

CITY OF BRANSON  
BOARD OF ADJUSTMENT  
MINUTES  
December 18, 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.

<b>ATTENDANCE</b>
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**1. Roll Call**

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

**Boardmembers Absent:** Edie.

**Also Present:** Ruth Denham, Assistant Director of Planning and Development;  
William Duston, Assistant City Attorney;  
Loretta McCullough, Office Specialist.

**2. Approve Agenda**

**MOTION:**

Motion by Boardmember Parnell and seconded by Boardmember Fish to approve the format of the December 18, 2008 agenda.

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

**NOES:** None.

**ABSTAIN:** None.

**ABSENT:** Boardmember Edie.

Motion to approve the December 18, 2008 agenda carried with a 5-0 vote.

**3. Approve Minutes.**

**A. November 20, 2008.**

**MOTION:**

Motion by Boardmember Fish and seconded by Vice-Chairperson Keller to approve the minutes of the November 20, 2008 meeting.

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

Motion to approve the minutes of the November 20, 2008 meeting carried with a 5-0 vote.

OLD BUSINESS
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None.

PUBLIC HEARING
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4. Request For Approval Of An Administrative Review For Zoning Code Interpretation Pertaining To Accessory Structures On Premises For Property Located At 312 Dalton Dr. Branson, Missouri. Project No. 08-18.2 (08-01800002).  
Applicant: Robert & Shelby Bussing and Brenda Petersen

FARRIS: We have one matter on our agenda tonight for a public hearing. I understand that is a request for an approval of an administrative review for zoning code interpretation pertaining to accessory structures on premises for property located at 312 Dalton Drive, Branson, Missouri. At this time, can we have an introduction to the matter by staff.

DENHAM: Yes. Mr. Chairman, members of the board. For this request, the applicant has requested the board to hear and decide an appeal where it is alleged there is error in a determination made by the director of planning and development in the enforcement of this title. This is a map of the subject area with the property in purple, the parcel that is located within the city limits. Here's an aerial view of the property and a video clip to follow. Where the little "Z" sign is on the east side of the property is where the video was taken. I'm just panning around to the view from the front of that subject property. An administrative review application has been received from Robert and Shelby Bussing and Brenda Petersen requesting administrative review for zoning code interpretation pertaining to accessory structures on premises for property located at 312 Dalton Drive, legally identified as lot 6, second addition to Rainbow Shoals subdivision. This property is currently zoned R-1, one family dwelling, contains approximately .96 acres and is vacant and undeveloped. For property located at 265 Walker Road, it legally identified as lot 5, second addition to Rainbow Shoals subdivision. This property is currently out of the city limits, contains approximately .95 acres and is occupied or developed. This slide shows a view of the accessory structures located on the property. From this view, we can see that the carport is located on the property line. A closer slide shows that it is actually right on the property line. In the city limits of Branson, the required setback is five

feet from the side property line and fifteen feet between structures. This concludes the staff report.

FARRIS: Okay. At this time, let me acquaint everyone here in attendance of some of the procedures that we're going to be following tonight. I'm going to allow a representative of the applicant first to give a presentation and after that we'll accept-- because this is a public hearing, we'll accept any comments from the public. I know that we received some letters. We will receive those also tonight. When everyone would appear before our board, appear here at the microphone. No speaking, please, from the seats. We want to be able to have the meeting recorded, since it is a public hearing, and if you would clearly give your name and give your address before you give your presentation, okay. I'd also ask that everyone stay on point on the issue that we have before us, which is an appeal of a previous decision made by a representative of the city of Branson. So, we'll give everyone, I think, a full and complete opportunity to be heard tonight, but let's go ahead and begin then this public hearing with the representative for the applicant. Is that you, Mr. Styron?

STYRON: (responded from audience) It is.

FARRIS: All right.

STYRON: (speaking from the audience) Would you mind going back to the aerial map so we can-- (inaudible)

DENHAM: Sure.

