



PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

Board Adjustment Minutes

May 24, 2012
7:00 PM

The following members of the governing body were present:

Patricia Laws-Chair, Danny Takah-Vice Chair, John Eigenbrode, Chris Chopelas, alternate member Sidney Sandy

Staff members:

Rox Burhans
Craig Thomas
Keith Sorensen
Helen Boich, Secretary

Keith Merritt, BOA Attorney

Call to Order- Chair Patricia Laws called the meeting to order.

Roll Call- Roger Fish was absent.

Approval of Minutes- March 22, 2012-approved

Public Hearings:

All those speaking to the requests were sworn in.

SUP2012-006 Cahill Office Expansion: Special Use Permit application to construct an accessory garage located behind the existing structure. Location: 120 Unionville Indian Trail Road; Applicant: Todd Cahill.

Planner Craig Thomas presented the request. The applicant is in the process of converting a residence into an office building and is requesting to construct an accessory structure 3,500 square feet in size behind the building. The property is zoned Central Business District and is located in the downtown area. A Special Use Permit is required being the accessory structure exceeds 60% of the size of the primary building. The building on the site is 1800 square feet.

The project is being developed in phases. The first phase is to rehab the residence, pave the driveway and the circulation area. Phase 2 would be the accessory structure. The applicant is requesting to pave the pad for the structure as they are paving the driveway and the circulation area. The accessory structure will be two stories, garages below with an office on the second floor.

Mr. Thomas stated as part of the project a staff analysis is done with regards to parking, landscaping and trash enclosure. There are parking calculations for Phase 1 and Phase 2 and if they eventually develop more on the site Phase 3 would be evaluated for parking as well. Staff is of the opinion that the parking requirements have been met. In regards to landscaping, trees have been removed and there is a landscaping plan to mitigate by replacing some of the trees. Staff is of the opinion the mitigation process has been met. There is a site plan, in house, addressing the trash enclosure. It is screened and it calls out the building materials would match the primary building. The required real estate appraisal submitted by William R. Morgan Company stated the proposed accessory structure will have no detrimental effect and no diminution in value to the surrounding properties.

Mr. Thomas stated staff is of the opinion the request is consistent with the Comprehensive Plan in meeting with Goal 1.3.1-Quality of Life: Properly conditioned, the proposed project would be required to adhere to certain architectural guidelines and would implement common urban design in a key area of town.

If the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the site be subject to the following conditions, along with the Board's approval of the special use permit:

1. The building footprint of the accessory building shall not exceed two times the footprint of the primary building.
2. The accessory building shall not exceed the height of the primary building.
3. The accessory building shall be constructed behind the primary building.
4. The accessory building shall be situated such that a minimum 10 foot side and rear setback is established. This area shall be a grassed or vegetative strip.
5. The accessory building shall be constructed of similar materials and colors as the primary building.
6. The trash enclosure shall be constructed of similar materials and colors as the primary building and be consistent with UDO Section 13130.
7. The garage area of the accessory building shall be used for vehicle storage, equipment storage, paint supplies, and similar materials.
8. Storage of hazardous materials is prohibited.
9. Outdoor storage of materials is prohibited.
10. The land uses shall comply with permissible uses listed in UDO Section 520.020(G).
The following uses are not allowed:
 - a. Industrial
 - b. Manufacturing
 - c. Warehousing
 - d. Recycling operations

11. All tenants are required to obtain all Town, County, and State permits to legally register their business operations.
12. Architectural renderings of the accessory building shall be submitted to Town staff for review. The renderings must be approved prior to construction.

Mr. Thomas stated with any approval the Board of Adjustment must find the following:

1. Whether the application is complete.
2. The Board will consider whether the application complies with all of the applicable requirements of this ordinance.

The Board of Adjustment must then make the following findings: That the request does:

1. Not materially endanger the public health or safety; and
2. Not substantially injure the value of adjoining or abutting property; and
3. Is in harmony with the area in which it is to be located; and
4. Is in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

If one of these findings cannot be made, then the Board must move to deny the special use permit request, stating for the record why the Board has decided to do so.

Member Sandy asked about the size of the building, the pavement and the impervious area. Mr. Thomas stated the impervious area for phase 1 is approximately 17,500 sq feet so detention is not required. Phase 2 is approaching the 20,000 sq ft threshold but that would be addressed during the site plan review.

