

**Town of Burns Harbor
Board of Zoning Appeals**

Minutes of Tuesday, January 22, 2008

A regular meeting of the Burns Harbor Board of Zoning Appeals was called to order by President Terry Swanson at 7:00 p.m. Answering present at roll call were Bill Meyer, Gordon McCormick, Jim Meeks and Tom Marconi.

Also present was Attorney Chuck Parkinson and Building Commissioner Randall Lopez.

Reorganization

President

McCormick moved to retain Terry Swanson as President. Meeks seconded the motion. Motion carried by unanimous roll call vote.

Vice-President

Meeks moved to appoint Gordon McCormick as Vice-President. Meyer seconded the motion. Motion carried by unanimous roll call vote.

Attorney

Meeks moved to retain the law firm of Harris, Welsh & Lukmann. McCormick seconded the motion.

Secretary

McCormick moved to retain Toni Biancardi as secretary to the BZA. Marconi seconded the motion. Motion carried by unanimous roll call vote.

Approval of Minutes

McCormick moved to approve the minutes of the December 18, 2007 meeting as written. Meyer seconded the motion. Swanson yes, Meyer, yes, McCormick yes, Meeks abstain, Marconi yes. Motion carried.

Setting of Future Public Hearings

None.

Communications, Bills, Expenditures

None.

Report of Officers, Committees, Staff

None.

Public Hearing

Continued - LISCO, Inc. requesting a special exception for a truck terminal in a C-2 zone and a use variance for outside storage and warehousing in a C-2 zone at 277 Melton Road

Attorney Terry Hiestand appeared on behalf of the petitioner Job Steel Corporation. Bill Scott of Job Steel Corp. was also present. The owner of the property is LISCO Inc. owned by Gene Brown.

Attorney Hiestand provided a history of the property since 1950. In 1980 it was approved for a truck service and repair facility in 1980.

Hiestand said after meeting with this Board the petitioner went back to the Plan Commission at its last meeting with the required findings and information necessary for the Plan Commission to make a recommendation. The recommendation was unfavorable at the Plan Commission. I asked why it was unfavorable. One concern was that it would generate some truck traffic. Mr. Scott will have approximately 14 trucks in and out of the property. The second concern is we would like to see something a little snappier go into that property moving us toward the realization of some type of retail area in the Town.

In regards to the traffic, if you look over the list of things that are permitted in the C-2 zone there are a lot of things that could be built there without a special exception that would generate a lot more traffic. We went over at the Plan Commission that this property satisfies many of the concerns expressed in the Master Plan in terms of not impacting adversely on the neighbors, utilizing the highway system.

I would argue that if we were to approve the special exception we don't really need to have the two use variances for the warehouse and outside storage. I base that on the definition of a truck terminal in Chapter 15 page 25 of your ordinance; any land use with or without buildings for but not limited to parking, storage, maintenance, fuel sales, food service, transfer station for commercial truck, tractors, truck trailers and other commercial vehicles. I would argue that the truck terminal is typically encompassing some type of a warehousing facility and often times a facility for storing things on the ground.

Photographs were provided of facilities in the area showing their use of outside storage. Similar facilities to Job Steel Corp. shown were LA Bell in Porter, IN, Trans United and CR England in Burns Harbor, IN.

Our truck trailers would be behind the existing buildings. The lot is long and narrow extending back to I-94. The proposed truck parking would be behind the existing buildings. One of the arguments we made is this has been a truck terminal for some time.

Special exceptions are permitted in the zone but are subject to review. It has been subjected to review and it was determined not to be in compliance with the Comprehensive Land Use and Zoning Ordinance.

Then it looks upon the following standards; harmonious with the character of the adjacent property and surrounding area. Most of this property is given over to outside storage of one type or another. There are three or four automobile dealers, the mobile home sales facility with outside storage of their entire inventory, numerous truck facilities. What is going to be better for the neighbors is the property has been cleaned up and will be maintained in a much better order, improved ultimately with a warehouse. Mr. Scott is going to be investing in his business and he wants to tell you up front that he is going to want to build a warehouse.