STYRON: I'm Harry Styron. I'm an attorney at 301 West Pacific, Suite A, in Branson, for the Bussings and their daughter, Brenda Petersen, who's also on the deed. This appeal is not a request for a variance. We chose to do this process in one or two stages, depending on what you determine. What we're asking now is that you reverse a determination made by the planning and development director who said that, in order to have an accessory building, you must have a primary structure on the same lot and, as I'll explain in a minute, the ordinance says on the same premises, not on the same lot and so I'll try to explain the physical situation. The sign in the video you saw was set up here on Dalton Drive, which is the street address of this lot. It's almost an acre. It's a large, mostly wooded lot. The Bussings-- actually their address is on Walker Drive, which is this street that's going north toward Fall Creek Road. Barkley Lane is not their street for reasons I don't understand. But anyway, at some time, Dr. Blue, who was the developer of this subdivision -- most of you know that he died a couple of weeks ago, unfortunately -- he at some time petitioned many of the lots in Rainbow Shoals that he owned to be annexed into the city in order to take advantage of some city utility services. The lot that the Bussings live on was not included in that and, as you know the tri-states utilities companies provides water in this area and I believe they're on a septic tank that was permitted under the regulations in force at the time the house was built. The driveway is here along this lot line.

The Bussings have an RV and they built a carport here to park it in and then they built a shed over here. The shed's ten by sixteen with a recently added lean-to. When Mr. Bussing was adding the lean-to, he found out from the city that the city required a building permit and that he might be exceeding the permitted size of an accessory building, and so he was given a stop work order; that was back in September. He came to me and asked me what to do, and I took a look at the situation. We chose to defer being before you last month because someone was-- Mr. Parnell, Mr. Robinson was absent. The storage shed that's over here does not appear to be too close to this side lot line; however, it was built without a permit within the city. The carport is very close to the lot line. Mr. Stephens, I assume that's who it was, made the determination that there could be no permit issued for an accessory structure. The city was willing, of course, as it does, to work with Mr. Bussing to try to get him in compliance rather than immediately force him to tear down his structures, but the city took the position that no building permit for an accessory structure could be issued because the primary structure was outside the city limits and not on the same lot. So, I started looking at the code and the case law. The code says an accessory structure is any structure which is not the primary structure on a premises, detached, but on the same premises as the primary structure. It does not say on the same lot and the term premises is not defined in the zoning regulations of the city or in the international residential code. A zoning law treatise defines premises as any combination of contiguous lots held in single ownership together with the development they're on. There is the definition of lot in code section 400.040 that supports the determination of the planning and development director, but that's not what the 400.040 says. It doesn't say lot. It says an accessory building or structure is a structure which is not the primary structure on a premises. It doesn't say on the same lot and, as many of you probably know, there are lots of houses in Branson that are built on more than one lot. My own a few blocks from here is built on a lot and a half and for many years it had an accessory building on the half lot next to it. In this case, the city apparently, without any legal authority that I can find, made the determination that it could not look across the property line into the county to find the primary structure and it couldn't look outside that lot. But I can't find any legal authority to support that position in Missouri law. I have found some cases from New Jersey and Massachusetts that go both ways. There is an interesting case in Missouri law and it says that, if you live outside the city limits and there is a rezoning application for adjacent property within the city limits, you have the standing to protest and you enjoy the benefit of the city zoning regulations even though you live outside the city. So by that logic, someone who lived outside the city could protest and claim the benefit of zoning regulations in the city; however, the city can't look at the same property owner's property ten feet away from the accessory building and recognize it as a primary structure, but that's exactly what happened here. Because the definition of accessory buildings specifically uses the word premises rather than lot, I can find no basis in the ordinances for the planning and development director's determination that the Bussing's house located just north of their shed could be ignored. They simply acted like it wasn't there. In the staff report, some of the sections provided underlines the word in the city and it's talking about the scope of zoning regulations and those all talk about the city can rezone property and exercise control of property within the city, and I have no argument with that, but I find the decision not to look a few feet across one lot line to the house that served as the primary structure, that I can't find any support for at all, so I would ask

you to reverse this determination. If you do, then the Bussing's will have an opportunity to figure out if they can correct the encroachment situation or apply for a variance. But as it is determined now by the development director saying they can't have those accessory structures at all, that decision amounts to a confiscation of those improvements since they can't be erected unless a house would be built on that property. And that's not what anybody intended, but that is the logical effect of what has happened here. So I know there are neighbors here who are concerned about the side setback encroachment by the carport. I'm not asking for a variance tonight. I'm asking for the right to have an accessory building on that nearly one acre lot near this house where the Bussing's have chosen to live their retirement years. So what we have is a well-cared-for tool shed and a very modern carport all in excellent repair. If the planning and development director's determination is reversed, then we'll ask for a variance or try to bring these structures into compliance.

