

CITY OF BRANSON  
BOARD OF ADJUSTMENT  
MINUTES  
April 3, 2008

CALL TO ORDER: Chairperson Alexander called the regular meeting of the City of Branson Board of Adjustment meeting to order at 7:00 p.m. at the City Council Chambers, 110 W. Maddux St., Branson, Missouri.

ATTENDANCE
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1. Roll Call

Boardmembers Present: Farris, Keller, Robinson, and Vice-Chairperson Parnell.

Boardmembers Absent: None.

Also Present: William Duston, Assistant City Attorney;  
Ruth Denham, Assistant Director of Planning and Development;  
Sonja Paden, Office Assistant II.

BOARD BUSINESS
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2. Approve Agenda.

Boardmember Farris requested that the current Item 4 be removed from the agenda to instead be presented before the board on April 24, 2008, and replaced with Item 5, effectively renumbering the current Item 5 as Item 4.

MOTION:

Motion by Boardmember Farris and seconded by Boardmember Robinson to approve the format of the April 3, 2008 agenda as amended.

AYES: Boardmembers Farris, Keller, Robinson, and Vice-Chairperson Parnell.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Motion to approve the April 3, 2008 agenda as amended carried with a 4-0 vote.

**3. Approve Minutes.**

A. October 25, 2007.

**MOTION:**

Motion by Boardmember Farris and seconded by Boardmember Robinson to approve the minutes of the October 25, 2007 meeting.

AYES: Boardmembers Farris, Keller, Robinson, and Vice-Chairperson Parnell.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Motion to approve the minutes of the October 25, 2007 meeting carried with a 4-0 vote.

<b>OLD BUSINESS</b>
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None.

<b>PUBLIC HEARINGS</b>
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4. Request For Approval Of A Variance From Section 410.040 Of The Branson Municipal Code Pertaining To Front Yard Setbacks For Properties Located At 130 And 132 Oak Ridge Rd. Branson, Missouri. Project No. 08-19.2 (08-01900002).  
Applicant: Mark Ruda.

PARNELL: We just have one item on our public hearing this-- this evening and, um, a variance application has been received from Mark Ruda requesting a variance from Section 410.040 of the Branson Municipal Code pertaining to front yard setbacks for property located at 130 and 132 Oak Ridge Road. This property is currently zoned "C" for commercial and contains .4 acres more or less and is currently under development. The applicant has requested the variance based on the following, and I'll let the commissioners read the reasonings for them. Um. Where should we have, um, the applicant stand to get good microphone coverage? Oh, there's a podium right there.

DENHAM: Yes. There's a podium, but there's no microphone.

PARNELL: No microphone. Come join us at the--

DENHAM: Here, let me move my stuff. And this is the item that's going next time. Oops. There's the location in purple. Here's an aerial view. I have a video clip and maybe you can point out the--

RUDA: Sure.

PARNELL: Mark, would you-- would you please identify yourself in the microphone for the--

RUDA: Sure.

PARNELL: --purposes.

RUDA: My name is Mark Ruda. I'm the manager of Cabins at Grand Mountain Phase 3, applicant for this, ah, issue. This is-- on the video we're looking at Oak Ridge Road, ah, public street off of Wildwood Drive just north of 76. Um. I think-- and there's a little piece of property that we're building some log cabins on, um, condominium ownership.

DENHAM: Here's the location and there's that one strip, which is at the request of the variance.

ROBINSON: Mark, could you show us in relation to the street, um, where-- where the, ah, variance would--

RUDA: Sure.

ROBINSON: --would be there?

RUDA: Would it be okay if I did it on this sur-- survey here?

ROBINSON: Sure.

RUDA: Okay.

ROBINSON: Great. Will you show us also in relation to where, ah, whose-ever's property is there.

RUDA: Sure. So, just to give everybody their bearings. Highway 76 sits right here, okay? So, Bobby Vinton's theater Blue Velvet is-- is generally right here.

ROBINSON: Yes.

RUDA: As we're going down the hill, Oak Ridge Drive comes this way.

ROBINSON: Yes.

RUDA: Um. So, ha--

ROBINSON: And-- and this-- and this enters into the development.

RUDA: This enters into the development. This end of the public street is approximately right here.