Chair Laws stated the applicant has indicated he would like to use this as a warehouse space, and that is not a permissible use. Mr. Thomas stated it is noted in the draft conditions as not permitted. Ms Laws stated she has not read in the report that it cannot be used as a living space. Mr. Thomas stated that issue can be added as a condition. Mr. Thomas stated residences are not allowed in the General Business District.

Mr. Jack Cahill, applicant, stated he would like David Conklin, the architect for the project, to speak. Mr. Conklin stated he is curious where the 10 foot setback came from. When the survey of the property was done there was no rear setback at all. He stated he has concern about that. There are many similar properties in Indian Trail that have no setback. He stated that is a question he would like answered before it is established there is one.

Mr. Thomas stated it is part of the landscaping section of the Town ordinance that requires a 10 foot vegetative strip between property lines. Chair Laws commented Mr. Conklin could be referring to properties that are grandfathered in. Mr. Conklin agreed that is possible. Mr. Conklin stated he questions that Indian Trail would favor multi use projects and the owner would not want to be limited to not having any residential on the site. He stated Mr. Cahill had mentioned to him he would like to have an office building with residence above and have mixed use on the project.

Mr. Thomas stated the current zoning does limit it to non residential; they would still be able to go through a rezoning process to do some kind of mixed use residential.

Mr. Conklin stated that answers his question, it allows the door to be open for them to do that in the future. He stated Mr. Cahill has expressed the desire to purchase the property next door which is now a rental home and then develop that property in with this property. He stated basically they want to keep their options open.

Chair Laws asked that at this time they do understand that the zoning is such that this is not permissible.

Mr. Conklin replied, correct, it will just be office use.

Mr. Thomas stated Section 810.180 does require a 10 foot wide landscape setback from structure to structure.

Chair Laws asked Mr. Conklin if that answered his question. Mr. Conklin replied it does and asked when was the daycare center done by the Pharmacy? Has that been recent because there is no setback at the daycare center as he can tell?

Member Takah stated the Board is only interested in this property, what other things that are going on have no relevance here.

Mr. Thomas stated Union County Public Works would be involved with any office to residence conversion because there are different allocations as far as water and sewer.

Member Takah asked about the one water tap in and how will that relate to the extra building.

Mr. Thomas replied the project is being developed in phases so what they are looking to do in Phase 1 is to get the concrete down. The project has been routed to Union County Public Works, they indicated when the structure went in they would look at it at that point. It would be coordinated with them during the Phase 2 site plan review. Mr. Thomas stated as of today there is just a certain amount of allocation, there is a possibility future allocation could be freed up.

Member Chopelas stated so there is no guarantee that if they wanted a second sewer tap there are going to get it. Mr. Thomas replied correct.

Member Sandy asked where the future building would be. Mr. Thomas replied Phase 3 would be years down the road and be another office building in the next lot. That would not require a Special Use Permit because it is not an accessory structure. When they decide to develop Phase 3 it will go through the site plan review process, parking and landscaping will be addresses at that time.

Chair Laws asked about the parking site plan. She stated she knows the County Fire Marshall did not have any concerns but is there room on the side of the building for fire vehicles. Mr. Thomas stated the width is 18 ft wide and is sufficient.

Member Takah asked if all the neighbors have been notified of the project. Mr. Thomas replied yes.

There was no further discussion.

Member Eigenbrode motioned the application is complete.

Member Chopelas seconded the motion.

All members voted in favor.

Member Takah motioned the application complies with all of the applicable requirements of this ordinance.

Member Eigenbrode seconded the motion.

All members voted in favor.

Chair Laws called for a vote on the Findings of Fact.

Member Eigenbrode motioned it does not materially endanger the public health or safety, as conditioned it does not allow for hazardous material to be stored.

Member Sandy seconded the motion.

All members voted in favor.

Member Takah motioned it does not substantially injure the value of adjoining or abutting property as stated in the required appraisal report.

Member Eigenbrode seconded the motion.

All members voted in favor.

Member Chopelas motioned it is in harmony with the area in which it is to be located according to the Village Plan for the location.

Member Takah seconded the motion.

All members voted in favor.

Member Eigenbrode motioned it is in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans as presented by staff.

Member Chopelas seconded the motion.

All members voted in favor.

Chair Laws asked Jack and Todd Cahill if they agree with the conditions to include **10 e., the accessory building will not be use as living quarters.** Both applicants agreed to the conditions as stated.

