directly affected are taken into consideration, as well. He pointed out that the Board is not to make decisions based on fear and "what if's". He stated that it is a fact that people from the Work Release facility do walk through the city's neighborhoods on a daily basis and pointed out that he has seen them in the clinic where he works. He stated that they are already somewhat integrated into the community. He pointed out that he would rather see them housed in a place like the proposal once released from incarceration than in a complex or rental. He pointed out that they'll be in the neighborhoods regardless, whether the community is aware of it or not. He stated that he feels that the proposal is a good opportunity to have within the city of Goshen and he feels that it would be a benefit to the city and the county. He advised that he would like to see it approved with a year to try it and the opportunity to come back at that point in time to report on the project.

Ms. Huffman stated that she felt that the petitioner has proven the need. He pointed out that the issue up for debate is the proper location. She advised that churches have historically had parsonages but that the trend is changing to have pastors owning their own homes and building equity. With this being the case, she pointed out that there will be many more homes available for services such as this and she stated that she does not feel that this will be the last such request. She stated that she feels that the Board needs to look outside of this box on this issue. She also pointed out that they are being very open and transparent about their plans. She stated that she would like to give it one year. She stated that she doesn't want this to be a case where people stir up the neighborhood with misinformation and pointed out that

there are now several people here as opposed to the one that was present last month. She stated that she would like to make a motion for approval with a one year condition added.

Action

A motion was made and seconded, Huffman/King, to go against the Staff analysis and recommendations and to approve petition 08-05UV with an added condition that it come back in one year for a full public hearing. A roll call vote was taken: J. King - yes, A. McKenna - no, K. Fairfield - no, K. Huffman - yes, A. Friesen - yes. The motion passed, 3-2.

V. Variances

08-06DV Tereso Moncivaiz requests a developmental variance to permit total accessory square footage of approximately 1,400 square feet where 639 square feet is permitted and an accessory height of 24' where 14' is permitted for a new 32' x 32' accessory storage building. The subject property is generally located at 703 N. 6th Street and zoned Residential R-1.

Petitioner Presentation

Tereso Moncivaiz, 707 N. 6th Street, stated that he is the current property owner. He advised that he also lives at the property adjacent to the subject property. He advised that there is an extra lot between his residence and the subject property that is tied to 703 N. 6th Street. He stated that he and his wife would eventually like to build a home for themselves on the lot. He informed the Board that he currently owns other property on 23rd Street and 7th Street and would like to construct and use the proposed building for storage and for repairing and maintaining his rental properties. He stated that it would be a place to keep his things that would be stored inside.

Mr. Friesen stated that he is concerned about the height of the structure. Mr. Moncivaiz stated that he currently has a truck that is 9'10" in height. He advised that he recently had \$3,000 stolen from the vehicle and would like to be able to store it inside. He stated that he would need a 12' door and feels that a 20' maximum height would be fine. He stated that 20' would be at the peak of the structure only.

Mr. King asked for clarification if the building would be to operate a business. Mr. Moncivaiz stated that it would be for his personal belongings and would store things such as a snow plow for his vehicle. He stated that he does use the plow for his rentals but also to maintain his own property. He stated that he would like to be able to store his things inside.

Mr. Friesen asked for clarification on the proposed dimensions. Mr. Moncivaiz stated that he is asking for 32' x 32' and advised that he is willing to come down from the original request for 32' x 42'.

Ms. Huffman asked if he understood the Staff Report and that the request is for a structure that is larger than most of the homes in the neighborhood. Mr. Moncivaiz stated that he does understand.

Mr. Friesen clarified that the modified request would be for a structure that would be 32' x 32' and 20' in height for a total of 1024 square feet.

Ms. Huffman asked what material would be used for the building. Mr. Moncivaiz stated that his residence currently has white siding and that he would also use white for the proposed structure. He stated that he plans to match the homes on both sides to help the building to blend in and to look nice.

Mr. Friesen asked if there would be any plumbing to the building. Mr. Moncivaiz confirmed that there would not be.

Mr. King requested clarification that the building would have a residential appearance with white siding and shingles. Mr. Moncivaiz confirmed Mr. King's statement. He also stated that he would provide a detailed plan if the request is approved. He again stated that they are planning to build a home on the proposed lot in the future and advised that they would simply be starting with the garage. He stated that they will be leaving enough room on the lot for a home, as well.

Audience Comments

Mike Weaver, 708 N. 5th Street, stated that he lives in this neighborhood. He pointed out that the proposed building would block their view of 6th Street from their home on 5th Street. He advised that they building will most likely end up being vandalized. He made the comment that he feels that the petitioner would end up becoming like Ron Davidhizar, another landlord in Goshen. He closed by pointing out that the proposed building is larger than the home on the property.

