GRAND JUNCTION BOARD OF APPEALS
NOVEMBER 9, 2005 MINUTES
12:00 p.m. to 2:20 p.m.

The regularly scheduled Board of Appeals meeting was called to order at 12:00 p.m. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Dr. Paul Dibble (Chairman), Travis Cox, Mark Williams, Reginald Wall and Patrick Carlow. (Mr. Williams left prior to the vote on the final item for consideration.)

In attendance, representing the Community Development Department, were Bob Blanchard (Community Development Director), Kathy Portner (Planning Manager), Ronnie Edwards (Associate Planner) and Scott Peterson (Associate Planner).

Jamie Kreiling, Assistant City Attorney, was also present.

The minutes were recorded by Bobbie Paulson and transcribed by Terri Troutner.

There were five interested citizens present during the course of the meeting.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the October 12, 2005 public meeting.

MOTION: (Mr. Cox) "So moved [that we accept the minutes of October 12, 2005 as presented]."

Mr. Williams seconded the motion. A vote was called and the motion passed by a vote of 3-0, with Messrs. Wall and Carlow abstaining.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-2005-222 VARIANCE--SUPRANOVICH FENCE VARIANCE
A request for approval of a variance to allow a solid 5-foot fence within the front yard setback in an RSF-4 zone district.
Petitioners: Vonda Supranovich
Location: 536 Lucas Court

<u>STAFF'S PRESENTATION</u>
Ronnie Edwards gave a PowerPoint presentation containing the following slides: 1) site location map, 2) Existing City and County Zoning Map, and 3) a Subdivision Plan. In residential zones, fences of up to 30 inches in height were permitted in front yard setbacks. They could be 48 inches in height if the materials used were two-thirds open to one-third closed. Ms. Edwards noted that what staff considered the petitioner's front yard, the petitioner was considering her side yard. The petitioner contended that the hardship was as a result of the unusual shape of her lot. The shape of the cul-de-sac did push the front property line 48 feet to the east. Staff agreed that the hardship was unique to the property; however, while the request met variance criteria A and F, it failed to meet criteria B, C, D, E and G. Because not all criteria could be met, staff recommended denial of the request.

QUESTIONS
Chairman Dibble asked how high a fence could be constructed in a side yard. Ms. Edwards said that side yard fences could be constructed up to 6 feet along property lines as long as they were outside of the 20-foot front yard setback.

Chairman Dibble asked if a solid 30-inch fence in a front yard would be subject to setback requirements. Ms. Edwards said that the petitioner could construct such a fence along the front yard property line if she chose; however, she had proposed placing her fence 2 feet in from her front yard property line.

Mr. Cox referenced the property at 544 Lucas Court and, by definition of a front yard, he wondered why the north property line of 544 Lucas Court didn't have a 20-foot setback. Ms. Edwards said that the Code contained a provision for corner lots that fences could be constructed to 6 feet on one side. The petitioner's lot was not considered a corner lot.

PETITIONER'S PRESENTATION
Vonda Supranovich, petitioner, realized that her request did not meet the literal interpretation of the Code. However, there had been no objections raised by any of her neighbors, and granting the variance would not harm anyone. Further, what staff regarded as her front yard she viewed as her side yard. And because she considered the area in question a side yard, she didn't feel that a special privilege would be conferred. She understood that limiting the heights of solid fences in front yards was intended to protect sight distances, but the fence she had requested would be constructed behind and to the side of her home. If her fence were constructed 20 feet in from her property line to comply with front yard setbacks, it would result in 10 feet of unusable "side yard" area because drainage from Broadway went through 534 Lucas Court, 10 feet away from the fence line and 10 feet along the backside of her property into a drainage hold that conveyed runoff to the end of the street. With 10 feet of her "side yard" utilized for stormwater conveyance, that would leave only 10 feet of usable "side yard" area on the south end of her property and approximately 56-58 feet of the full length of her property up against her home. However, since her home had been constructed only 22 feet away from the sidewalk, she would be constructing a fence for a net benefit of only 2 feet. So while she could still use the property, she would not be able to use it for her intended purpose. She wanted to set aside her "side yard" as a play area for her grandchildren. A 5-foot fence would provide security as well as the same level of privacy that was enjoyed by her neighbors.

Ms. Supranovich referenced photos of her property from various angles and letters of support received from her neighbors that had been submitted previously. She clarified that she would like to construct her fence 3 feet in from the sidewalk.

