

CITY OF BRANSON
BOARD OF ADJUSTMENT
MINUTES
August 27, 2008

CALL TO ORDER: Chairperson Farris 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

1. Roll Call

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

Boardmembers Absent: Parnell.

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

2. Approve Agenda

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Fish to approve the format of the August 27, 2008 agenda.

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

NOES: None.

ABSTAIN: None.

ABSENT: Boardmember Parnell.

Motion to approve the August 27, 2008 agenda carried with a 5-0 vote.

3. Approve Minutes.

A. April 24, 2008.

MOTION:

Motion by Boardmember Fish and seconded by Boardmember Edie to approve the minutes of the April 24, 2008 meeting.

AYES: Boardmembers Edie, Fish, Robinson, Vice-Chairperson Keller and Chairperson Farris.
NOES: None.
ABSTAIN: None.
ABSENT: Boardmember Parnell.

Motion to approve the minutes of the April 24, 2008 meeting carried with a 5-0 vote.

OLD BUSINESS

4. Request For Approval Of A Variance From Section 66-218 Of The Branson Municipal Code Pertaining To Buffering And Screening Requirements For Properties Located At 1120 W. Highway 76 Branson, Missouri. Project No. 08-19.3 (08-01900003).

Applicant: Andrei Soumiatin

FARRIS: All right. And item number four tonight. Ruth would you like to-- Ruth or Sonja, would you like to introduce the item tonight?

DENHAM: Mr. Chairman, members of the board. Our item tonight is a request for approval of a variance received from Andrei Soumiatin requesting a variance from Section 66-218 of the Branson Municipal Code pertaining to buffering and screening requirements for property located at 1120 West Highway 76. This property is zoned R-3 multi-family dwelling district, contains approximately .55 acres. It's currently unoccupied and developed. At the August 5th Planning and Zoning Commission meeting, the applicant requested that this property be rezoned from R-3 to commercial, and the P&Z has recommended approval to the Board of Aldermen. Although new parking would not be required, it would be a benefit to the operation of the business and a benefit to keeping the streets clear of customer parking during the hours of operation. If the Board of Aldermen approves the rezoning request and if the applicant initiates new development by adding needed parking to the site, the construction of a new parking lot would require a hundred-foot buffer between the subject property and surrounded R-3 zoned properties per Section 66-218 c.1 of the Branson Municipal Code. The required buffering would not allow for construction of the new parking lot due to the limited size of the lot on which they're located. The applicant has requested to go before the Board of Aldermen; however, they're requesting that this variance be approved prior to going on to the Board of Aldermen. And this concludes the staff report.

FARRIS: All right. At this time, let's hear from the applicant or representative from the applicant about the application.

WEISZ: My name's Mark Weisz, 386 Dalton Drive. I'm the representative of the owner of the property, which is held in an estate, the Silva Greenspan estate. The owner of the property,