Mr. Friesen asked if he understood that the petitioner is willing to reduce the size from the original request. Mr. Weaver stated that it would still be too big and that he wouldn't be able to see the kids playing on 6th Street. He also stated that he previously asked for a big building and was shot down.

Ms. Huffman requested confirmation that he is against the petition. Mr. Weaver confirmed his opposition and stated that he would rather see something 10' x 20'. He stated that he feels that the current request is senseless and would cause more problems in the neighborhood.

Mr. Hauflaire explained that recent conversations with the petitioner have revealed another possible option for a variance request. He stated that the petitioner and his wife own lots 19, 20 and 21 but that lots 19 and 20 are in his name and lot 21 is in her name. If the vacant lot could be tied to lot 21 instead, he stated that it may simplify the request. He stated that home on lot 21 is much larger than the home on lot 19 and that it would permit a larger accessory building. He advised that the matter needs to be looked into further, however, as the properties are currently in different names. He stated that his initial response is to deny the current request and have the petitioner come back with a new request at the next meeting.

Attorney Kolbus stated that this request should instead be tabled today. The petitioner could then file a new request. They could then act on the new request first and potentially resolve the issue. If it would work, then this request could be dismissed. If not, they could still act on the current request at that time.

Public hearing was closed.

Staff Report & Discussion

There was no discussion amongst the Board.

Action

A motion was made and seconded, Huffman/Fairfield, to table 08-06DV until the next meeting. The motion passed unanimously, 5-0.

Karen Fairfield left at 5:25pm.

08-07DV Speedway SuperAmerica, LLC & Robert Skidmore request a developmental variance to allow new LED sign faces for gas prices to be installed on the existing non-conforming sign. The subject property is generally located at 910 W. Lincoln Avenue and zoned Commercial B-2.

Petitioner Presentation

Robert Skidmore, Speedway SuperAmerica at 5000 W. 86th Street, Indianapolis, stated that he is present on behalf of the petition. He stated that they are asking for a variance for a sign at the store location on W. Lincoln Avenue. He provided for the Board a photo of the current sign and also an example of what is being requested. He stated that they received a copy of the Staff Report and made the following remarks in response. He stated that they do not feel that the surrounding properties would be affected in a negative manner as they would simply be replacing the changeable numbers with LED numbers. He reiterated that the only change would be to adapt the existing sign to LED numbers. He stated that they would be cutting down the amount of prices shown from four (4) to three (3). He also pointed out that this would be a safer alternative for employees. He advised that there have been two (2) instances of injury to employees within the past year while changing the existing price numbers. He stated that the LED seems to increase visibility and looks better. He also pointed out that taking the sign down and replacing it to bring it in to conformity would cost more than the faces themselves. He stated that bringing the sign into compliance would also reduce the sign's visibility.

Ms. Huffman asked if they would be willing to bring the sign into compliance in exchange for the LED numbers. Mr. Skidmore stated that they would not be willing to reduce the sign size from 140 square feet to 50 square feet as they are trying to advertise their product.

Ms. Huffman asked if there are any examples available of other gas stations that have brought their signs into compliance. Mr. Hauflaire advised that this is the first request that has been made in this very specific capacity.

Audience Comments

There was no one to speak to the petition.

Staff Report & Discussion

Mr. Hauflaire recommended denial of the variance request. He pointed out that the petitioners have the right to keep the sign “as is” with no changes. He stated that he is recommending denial because of the significant cost that will be associated with this sign modification. He pointed out that there will not be another opportunity to force the sign to be brought into compliance. He stated that there is no competition for the petitioner in the immediate area and also pointed out that three (3) of the adjacent corners have homes on them. He stated that a sign at this location meeting the ordinance requirements could do everything that they would like for a sign to do. He reiterated that now would be the time to make them come into compliance.

Ms. Huffman requested confirmation that they could keep the sign as it currently is. Mr. Hauflaire confirmed her stated advising that it would continue to function as a non-conforming sign.

Mr. King stated that he can understand the safety issue that Mr. Skidmore mentioned.

Mr. Friesen commented that the LED numbers do look nicer but also pointed out that the existing sign is too big.

Ms. Hershberger, Recording Secretary for the meeting, pointed out for the Board that most of the existing gas station signs that have had recent changes are approved as part of the PUD process and fall under a different set of regulations established by the PUD argument.

Mr. King stated that the sign ordinance was put in place to improve the City’s streetscape and to improve the appearance of the signs throughout the city. He asked if they would be willing to bring back a better sign that meets the ordinance requirements as the City of Goshen does have high standards with regards to signs.

Mr. Hauflaire pointed out for the Board what would be permitted under the current ordinance. In response, Ms. Huffman reiterated that they are not interested in reducing the size of the existing sign.

