

CITY OF BRANSON  
BOARD OF ADJUSTMENT  
MINUTES  
January 22, 2009

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>
-------------------

**1. Roll Call**

Boardmembers Present: Edie, Fish, Robinson, and Chairperson Farris.

Boardmembers Absent: Parnell and Vice-Chairperson Keller.

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

**2. Approve Agenda**

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Fish to approve the format of the January 22, 2009 agenda.

AYES: Boardmembers Edie, Fish, Robinson, and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Parnell and Vice-Chairperson Keller.

Motion to approve the January 22, 2009 agenda carried with a 4-0 vote.

**3. Approve Minutes.**

**A. December 18, 2008.**

MOTION:

Motion by Boardmember Fish and seconded by Boardmember Robinson to approve the minutes of the December 18, 2008 meeting.

AYES: Boardmembers Edie, Fish, Robinson, and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Parnell and Vice-Chairperson Keller.

Motion to approve the minutes of the December 18, 2008 meeting carried with a 4-0 vote.

OLD BUSINESS

None.

PUBLIC HEARING

4. Request For Approval Of A Variance From Section 410.010 Of The Branson Municipal Code Pertaining To Accessory Structure Setbacks For Property Located At 811 S. Second St. Branson, Missouri. Project No. 08-19.5 (08-01900005).

Applicant: George Cramer

FARRIS: We have a public hearing on our agenda for tonight and that is a request for approval of variance to section 410.010 of the Branson municipal code pertaining to accessory structure setbacks for property located at 811 South Second Street, Branson, Missouri. The applicant is George Cramer. Can we have a staff introduction to this item as we start the public hearing?

DENHAM: Yes. Mr. Chairman, members of the board. The applicant's requested approval of a variance from both required setbacks and distance between structures. The first request is for a 5-foot variance from the rear setback line. The other is two foot of distance between structures. Thirteen feet between structures is being requested versus the fifteen feet required. The parcel is located in R-1 single-family zoning, completely surrounded and shown in purple on the map. Two videos were taken of the property. One is at the "Z" sign in front of the subject; the other is from the rear of the subject property. This one taken from the front of the property pans west, goes counterclockwise. This next video is taken from the back alley facing north so that you can see what the view is from the rear of the property. An accessory structure is defined as any structure which is not the primary structure on a premises, detached, but on the same premises as the primary structure. R-1 family dwelling district area requires a 5-foot rear and side yard setback and fifteen feet between structures. This structure is a nonconforming structure. Ordinary repairs and maintenances are allowed, which include replacement of non-bearing walls, fixtures, wiring, plumbing. It existed prior to the adoption of the city of Branson's zoning code, which was adopted in 1985. This structure was built in 1962. This view again is from the rear of the property, the rear alley. This is another picture showing the property line, which is just in line with the post right here, so the existing structure does sit right up to the property line. And then this last picture shows the roof before the tree hit the structure during one of our recent storms, showing the roof after the damage. This concludes our staff report.

FARRIS: Thank you very much. Let me talk a little bit about our procedures. We have opened a public hearing; that's what we'll be having tonight is a public hearing. When you appear, if anyone wishes to speak before our board tonight, if you'll come up to the front and use the microphone; please no speaking from the seats. We want to make sure that the meeting is

recorded. When you come up, if you would identify yourself by your name and your address then we want to be able to have an opportunity to give you a full opportunity to share your thoughts as to this request with the board. I think let's go ahead then and open this public hearing and let's hear from a representative for the applicant. Is that you, Mr. Cramer?

CRAMER: Yes.

FARRIS: All right, if you'd like to come on up.