Member Eigenbrode motioned to approve SUP 2012-006 as conditioned to include condition 10e. and the Findings being made.

Member Chopelas seconded the motion.

All members voted in favor.

SUP2011-008M Open Air Merchant Market: Special Use Permit application to modify the original permit. Location 155: Corporate Boulevard; Applicant: Tim Sebert.

Craig Thomas presented the request to modify the original Special Use permit in regards to the trash enclosure and the table and tents. Mr. Thomas stated the SUP was approved November 2011. The business is located within a Regional Business District. He stated there were several conditions that were related to the site and the market operations. The modification relates to the trash enclosure and the display tables. The applicant is of the opinion the trash enclosure is not necessary; he has relocated the dumpster and the recycler to the rear of the property. It is not visible from the right of way and the tables are simply labor intensive, very costly, very repetitive every week. The site is 3 acres located on Corporate Boulevard. It is primarily used during the week as consignment sales for furniture. There is an accessory building located at the rear of the site, there is paved parking located in the front and there is a fenced in area behind used for the market operation.

Mr. Thomas stated in the analysis Condition #7 states ‘A trash enclosure shall be built consistent with UDO Chapter 13130.’ The applicant is requesting to waive this requirement. Condition #15 originally read “Tables and tents used for the outdoor merchant market may be assembled no earlier than Friday after 5 pm but shall be disassembled on Sunday at the conclusion of the market. The applicant is requesting to remove the tables from this condition. Tents are used sporadically.

Mr. Thomas stated since this lot did not have a trash enclosure it is considered a non conforming lot. Any intensification of the use it is required to bring up to conformity. A trash enclosure is required with any new development. The current location is not visible from the right of way but part of the market operations. Staff is looking to have the enclosure safely contain the trash, separate the port a johns and also for esthetic reasons. He stated in regards to the table display staff has classified it as a temporary use of tables, an accessory use and if there is going to be a permanent display of the tables staff would like to see some permanent delineation of the market such as a park shelter. Mr. Thomas stated there was a real estate appraisal conducted by William R. Morgan Company with the original SUP. It was not required to have an updated version for this modification request because the market operations itself is analyzed. In looking at the Comprehensive Plan the business is located in the 74 Business Corridor which provides a variety of commercial good and services and is a major area of economic activity. Mr. Thomas stated staff has concluded it does conform with Goal 1.3.2 Land Use in that the subject site is in harmony with the area in which it is located. There are several service-based and retail businesses in the immediate area. Properly conditioned, potential land use conflicts between neighboring properties have been avoided.

Mr. Thomas stated if the Board is to select to approve the staff recommends the modified conditions to read:

Condition #7- A trash enclosure shall be built consistent with UDO Chapter 13130 by May 31, 2013. This would give the applicant a year to get the operation up and running.

Condition #15- Tables and tents used for the outdoor merchant market may be assembled no earlier than Friday after 5 pm but shall be disassembled on Sunday at the conclusion of the market. If tables are displayed throughout the week, a structure shall be constructed to provide a permanent delineation of the market area.

Mr. Thomas stated with any approval the Board of Adjustment must find the following:

1. Whether the application is complete.
2. The Board will consider whether the application complies with all of the applicable requirements of this ordinance.

The Board of Adjustment must then make the following findings: That the request does:

1. Not materially endanger the public health or safety; and
2. Not substantially injure the value of adjoining or abutting property; and
3. Is in harmony with the area in which it is to be located; and
4. Is in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

Chair Laws asked about condition #15 in regards to the structure. She stated there is no specific type of structure called out and will this need to be approved by the Planning Dept. Mr. Thomas replied it would be required to go through a site plan review by the department.

Member Chopelas asked if the Town has considered any type of shielding or screening so that the tables cannot be seen. Mr. Thomas replied additional landscaping has been offered up.

Member Takah asked Mr. Thomas to clarify what exactly he means by a trash enclosure. Mr. Thomas replied a permanent structure made of brick with a synthetic material for gates that matches the primary structure.

Member Sandy stated his concern the tents will not be the permanent wood structures as the Flea Market on Independence. Mr. Thomas stated they will not. In the letter of intent the applicant is just addressing the tables; Mr. Sebert is fine with the tent requirement staying as is.