FARRIS: All right. On behalf of the board at this time, any questions of Mr. Styron at this time before we let other members of the public here speak? Any questions for Mr. Styron at this time? All right. Hearing none, we might call you back up later.

STYRON: Thank you very much.

FARRIS: All right. Is there anyone else who wishes to speak in favor of the application tonight? All right.

STYRON: (responded from audience) Mr. Bussing's here. Mr. Bussing.

FARRIS: Okay. Good evening. And we have other members of the public that are here. I'm not going to presuppose what positions they may hold, but I'm going to go ahead and allow anyone else from the public to come up and speak and state your position. All right, sir?

HICKS: My name is Terry Hicks. I live at 191 Barkley Lane right next door to Bussing's driveway. When he built his very large carport, we had a few heated words at the time. He well knew he needed a permit. He knew he was supposed to follow building codes, but his attitude was 'it's my property, I'll do what I please,' so he built it right on the line. And it's large, it's not that great a thing to look at and, because it's right on the line, it affects me. I've had my property for sale for a year, and I've had several prospective buyers come out. I show them where the property stake is and right away they say, well, hey, his building's right on the line. You know, it shouldn't be there. Another thing that happens when he built it, there was a natural watershed between my property and Mr. Graber's property. It run right down between the two properties. So before he built his carport, he took railroad ties and he went out thirty foot across this waterway, built them up about four feet high, filled it all with gravel, and then he built his carport on top. So the water was forced at least thirty foot, probably farther, out around his carport and then it goes right into the middle of John Graber's yard instead of down the lot line like it should. So basically that's my complaint. Seemed like there's—

FARRIS: Mr. Hicks, we--

HICKS: Seemed like there's something else I was going to complain about while I'm up here, but I can't think of it right now. What was it? I already mentioned that. Well, basically, I hate to be fighting with my neighbors, but, you know, if I was going to build a building on the lot line, I think I'd follow the codes and, if he'd have had any sense, he would've done that. He was told by both of our families here on several different occasions, you know, and we tried to be nice about it, but it's just come to this. And I want to tell Shelby I'm sorry for you. I know it's not your doings. So that's all I have to say. I'll be glad to answer any questions that anybody might want to ask.

FARRIS: And Mr. Hicks, before the meeting began, you brought up to us and you gave the board a letter--

HICKS: Yeah.

FARRIS: --and each of us have received that letter and a copy has been given to staff, and so that's been incorporated into our hearing tonight, okay?

HICKS: Thank you.

FARRIS: Can I just clarify real quick for our understanding. You said that your property is right next to the driveway that goes back to the carport.

HICKS: Yeah. I face Barkley Lane.

FARRIS: Okay.

HICKS: And his driveway runs right along the end of my property.

FARRIS: All right. Thank you, sir. All right. And do we have other members here from the public who'd like to speak?

J. GRABER: My name's John Graber and I live at 139 Lear Drive, which is behind, well, it's right here. It's behind the property where the sheds are. Isn't that what I said? Yeah, that's correct. And we're on the back side of the property where they have their sheds located at. And I want to thank you for inviting us to this meeting and getting the whole story and giving us this opportunity. I'm not real sure what all we're supposed to be going over, so forgive me if I'm stepping over the boundaries on that, but I just wanted to agree with everything they all said. I mean, you can go back there behind actually on our property line and their property line, the Hick's gully-way there. I mean, you can see where it goes right into where that shed was, but now it has to go around that adjacent. I mean, I don't know, you can say it's not that big a

deal, I guess, but it is cutting into our property, eroding our property and along with that and along with the fact that that shed is right on our property line, if we ever decide to sell-- when we do decide to sell, you know, that is going to be an issue. And we-- my wife and I went out there and, from the property stakes in the back of our house, ran a string line across there. And, you know, of course, the brush is high; we couldn't really get down there close. We had to eyeball along that string, and according to our calculations there, the foundation of that carport is on our property. And, I mean, you know, I don't know if that's really what the issue is tonight or not, but I thank you for letting me bring this up and I may not have a chance at the next meeting, I'll let you have that.