QUESTIONS
Mr. Williams asked for clarification of some of the referenced photos. Ms. Supranovich said that some photos depicted the vinyl fencing material preferred by her neighbors; some depicted the area of wasted space that would be created if the fence were constructed 20 feet from the property line; some were of her neighbors' properties, etc.

Mr. Williams asked the petitioner to point out where she wanted to construct her fence. Ms. Supranovich explained that she would like to have her fence originate one foot behind her home and extend to within three feet of the sidewalk. She also wanted to construct a swinging access gate for ingress/egress. When asked if the fencing would extend to include a triangular piece of property located to the north of her driveway, Ms. Supranovich replied negatively.

Mr. Williams asked if a fence existed between the petitioner and her neighbor. Ms. Supranovich said that her neighbor had constructed a vinyl fence 20 feet from her side yard property line extending to her rear yard property line.

Mr. Williams asked what, if anything, occurred on the west side of the petitioner's property. Ms. Supranovich noted the presence of a 6-foot-high wooden privacy fence that extended the entire length of the development.

Mr. Wall noted a small portion of property to the north of the petitioner's driveway and asked if that would be fenced off, to which Ms. Supranovich replied negatively.

Mr. Williams asked the petitioner if she'd already secured a building permit for the fence. Ms. Supranovich said that she'd hired Taylor Fencing to erect the fence. They'd been the one who'd told her that a variance would be required before the fence could be installed to her specifications since the Code considered that side of her property a front yard.

Mr. Williams asked about the compatibility of fencing materials with adjacent properties and whether the neighbors were in support of the petitioner's request. Ms. Supranovich reiterated that her neighbors were all supportive of her request and that she would use the same vinyl fencing materials as her neighbors to ensure uniformity.

Mr. Carlow asked if the property to the south of the petitioner faced the same restrictions. Ms. Carlow noted that his property was triangular in shape and had both substantial side yard and rear yard areas. Ms. Edwards said that the side yard referenced by Ms. Supranovich for the southern property was considered a front yard as well.

PUBLIC COMMENTS

There were no comments either for or against the request.

DISCUSSION

Chairman Dibble said that since most of the petitioner's property was situated to the side of the home, it was clear how one could regard the area as a side yard. He asked for clarification from staff on why that area was considered a front yard. Ms. Edwards referenced Chapter 4 in the Code that stipulated frontages adjacent to rights-of-way were considered front yards. That included frontages directly abutting access easements.

Ms. Kreiling added that the definitions of front and side yards were also contained in Chapter 9, Definitions, of the Zoning & Development Code. Chairman Dibble read the definitions of both into the record.

Mr. Cox said that he'd originally been inclined to agree with staff's conclusions; however, after listening to the testimony, and given the unique nature of the lot, he now believed that the petitioner's request was reasonable and represented the only way for her to truly enjoy the ownership of her property. He didn't feel that granting the variance would create sight distance problems nor would it adversely affect any of the neighboring properties. This was one of those situations where granting a variance just made the most sense.

Mr. Williams also felt that that the request met established variance criteria.

Mr. Wall concurred and said that given the petitioner's hardship, the number of letters received in support of the request, and the quality of the fence that would be erected, it made sense to approve the request.

Mr. Carlow observed that the petitioner's lot was so unusually shaped that he could easily understand how the petitioner could regard the yard area in question as a side yard.

Mr. Cox said that no variance would have been necessary if the subject yard area had been a side yard. However, even if the yard area was, by definition, a front yard, he felt that it still met variance criteria and as such, the request could be approved.

Chairman Dibble did not feel that the petitioner was asking for an allowance to construct fencing in the front of the home. It was clear to him that no fencing was being erected in the front of the property. While perhaps not consistent with Code definitions, the side yard faced the side of the home, and that's the area that would be fenced. He didn't feel that granting the variance would confer a special privilege, and agreed that the hardship was unique to the petitioner's property. He felt that it met the intent of the Growth Plan and at least the spirit of the law with regard to Code criteria. As such, he supported approval of the request.

MOTION: (Mr. Williams) "On item VAR-2005-222, I move that we approve VAR-2005-222, a request to allow a solid 5-foot fence within the front yard setback, south of the existing residence, adjacent to the right-of-way, with the findings and conclusions listed in the staff report."

Mr. Cox seconded the motion.

Ms. Kreiling said that based on Board member discussions, she advised changing the motion's verbiage "...listed in the staff report" to "...as discussed here today." Both Messrs. Williams and Cox concurred with counsel's recommendation. The revised motion is as follows.