Tim Sebert, applicant and owner, stated his concern regarding the tables. He stated they purchased all weather tables and have come across the situation of having to populate the market on the weekends. It is a very hard task. He stated there is no public exposure during the weekdays and no interest was being generated for the business 5 days a week. This has resulted in an almost complete standstill; no income revenue has been coming in at all. Mr. Sebert stated he talked to other flea market owners and they all said the problem is if you don't have exposure then you will get no interest. And that is exactly what has happened for the merchant market. By leaving the tables up, first of all they are not an eyesore, and he stated he knows this is his opinion but he can give the opinion of thousands that will say the same thing. They are white and new and look better than cars sitting out there with rust on them. But they do attract attention. He stated he tried it on a trial basis and people did stop by and ask about them. Mr. Sebert stated from this learned experience he is asking the Board to allow them to stay up seven days a week because it is a merchant market and there need to be that visibility seven days a week to populate it. Mr. Sebert stated to build a structure would put him out of business; he does not own the building or the property. He stated he asked two local contractors what it would cost to enclose the area, prior to being informed it was a condition, and it was even a consideration down the road if he had bought the property. For a simple enclosure because of the size it was

estimated at \$300,000.00. If people want tents or shields from the sun they can put up their own up and take them back down. He stated he is asking the Board to give him some relief from the enclosure itself. Mr. Sebert stated they put up trees and bushes to use as screening but at the same time this is a business district, he stated he wants people to know he is a business. Too much cover isolates the business and customers are lost. Visibility is important to success.

Mr. Sebert stated as a requirement of the original SUP bushes were planted on the side of the property. It was discovered there is asphalt on exterior of the fence. He stated he was told by Ms DeHart they would have to plant them on the interior side of the fence. There is deep gravel and with the acid of the gravel no shrubbery would live. He stated merchants went to the Town Hall for their privilege license and were turned down because they were told the market was shut down temporarily until the bushes were in. He stated he went out and spent every bit of profit the store had and put the bushes in but did let everyone know that anyone who would put them in informed him they would die within thirty to sixty days. 50% of them are already dead in the first 3 weeks. There is a lot of wasted money there and it shouldn't have been spent but they complied, they are there and they are all dying. He stated they are trying to comply but in a manner that won't affect the business. He stated he wants to keep the business looking good and he wants to bring customers in but he cannot close his business off from the public.

Mr. Sebert asked what the purpose of a trash enclosure is.

Chair Laws replied it was explained in the staff report. Mr. Sebert replied he did not hear it. Mr. Thomas stated it is to help bring the site into conformity. With any new development or intensification of use this is one of the elements that bring it into conformity. It is an esthetic as well as a physical separation. Mr. Sebert stated the property is fenced all the way around with a gate that locks. The trash receptacles are behind the building, it is the only place on the property they can be located where the trucks can get to them. He stated he was told he would have to spend another 5 or 6 thousand dollars to put up a brick enclosure, which he does not have. They are not visible from any corner of the front of the property. As far as esthetics the port a johns are visible. Mr. Sebert stated they were told they would need them even though the store has 4 bathrooms.

Mr. Thomas stated it was Union County Public Works that required the port a johns.

Mr. Sebert stated the trash receptacles are completely out of view, they are not being used by customers and they have locked sliding doors. The previous business has had them in their open parking lot for years without any enclosure. He again stated he is not the owner of the building. Mr. Sebert stated he loves Indian Trail but he is learning there is a double edge sword in this community because within 5 miles there are about 40 trash enclosures that are not covered, fenced in or bricked in and they are right up against the road in most cases. He stated he has pictures of all of them. Mr. Sebert stated he has complied the best he can, he has put them out of view, they are not dirty and they are cleaned up every day. He stated his main concern is to not overburden the business with a hardship. Mr. Sebert stated he understands the grandfathering clause but if there is a worry about the esthetics then things should be equal.

Mr. Sebert submitted the pictures as evidence but no members requested to view them.

Member Sandy asked if the enclosure could be made of anything other than brick, could it be made of wood. Mr. Thomas replied the enclosure must be made of brick or synthetic material to match the primary building.

Chair Laws asked Mr. Sebert if he had moved the dumpsters. Mr. Sebert replied United Rentals had the dumpster in view at the right of the back bay. They were moved behind the back building.