FARRIS: Thank you, sir.

J. GRABER: I think that was it.

FARRIS: Does anyone on the board have any questions for Mr. Graber? All right. Thank you. Ma'am, did you want to speak next?

K. GRABER: Not really. I'm Karen Graber. I live at 139 Lear Drive. And my first question is, what actually is the decision of the board at this point because their attorney's asking you to reverse your decision?

FARRIS: If I can I think probably tee up the issue, our decision tonight is the applicant is not requesting a variance, okay, tonight. Primarily, this board hears requests for variances. As a matter of fact, at our last meeting, we had a request for an administrative review. It was the first time in my tenure on the board, a couple years, that we've had one and now we've got one two months in a row. So, administrative review is basically a request by an applicant to ask that a decision made by a city official, such as the director of the planning department, that a decision made by that official be reviewed and the applicant is actually requesting that that decision be reversed; that is what they're actually requesting tonight. So that decision would be that, I guess specifically, would be the letter that's incorporated into their application that would've required them to have obtained a building permit as to the structure in question and whether they could have that structure on that lot itself. Now that's a different set of issues than a variance and, if they come back at some point in the future regardless of what would happen tonight, then there'd be a whole other set of issues and determination on that than where we are tonight.

K. GRABER: So we're really not talking about the carport. We're talking about the shed and allowing the county house to be the qualifying for the city property?

FARRIS: I think we're talking about any structure that's on that lot 5; that's the city lot. Any structure that's on lot 5, or proposed to be on lot 5, are the structures that we're talking about.

K. GRABER: Okay. Because I'm not-- I didn't get a chance to look up the restrictions for our subdivision, but I'm wondering if the restrictions would require that our lots have a single family residence on them only, so that would--

FARRIS: And I would give you, if there's assistance by counsel here tonight, but we're not in a position to evaluate and take into consideration the subdivision regulations, those covenants and things like that, okay. We're not in a position to be able to regulate or enforce those tonight. So you may have rights independently of your right to be able to come here as a member of the public to enforce those or your subdivision board may be able to have those rights, but we're not going to be able to be in a position to assist in enforcement of those rights or those restrictions tonight.

K. GRABER: Okay. So had he come and gotten a building permit to build that shed, would not the city have found out right then that he could not build it because there was not a city home that qualifies him to have an accessory structure?

FARRIS: It's probably a safe assumption that it would've gone through, you know, it would've gone through a little more-- it would've gone through a different channel, would've had that level of review rather than someone putting up a structure, so.

K. GRABER: Okay. It just doesn't make sense to me that he's asking for their county home that they pay county taxes on to qualify for a city home on a city lot. And we didn't own our property when they came around and annexed us into the city, but I'm thinking it was a city thing and the Hicks' might be able to verify that. But I thought it was each individual could sign up themselves, that everyone was able to annex to the city, if they wanted to, and it wasn't a Dr. Blue thing, but I don't know that for sure.

FARRIS: Well, I mean, typically, annexation has to be done by an owner. I mean, if the developer is the original developer and owns the lots, then he can sign a petition to seek annexation voluntarily, if it's done voluntarily. So if the developer owns certain lots and has sold certain lots, I'm assuming that must have been the case here that the applicant must have owned that lot already and that maybe Dr. Blue, or whoever those other owners were, decided to request to annex in and maybe this applicant did not.

K. GRABER: Okay. Well, I guess I just wanted to make that point that it doesn't make sense to me you can count a county house for city property when-- I mean, it just doesn't make sense. And the only other thing I have on the carport is it's been up long enough. It was put up wrong without a building permit. It's not, you know, it may be even be a safe structure. As far as we know, it's not even on a foundation. And all the other things I listed in my letter, the trials and errors we've had with Bob Bussing, I would like to ask for immediate removal or replacement of that carport. And I don't know if we can do that tonight or not, but that's what I-- I feel it's been up long enough and it's going against the codes. It needs to be taken care of immediately.