CRAMER: My name's George Cramer. My mailing address is post office box 1606, Branson. I live at 2214 Frank Rea Road over in eastern Taney County. I'm here to represent the Nichols' and the short version is a tree has pretty much damaged the structure. We can repair the roof and they can continue to use it for storage and she does some hobbies and crafts out there sometimes. We would like to upgrade it with some new windows, new siding and, before we started doing that, I inquired to the planning and zoning and they said, if we do more than fifty percent of the value of the building then we need to get a permit, which would require a variance. If we do a lot of work to the structure, I'm sure you guys are familiar with remodeling, it may be more feasible to just push it over and start again. And before we did that, we wanted to see if we could get a variance because we know if we take it down and it doesn't meet code then it can't go back up. So we'd like to take the eyesore away and put up a new building and not create any, I think, adverse effects on the neighborhood. I don't know that the alley could ever be widened. They'd have to move all the high lines because they're already there. I think it'd be a benefit to the neighborhood and we'd like to ask for a variance from the code so we can restore that building. Thank you or would there be any questions?

FARRIS: Any questions from the board at this time for Mr. Cramer? Okay.

FISH: I do have a question, Mr. Chairman. Do I understand that one of the dimensions would change or does the existing structure not comply with the 15-foot separation?

CRAMER: The existing structure doesn't comply.

FISH: Gotcha, gotcha.

CRAMER: We don't want to change the size of the building or the footprint.

FARRIS: Mr. Cramer, the current noncompliance, if I understand, is that there's thirteen feet between structures when fifteen feet is the code; is that correct?

CRAMER: I didn't do the measurements myself, but yes and it's also, I'm sure, too close to the setback on the alley. It is an older neighborhood and there are several nonconforming structures in the neighborhood. I don't think it would create a independent problem.

FARRIS: And you're wanting to keep the same footprint--

CRAMER: Correct.

FARRIS: --of the current structures.

CRAMER: Correct. And we actually haven't decided if we're going to tear it down or not. We need to repair it because she wants her building back, but I said before we do, you know, maybe we'll just upgrade it, but we didn't get into that because if we can't get a variance then it would be moot.

FARRIS: All right. Any other questions for Mr. Cramer from the board?

EDIE: Mr. Chairman?

FARRIS: Yes.

EDIE: Mr. Cramer, what you're proposing to do to upgrade it, like new siding and replace some windows--

CRAMER: Yes, sir.

EDIE: --and the roof--

CRAMER: Yes, sir.

EDIE: --and maybe some structural on perhaps the rafter or something--

CRAMER: Correct.

EDIE: --do you believe this would be more than fifty percent of the value of the building?

CRAMER: If we make all those other cosmetic changes, yes. We can repair the roof and make it safe for less than fifty percent.

EDIE: Thank you.

CRAMER: You bet.

FARRIS: Any other questions for Mr. Cramer from the board at this time? Okay. Mr. Cramer, do the Nichols' wish to speak tonight or do you know of anyone else who wishes to speak on behalf of the applicant tonight besides yourself?

CRAMER: Not to my knowledge. I had talked to the Nichols' and they said for me to just present their case.

FARRIS: Okay.

CRAMER: (to the Nichols' who were seated in the audience) Would you like to speak? No. We're good.

FARRIS: Okay; all right.

CRAMER: Thank you.

FARRIS: Thank you very much. We have some other people here from the public. If there's anyone else from the public who received notice or otherwise knew about tonight's public hearing that would like to come up and address the board in regard to their request, you may feel free to come right on up.

BEARD: My name is Jim Beard. I live at 812 South Third. It's the neighbors right behind them. My wife and I have lived there since July of '91 and actually it was our tree that fell that caused their problem. In the years we've lived there, seventeen-and-a-half years, this shed has had no problems for the neighborhood whatsoever. Large utility vehicles can go up and down that alley with no problem. In fact, if they need to widen the alley, all of the utilities and all would have to be moved in that area, so, I mean, there's no real problem there at all. There's another thing. Like he said, it's an older neighborhood. We're kind of a look in the past of Branson. We're kind of unique up there, almost like downtown is unique. We're not a bunch of row of houses all alike. We're different and this house and this property is very unique with the setback of the house the way it is. The out building's the way it was back then, you know. You don't see that nowadays. We have had quite a few of our houses in our neighborhood that are being sold now for rental property. It hasn't been a problem yet. Most of it's been taken care of pretty well, but, if it continues in that trend, it could be a problem not only for our neighborhood, but for the city of Branson. I would like to see the uniqueness of that neighborhood stay like it is, make people want to come there and live, because it is a very unique place. This is a perfect example of why we should have variances in the law. These people only want to put back what they lost, that's all; nothing more, nothing less. It's not going to hurt anybody in that neighborhood. We're the closest one to it. If anything, keeping the uniqueness of the neighborhood will help hold up our property value. When you start removing all these little things that make them unique, that's when you start having problems in a neighborhood. So I ask that you really consider this and approve this variance for them. Thank you.