Silva Greenspan, passed away last year. There was an antique store in operation there for many years and, upon her passing, the estate decided to, you know, sell the property. One thing that we were surprised about when we first, you know, looked at this is that it's the only property in Branson that touches Highway 76 that is not, you know, zoned commercial. That surprised me. I met Ms. Greenspan many years ago and, at the time, she thought her property -- this was in the late '80s -- was, you know, a million-dollar property and I said thank you, but I probably can't sell it for that at that time and hadn't talked to her in years until the estate called me. After discovering that there was a zoning issue and knowing that we'd have to, you know, deal with that to continue the commercial use that was there before or an office use or some like use. It was also discovered, once we get commercial zoning with the buffer zone to the adjoining R-3, that the property would become virtually, you know, unusable. So, Paul Riazantsev and his partner Andre are the purchasers of the property and they're proposing to-- and I think there's one of these in your packet. I'll pass around the larger version so you can take a look at it. Basically, there's an existing structure up by Highway 76 known as Twin Pines Antiques. I think it was built around 1935. And I'm guessing that the reason this was zoned R-3 at the time was this was, you know, part of the mobile home park, Gaar Mobile Home Park, which is right behind it. That was the use when zoning came into place, which is why it was, you know, placed on it. I don't think they're trying to slight it in any way. It was just that that was, you know, the current use; however, they did have existing commercial on this one lot, and what we'd like to do is to be able to rehab, remodel and clean up this front building, and I'll also pass around an artist's rendering of the way they'd like to make it look. Since it's a nonconforming building, the owner knows that he's not going to be able to increase its size or increase its nonconformity, you know, in any way. He just wants to be able to fix it up, make it look nice, make it usable to an office tenant or antique shop, you know, or a retail tenant and then fix up the existing stone home, the existing house behind the property, and put it in rental. Now at some point ten years from now, you know, they might decide, you know what, it's time to put a 5,000-square-foot office building or a 3,000-square-foot office building on this site. I understand it can support, according to Bill Yung, around 6,000, you know, square foot, you know, of office, you know, building based on the .55, you know, acre size. But the-- we wouldn't be able to even utilize, you know, this property by zoning it commercial to continue those uses unless we get a variance. And what we're asking for is a variance of the 100-foot buffer zone. We're asking for it to be waived in this case. We're asking for it to be waived only subject to approval by the Board of Aldermen of our commercial zoning request, which has already been approved by Planning and Zoning Commission. What we would like to do is put a fence between the R-3 zoned property, which is Gaar Mobile Home Park, and the owners of that property are supportive of our request, and, you know, have a 10-foot landscape, you know, buffer and a fence to, you know, buffer the two sites. And what we're looking to do now is add some proposed parking, so there will be existing parking for whoever rents this as an office or an antique shop. I can tell you, when I visited Mrs. Greenspan back in the '80s, I parked in the lot that was the track, and I think many people did, only they had very good neighbors that never complained to Silva because there really wasn't any good parking or safe parking, you know, there, but people would park on the neighboring property and this is one thing we'd like to fix, so we're not going to have to impose on the neighbor. We will have landscaping and buffering

and a fence between the two properties and feel it's a totally appropriate request, but now I'm going to pass this around so you can look at the drawings we've done showing what we'd like to do at this stage of the development.

Now in order to get a variance, I understand there's a few things and few tests that we have to meet. One is special circumstance, and Twin Pines is a .54-acre property. It's a hundred-foot wide, 235-foot deep. With its width of a hundred feet and adjoining R-3 zoned property, the hundred-foot buffer requirement between C zoned R-3 zoned property would render the property one hundred percent buffer zone without commercial or residential structures allowed. This unique hardship is not shared by any other property on West Highway 76 in Branson, since all other properties on west 76 are zoned commercial or planned development PD. Now if you take a literal interpretation of this hundred-foot buffer, this would be the result. If the 100-foot buffer was enforced upon rezoning to commercial, the land would lose most of its value and all of its income and tax-producing use. This is not the case for any other commercial property zoned along Branson's West Highway 76. The 100-foot buffer requirement, literally interpreted, would not even allow the addition of needed parking spaces that would benefit the area. And another item that we have to meet this test to gain your approval tonight is the property's special conditions and circumstances must be understood, and these special conditions and circumstances do not result from any action of the applicant. The property is and has been a hundred-foot wide since 1935 or before and has had a commercial use for many years. And, by the way, that grandfathered commercial use, it was grandfathered, but upon six months, we lose that grandfather, and she passed away more than six months ago. Granting the variance request will not confer applicant any special privilege. By granting applicant's request concerning the hundred-foot buffer tonight, no special privilege will be denied any other commercial zoned property in the district, and I'd be happy to answer any questions that you have and Paul's here to answer any of your questions, as well. Paul's the buyer of the property.

FARRIS: Any questions for Mr. Weisz or the applicant?

EDIE: Mr. Chairman?

FARRIS: Yes.

EDIE: Mark, how many parking places does the site have right now?

WEISZ: Well, most of the parking places that it has right now that I'd call parking places are in the driveway of the home, which might be, you know, four, and there is a space right in front of the property where you can kind of parallel park and get in there safely. So, I'm going to tell you the commercial structure has one and it's not a good one. What they've been using since 1935, I believe, is mainly the parking lot next door.

EDIE: Okay. Thank you.

FARRIS: Any other questions for Mr. Weisz or the applicant? Okay. Thank you.

WEISZ: Thank you.

FARRIS: Ruth, do we have a video, I think, of the property or some pictures?

DENHAM: Yes; we do.

FARRIS: Okay. Maybe we could see that staff report.

DENHAM: And there's the aerial map showing the subject property. The little green spot on that aerial view is where the video was taken from, just to give you an idea of the layout of the property. I apologize. We are having difficulties this evening with this.