FARRIS: I would just tell you that my thought is, as the chair of this board, is that we have a pretty limited purview as a board. There could be staff action that could happen depending upon the vote of the board, but this board tonight won't have the ability to order removal or to grant permission for removal or anything like that tonight. We'll just decide whether the previous decision made by the city official is a correct decision under the laws of both the state of Missouri and the city of Branson.

K. GRABER: Okay. Thank you.

FARRIS: So, thank you. Any other member of the public who wishes to speak at tonight's public hearing? Mr. Graber, I'll recognize you to come back up.

J. GRABER: Say my name again or-- John Graber, 139 Lear Drive. I'm just wanting to-- since you're kind of clarifying a little bit here, the point that the lawyer brought up I thought sounds pretty good, about the being adjoining. You can't look across the property line. Well, what if there would have been a piece of property in between them. Would he still be trying to make this argument the way-- it's a part of the premises. I mean, it seems to me like the county lot where they live was bought at a separate time as the city lot was. The city lot was vacant at the time. The county lot was bought with the building already intact. I mean, it seems kind of common sense what premises would mean in this case; that it's the original property owned and it's not like the city and the county. You know, that's kind of a separation of the two properties also. But, anyways, I was just-- thank you.

FARRIS: Thank you. At this time, any other member of the public wishes to speak? Okay. I'll go ahead and inform everyone that we have received, as I said, we've referenced a letter from Mr. Hicks that was referenced tonight. We have received that. I believe that Ms. Graber, you sent a letter also, Karen Graber, and we've received that. These letters have also been shared with Mr. Styron, the attorney for the applicant. We've also received a letter from an Edward and Mynette Ulrich dated December 17<sup>th</sup> that was sent in to the planning and development department. And then I understand, Ruth, that we have a memo here that Troy Anderson received a couple phone calls and that information has been provided to us; is that correct?

DENHAM: Yes; that's correct. Karen Graber called, but also provided a letter tonight, and Doris Bauer. She called just to request clarification.

FARRIS: All right. At this time, let me give-- Mr. Styron, is there anything that you'd like to address in response to anything you've heard from the public comments at tonight's hearing?

STYRON: (responded from audience) No. (inaudible)

FARRIS: All right. At this time then, does the board have any questions for the applicant or any comments at this time? Actually, I have some questions. Mr. Styron, could you?

STYRON: Yes, sir.

FARRIS: I just want to make sure that the issue is framed for us well tonight. In the shortest sense possible-- I know that it's tough for any good lawyer to shorten their argument down. I understand that. We got three of them in this room tonight, but could you just tell us in an objective fashion, I mean, what is the decision that is before us tonight? How would you frame that?

STYRON: The decision before you, as I understand it and I have not seen it in writing, is that the planning and development director or the department indicated that it could not consider a building permit for the shed because there was no primary structure on the same lot. And because the primary structure or residence where the Bussings live is outside the city limits, the planning and development director or the department was not going to look at it. That's how I understand it. That's how I understand it was framed in the staff report that was submitted tonight.

FARRIS: Let me ask you this. Moving away from the fact that we've got a city lot and a county lot, if your clients wish to take lot 5, which is in the city, and they didn't own lot 6, didn't have a house on lot 6, and they had ownership of lot 5 and they wanted to place a structure, a non-residential structure, okay, on that lot, would you be making the same argument that they would have the right to be able to do that?

STYRON: I would say that they would have the right to place an accessory structure on the lot within the city limits, even though there was no primary structure or dwelling on that lot, because under 400.040, the two lots are a part of the same premises, that is contiguous lots under common ownership and that the definition of accessory structure uses the term premises other than lot. It could've said lot, but it does not, and premises by the one definition I was able to find refers to one or more parcels under common ownership and unified use. So in this case, essentially, the lot within the city limits is a lot where the Bussings have some landscaping and a shed, of course, where they park the RV. Mr. Bussing sometimes gets firewood delivered in in chunks that he splits on that adjacent lot. Plus he's done some clearing on his lot in the county, possibly his lot in the city.