FARRIS: All right. Any questions-- before you leave, Mr. Beard, any questions from anyone on the board for Mr. Beard tonight? Mr. Beard, I've got a couple questions. So if I understand it,

the back of your property comes up to the back of this subject property that's being requested; is that correct?

BEARD: Yes.

FARRIS: So you guys are-- come right up to each other as neighbors?

BEARD: We are the closest one to that particular shed, yes.

FARRIS: Okay. So the property that would be most affected by how much the setback is or is not would be you; is that correct?

BEARD: Yes.

FARRIS: Okay. And you are in support of their request; is that correct?

BEARD: Yes, I am.

FARRIS: All right. Thank you. Any other questions in light of my questions for Mr. Beard? Okay. Thank you, Mr. Beard.

BEARD: Thank you.

PADEN: Might I just remind you to sign in, please? Sign in. Will you sign in on sheet up there?

FARRIS: We have a sign-in sheet there, Mr. Beard. As Mr. Beard signs the sign-in sheet, are there any other members of the public who are here tonight who would like to have an opportunity to address the board in regard to the request? Okay. Let's have discussion of the board or any other questions that may be redirected to Mr. Cramer at this time. Let me ask, to begin with, staff. Any department of the city express any concern about the request, such as anything related to the alley or access or ingress or egress in that area?

DENHAM: No. We've not received any concerns from any of the departments.

FARRIS: Okay. And have we received-- pursuant to all the notices that went out in the neighborhood, have we received any letters or anything like that in writing of either people in support or in opposition to the request?

DENHAM: No. We've not received anything.

FARRIS: Okay. All right.

FISH: Mr. Chairman, I have a question of staff also.

FARRIS: Okay.

FISH: Given the 2-foot difference in the variance and the setback itself, thirteen to fifteen, is there any provision in the code that would allow the current existing setback to remain if that adjacent wall was fire treated and fire rated? Is the 15-foot a fire separation or is it just an ordinance separation?

DENHAM: Actually, the building code would require ten feet. The fifteen feet is for fire department access and the fire department did not have any concerns with the 2-foot difference.

FISH: Well, I ask that because I know that sometimes you can get a clearance. If it's with a 30-foot separation, you need to do a fire wall or a fire-protected wall, you can get closer by code, so that's the reason I was asking the question.

DENHAM: Okay, yes. The zoning code requires the fifteen feet, but as far as the fire wall separation, I believe it is ten feet in single-family per IBC.

FISH: Okay.

FARRIS: Any other questions on behalf of the board for either Mr. Cramer or the staff or any discussion?

EDIE: I think discussion might be in order. It seems as though the way I'm reading this is the owners want to put this garage back as it was, but the difference is cost versus value. It has nothing to do with clearances to property line and so on. If the garage has been there since 1962 – I was a young man then, by the way – but it seems that if it's been there since 1962 and there's been not a problem, the neighbors don't seem to object to it, the only difference is the cost, the percentage of cost it would take to do the improvements, replace windows, siding. Was there something else, Mr. Cramer? Please.

CRAMER: We'd like to do a big upgrade to it and we haven't really run the numbers. Like I said, it may be more cost-efficient to tear it down and start again. It may be, but that would depend on the cost, but we didn't run the numbers because without a variance it'd be moot.

EDIE: Is it structurally sound right now?

CRAMER: Yes, it is.

EDIE: Okay.

CRAMER: It is. The garage I think began life as a carport and it's kind of a conglomeration. It's structurally sound, but it has a little-- it kind of lists a little bit to starboard.