ROBINSON: Okay.

RUDA: Okay. Just for general purposes.

PARNELL: And this is the plaza--

FARRIS: That is on us-- ah, north end of--

RUDA: Yea. So the entrance to the Tanger Mall, the back kind of-- the side entrance is right over here where this dent is. Okay?

PARNELL: I was out there this afternoon. This is the-- this is where the two units in question are.

RUDA: This-- this is the-- that's correct.

PARNELL: Right. So this is 32, or what was it? What were the two numbers there?

RUDA: 130 and 132 I believe are the numbers. 130 and 132.

PARNELL: So this-- this one was 130 and that was 132.

RUDA: Gotcha; correct.

PARNELL: Where is the area of, um, um, that you need the setback altered from?

RUDA: Okay. So the-- maybe we can look at it a little bit closer here.

PARNELL: Okay.

RUDA: So let-- let me go back to this. So what we're doing is building a few condominiums in here. Generally, because of the topography, this area when they developed what the-- was called Oak Ridge Subdivision, this area kind of the home of unsuitable material got pushed down here functionally, is what happened. Um. And so when we started excavating this, it was-- we ended up with a lot of unsuitable fill and so we just kept digging down and digging down and digging down. Um. When we did that, it made it more important for us to build closer to the street because we-- we want and our customers want something very close to walk-in, and we need a certain-- a number of those for ADA and accessibility purposes. Um. They don't all have to be, but-- but customers like them, so we like to do that. Um. So because of the steepness of-- of the grade, we like to-- we wanted to build them, um, relatively close to the front setback. Um. So we've-- so we built these cabins that are in here. We-- as you can look at this, you know, our intent was to follow the setback, um, and-- and we did do that everywhere except this corner on 58. Look at an enlarged view of this--

PARNELL: Oh, I see; yea.

RUDA: Okay? What happened is the setback-- 25-foot setback and we-- th-- the deck, as my understanding, can be on the setback; the building cannot be. So it is this corner right here of which I'm off for the setback. From, ah-- and this-- some of this stuff was in the letter as well, but, you know, from a practical purpose, what really happens is we have the surveyors come out. We stake the property then we do the excavation. We have the surveyors come back out and stake the property again then we put the forms in for our concrete for our-- for our foundations. Well, they actually, you know, they can't form on top of the markers, so they actually move them, so we measure off of an offset. Well, you know, just-- I can't tell you just exactly when it happened or where it happened, but likely the-- what happened is, you know, with-- based on the curved street right here, we missed an offset on this front corner here, you know. We-- it was not intentional. I think it's obvious from the rest of this that it w-- was not intentional and-- and, you know--

ROBINSON: And the offset's approximately two feet--

RUDA: It's approximately two feet; that's correct.

PARNELL: This-- this dotted line--

RUDA: This-- this dotted line is the offset.

PARNELL: --is the offset line. Okay.

RUDA: That's-- that's-- that's the setback line.

PARNELL: Yea; okay. And so the maximum excursion here is two feet.

RUDA: That's correct.

PARNELL: Okay.

RUDA: That's correct. Um. You know, the-- the setback is not an inspected item, city inspected item. So the reason that it came up in this case is because it is a condominium because the plats obviously have that on there. So, you know, I can't say that it has never happened before, it likely probably has, but it is not a normal inspection item. Um. But it does obviously go through condominium plats, so that's-- it was not our intention to do it, and this is where— this-- this is obviously where-- where the problem exists.

PARNELL: I should mention to you, Mark, that because we have only four commissioners here this evening--

RUDA: Uh-huh.

PARNELL: --um, affirmative on all four will be required to pass it on.

RUDA: Okay.

PARNELL: It has to be unanimous.

RUDA: Okay.

PARNELL: Any commissioners have any questions?

FARRIS: Mark, I-- what I usually do is I take, ah, the applicants through our 4-point test. Ah. A lot of people think that our job is just to do what's fair and--

RUDA: Sure.

FARRIS: --one way or another, that's not what the-- the guidance of the ordinance is, but--

RUDA: Sure.