FARRIS: Now your answer I think came back to the fact that there is the house there, though, but if there was not that house or the house that's pictured here was owned by someone other than the applicants-- if they owned just lot 5 and for whatever their reasons were, when they drove in from Iowa, they wanted to park an RV or store something on an unoccupied lot without any adjacent--

STYRON: Okay. I'm sorry. I misunderstood.

FARRIS: That's okay.

STYRON: I would not be making this argument because I believe there has to be a primary structure on an adjacent lot or on that lot in order to support an accessory structure.

FARRIS: So--

STYRON: So you can't buy a single lot and put an accessory structure on it. So someone like you're talking about who lived here part of the year could not build a carport and come down here with their RV and park that RV in it unless they had a primary structure on the same lot; that's all I'm saying.

FARRIS: So are we really to determine what the term premises is? Is that almost at it's--

STYRON: I think that's it, within the meaning, premises for the purpose of the definition of accessory structure. The Bussings are not contesting that the city has the right to regulate structures on a lot within the city limits; that's not the issue. We're just-- I understood that the Bussings were denied the right even to apply for a building permit for an accessory structure because they had no primary structure on the same lot or because it was outside of the city limits, wasn't clear which, though. There was a request made, according to the staff report, to the Bussings that this would be a good time for them to voluntarily annex their lot where their house is and that might smooth-- might clarify-- that would do away with the problem we're facing tonight.

FARRIS: Granted. I mean, that's good background information, but, I mean, that's not part of our decision tonight. But, I mean, at its heart, did that not consider that there'd be an elimination of two lots. There would be one lot, and there'd be no question, as to whether premises or lot, of whether they're one and the same then.

STYRON: If a replat was required to combine the two lots, but I don't know of an ordinance that requires an owner of adjacent lots-- I mean, nobody's ever asked me to. I have a house and an adjacent lot. I think if I came down and asked for a building permit to put up an accessory structure that I would not be asked to file a replat to combine the two.

FARRIS: Any other questions from the board for Mr. Styron? All right. Thank you, Mr. Styron.

STYRON: Thank you for your attention.

FARRIS: Any comments tonight from the board or any discussion?

FISH: Mr. Chairman?

FARRIS: Yes.

FISH: I know for consistency throughout ordinances and building codes, I've run into issues like this, mostly pertaining to signs. I know this not a sign, but to be able to erect a sign, and in this case it seems like an accessory structure, you do need to have a primary building or structure on the property on which you decide to erect a sign, or in this case an accessory building. I think just for discussion I'd like to throw out it seems like this would go against any precedence that's been set by the city to date in terms of other areas within the code and ordinances. I don't know how the city staff or council or the rest of the board feels about that, but I think that's something I would consider in making this decision as well. I don't know if that muddies the water or not, but it seems like there's other precedence-setting situations that kind of give me a guide as to how to respond to this.

FARRIS: Any response, any additional comment to the issue raised by Mr. Fish? What strikes me to be the issue, and that's why I was trying to boil it down to, you know, what is this or what is that, was I was trying myself, in trying to analyze this, to figure out-- basically, it comes down to be an issue of trying to come up with what we call a 'plain reading' of the ordinance. I mean, you can't define every single word in an ordinance book and, you know, what is the plain reading of maybe the issue of what a premises is. It may not be defined, but I don't know, I guess it would seem to me that there must be a plain reading that would be apparent, and it seemed to me that would require something on the same lot or something that has the same premises. And I just continue to wonder on this whether we can evaluate, as the applicant wishes us to, a lot that's outside the city. They're outside the city, they have a lot inside the city, but yet for this interpretation, they want that to be the guide, but maybe not on others. I'm just kind of free-flowing a little bit in my thinking there. Any other discussion?

PARNELL: I hate to trouble him, but could I have Mr. Styron come back up? I'd like to clarify something. What I'm about to ask may not be quite within the purview of our decision tonight, but I just want to I guess clarify what your clients' intentions are. They're aware, of course, that they're out of compliance with regard to setback.