Attorney Kolbus reminded the Board that the petitioner can also erect a conforming sign without the need for a variance if they so choose, even if the current request is denied.

Public hearing was closed.

Action

A motion was made and seconded, McKenna/King, to deny 08-07DV as recommended in the Staff analysis. The motion passed unanimously, 4-0.

08-08UV Rieth, Rohrer & Ehret Funeral Home requests a use variance to permit monument sales (including outside display and storage) in a Commercial B-2 zoning district where permitted only in the Commercial B-3 and Industrial M-1 and M-2 zoning districts. The subject property is generally located at 311 S. Main Street and zoned Commercial B-2.

Petitioner Presentation

Jerry Ehret, 311 S. Main Street, stated that they are asking for a variance to show monuments on their property. He stated that he had additional photos for the Board to review if they would like but acknowledged that there were

Mr. Friesen asked if he was familiar with the Staff recommendations. Mr. Ehret stated that they are and are in agreement with the recommendations.

Audience Comments

Fred Kieper, 18865 Wilson Drive, spoke in opposition to the variance request. He stated that he is a Goshen resident, a Goshen College graduate and owner of many businesses in town. He pointed out that he is the owner of Always In Stone, a local monument business, and acknowledged that the petitioner is a competitor for his business. He stated that he is present as both a competitor and a general business person. He stated that he takes the ordinance seriously. He provided a packet of information to the Board members to assist in his presentation. A copy of the Commercial B-2 section of the ordinance was included and he pointed out various aspects of the B-2 regulations. He also pointed out the Permitted Uses of the ordinance. He stated that he has no problem with competition and stated that the ordinance allows them to have monument sales. He reiterated that the issue is the outside display of the monuments. He pointed out that the ordinance makes it clear that the outside display is not permitted. He asked that they be required to continue their monument sales inside at the same place where they sell their concrete vaults. He noted that it would not be as effective but that it would maintain the ordinance regulations.

Mr. Kieper further explained for the Board the differences that he sees between the requirements for the B-2 and B-3 zoning districts. He stated that he conducted a study that analyzed ten (10) properties for sale on the MLS system. He provided the members with a copy of the study. He stated that he recently purchased a B-3 property as he knew it was necessary in order to conduct the outside sales that he has with his business. He pointed out that granting the variance would give a huge advantage to the petitioner and that it would not be right. He stated that it would be giving them a head start. He stated that he had to pay the higher price for a B-3 property to be able to do what he does. He explained that granting the variance would be giving them the same advantage without the cost of the property located within a B-3 district. He asked that they maintain the integrity of the ordinance.

With regards to the Staff Report, Mr. Kieper stated that he feels that Mr. Hauflaire was off the mark in a few areas. He stated that he feels that the second paragraph of the analysis makes a lot of the ordinance requirements appear to be incidental. He stated that they are *not* incidental. He made the point that if one is allowed, then maybe such uses will pop up everywhere. He also stated that he disagrees with the comment regarding general welfare of the community. He stated that he does not know if all 30,000 citizens will be affected but he will be and his business will be.

Mr. Friesen inquired as to where the next closest monument store is other than the proposed use. Mr. Kieper stated that the next closest is approximately twelve (12) miles away.

Ms. Huffman asked Mr. Kieper how many monuments he displays at his business. He stated that there are over 100 on display but pointed out that his business is the sale of the monuments only. He stated that he may have a particular monument that will sit for years before the right person comes along. He advised that a business could succeed with only twelve (12) stones.

Ms. Huffman further questioned whether he is concerned that he would not be granted the same variance. Mr. Kieper stated that he is not concerned about that and is not asking for a variance for his business. He advised that he purchased a B-3 property because that is what the ordinance requires.

Mr. Kieper also stated that he is upset that Mr. Hauflaire appeared to have put words into people's mouths with the comment that "people will often buy... doing business there anyways." He pointed out that the proposed location for monument sales is at a very busy thoroughfare and stated that the monuments on display do not blend and that people *do* notice them.

Mr. Kieper again stated that granting the variance will hurt him and his family. He stated that he purchased B-3 property despite the fact that he would rather have purchased B-2 due to the price difference. He also made the point that the physical features of the lot should not matter and that they are attempting to enter into a new business with the monument sales. He stated that the new business has nothing to do with the subject property. He commented that if he wanted to start selling hot dogs, he would have to get a food license. He made the same point with alcohol sales. He

stated that the business is irrelevant to the property itself. He stated that they could continue to do business without the variance being granted. He further stated that it would not cause an unnecessary hardship on the petitioners. He stated that they could sell through pictures and by doing so they could ensure that the customers are already working with the funeral home and not going to them just for the monuments.

In closing, Mr. Kieper commented on Mr. Hauflaire's remarks regarding the comprehensive plan. He stated that he owns four (4) businesses in town. He stated that he does follow the rules. He noted that he may not always agree with them but he does what they say.