Chair Laws asked Mr. Sebert if there was signage for the building and if she drove by today would she know what that property is for. Mr. Sebert replied there is signage up high, not noticeable, don't know why. He stated he has had people go by the building and call him not being able to find him. For some reason it is not a noticeable sign.

Chair Laws stated would it not be better to have signage that explains the business rather than tables set out. Mr. Thomas stated there is a free standing sign and a sign on the building.

Chair Laws asked if a landscaper would not have the forethought to build a raised bed for scrubs. Mr. Sebert replied two different landscapers stated it could be planted or dug out for about \$12,000.00. He stated he assumes it would be about the same amount of money to build it up and he doesn't have it.

Chair Laws asked Mr. Thomas if the plants are dying and he went back out there what would he do, would Mr. Sebert be sited for that. Mr. Thomas replied yes.

Member Takah suggested free standing planters.

He stated he does not see the marketing strategy by having the tables up all week.

He would not make the connection. Mr. Sebert stated they do what they are intended to do, draw attention. An empty parking lot does not. The signage is not that great at the Pineville flea market. The tables draw the interest, the same as Sweet Market. For people who are looking for that type of business they look for such tables or displays.

Member Eigenbrode asked why this was not a Variance from the UDO. Mr. Thomas replied the non conforming section of the Ordinance states if you are putting an investment into the property it needs to be brought up to conformity.

Mr. Sebert stated he is not making an investment into the property; he is just using the facility. He is not building, he is not changing a thing, and the tables are not planted in the ground. He stated he struggles with this not only because he does not have the money to do it but for conformity for investment in the property.

Chair Laws stated it has been six months since the permit was approved and Mr. Sebert is coming back before the Board asking for a concession. Mr. Sebert stated they have been working to get the business up and running.

Member Eigenbrode stated to remove the two conditions it's not continuing a non conforming use because he doesn't own the property. The Special Use is just for the business to operate. He stated he wonders if they could just be waived.

Member Chopelas asked would this not be considered an occupational change because there was a totally different type of business at the location. The site needs to be brought up to standard to meet the new requirements.

Chair Laws stated the public is now on the site.

Senior Planner Rox Burhans stated he would like to speak to issues that were not heard that may be important for the Boards consideration and deliberation. Both the trash enclosure and the table removal were agreed to prior to the previous SUP being approved and the use being established. The applicant was in agreement at the public hearing. Mr. Burhans stated he believes this is important as the items are being discussed. He stated there was discussion regarding if he was a property owner he would be willing to make some investment, as a tenant I would be willing to make a different level of investment. Once a use is established on a property, whether by an owner or tenant, the same level of investment must be made by the requirements of the UDO or a Special Use Permit with associated conditions. It is not germane to the discussion. Mr. Burhans agreed the dumpster is not as visible in the new location but there are a lot more people being brought to the site and in view of the enclosure. This is part of the rationale of enclosing it. Dumpster enclosures whether they are or are not visible provide good containment. They sometimes become storage areas. The tables were addressed as a temporary improvement not to be up on a permanent basis. If they were to be permanent an enclosure would be required. Mr. Burhans stated these issues were not being highlighted enough in the discussion.

Mr. Thomas stated the non conforming section of the Ordinance states if a use is being expanded by 15% or less nothing needs to be done. The area of the market operation exceeded the 15%. Thus certain site aspects needed to be brought up to standard. It is not specific as to what aspects need to be brought up. It was staff's opinion the trash enclosure was one of the items.

No further discussion.

Member Chopelas motioned the application is complete.

Member Takah seconded the motion.

All members voted in favor.

Member Eigenbrode motioned the application complies with all of the applicable requirements of this ordinance.

Member Chopelas seconded the motion.

All members with the exception of Member Sandy voted in favor.

The Board of Adjustment must then make the following findings: That the request does:

Not materially endanger the public health or safety.

Member Chopelas motioned it does endanger the public health or safety because the trash dumpster is not enclosed.

Member Takah seconded the motion.

All members agreed. The finding was not made in support of the request.

Not substantially injure the value of adjoining or abutting property.

Member Eigenbrode motioned it does not as stated in the required appraisal report.

Member Chopelas seconded the motion.

Members Eigenbrode and Chopelas voted in favor of the finding.

Members Sandy, Takah and Laws voted the finding cannot be made. The finding was not made in support of the request by a 3 to 2 vote.

Is in harmony with the area in which it is to be located.