It won't inappropriately change the essential character of the surrounding area. It is all directed toward the traffic on Hwy 20. It is not like we are putting this in a residential district. The neighbors are all businesses and highway oriented businesses of some type or another.

It won't interfere with the general enjoyment of the adjacent properties. It has been operated as a truck facility for some time. It is not going to change the character of what is going on there. Some argue they would like to change the character. The reality is that we don't have any other people standing in line to use this property except for the purpose it has been used for the last 50 years.

It will be an improvement to the use and character of the property under consideration. If you look at the aerial picture of the property from 2007, all the stuff you saw in that has been cleaned off the property. There are just buildings there now. A question was raised at the Plan Commission about the advisability of putting a gate across some type of trail that appears to run down the east side of the property. We don't have any problem enclosing that off. Security is a paramount concern for this type of facility. That is one reason businesses utilize truck firms and terminals is because they have difficulty maintaining security of some valuable additives to the steel process on site so everything on the property will be secured and there will be somebody in attendance 24 hours a day to monitor what goes on the property.

It is not hazardous to adjacent property. It is not going to involve anything that is going to be detrimental to health, safety or generate smoke or noxious fumes. It is not going to produce near the traffic that other permitted uses would produce from that same site.

It is adequately served by essential public facilities. Sewer runs through the property. There is highway connection. There is not going to be a question of this taxing the Town to provide additional facilities that aren't there.

It is consistent with the Comprehensive Plan. It is compatible to adjacent land uses (p32). Safe, convenient traffic access; this is probably the best place in the community to have this type of facility. Later in the Comprehensive Plan they talk about being on an arterial street in close proximity to expressway interchange (p64). There is sufficient space for onsite parking (p63). We are saving natural vegetation that occurs at the north end of the property (p63). The lot size is adequate. The difficulty we mentioned in our findings is that the lot is narrow and long but those uses like the trucks would be well back from Hwy 20. It is in an area of mixed uses (p63). It will be a refurbishing and restoration project. It will be an improvement along a major thoroughfare.

I think if it were approved as a truck terminal as a special exception that we don't necessarily need the use variances for the warehousing and outside storage. We are here to prevent future misunderstandings by telling you up front what we are going to do.

I wish as much as anybody that we were getting some of the retail development that is appearing down the interstate in Portage but we have not. Even cities with many more housetops like Porter don't have a grocery store, any retail areas. I don't see that's our future at least for a few years. In the meantime this property has got to be used for something. We certainly want to try to avoid the bad example that occurred immediately to the west of this property at the former Plaza property where it is not being used for anything and has been allowed to deteriorate beyond the point that it is probably a public safety concern.

We would be glad to answer any questions you have as to the type of business use that is contemplated here. What we established at the Plan Commission was that Mr. Scott's hope is to run about 14 trucks or so out of there. To be able to build a warehouse, have 24 hour staffing, and try to make that property into an asset for the Town and keeping it cleaned up.

Meeks commented you said about 14 trucks.

Hiestand said the trucking business with trucks as your inventory sometimes you are going to have more if you can market and get the jobs for them.

Bill Scott said that would be the average lay over.

Hiestand clarified that would be 14 trucks on the premises. Trucks have been laid over at the property in the past. Mr. Scott is thinking the typical load would be to have 14 trucks there. He may be wildly successful and has room there with over 4 acres to have a more fully developed business than that but that is determined by the economy.

Swanson said you have 14 trucks and trailers and there would be owner operators that might be there also.

Bill Scott said now I am operating 20 trucks and trailers and part of them are owner operators. I don't see them all the time. Usually you would see 14 trucks over night on weekends and whatever.

Hiestand said the front buildings the one to the east side will continue to be an office area and the one to the west side with the overhead doors will be an area to maintain and service trucks.

Bill Scott said he is operating now in Lake Station and Westville.

Meyer said 14 trucks applies to the trucks parked there overnight. There could be 40 trucks in and out of there during the day.

Bill Scott said Yeah, probably. On any given day it could be 5 or 20. I don't know.

Hiestand said a lot of the trucks are picking up loads from point A to take to point B and from point B they pick up a load and go to point C. They may be gone for a week to two weeks at a time.