STYRON: With respect to the carport, not the shed.

PARNELL: Yes. Are they within compliance with regard to the size of the shed?

STYRON: Not with the lean-to.

PARNELL: Right; right. And so it's your intention this evening, if I understand you correctly, that you would, after this administrative review, presuming that we rule in your favor, then you would be back before us the next month or sometime in the near future and you would be asking for a variance.

STYRON: Yeah. I can't really ask for a variance if the buildings have no right to be there at all. So the effect of denying what we've requested you tonight is to take those buildings away. So

what-- we had to do it in two stages and, one, what I'm doing tonight is pleading for them to have the right to bring the buildings into compliance or to get a variance. I will give them advice and they will make a decision that's partially economic, of course, based on that and what I tell them that I think you would be able to defensibly do on the variance request. As we all know, your right to grant a variance is pretty sharply limited. One of the things that you are not to grant variances of this type for are self-created problems. So I understand that and that's how I will advise them, but what I'm trying to do is get to a point where they have some choice where they have the possibility of being able to keep these buildings and to bring them into compliance rather than, if you uphold the decision of the planning and development director, it looks like our choices would be either to remove the buildings or to go to court. So that's how it is in plain terms.

PARNELL: Thank you for that.

FARRIS: Any additional comments? Questions? So I keep coming back to this term 'frame.' I'm trying to frame the issue on this. By the way, I'll mention to the board and to the members of the public that we'd gotten some additional information in our binders, which I appreciate being provided, and I took an extra opportunity to look back through the resolution that was adopted years ago that establishes our procedures. It appears that the procedure as to motions is to always put it on the floor and always have a motion to approve an item. So it looks like it would not be appropriate to have a motion to deny or a motion to overrule, but it always should be a motion to approve and then, of course, you could vote yea or nay on that, but let me just make sure I understand. A motion tonight, if I understand, would be that we would have to vote, up or down, would be a motion to grant the appeal which would, in a sense, overrule the-- let me take a look at this again. We would have a motion to-- am I correct, counsel? What would the motion be properly?

DUSTON: A motion to grant the approval of the appeal of the planning and zoning director's decision.

FARRIS: Which would, in effect, overrule the previous decision?

DUSTON: Overrule the decision of the planning and zoning director to not allow this building.

FARRIS: Okay. So a 'yes' vote would overrule the previous decision.

DUSTON: Yes, to grant the appeal.

FARRIS: Okay, to grant the appeal.

DUSTON: Yes.

FARRIS: Grant the appeal, okay. And the appeal, Mr. Styron, that you're specifically asking for does not contemplate placement of structures; that's for a different day. And it doesn't address whether building permits were obtained, not obtained, all those issues, that's a separate issue, but just whether the subject structures could be placed on this lot.

STYRON: (responded from audience) (inaudible)

FARRIS: Okay. With everything else being in compliance. Okay; all right. That said, since I've tried to frame, frame, frame, any other comments from the board? Okay. I want to give the public an additional opportunity. I know we've kind of gone back and forth and we appreciate people from the public being here. Is there anything in addition that's on the points that we've raised tonight? Again, there're other issues. I mean, there's going to be additional days potentially to this, but is there anything from the public that is here or any of the adjoining landowners that are here would like to mention or to give us any additional information as to the issue itself, which appears to be that of the premises. Ms. Graber?

K. GRABER: Karen Graber, 139 Lear Drive. It just seems to me that it should be cut and dried. He said he wouldn't fight this issue if somebody from out of town came and wanted to purchase the city lot and put a shed on it. It's a city lot. He's asking for a county lot to qualify for that. To me, it just doesn't seem-- you've got night and day. They're not equal. You've got a city lot. A county lot should not qualify for that, but that's--

FARRIS: Thank you. Mr. Hicks?