FARRIS: It's quite all right.

DENHAM: Here we go. I cannot see.

FARRIS: And what that's showing there is that's showing the ordinance from which the variance would be requested; is that correct?

DENHAM: Can you see?

PADEN: Yes; yes. It says at the time of development of property zoned C commercial, a minimum of a hundred foot buffer shall be provided along all rear and side property lines which are common to property zoned R-1, R-2 and R-3.

FARRIS: Has staff received any phone calls or any communication from any of the noticed individuals that would be adjacent to the property or close to it about either consent or any objections to the applicant's request?

DENHAM: No. We've not received anything for this meeting.

EDIE: Was the neighbors aware of this meeting? Was a notice sent to them or just the sign?

DENHAM: Yes. Notices are sent along with the sign. It went out for the public hearing for Planning and Zoning Commission and then the same type of advertising and posting--

EDIE: Okay.

DENHAM: --for the property.

EDIE: So, nothing negative?

DENHAM: No. We've not received anything; no.

EDIE: Okay.

FARRIS: And as I see on Mr. Weisz's letter, the Gaar Mobile Home Park owners are supportive of the request. Okay. And-- if I can ask maybe Mr. Weisz?

WEISZ: Yes, Mr. Farris.

FARRIS: The owners in voicing their support-- is one of the elements of their support the fencing and landscaping buffering that you've shown in the side?

WEISZ: No. They'd actually be fine without it. We just thought it was more appropriate to ask for it with it. They're actually interested at some point in time converting their land into commercial. We had discussions about, you know, doing it together, since it's in a, you know, a heavy residential, you know, mobile home use and isn't the one on 76, it might be more appropriate for this one to go commercial at some point. And they have our understanding that should they ever make that request, should there ever be a higher and better use come along that would, you know, provide more taxes for the city, we would be supportive of, you know, their issue. And we're working together on this to help get the area cleaned up.

FARRIS: So, you feel confident that, if the Board of Adjustments gave the variance without requiring any special conditions, such as the buffering or the fencing, that the neighbors, the mobile home park, they would be fine with that?

WEISZ: It would be no change from what it's been since 1935 except there'd be a few parking spaces. And if you notice the truck from the city staff is actually parked on Bar Harbor Road. If we would've had that little lot there, they could've, you know, pulled off, but that's development and that triggers, you know, the hundred-foot, you know, buffer requirement not allowing us to do it, you know, sitting up against that property. It was more for trying to come up with a reasonable solution, you know, working with, you know, PDs in the past that often there's a fence and, you know, landscape buffer, you know, when appropriate. But no, there's no-- it'd be no change and I'm sure that that one particular owner, Gaar, would be very happy without it. It would not change their life one bit, you know, from the way it is today except it'd get things a little bit cleaned up and they wouldn't, you know, have-- we've actually had, you know, some homeless people, you know, kick the door in and, you know, I had to go out there a couple times to, you know, clean it up, so that's one of the things we're wanting to do.

FARRIS: Okay. When is the zoning request itself coming before the Board of Aldermen?

WEISZ: It was-- we've postponed it, so it will be the following meeting and, you know, we thought the proper way-- because, frankly, if we get the commercial zoning, we can't use it. If we don't get commercial zoning, we don't want any of this because at least it's usable as R-3

today, but if we zone it to commercial before this step, there'd be no use for the property. It'd be a hundred-foot buffer zone that he's bought and he wouldn't be able to put a parking lot in and without it I don't think anybody would want to, you know, rent it just the way it sits.

EDIE: How many parking spaces do you anticipate?

WEISZ: Paul?

RIAZANTSEV: (responded from the audience) It's my understanding about eight.

EDIE: Eighteen?

RIAZANTSEV: Eight.

EDIE: Eight?

WEISZ: It's about an eleven hundred square foot, you know,--

EDIE: Okay.

WEISZ: --building, so that would be over the requirement for any, you know, retail or office use.

EDIE: Yeah.

FARRIS: Okay. Any other questions while Mr. Weisz is at the podium?

ROBINSON: I have one question, Mark. The land where the billboards are located on up there, next to Highway 76,--

WEISZ: Yes.

ROBINSON: --which is west of this. Is that commercial today?

WEISZ: It is zoned commercial. It's another owner,--

ROBINSON: Okay.

WEISZ: --but it is zoned commercial.