Member Takah motioned it does not because of report, the UDO, the Master Plan and the Comprehensive Plan.

All members agreed.

Is in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

Member Takah motioned it does not meet staff's recommendation or the UDO or Master Plan for Indian Trail.

Member Sandy seconded the motion.

All members agreed.

Member Chopelas motioned to deny SUP 2011-008M stating the Findings of Facts cannot be made.

Member Sandy seconded the motion.

All members voted in favor.

VAR2012-001 Sun Valley Commons Digital Sign: A request for relief from UDO Section 9140.040, Table E., to allow for a digital message board within a Village Center Overlay. Location: 6449 Old Monroe Rd; Applicant: The Moser Group.

Planner Keith Sorensen presented the request to include a digital message board in the monument signs for the complex. Mr. Sorensen stated Sun Valley Commons Phase III is currently under development with a 14 screen movie theatre slated to open by the end of June this year. There are also 6 buildings planned in addition to the movie theatre. The anticipated tenants will be a combination of restaurants, retail shopping services, an expansion of the multi tenant shopping center that is already there. The request is variance to Section 9140.040 which regulates both digital and manual change message boards. The ordinance allows for the commercial use within the Hwy 74 Business Corridor only to have message boards. Sun Valley Center is outside of this business corridor. The message board would be 11 square feet, 11 % of the total sign area. Two new monument signs are proposed, one at either entrance on Old Monroe Rd and Wesley Chapel Stouts Rd. The center is predominately surrounded by residential zoning districts.

Mr. Sorensen stated the staff analysis is the digital message boards are only allowed on the Hwy 74 corridor due to the concentration of commercial uses unlike Old Monroe Rd like other town thoroughfares have more of a mixture of uses, including residential. Sun Valley Commons is within a village center overlay district. The intent of this overlay is to create a pedestrian oriented atmosphere by establishing specific regulations for types of land uses allowed such as

building size, setbacks and sign criteria. The sign criteria for a village center overlay is to encourage smaller signs with more subdued forms of illumination.

Mr. Sorensen stated in relating to the Comprehensive Plan it relates most to Goal 1.3.1 Quality of Life- to create a unique identity for Indian Trail with common urban design elements implemented throughout the downtown as well as other areas which would include Village Centers. Mr. Sorensen stated staff feels a digital sign would not generally be in harmony with the goal of trying to create a more pedestrian scale environment and the signage requirements related to that.

Mr. Sorensen presented pictures of six shopping centers similar to Sun Valley Commons and their method of signage. Only one utilized the digital message board. The web appears to be the most common venue for advertizing.

Mr. Sorensen stated per UDO Chapter 380.050, the Board of Adjustment may grant a variance if it finds that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that by granting the variance the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. The board may reach these conclusions if it finds that strict compliance will:

1. Not allow applicant to make reasonable use of property;
2. The hardship is suffered solely by the applicant;
3. Hardship relates to applicant's land rather than personal circumstances;
4. Hardship is unique or fairly so, rather than one shared by surrounding properties;
5. The hardship is not the result of the applicant's own actions;
6. Will not grant an extension of an existing nonconformity or initiate a nonconforming land use.

If the Board desires to grant this variance, then it may place reasonable conditions on the request that are necessary for the general public health, safety and welfare of the Town's citizens. Any such conditions are to be mutually agreed between the Board and the applicant. If the Board is unable to find for all six findings of fact in this variance, then the Board must move to deny the variance request.

Member Sandy asked if he is correct in that digital message boards are only allowed on Hwy 74. Mr. Sorensen replied for commercial uses, the sign ordinance does allow institutional uses like schools, churches, emergency uses, government agencies or facilities to have message boards outside of the Highway Corridor.

Mr. Buzz Bizzell, owner of a firm that designs and consults with small towns as far as creating synergy with making main streets better stated he also consults with mix use town center developments. He stated it is all about keeping tenants and the centers open for business. Communication is a key element to make a small village center successful. The 11% of the sign is just creating some communication; it will not overwhelm the sign. It will elevate the quality of the signage in the town. He stated with one square foot of signage change others would be willing to change their signage. He stated they create a level of design that is higher than what is in place now and that raises the level of design for the next developer. It is a TV screen, not little

dots, light bulbs or a scoreboard type effect. It can show any advertizing. The developer wants to use it for communication to notify the public what is going on.