Bill Scott said he can't limit the number of trucks a day. Only on the weekends would you see all my trucks there which would be 12 to 14 at one time.

Meyer said one of the biggest concerns is the traffic and the trucks going in and out on the highway. We already have more of that than I would like to see.

Hiestand said any number of uses permitted without a special exception are going to have more vehicle business. They won't always be semi trucks. The Comprehensive Plan stresses that if you are going to have that type of business it ought to be located ideally in that exact spot, on a major arterial road close to interchange with I-94. You don't want to put the business somewhere else and have less than an ideal situation. Hwy 20 is probably going to see some more stop lights come on it. Traffic is not going to be going through there at 50 mph. It is certainly a lot less traffic than is turning in and out of Tech Drive onto Hwy 149.

Meyer said that's right. It doesn't make it any better. It makes it worse. You have more traffic.

Hiestand said if not a truck terminal what is going to use that property? It has been associated with trucks and truck repair for 50 years. We don't have a magic wand to say let's turn this into a supermarket. That is not going to happen.

Meeks said I disagree with that. The Planning Commission's concern was that a truck repair and a truck terminal were going to quadruple the traffic there. You said 40 trucks in and out and that is not just during the day. You don't have that right now.

Hiestand said whether it has been approved as a truck terminal or not it's de facto been a truck terminal all the time that Brown or LISCO and Roger's Repair was there. It is not a new use to this property. It is in fact trying to get the property in line with what its use has been.

Meeks said I would disagree with that. It was a truck repair and now it is a truck terminal. By definition they are two different things.

Hiestand said the reality is trucks have been in and out of there for things besides repair. You can see there is 8 in the photo parked there on the property probably by owner operators because it is a secure area and proximate to the interstate.

Meeks said we discussed at the Plan Commission all the traffic is not going to be going east to I-94. There are vehicles that will be going west and south.

Hiestand said that is a strong possibility depending on where they need to deliver their loads at. Most of the truck traffic is going to come by I-94. This is an arterial road, this is the purpose of it to have trucks go in and out. If you can't have trucks on a major arterial four lane highway with a trucking business, where are you going to put a trucking business? What kind of highway are you looking for?

Meeks said the issue is we have a truck problem on that road and Hwy 149. The question is do we want to increase that problem. I don't think the problem is whether that road built for truck traffic. Sure it is but is it built for the truck traffic that we now presently have and will have in the future. Just because it is a bad situation, do we need to make it worse? Let's not forget in the future we are going to have a road that is going to try and let out 300 houses traffic onto Hwy 20. I think that road is going to come to a stand still if we keep putting stuff on it. I think the volume of trucks from what it is now and what Mr. Scott is planning are two different things.

Hiestand said unless we've got some use to make of this property that is consistent with everything that we are talking about is the Town going to buy that property from Mr. Brown?

Mr. Scott wants to lease it with an option to purchase it in the future.

Swanson said CR England is in a business park. Trans United is in Light Industry. Both of them are new buildings, all paved and landscaped. According to our Comprehensive Plan parts of it are to promote the redevelopment of strong central commercial cores, promote positive community image, promote improvements and beautification of major thoroughfares. I realize this was cleaned up but any responsible owner should have cleaned that up 20 years ago. To say you pulled all the junk out, look how good we are, I don't see that as an argument.

Hiestand said it is cleaned up and would've been painted.

Swanson said it should've been cleaned up 20 years ago. It isn't that you are doing this wonderful thing for us. It was neglected all this time.

Hiestand said it wasn't but if somebody wants to come in and clean it up or does clean it up are you going to say we don't want you to drive on our highway.

Swanson said basically what we are talking about if this goes through is a steel storage yard, all stacked up all over and I don't think that is fair to the businesses that are putting hundreds of thousands of dollars into the new car dealerships and corporate logos and even Pilot whether we like it or not is well maintained. Now we are talking about bringing pallets.

Hiestand said you have an ordinance against having a junk yard. Despite that ordinance this has been a junk yard. It is cleaned up and would have been painted. The man wants to build a rather substantial building back there. All the storage will be well back from highway 20 behind the buildings. Who could have driven by there and said the stuff in that photograph was back there? You wouldn't have seen anything back there. During the days of John Zehner you would have been scared if you would have known what he had back there.