FARRIS: --I-- I don't think tonight I'm going to take you through those points. I think what you've done is you've recognized what those tests are and you've incorporated those in-- into what I-- I saw in your application. I think it appears that you've-- you kind of track those along, but, um, is there anything beyond what you placed in your application on those four points. There was four paragraphs that we got that appears to kind of track those, ah, those tests that we have to have and, basically, we have to find that each of those, you know, each of those tests are met. So is there anything that you'd like to ask--

RUDA: I-- I guess the--

FARRIS: --or add-- add to those?

RUDA: The-- the one issue is, you know, when I was reading through the application for the requirement, it-- you know, one of the requirements was that you have to show that this was not-- essentially not your fault. And, you know, I-- I guess, you know, that puts me in a little bit of a hard position. I can show lots of places that it could-- it could've been this person, this person, this person because I didn't-- you know, short of being out there, you know, every time a survey, you know-- I-- I can't tell you if the survey was off or if the excavation was off or if the concrete forming was-- I-- I can't tell you exactly who created the problem. I-- you know, we did not do it intentionally. That was, you know, that was not our intention, obviously. You know, as the applicant, you know, we hired the construction done, but I cannot absolutely, without any doubt, tell you exactly who was-- was responsible.

KELLER: This is built on like, ah, stilts, so to speak.

RUDA: That's-- that's-- that's correct.

KELLER: They're forty some feet in the air and--

RUDA: That's correct.

KELLER: --it's very, very difficult to--

RUDA: That's right.

KELLER: --keep those-- it's not like a slab on grade structure where you can pull a-- a tape measure from a point and check it every minute you want to.

RUDA: Well, and the other thing that made it very difficult is the street curves and so--

KELLER: It does.

RUDA: --and-- and so you're-- you're trying to pull from-- you know, depends which point you pull from whether you're twenty-five foot off of it and so it's-- it makes it hard to-- to check on a periodic basis, but that's-- I'm trying to-- I'm not trying to make excuses here. I'm--

ROBINSON: It's a beautiful project.

RUDA: Thank you.

ROBINSON: Beautiful project.

PARNELL: How many square feet is-- I notice each cabin is-- is really kind of a duplex type thing.

RUDA: Sure. Each cabin in these right here is approximately fifteen hundred square feet. Each one of the two, so approximately three thousand square feet total in this building.

PARNELL: Do I hear any other questions from the commissioners? Seeing no one else is present to speak either for or against this, so, ah--

FARRIS: And the city hasn't received any input, ah, positively or negatively by any--

DENHAM: No. We've not received anything.

FARRIS: --one that would've received notice or anything like that, correct?

DENHAM: No. Nothing.

FARRIS: Okay.

DENHAM: In fact, phone calls were even made to the, um, members on the list of-- property owners on the list just to let them know the meeting was changed--

ROBINSON: Good.

DENHAM: --to tonight. Still no, you know, no concerns.

FARRIS: And it looks like quite a few of them are actually-- or at least it looks like maybe the-- at least this top four on that notice sheet are actually-- they're in the family,--

RUDA: Affiliated.

FARRIS: --isn't that correct?

RUDA: Affiliated parties.

FARRIS: Okay.

PARNELL: Mark, did you have any other questions about the process?

RUDA: I don't think so.

PARNELL: Okay.

RUDA: Thank you.

PARNELL: Do I hear a motion?

FARRIS: I move to approve the variance as requested.

ROBINSON: I second it.

PARNELL: Motion has been approved and seconded. Please call the roll.

PADEN: Boardmember Farris?

FARRIS: Yea.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Boardmember Keller?

KELLER: Yes.

PADEN: Vice-Chairperson Parnell?

PARNELL: Yes.

PADEN: The motion passes with a four-zero vote.

RUDA: Thank you.

MOTION:

Motion by Boardmember Farris and seconded by Boardmember Robinson to approve this variance request.

AYES: Boardmembers Farris, Keller, Robinson, and Vice-Chairperson Parnell.

NOES: None.

ABSTAIN: None.

ABSENT: None.

The motion to approve Project No. 08-19.2 passed with a 4-0 vote.

PARNELL: It is a beautiful project. I went out there this afternoon. It was really neat.

RUDA: Thank you. I appreciate you guys having--

KELLER: The real problem was when we built that road we probably put the wrong curve in there. If we built that road right-- knew there was something about it there.