Chair Laws asked Mr. Bizzell if the size of the display is 17" tall. She commented it would be the size of 2 pieces of notebook paper. He replied yes, roughly 8 feet long.

James McGee, Southern Real Estate, agent for the property owner of the Harris Teeter shopping center stated they fully support the development but are neutral to any decision the Board of Adjustment makes on the request.

Board of Adjustment Attorney Keith Merritt stated the Board may want to be aware of and the staff may want to address is that for the signage of this type that is allowed on the Highway 74 Corridor there are specific regulations about the sign turn over times, a whole set of regulations that go along with allowing the signs in the corridor. He stated when Mr. Bizzell was speaking about changing the text every 12 hours Mr. Merritt stated he is not sure if that is in conformance with what the Hwy 74 Corridor conditions are or not. If a decision is made to grant the variance one of the issues the members would want to look at is making sure if you are allowing this request it is under the same rules and regulations that it would be allowed under the Hwy 74 corridor.

Mr. Sorensen stated what is allowed in the corridor, whether it is digital or manual, is up to 50% of the total sign area and a static message for a minimum of 10 minutes. What the applicant is proposing is less than what is currently allowed in the 74 corridor.

Chair Laws entertained a motion whether the permit is in the Town's jurisdiction according to the table of permissible uses.

Member Chopelas motioned the permit is.

Member Eigenbrode seconded the motion.

All members voted in favor.

Member Eigenbrode motioned the application is complete.

Member Chopelas seconded the motion.

All members voted in favor.

Findings of Facts:

1. Strict compliance with the UDO will cause the applicant not to be able to make any reasonable use of their property.

Member Takah stated with the strict compliance with the UDO it is not in harmony with the community and the UDO.

Chair Laws stated #1 is asking compliance does not allow the applicant to make any reasonable use of their property. She asked if the members agree. Member Takah stated he is saying it does not allow the applicant to make any reasonable use of the property. According to the UDO and harmony it should be down to the second or third one. Chair Laws stated she disagrees. Member Chopelas stated he is making reasonable use of the

property with the development. Chair Laws stated she does not believe a 17” digital message board is going to keep him from being able to use that property as far as the original site plan that was submitted. Member Chopelas seconded the statement which was presented as a motion.

All members agreed.

2. The hardship suffered by the applicant is solely the applicant’s, and is not suffered by any other neighbors and/or the general public.

Member Chopelas motioned the hardship is suffered by all retail establishments in the area.

Member Eigenbrode seconded the motion.

All members agreed.

3. The hardship suffered by the applicant relates solely to the applicant’s land, rather than any personal circumstances on the applicant’s part.

Member Laws motioned it is a personal preference; they want a digital message board.

Member Chopelas seconded the motion.

All members agreed.

4. The hardship suffered by the applicant is unique (or nearly so), rather than being shared by many surrounding properties.

Member Eigenbrode motioned it is shared by the surrounding properties.

Member Sandy seconded the motion.

All members agreed.

5. The hardship suffered by the applicant is not the result of the applicant’s own actions.

Member Eigenbrode motioned it is not the result of the applicant’s own actions; it is a conflict with the UDO.

Member Chopelas seconded the motion.

6. The variance will neither result in the extension of a nonconforming situation in violation of UDO DIVISION 1400, Nonconformities, nor authorize the initiation of a nonconforming use of land.

Member Chopelas motioned it would result in a nonconforming situation in that area because the sign is not allowed in that part.

Member Eigenbrode seconded the motion.

All members agreed.

Attorney Merritt stated the Board has failed to agree with Findings 1,2,3,4 and 6 and did find in favor for the applicant #5 Finding.

The applicant asked to be heard. Chair Laws at the discretion of the members stated the Board is ready to vote.

Attorney Merritt instructed the members a motion can be made to deny based upon the failure to find the necessary Findings required by the UDO.

Member Takah made the motion as stated.

Member Chopelas seconded the motion.

All members voted in favor.

Other Business-none

Chair Laws asked if there would be a June meeting. She informed the clerk she will not be available. Mr. Thomas stated there is a possible variance if it is received in the office in time to make the application deadline.

Member Sandy stated he will not be available. There could possibly be 4 members available.

Adjournment

**Town of Indian Trail
Board of Adjustment**

_____ **Chairman** _____ **Date**

_____ **Secretary**