Meeks said and the Town made him clean it up on occasion.

Hiestand agreed but said at the time he sold it to Mr. Brown it still wasn't cleaned up. Here is a guy who wants to come in. He has worked with Mr. Brown to clean up the property and wants to build a building in the future. And say you can have your commercial property on Hwy 20 an arterial highway just so you don't have anybody go there and bring any traffic to Town. I don't think that is consistent with the highest and best use of this property. It is on an arterial road, an area proximate to I-94 and it would be reasonable to expect that he could operate his trucks from that property and have a truck terminal there.

Remember, it is a special exception; a permitted use.

Swanson and it says truck terminal. Does that have to mean steel hauling terminal? Could it be hostess and they move their cup cakes around or UPS? Does it mean this four acres is going to be covered with stuff?

Hiestand said if you look at the diagram he submitted he is not proposing to cover the four acres. There is an area to park trucks, a warehouse to put things inside and an area to set things on the ground. None of which are unreasonably large and leaves the whole north end of the property undeveloped with the tree scape that exists there.

Meyer said it sounds as though you are arguing we have a bad situation there now and we should perpetuate it. I don't agree. You talk about the trash that was there and the trucks coming in and out for years. Does that make it alright?

Hiestand said there is no use for this property except this.

McCormick said there are all kinds of uses in C-2.

Hiestand said the market is not there.

McCormick said I have a couple things. The trees can be taken down. There is nothing that says you can't take every tree down. I don't care what has been done for 40 or 50 years. I do not believe special exceptions stay with the property. It should be with the owner. In our Master Plan it talks about grouping things together. You talk about Trans United and CR England. They are all in one part of Town. That is a

controlled exit and entrance onto the highway. Up here is C-2 and it is gradually getting more C-2, everyday shopping needs of the community. This is not an everyday shopping need of the community. Trans United outside storage is all brand new equipment not coils of steel. I have been at these steel transfer yards around the area. There is nothing but stacks of stuff sitting there for who knows how long. Outside storage at the car dealerships is different than coils of steel. It is not even comparable. You talk about traffic. In C-2 there are ways around that. You got Lions Drive. Just because it has been a truck garage for 40 years doesn't mean it has to continue to be that.

Meeks asked if outside storage is permitted in this zone. The answer is no.

Hiestand said but everybody in the zone is having outside storage.

Meeks said you are not going to compare a coil of steel to RV or a brand new car. I don't know what we are going to vote but if he is going to have a truck terminal fine but he can't have outside storage. I wouldn't agree to that at all.

Marconi said you wouldn't see any of that stuff they store outside. It is all going to be behind the building. Whatever is back there you won't know because you won't see it.

Meeks said if we take the petitioners picture of the property you'll notice 2 cars on the lot that are not 15 feet off the road. We would have to make sure that is marked clearly with pavement markings and signs. You only have 21 feet from the restricted zone to that building.

Hiestand said I don't think we have a problem with that. To some extent I think we are being judged by the fact that the property has not been cleaned up to the extent of being painted and marked. We deferred doing any work on it when Randal said don't do anything to this property until you come to the Town.

Public Comment.

Al Pashon said we own the property to the east where Camp Land is situated. It has been said over and over this would have no impact on the neighbors. It could probably be done so it wouldn't but there is 21 feet between the storage yard and our property. It appears that the storage yard goes north without end and could be extended all the way to I-94 if the need was there. I had a huge concern about the appearance of a steel storage yard. If there was a good site barrier between our property and that one and between the interstate storage yard it wouldn't impact us. There are trees there now. They are mature trees, you can see right through them. There are a lot of trees between the highway. The view from the highway affects our image and the Town's image retail as it is now. I have a difficult time picturing selling a \$100,000 motor homes while looking at a steel storage yard. A site barrier could be put there somehow. If it were it wouldn't affect us. You made a lot of noise about not being able to see it from 20 but you would be able to see it from I-94 and all the time from our property which is a retail business. That is my concern that it would alter the character of our property if you could see the storage yard.