RUDA: Well, thank you guys for meeting tonight. I real-- I really appreciate it.

FARRIS: Good luck with your project.

RUDA: You guys helped me a lot this evening. Thank you. Thank you.

ROBINSON: Tell-- tell Nana hi for us.

RUDA: I'll do that. I'll do it.

ROBINSON: Yeah. Tell her it just like that.

DENHAM: Bye-bye, Mark.

RUDA: Bye. Thank you.

KELLER: See ya later.

<b>OTHER BUSINESS</b>
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PARNELL: Ruth, I don't believe we have any other, um, business-- at least there was this one on the agenda. Is there anything else?

DENHAM: No. Um. We will just schedule the election of, um, chairperson and vice-chairperson at the next m-- at the next meeting.

PARNELL: See you later; okay.

DENHAM: And we have not received anything else, so we'll just have the one item.

PARNELL: And you know what happens-- you know what happens when you don't show up, don't you?

DENHAM: Uh-oh.

ROBINSON: Yes.

KELLER: He sat here a couple of minutes, I mean, right?

DENHAM: Uh-oh. Better be here--

FARRIS: I better come.

DENHAM: --for the minutes.

KELLER: For the minutes.

FARRIS: 'Course, that's at the end of the agenda, which means I would show up, I'd approve the minutes then I have to sit outside while the discussion is happening, correct?

KELLER: Well, we hope it would go that way.

FARRIS: If I did the right thing.

ROBINSON: Exactly.

PARNELL: Exactly.

DENHAM: Do you want them put as a first item then? That-- the election as the first item?

PARNELL: Sure. That would be fine. Let's do that. That way he can--

DENHAM: Then you don't have to wait.

PARNELL: That way he can be counted legal and go away happy. Yea; yea.

DENHAM: Okay.

FARRIS: You know, this wasn't too bad of a place to actually have, ah, you know, tonight. I mean, um, wha-- it didn't have the-- the separation--

KELLER: It's another thing that I'm so far apart from everything.

FARRIS: --and everything. I mean, is it-- would it be-- I don't know if anyone would have an interest, but would there be a possibility that—that, unless we had a big, big thing that came before us where we expect a lot of people, to have our meetings in here?

DENHAM: If, um-- if that's what all of you wish to do, we can schedule the courtroom for the meetings.

FARRIS: I don't know. What are your-- what are your thoughts?

PARNELL: I-- I think this was a little bit more intimate. I kind of like being able to walk

around the table--

FARRIS: Exactly. Get around and look over somebody's shoulders, so.

PARNELL: --and that was kind of-- I know was kind of nice--

KELLER: Or having to holler at them to speak up.

PARNELL: --instead of like the way we've been.

DENHAM: Right. I can hear you there.

FARRIS: Of course, that's less of a distance if you want to spit on us, too.

KELLER: Depends on how we-- what you really got out there.

PARNELL: Well, that's true.

ROBINSON: Yea. I've been on some where--

KELLER: You'd just loved to be away.

FARRIS: If we vote no, that spitting distance wouldn't be very far, you know.

DENHAM: That's true.

KELLER: That's kind of scary.

PARNELL: When he could just reach across the table.

FARRIS: Exactly.

PARNELL: As many in the county might, you know.

DENHAM: Whatever you want to do.

PARNELL: I would-- I would-- I-- I don't feel strongly about it one way or the other, but I would-- I would be more comfortable in here.

DENHAM: Okay.

FARRIS: If we do them every once in a while or something.

PARNELL: I have no preference.

ROBINSON: I don't either.

KELLER: Whatever works.

DENHAM: Okay. It's nice that we can have this set-up--

FARRIS: It may be depend on how well you get the sound.

PARNELL: Yea; true.

FARRIS: That may be-- that may be-- if you have very poor sound from tonight then-- then that may be something to take into consideration.

KELLER: Well, they do that on purpose, you know, so they can't understand attorneys.

PARNELL: You know how those judges are; now we know. The only other disadvantage I can see is, aside from the technical difficulties of getting everything amplified properly, is that the people out there-- in the other room, they have a little name sign in front that anybody can-- helps them identify who we are. I don't know that that's important, but probably they deserve--

FARRIS: Our full board will be how many? How many--

DENHAM: Six.