ROBINSON: Okay. So it's commercial on two sides of it and the residential on that one side?

WEISZ: Right. Our residential neighbor is the Gaar Mobile Home Park.

ROBINSON: Okay.

FARRIS: Any other questions for Mr. Weisz? Thank you. Fellow members of the board, I thought I would inform you I had a conversation tonight before we began regarding a question I had and that was -- and I had this conversation with Ruth -- and that was just whether the timing issues of whether it was appropriate for us to take this up or whether this was ripe and, if Mr. Duston would like to provide assistance with this, I'd welcome that, but I think in our discussions tonight in regard to that, it might well be appropriate that a-- if the board was so inclined to approve the requested variance, was to make it subject to the rezoning request being granted by the Board of Aldermen. That would not create any pressure on the Board of Aldermen to do that, but would make it complete. That way we wouldn't have a variance without, of course-- you're not going to have-- you're not going to be able to do this unless you get both, I assume, but I had a discussion tonight with Ruth about that and that was cleared up for me. Mr. Duston, any thoughts that you'd have, legal-counsel-wise?

DUSTON: I mean, that should solve your problems without having a variance just hanging out there. I mean, it wraps everything up. I mean, I-- there's no qualms, but-- I mean legally, but I would think that for your guy's purposes of saying, hey, we don't want something just hanging out there on this piece of property, we can make sure that the only way it happens, if it all happens together.

FARRIS: Yea. Sounds good. Thank you. Do we have any discussion-- let me ask this, before discussion by the board. Is there anyone else from the public or anyone else present besides board who would like to have any comments heard tonight in regard to the application and the request?

STEPHENS: Don Stephens, Director of Planning and Development. I apologize; I stepped out for just a minute. Regarding the buffering, my only request from staff would be that in the case of the buffering that you do add that as a contingency. And the reason I say that is that, if the property's zoned C commercial and you approve a variance to the 300-foot buffer, the buffering requirements for the city when you do have that separation is it has seventy-five percent so that you can't see through it. In other words, it's a seventy-five percent solid buffer. If anything ever developed on this, I mean, if these ever left and somebody were to develop some residential in that area, it certainly would provide at least for the extent of trying to provide at least what would normally be required. The hundred feet is an impossible thing to do, but in that respect, we would, you know, from a staffing perspective, I'd request that you do that.

FARRIS: Okay. And I would point out for the board that in our ordinance that we work under that's in your packet, 425.040 subsection-- it's at the end of paragraph two, talks about that in granting a variance, the Board of Adjustments may make or may prescribe appropriate conditions and safeguards in conforming with the title, so we have that ability to approve a variance with those additional safeguards.

STEPHENS: Yes.

FARRIS: If the board was inclined to do that, Mr. Stephens, could you assist us with how-- would we approve it pursuant to the plans or would we need some specific language to lay out what buffering requirements that we would like to have the variance contain?

STEPHENS: The best way to do it would be to reference that section of the code that relates to that buffering requirement, and I think that section is included in the packet. It's just a reference to approval of, I mean, if you so decide to approve the variance, approval of the variance subject to a) receiving commercial zoning through the Board of Aldermen, and b) meeting the requirements for buffering and screening as per section-- I'm not sure what that is.

DENHAM: Yea. Meeting the requirements of screening because the buffering would be one hundred--

STEPHENS: Screening.

DENHAM: --feet, which we're getting a variance from, but the screening-- and then that would allow for the seventy-five percent coverage. And I believe the applicant has suggested a 10-foot buffering and that-- on the submittal. Is that what's on your drawing?

WEISZ: Yes; it is.

DENHAM: Okay. So it could be that 10-foot buffering and-- to provide screening-- a seventy-five percent screening or whatever the--

STEPHENS: Yea. Or it could just be--

DENHAM: --screening requirements are.

STEPHENS: --the 10-foot buffering subject to the screening requirements as per the Branson Municipal Code and that would do it. And I apologize. I didn't mean to come up here and interrupt it, but I missed part of it when I went out and I didn't know whether that was in there or not.

FARRIS: That's quite all right. We're too lazy to come up with the language, so we need to rely upon someone else to help us do it.

STEPHENS: You got the wordsmith over there.

FARRIS: Any other comments or questions for the applicant or any general comments about the application by members of the board tonight? If we don't have any further comments, then we can entertain a motion concerning the application.