Hiestand responded that Mr. Pashon's property has been a credit to the Town. You can see the investment he has there. We don't have any objection to having a 6 foot high barrier on the east and the north end and would not store outside of an area that is encompassed by that fence. There are trees there now but may not last forever. It would be prudent to put up a fence.

Public Comment closed.

Swanson closed the public hearing.

McCormick said I feel it should stay C-2, everyday shopping needs of the community.

Parkinson said you have three petitions filed. You have been given the definition of truck terminal. I think the contention is that inherent in the definition is two use variances they are requesting. That initially was not the determination of the Building Commissioner and that is why people bring appeals to you. My own opinion is that in this construction if you take a look at the way this definition reads it does not

incorporate the uses. The definition states land use with or without buildings for but not limited to. After the colon is the important part, parking, storage, maintenance, fuel sales, food service or transfer station for commercial trucks, tractors, truck trailers or other commercial vehicles. I think the operative word is for. All those particular items, parking, storage, maintenance etc. have to be for the commercial trucks. It is probably a better idea to take the two use variances independent of the special exception. You could always on the other hand condition the granting of those on this being a truck terminal so they would end if the property is not used as a truck terminal. I am not certain that definition of truck terminal incorporates those tow uses. I think they are independent. I think you could have outside storage that is not related to the use of the property; parking for commercial trucks, storage for commercial trucks. I think the storage is for the trucks and tractors and trailers. It is not storage incident to the use. That is my opinion of this.

The required findings of the special exception are under 15-6-6. You are required to find the proposed use is one listed as a special exception for this district. That is listed in the schedule of uses so you must find that in the affirmative. The second, you are also required to find in the affirmative because they have presented this special exception to the Plan Commission. The third is the operative finding. You are finding the special exception request meets the standards of the district in which the special use is to be located and the standards or other requirements are complied with. In considering that you've got 8 items, basically if you find in the negative on any one of those items you can rule against it but you have got to find in the affirmative for all of them to approve it. That is how you get at the finding of yes or no on #3.

Swanson said we have 8 standards. #2, will it change the character? I don't know if it will change it this week but I think it can. I don't think that is an improvement if it changes the character. Traffic, we didn't do a traffic study so I can't definitively say that your trucks are going to cause more problems but your guys carrying coils will be going in and out awfully slow. I don't know if there are excel and deceleration lanes. That bothers me. The last is the Comprehensive Plan. We are trying to redevelop and have a strong commercial core. I don't see how a storage yard is going to help things.

Meyer said I think under the standards is item 8, consistent with the intent and purpose of the chapter and objectives of the currently adopted Comprehensive Plan. I don't think it is.

Hiestand said we did address that at the Plan Commission. The Comprehensive Plan directs you to put things where the highest and best use is for them there is no place that you could direct Mr. Scott to that would be better suited for this use.

Meyer said that may be true. Maybe there is no place in Burns Harbor for his truck terminal. Why do we have to put a truck terminal in Town?

Hiestand said we went over that with respect to the adult uses. You have to have some place zoned in your community for these various types of uses even if you are not personally happy with the use.

McCormick asked Mr. Scott how he planned to transfer loads.

Bill Scott said most likely with a fork lift.

McCormick said a forklift is noisy and with a 20 foot mast would be visible even with a 6 foot fence.

Hiestand said it is the same equipment used at Trans United.

McCormick said once again if you look at our Comprehensive Plan the truck terminals are grouped together in Town with controlled access to the highway.

Randal Lopez said I am opposed to it mainly because of the traffic. You see how slow the trucks are moving at the intersection at Pilot. They get backed up and sit on the road. It ties up the traffic. I think the same thing could happen here. If they are coming in with coils they are going to be moving slow. We've already got that situation down there on 149. The outside storage gets to be a problem. It is hard to control it.

President Terry Swanson reviewed the eight standards for the special exception.

1. *The Special Exception shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.*

Meeks said the adjacent properties; it is compatible with the Plaza property actually it is better than that.

Meyer said on the other side if he puts a site barrier I guess it doesn't make any difference.

2. *The Special Exception shall not inappropriately change the essential character of the surrounding area.*

Swanson said I think it can change the essential character of the surrounding area.