EDIE: You can kind of see that in the picture.

CRAMER: Right. I think the tree helped it along a little bit, too, but we can straighten the thing up and repair it and probably stay under the fifty percent cost. I know that your background dictates that it may be easier to start over.

EDIE: Yes. Thank you, Mr. Cramer.

CRAMER: You bet.

FARRIS: Anything else, Mr. Edie?

EDIE: No. I'm inclined to grant the variance. I don't know how the rest of the members feel. It's going to be the same building in the same spot more or less and, if it's been all right since '62, I think maybe we ought to consider it.

FARRIS: I will share with the board, by no means am I a veteran on this board but I've been on for at least a couple of years, that we've had a couple of requests that are similar to this in that someone who had damage because of some reason, fire or trees or some reason, and they wanted to go back to basically same footprint, same use, didn't want to all the sudden go from having a home to wanting to build the Taj Mahal and the precedent that I think that we've had on the board since I've been on is to grant those variances, so long as it basically is coming back to what it was before. I think in particular one of the things that we should consider is when you look at the old downtown Branson or the original Branson, St. Lucia potentially, is that that was the use then. If the neighbors are comfortable with that use and the person we've already heard from who'd be most affected by whether there's a setback or not is fine with having that structure in the same footprint as it was before, that's the precedent that we've as a board in the past, at least in the recent past, so I'd keep that in mind. Can I clarify, though, one question I've got and that is I want to make sure that we have before us-- what specifically is the variance that's being asked for? I want to make sure that when we do present this for a vote that we know exactly what we're asking for because, when Mr. Cramer was up, there was some discussion about exactly what was the nonconforming and I was taking my information off of our staff report, which reads that the variance request is for thirteen feet between structures and it says fifteen feet is required per code, and a 5-foot variance from the rear setback line and it says five foot is required per code.

DENHAM: The applicant's requesting 5-foot variance from the rear yard setback line because the structure sits on the property line and five feet is required, so it would be the full five feet.

The distance between structures would actually be a 2-foot variance because they want to keep thirteen feet versus the fifteen feet required.

FARRIS: Mr. Cramer, would you come up. I just want to make sure that we're all on the same page. I don't want to potentially present a variance request for a vote and approve or not approve something that you're not wanting to do or something different, so.

CRAMER: The one thing I'm having a little trouble with, on the variance we're going from fifteen feet to thirteen feet. There's not thirteen feet between the buildings. I think maybe we filled in the wrong line because, as you can see the structures, the little garage on the picture kind of overlaps the house. The front of that garage is just slightly over two feet from the house. There's a walkway in-between them. I think what we're actually looking for is a 13-foot variance because there's just a walkway, you know, between the house and the garage. There's not thirteen feet between the buildings now. So I think the variance is not a 2-foot variance to go from fifteen to thirteen. I think we're wanting to go from fifteen to two. We're wanting a 13-foot variance because that's where it is. It doesn't sit back from that house thirteen feet. I was just conferring with the Nichols' and I asked. I said that's not that, no.

FARRIS: So let me ask. On the code itself, it's the feet difference between the structures, so between two structures-- am I reading that correctly? between structures?

DENHAM: Yes. Between the structures. You are reading it correctly. I apologize. I spoke with Troy Anderson and asked for the measurements between the accessory structure and the main structure, and he had let me know that it was thirteen feet. So I apologize for the misunderstanding.

CRAMER: Well, I could've brought some numbers myself. I've got a tape. We could go back and check and see what the variance is going to have to be or we could write the variance that it's-- I don't know how to do that, but that it's not to exceed the existing footprint of the structure, you know. We don't want to move it, but there is not thirteen feet there. I want to make that clear.

EDIE: Mr. Chairman. Is there a covered walkway between the two buildings? You said it's 2-foot. Does it got a cover over it?

CRAMER: Moment?

EDIE: Yes.

CRAMER: I have a photograph I can show the board.

EDIE: Please. Well, my question was leading to, if it had a covered walkway between the two then it would be an attached garage, wouldn't it?