FARRIS: It will be six.

DENHAM: Yes.

PARNELL: One substitute that makes six.

FARRIS: So--

DENHAM: Yes. Five and an alternate.

PARNELL: Correct.

FARRIS: So, I mean, if we were-- I mean, if we could set up any way, I suppose, tables in here, but if we had it like this, it'd be just like this with room for-- for one to come up at a time or something like that, or the applicant to seat-- be seated there.

PARNELL: Uh-huh.

DENHAM: You can do it this way and put both tables lengthwise. Put your chairs behind it so you're facing the audience. I don't know. Do you know if they have a microphone anymore for this podium?

FARRIS: Ah. No; I don't.

DENHAM: Okay. We can check into it and--

FARRIS: We'll check it out and see. It was just-- just a thought I had.

DUSTON: Every time just being in here it's so small and you can announce from there. When-- when I'm in here and we're trying cases, the room's so small it's not an issue announcing. Now, I mean, for you guys, well, we're not recording the trials--

PARNELL: Right.

DUSTON: --so it's not an issue. Um. Just holler at Kim and Lisa and they'll tell you if there's something in that closet.

DENHAM: Okay.

DUSTON: There might be something that attaches to that that is back there in those closets. I-- I don't know.

FARRIS: For-- for tonight it seemed like it worked well. Now that may not be the case on every, you know, application, but for just, you know, for us to just get up and go take a look at something or something like that it seemed like it worked well. But I just don't like-- I think

sometimes it's the message you send, you know. In the other room, we're kind of sitting high up like kings--

PARNELL: Yea.

DENHAM: Right.

FARRIS: --looking down on people and that's not--

ROBINSON: And-- and my initial comment when I came in tonight, this is informal; that's me.

FARRIS: Exactly; exactly.

ROBINSON: I like that.

PARNELL: I like that aspect of it, too.

FARRIS: Exactly.

PARNELL: I mean, things are a little friendlier.

FARRIS: If we can make it work out here, maybe we'll see if we can do that.

PARNELL: Yea. I'd go for that.

DENHAM: Okay. We'll make some phone calls and see--

FARRIS: Okay.

DENHAM: --what we can get set up here for the next meeting. Okay.

PARNELL: If there is, ah--

DUSTON: It's all fine with each other being friendly and all. I mean, we need to realize like last time we were here and we all decided that sign needed to come down.

KELLER: It wasn't--

DUSTON: They looked at you guys, and they didn't do it. So, it's all good to be friendly, but at times somebody's going to have to say no. You guys are making decisions, and those decisions are decisions because last month they didn't pull it inside yet. The P&Z had to go down there and start writing a ticket a day for about two weeks before they finally pulled the sign down.

PARNELL: How much--

KELLER: I went by there to see it.

PARNELL: What did they say? What did they say when you-- when-- oh, we didn't know we needed to do it by this date or--

DUSTON: Well, I--

FARRIS: I kept-- I kept wondering about that.

DUSTON: --I-- I-- I wasn't down there for everything that they said back and forth-- this is off the record, right?

PARNELL: Right.

DUSTON: Okay. But I mean they kind-- they kind of--

DENHAM: This is still--

PADEN: This is actually on the record.

PARNELL: This is on the record. Ah.

PADEN: You need to adjourn the meeting.

<b>EXECUTIVE SESSION</b>
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None.

**ADJOURNMENT**

PARNELL: Do I hear-- do I hear a movement to adjourn?

KELLER: Movement to adjourn.

FARRIS: So moved. And I second.

KELLER: Second.

DENHAM: Meeting adjourned?

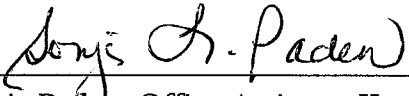
PARNELL: Meeting adjourned.

**MOTION:**

Motion by Boardmember Keller and seconded by Boardmember Farris to adjourn the meeting at 7:24 p.m.

  
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Pat Parnell, Vice-Chairperson

5/2/08  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sonja Paden, Office Assistant II

5-06-08  
\_\_\_\_\_  
Date