Meeks said that is talking today not 6 months from now. Will it? No. Would we like to have a corporate business there absolutely but that is not going to be here tomorrow.

Swanson said it will change for the neighbors.

Meeks said he is going to put up a fence and leave the trees.

3. *The Special Exception shall not interfere with the general enjoyment of adjacent property.*

Meeks said I don't think it will. He will leave the trees and put up the fence.

4. *The Special Exception shall represent an improvement to the use or character of the property under consideration and the surrounding area in general, yet also be in keeping with the natural environment of the site.*

Marconi said he is going to improve the site.

5. *The Special Exception shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety, or welfare of persons or property through the excessive production of traffic, noise, smoke, odor, fumes, or glare.*

Meeks said we are going to have an increase in truck traffic.

6. *The Special Exception shall be adequately served by essential public facilities and services, or it shall be demonstrated that the person responsible for the proposed Special Exception shall be able to continually provide adequately for the services and facilities deemed essential to the special use under consideration.*

No comment.

7. *The Special Exception shall not place demands on public services and facilities in excess of available capacity.*

No comment.

8. *The Special Exception shall be consistent with the intent and purpose of this Chapter and the objectives of any currently adopted Comprehensive Plan.*

Swanson said I like the part about redevelopment, a strong central commercial core.

Meyer moved to grant the special exception of LISCO, Inc. Meeks seconded the motion.

Meeks said we have issues with 4,5 and 8.

McCormick said 1 also. It is not harmonious with the character of the adjacent properties. It is to the west of them but not any of them to the east.

Meyer amended the motion and moved to grant the special exception of LISCO, Inc. conditioned upon the parking being marked with signs and paint, and a 6 foot fence barrier erected on the east. Meeks seconded the motion.

Meeks said if this gets approved there are several exceptions I would like to make to this. The pavement has to be marked and there has to be signs, no parking within 15 feet north of Hwy. 20. The tree line has to remain intact unless otherwise naturally falls. The fence can't be less than 6 feet high and has to be put up within 180 days. The approval only goes to the petitioner. If somebody else leases the property they would have to come back to the BZA. The road that goes north on the property needs to be cut off to traffic. There will be no outside storage, only tractors and trailers. That would be the only way I would vote in favor of this.

Hiestand said we can't live with no outside storage. We'd be happy to screen it. The definition of truck terminal talks about transferring basically that is what we are talking about. In the transferring process you have to be able to sit things on the ground and come back and put it on another trailer later. We couldn't operate without the ability of outside storage.

Meyer said are we talking about coils here?

Bill Scott said he would be storing plates and bars; steel products.

Meeks amended the motion and moved to grant the special exception of LISCO, Inc. for a truck terminal conditioned upon the parking being marked with signs and paint, a 6 foot fence barrier erected on the east within 180 days, tree line remains, limit the special exception to the petitioner, closing the dirt pathway to traffic. Meeks seconded the motion. McCormick voted no, Meeks voted no, Marconi voted no, Swanson voted no, Meyer voted yes. Motion failed.

Parkinson said the law allows you to impose reasonable conditions. It doesn't allow you to impose any condition and any condition I believe the petitioner feels would strip the request of any meaning. You can't impose a condition that takes away what they are requesting to be granted. That is why they said they wouldn't agree to no outside storage. You are entitled to impose reasonable conditions. Granting the special exception could be challenged on the basis that this is not reasonable. I would tend to agree.

Marconi said nobody likes this stuff to be outside where it can be seen. If they had a building and it was all enclosed would that be more acceptable to you?

Meeks said he plans on building a building later.

Marconi said how much later?

Hiestand said I think in all fairness to not misrepresent the drawing would indicate even when he has a building Mr. Scott would still have need for an outside storage area. The building would be a real boom for his business and further isolate the outside storage from any other uses but without the outside storage he is going to rethink his approach. It is a four acre parcel. You have to think of some outside use for it. No one is going to build a one acre building on that property.

McCormick moved to deny the special exception of LISCO, Inc. for a truck terminal based upon #1 of the findings. Marconi seconded the motion.