CRAMER: Yes, but it does not actually have that.

EDIE: That was my question.

CRAMER: (inaudible) (spoke from audience)

FARRIS: Please, please.

EDIE: So it'd be on the recording.

CRAMER: The garage and the house are not attached to one another.

FARRIS: Okay. All right.

EDIE: I have no other question, Mr. Cramer. Thank you.

FARRIS: So to follow up then on that staff, if we were to entertain a motion to approve the variance, if we're able to do that tonight, to give enough specificity so that everyone would for sure know what we're talking about, could it be made to grant a variance so long as the applicant builds or renovates the structure in the same footprint or do we need an actual measurement to be able to have enough specificity for a variance tonight?

DUSTON: I would make your motion to grant the variance and then after the motion's been made, it's been seconded, then have someone make the motion to amend the variance to say this, this, this and this and then vote on the amendment, then vote on the variance.

FARRIS: Okay. Would it be appropriate to just-- none of the people in the room tonight have measurements, is where we're coming up lacking tonight.

DUSTON: Stick with this footprint. I think the footprint idea would be good for the amendment.

FARRIS: So specify a footprint that allows enough information then city staff when they come out to make sure that everything's in compliance that they can verify that.

DUSTON: It sits on a concrete pad, doesn't it?

CRAMER: (responded from audience) I'm sorry?

DUSTON: It sits on a concrete pad, doesn't it?

CRAMER: It has a wooden floor right now. It was just a graveled carport when it began life and they put a wooden floor in it.

FISH: Excuse me, but it does have a concrete foundation?

CRAMER: It does not.

FISH: Okay.

CRAMER: That's one of the things we'd like to improve.

FISH: Gotcha, okay.

DUSTON: There's a foundation to go off of there, though. There's something there for the footprint.

FARRIS: City staff, if nothing else, could go out tomorrow, this week, and measure to where the current foundation would lie so we make sure that we all know what the footprint is.

DENHAM: Yes.

FARRIS: Okay. I just want to make sure that if your variance is granted tonight that you're not in a situation which you've got to come back next month to ask us to revise something. I want to make sure we get it done correctly, however the vote is tonight.

CRAMER: That's why I came back up to approach the board on that thirteen foot thing because that wouldn't do it.

FARRIS: Okay. All right. Thank you. Any other questions at this time or comments from the board? After hearing the discussion that we've had, those here tonight and the public who've come out tonight, any other comments or suggestions that they would have for the board in light of the questions that we've had about footprint and measurements and those types of issues? If someone would like to make a motion and, as we've discussed in the past, the correct motion, however the vote would be, to place it on the table would always be under our rules of procedure to have a motion to approve the requested variance. So at this time, does someone have a motion they'd like to make to be able to place this on the table?

FISH: Mr. Chairman, I'd like to make a motion that we approve the variance as submitted.

EDIE: I will second it.

FARRIS: All right. So we have a motion to approve the variance and we have a second. Before we take a vote on that, we've heard from our staff council tonight who's made a recommendation to have a motion, as I understand, that would amend the variance as requested to specify that the variance that is requested that would be up for approval would be to be able to grant a variance to be able to make the renovations or repairs or replacement on the same footprint as the existing structures; is that correct, Mr. Cramer? If a motion similar,--

CRAMER: Yes.

FARRIS: --but substantially the same as that that would meet what you're asking, so we're all on the same page; is that correct?

CRAMER: That's correct. We'd like to put the building back in the same size, shape and manner that it's in now.

FARRIS: Okay. So hearing that staff council has made that recommendation, do we have a member who would like to make a motion to amend the motion that we have to approve the variance and place that then up for a vote first? Do we have that motion?

EDIE: Mr. Chairman, I move to amend the motion under the same conditions as you just reiterated. Do I need to repeat it? I'm not sure I can.

FARRIS: I don't think so, but I think, just so our record is clear, if I understand your motion, Mr. Edie, you're asking to amend the motion on the floor to clarify that the variance that's requested that would be up for approval would be to grant a variance to allow the applicant to either repair, replace or renovate the existing structure on the current footprint of the existing structure.