Bob Ganger, 317 Chicago Avenue, stated that he works at the funeral home. He clarified that they have no desire for displaying vaults or anything large outside. He stated that what is shown in the Staff Report photos is what they are requesting. He stated that they try to be good businessmen and follow the rules. He stated that the monuments do blend with the existing building and pointed out their location on the subject property. He stated that they would like for the variance to be granted.

Staff Report & Discussion

Mr. Hauflaire stated that he is recommending approval to allow the outside display of monuments. He stated that the displays have been present on the subject property for approximately seven (7) to eight (8) months and went unnoticed by most as they are not really visible from any public right-of-way. He pointed out that the B-2 district is unlike any other district in that most of the buildings are basically built up to the lot lines. He advised that the subject property is zoned B-2 but is built on must less of the lot than what is permitted by the ordinance. Because of this fact, he pointed out that monuments could be displayed without being highly visible. He noted that the applicant is asking for up to twelve (12) monuments and he read for the Board the conditions listed in the Staff Report. He advised that there are seven (7) monuments shown in the Staff Report photos and reminded the Board that they can set the maximum number of monuments permitted on site. He advised that he is recommending requiring that they remain in the general location that they are currently placed but made the suggestion of adding to it that they be no closer than 20' to the alley. He advised the purpose of the listed conditions is to ensure that what is currently there is what will be there in the future.

Public hearing was closed.

Action

A motion was made and seconded, King/McKenna, to grant 08-08UV with the conditions listed in the Staff Report and the addition of the revision from today adding that the monuments be no closer than 20' from the alley and the wording "public street right-of-way."

Ms. Huffman stated that she feels that a compelling argument was made by Mr. Kieper.

Mr. King responded that the Board of Zoning Appeals is an option for alternatives. He clarified that the City appreciates those who do follow the rules but he stated that he feels that the display is innocuous.

The motion passed, 3-1, with Ms. Huffman voting against the petition.

08-08DV & 08-09UV – Jesus Perez & Barr Design Group, LLC request a development variance permit a restaurant in a Commercial B-1 district. Additionally, developmental variances are requested to relax the parking setback requirements to 14' where 35' is required and to allow maneuvering of on-site parking in the public alley. The subject property is generally located at 514 Lincolnway East and zoned Commercial B-1.

Petitioner Presentation

Mark Barr, Barr Design Group at 502 S. Main Street, stated that he is representing Jesus Perez in this matter. He stated that they will primarily serve customers through carry out with a maximum seating capacity of 10. He stated that they understand the Staff Report and have nothing further to add.

Audience Comments

There was no one to speak to the petition.

Staff Report & Discussion

Mr. Hauflaire stated that he is recommending approval of the request for a restaurant in the proposed Commercial B-1 location. He stated that part of the request deals with the maneuvering but pointed out that there is not much traffic in the subject alley. He also pointed out that there are no major improvements needed for the site. He advised that there is already a commercial storefront and that the hard surfaces are already in place. He again recommended approval of the request.

Ms. Huffman requested confirmation that they are not requesting a drive-thru and also asked if it would be allowed. Mr. Hauflaire confirmed that a drive-thru is not part of the request and stated that it would not be allowed for the subject property.

Public hearing was closed.

Action

A motion was made and seconded, McKenna/Huffman, to grant 08-08DV & 08-09UV with the conditions listed in the Staff Report. The motion passed unanimously, 4-0.

08-09DV & 08-10UV – Goshen Public Library and Brads-Ko Engineering & Surveying, Inc. request a use variance to permit the expansion of the library parking lot in a Residential R-3 zoning district. Libraries are permitted in the Commercial B-2 and B-3 districts. Additionally, developmental variances are requested to allow 109 parking spaces where 115 spaces are required, to permit an 8.5’ parking setback along S. Main Street where 35’ is required and to allow maneuvering of on-site parking in the north/south public alley. The subject property is generally located at 601 S. 5th Street and zoned Residential R-1 and Residential R-3.

*** Withdrawn at the petitioner’s request. ***

08-10DV Maple Court Place and Brads-Ko Engineering & Surveying, Inc. request a developmental variance to permit the construction of an apartment complex on property accessed by a private access easement where the ordinance requires that all primary buildings have direct access to a public street. Also, a request to permit buildings having a length of 215’ where 200’ is permitted. The subject property is generally located immediately to the south of Peddler’s Village and zoned Residential R-3.

*** Tabled at the petitioner’s request. ***

VIII. Audience Items: none

IX. Staff/Board Items: none

X. Adjournment: 6:15 pm

Respectfully Submitted:

Becky Hershberger, Recording Secretary

Approved By:

Ardean Friesen, Chair

Karen Fairfield, Secretary