EDIE: Mr. Chairman, I propose we approve the variance subject to the screening requirements as shown in Section 425.040 and subject to approval by the Board of Aldermen for rezoning to commercial zoning.

FARRIS: And let me clarify Mr. Edie on that. In meeting the screening requirements, would it be proper to-- could it be okay to make that a more general-- to just make the-- meet the requirements of screening pursuant to the Branson Municipal Code? I think the section you cited is our section, so--

EDIE: I agree.

FARRIS: Okay.

EDIE: My proposal includes your language.

FARRIS: I thought I heard you say that the first time. All right. So, to clarify, we have a motion on the floor made by Mr. Edie to approve the requested variance with the requirements that are contingent upon the applicant receiving an approval of its request to rezone the property to commercial by the Branson Board of Aldermen and that they would need to meet the requirements of screening pursuant to the Branson Municipal Code. Is that correctly stated, Mr. Edie?

EDIE: Yes, sir.

FARRIS: Okay. And is there a second to that motion?

FISH: I'll second that.

FARRIS: Any further discussion before we would call for a vote on the motion that's been seconded?

FISH: I guess I've got a question that would go mostly to staff probably. With this use, are you comfortable with the number of parking spaces that they can obtain or achieve on this property given the use of it?

DENHAM: Yes. And if any new development takes place in the future then they'd be required to meet the additional parking, but as it sits now, yes, we're comfortable with that.

FISH: Okay.

FARRIS: Any further questions or comments before we call for a vote? Okay. Ready for a vote.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Chairperson Farris?

FARRIS: Yea.

PADEN: The request passes with a five-zero vote.

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Fish to approve this variance request.

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

NOES: None.

ABSTAIN: None.

ABSENT: Boardmember Parnell.

The motion to approve Project No. 08-19.3 carried with a 5-0 vote.

FARRIS: Before we proceed with the rest of the agenda, I'd like to thank city staff for working with the applicant and I'd like to thank the applicant for taking into account what our test is, and that's that 4-part test that's in the ordinance and by-- I'd like to thank the staff for reminding people that that's what we're looking at and, if they can include that in their application process, it makes tonight's discussion much easier than having to take you methodically through those four points. And I'd like to thank the applicant and application, the

applicant's representative for actually going ahead and walking us through that step itself. We appreciate that. Thank you.

PUBLIC HEARING

None.

OTHER BUSINESS

FARRIS: All right. The next-- we have no public hearings for tonight and do we have any other business? Anyone have any other business that we need to discuss tonight?

DENHAM: No, Mr. Chairman; we do not.

FARRIS: Okay. I do have one question on 'other business.' As we approved in the minutes for our last meeting, there was some discussion about there would be some notebooks prepared for each board member that would lay out some of the statutes and I think there was some materials that was going to be coming from maybe the American Planning Association possibly?

DENHAM: Yes. We have the notebooks ready. We just received the CD for the Board of Adjustment training, so we'll be putting that together. Hopefully-- we don't know if we're going to have-- we have a meeting requested for next month yet. I think our deadline is Friday, so we haven't received anything yet. So we'll be planning the-- at our regularly scheduled meeting to be able to start making some of the presentations, but we just received it the end of last week, so.

FARRIS: Great. I look forward to that, so--

DENHAM: Great. Thank you.

FARRIS: --very good, very good.

EXECUTIVE SESSION

None.

ADJOURNMENT

FARRIS: And we do not have an executive session for tonight, and so at this time we will entertain a motion to adjourn.

EDIE: Motion to adjourn, Mr. Chairman.

FARRIS: And is there a second?

ROBINSON: Yes; second.

FARRIS: Call for the vote to adjourn.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Chairperson Farris?

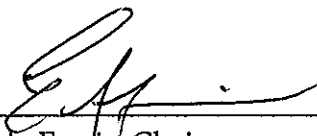
FARRIS: Yea. We're adjourned.

PADEN: Motion to adjourn approved. I'm sorry.

FARRIS: Very good.

MOTION:

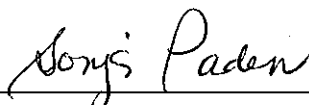
Motion by Boardmember Edie and seconded by Boardmember Robinson to adjourn the meeting at 7:36 p.m.



Eric Farris, Chairperson

11/24/8

Date



Sonja Paden, Office Assistant II

11-24-08

Date