McCormick amended his motion to deny the special exception of LISCO, Inc. for a truck terminal based upon #1,2,4,5 and 8 of the findings. Swanson voted yes, Meyer voted no, McCormick voted yes, Meeks voted no, Marconi voted yes. Motion carried.

McCormick moved to deny the use variance of LISCO, Inc for outside storage based on the denial of the special exception. Meeks seconded the motion. Motion withdrawn.

Hiestand said you could define the area where it could be stored. We are not asking to store the whole property with outside storage. We are asking for an area to do it.

Meeks said my point is we don't know how much is going to be stored out there.

McCormick moved to deny the use variance of LISCO, Inc for outside storage based on #5 of the findings that it will interfere substantially with the comprehensive citing the Comprehensive Plan page 33, encourage industrial uses where safe and convenient traffic access can be provided. Meyer seconded the motion.

Meeks questioned the denial of the variance based on the Comprehensive Plan.

McCormick said our Comprehensive Plan specifically states we want to cluster all industrial uses together. Right now the majority of them are north of Hwy 12 or on 149 in the area of Trans United and Sun Steel.

Swanson said I think we should include #2, affects the adjacent property owners.

Parkinson said your ordinance says substantial adverse affect but you do have to enunciate the basis for that conclusion. What facts were demonstrated in the public hearing which supports that conclusion?

Meyer said if we were to grant the variance for outside storage that would mean they could be being material in on a truck, unload it, put it on the ground, pick it up and put it on another truck later. How is that different from a truck terminal that we already denied?

Parkinson said it is not. It just makes the use of operating the place as a truck terminal illegal. It would be up to the Building Commissioner to say what they have got going on is in violation of the ordinance. Outside storage includes a lot of different uses.

Meeks said our ordinance says outside storage is not allowed in C-2. Why can't we just base our decision on that?

Parkinson said they are requesting a variance from the terms of the ordinance. You have to have reasons to deny it. They are entitled to petition for a variance from the terms of the ordinance. The reason you have a Board of Zoning Appeals is to review cases where people say precisely what they have said in the petition and findings that the use variance will not be injurious to the public health etc., the use and value of the area adjacent will not be affected and 3,4, and 5 when you apply the terms of the ordinance to this particular property there is going to be practical difficulties, a hardship and some kind of inconsistency with the Comprehensive Plan. Those are all determinations that they think you will agree with them. There are going to be cases where that occurs and that is why people come to you and ask for relief from the terms of the ordinance.

Hiestand said the findings are opportunities if this were to be appealed the judge is very interested in what the BZA stated was the evidence that they felt supported their findings.

Randal Lopez asked how is it a hardship for Mr. Scott if he doesn't own the property?

Parkinson said #4 requires you to look at whether the strict application of the zoning ordinance meaning no outside storage in a C-2 constitutes an unnecessary hardship if applied to the property.

McCormick amended his motion to deny the use variance of LISCO, Inc for outside storage based on #5 of the findings that it will interfere substantially with the comprehensive citing the Comprehensive Plan page 33, encourage location of industrial uses in areas where safe and convenient traffic access can be provided

and page 33, promote redevelopment of a strong central commercial core and page 35, Community Appearance. Meyer seconded the motion. Motion carried by unanimous roll call vote.

McCormick moved to deny the use variance of LISCO, Inc. for warehousing based on #5 of the findings that it will interfere substantially with the comprehensive citing the Comprehensive Plan page 33, encourage location of industrial uses in areas where safe and convenient traffic access can be provided and page 33, promote redevelopment of a strong central commercial core and page 35, Community Appearance. Meeks seconded the motion. Motion carried by unanimous roll call vote.

Attorney Parkinson will write the findings and the secretary will get president Terry Swanson's signature.

Old Business

None.

New Business

Schedule of Uses

Swanson suggested recommending to the Plan Commission to review the schedule of uses when they look at the Comprehensive Plan.

Adjourn

Meeks moved to adjourn the meeting at 9:15 p.m. Marconi seconded the motion. Motion carried by unanimous roll call vote.

Approved February 26, 2008

Terry Swanson, President

Toni Biancardi, Secretary