EDIE: That is absolutely correct.

FARRIS: I thought I heard you say that.

EDIE: Good ears.

FISH: The word current footprint is important to me.

FARRIS: Yes.

FISH: Not to enlarge it or to change it.

FARRIS: The current footprint.

EDIE: It will include a footprint in the amendment.

FARRIS: Okay. Is there a second to that motion made by Mr. Edie?

ROBINSON: I'll second it.

FARRIS: Okay. Any discussion on the motion to amend at this point by the board? Any discussion or comments from the public as to that motion that we have before us? Okay. If I have a good grasp of parliamentary procedure, we need a vote on the motion to amend what is on the table first; is that correct?

MULTIPLE BOARDMEMBERS: Yes.

FARRIS: All right. So let's call for that vote at this time.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Chairperson Farris?

FARRIS: Yea.

PADEN: Motion to amend passes.

FARRIS: Okay. So now we have the motion to approve the variance as it has been amended tonight that is before the board. Is there any member of the public who would like at this time before we take a vote have any comment or suggestions tonight? Hearing none, any board member like to make any further comment or suggestion? I call for the vote on the motion as amended to approve the variance.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Chairperson Farris?

FARRIS: Yea.

PADEN: Motion as amended passes.

**MOTION:**

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

Boardmember Edie offered the following amendment:

1. Construction is to repair, replace or renovate the existing structure on the current footprint of the existing legal, non-conforming accessory structure.

**MOTION:**

Motion by Boardmember Edie and seconded by Boardmember Robinson to amend this variance request.

AYES: Boardmembers Edie, Fish, Robinson, and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Parnell and Vice-Chairperson Keller.

The motion to amend Project No. 08-19.5 (08-01900005) carried with a 4-0 vote.

AYES: Boardmembers Edie, Fish, Robinson, and Chairperson Farris.

NOES: None.

ABSTAIN: None.

ABSENT: Parnell and Vice-Chairperson Keller.

The motion to approve Project No. 08-19.5 (08-01900005) as amended carried with a 4-0 vote.

FARRIS: Mr. and Mrs. Nichols, Mr. Cramer, congratulations. You've been granted your variance. Wish you good luck with your project. Thank you.

**OTHER BUSINESS**

FARRIS: All right. Do we have any other business tonight?

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

FARRIS: Okay. And I don't believe we have an executive session tonight; is that correct?

DENHAM: No executive session.

**EXECUTIVE SESSION**

None.

**ADJOURNMENT**

FARRIS: Well, then I think we will entertain a motion to adjourn.

EDIE: So moved, Mr. Chairman.

FARRIS: And is there--

FISH: Second.

FARRIS: --do we have a second? I call for the vote.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Fish?

FISH: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Chairperson Farris?

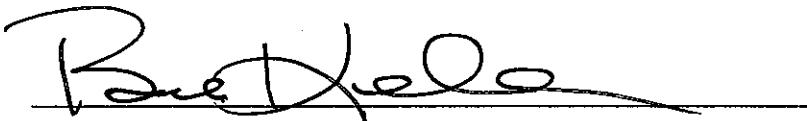
FARRIS: Yea.

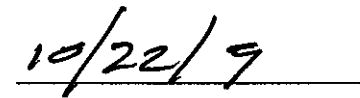
PADEN: Motion to adjourn passes.

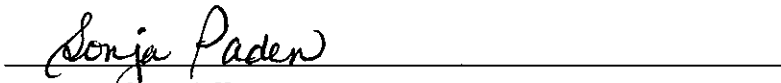
FARRIS: Thank you very much. Thank you. Everyone have a good evening.

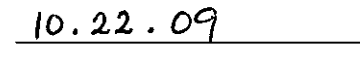
MOTION:

Motion by Boardmember Edie and seconded by Boardmember Fish to adjourn the meeting at 7:34 p.m.

  
\_\_\_\_\_  
Bob Keller, Vice-Chairperson

  
\_\_\_\_\_  
Date

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

  
\_\_\_\_\_  
Date