HICKS: I'm Terry Hicks. I live at 191 Barkley Lane. One thing that I heard when the lawyer was talking it's kind of about Bob's intentions. The garden shed that he built, he didn't build it. He had it hauled in and put in his yard. He did that a year or so before he ever put up the carport and he knew well then he should've had a building permit, but he's the kind of guy that he does it his way and to heck with everybody else. And I never said anything. It didn't affect me. The shed is in his yard, but it's the carport that bothers me. But don't think he was innocent about it. He knew exactly what he was doing. Everything he built over there, he knew what he was doing and he knew he was doing it against the city code. That's all I got.

FARRIS: Thank you. Any other comments, questions by the board? If not, I suppose it would be appropriate to have a motion to place it on the floor for an up or down, yea or nay, motion to approve the appeal; is that correct?

DUSTON: Yea to approve the appeal and nay to disapprove the appeal.

FARRIS: Okay. At this time we'll entertain a motion so we can place it on the floor.

PARNELL: Mr. Chairman, I would make a motion to approve the applicant's appeal.

FARRIS: Okay. We have a motion. Is there a second?

ROBINSON: I'll second it.

FARRIS: And any discussion on the motion as seconded? And again to clarify, a yes vote will be to overrule the previous decision of the city of Branson.

DUSTON: The yea vote is a vote to override the director of planning and zoning and to vote for Mr. Styron's client. It would take four yea votes to overturn the planning and zoning director's decision.

FARRIS: All right. Any other discussion before we call for the vote? Let's take the vote please.

McCULLOUGH: Boardmember Fish?

FISH: No.

McCULLOUGH: Boardmember Parnell?

PARNELL: No.

McCULLOUGH: Boardmember Robinson?

PARNELL: No.

McCULLOUGH: Vice-Chairman Keller?

KELLER: No.

McCULLOUGH: Chairman Farris?

FARRIS: Nay.

McCULLOUGH: Motion to approve fails with a five to zero vote.

MOTION:

Motion by Boardmember Parnell and seconded by Boardmember Robinson to approve this administrative appeal.

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

The motion to approve Project No. 08-18.2 failed with a 5-0 vote.

FARRIS: All right, so that concludes this public hearing. And I would encourage the applicant, even though this was not successful, to try to continue to work with the city staff to try to come in compliance with--

[audience member responded; inaudible]

FARRIS: Okay. Well, I know that there're just issues of outstanding buildings and issues there, so I'd ask you to continue to work with the city in that regard, so thank you for coming tonight on behalf of the applicant. Thank you for the rest of our public for being able to come and contribute to our public hearing tonight. All right. Thank you very much.

#### OTHER BUSINESS

FARRIS: Let's move on to any other business tonight. Ruth, do we have any other business before the board?

DENHAM: No. We don't have any more business for the evening.

FARRIS: And I don't think we have any executive sessions tonight?

DENHAM: No. No executive sessions.

#### EXECUTIVE SESSION

None.

#### ADJOURNMENT

FARRIS: So we will entertain a motion to adjourn.

KELLER: I'll make a motion to adjourn.

FARRIS: And is there a second?

FISH: I'll second that.

FARRIS: And let's call for that vote.

McCULLOUGH: Boardmember Fish?

FISH: Yes.

McCULLOUGH: Boardmember Parnell?

PARNELL: Yes.

McCULLOUGH: Boardmember Robinson?

PARNELL: Yes.

McCULLOUGH: Vice-Chairman Keller?

KELLER: Yes.

McCULLOUGH: Chairman Farris?

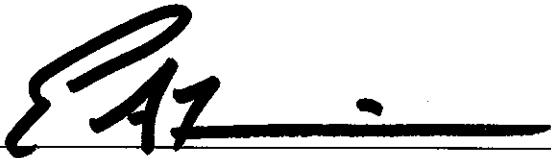
FARRIS: Yes.

McCULLOUGH: Motion carries five to zero.

FARRIS: Okay. We're adjourned. Thank you all for coming tonight.

**MOTION:**

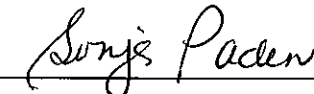
Motion by Vice-Chairperson Keller and seconded by Boardmember Fish to adjourn the meeting at 8:00 p.m.



Eric Farris, Chairperson



Date



Sonja Paden, Office Assistant II



Date