MOTION: (Mr. Williams) "On item VAR-2005-222, I move that we approve VAR-2005-222, a request to allow a solid 5-foot fence within the front yard setback, south of the existing residence, adjacent to the right-of-way, with the findings and conclusions as discussed here today."

Mr. Cox seconded the motion. A vote was called and the motion passed unanimously by a vote of 5-0.

VAR-2005-237 VARIANCE--C-5 MEDICAL WERKS
A request for approval of a variance to the sign code to allow for a second freestanding sign at the entrance to a multi-business site.
Petitioner: Jim Crittenden, Coors Ceramics
Location: 2449 River Road

STAFF'S PRESENTATION

Kathy Portner gave a PowerPoint presentation containing the following slides: 1) site location map, 2) aerial photo map, 3) Future Land Use Map, 4) Existing City and County Zoning Map, 5) site plan, and 6) drawing of proposed signage. The petitioner wanted to transfer his sign code allowance from Sand Hill Lane to the easternmost entrance of the business. The existing CoorsTek sign was located along the western driveway. The petitioner was requesting a second freestanding sign at the eastern driveway entrance. Proposed signage would be 16 square feet on an approximately 32 square foot base at a height of 6 feet.

The subject parcel was very large, with over 1,200 feet of frontage along River Road. The building itself was situated in such a way that there was no access available via Sand Hill Lane. Staff regarded the size and shape of the property as unique.

Having concluded that the request met variance criteria and met the recommendations of the Growth Plan, staff recommended approval.

QUESTIONS

Mr. Cox asked if multiple freestanding signs would have been allowed had the business been a shopping center. Ms. Portner explained that shopping centers typically had pad sites that were on separate parcels. Because those pad sites were generally subdivided, separate signage was allowed along the street frontages for each of those subdivided lots. In the past, the Board of Appeals had considered similar requests for signage of leased business uses where no subdivision had occurred.

Mr. Cox wondered what the City's position would be if Medical Werks were to relocate or close. Would the second sign at the eastern entrance still be permitted? Ms. Portner said that the variance request was specific to the sign's location at the eastern entrance, not to the sign's verbiage. If the variance were granted, and if Medical Werks closed, the sign could remain.

Chairman Dibble wondered how much traffic was anticipated along Sand Hill Lane. What kind of access was it? Ms. Portner said that the access was used strictly for the two rear parcels. As a point of clarification, she added that CoorsTek had a sign code allowance based on the amount of available frontage. A sign could be erected at the Sand Hill Lane intersection along River Road without a variance.

PETITIONER'S PRESENTATION

Jim Crittenden, petitioner, commended Ms. Portner for her thorough presentation. He noted the shipping/receiving area along the south side of Medical Werks and said that traffic would be brought in through the easternmost entrance. Since CoorsTek's shipping/receiving area was located further west, its traffic would continue to use the westernmost entrance as its primary access. The sign code would have permitted a 300 square foot sign; he was asking for a sign that comprised only 16 square feet.

PUBLIC COMMENTS

There were no comments either for or against the request.

DISCUSSION

Mr. Carlow felt the request to be straightforward.

MOTION: (Mr. Williams) "Mr. Chairman, on VAR-2005-237, I move we approve the requested variance to section 4.2.G.1.e(7)(A), to transfer the freestanding sign allowance from the Sand Hill Lane frontage to the River Road frontage, to allow a 16 square foot sign face on a 32 square foot base, with a height not to exceed 6 feet at the east driveway entrance."

Mr. Cox seconded the motion. A vote was called and the motion passed unanimously by a vote of 5-0.

VAR-2005-086 MINOR DEVIATION VARIANCE--CONCRETE BY DESIGN
Appeal of the Community Development Director's approval of a minor deviation to the setback requirements for 2857 1/2 Grand Falls Drive.
Petitioner: Robert R. Hartman
Location: 2857 1/2 Grand Falls Drive

This item was pulled from the agenda.

MSC-2005-245 MISCELLANEOUS--INTERPRETATION APPEAL
Appeal of the Community Development Director's interpretation of Code Section 3.8.B.3, Non-Conforming Structures and Sites, Expansion.
Petitioner: Dan Wilson for Ron Kissner
Location: 2520 Highway 6 & 50

STAFF'S PRESENTATION

Bob Blanchard said that the appeal request originated over the owner of Pine Country Trailer Sales & Rentals wanting to occupy property to the east of his existing business (2520 Highway 6 & 50). Mr. Blanchard said that appeal opportunities were outlined in Code Section 2.18. If the Board upheld the appeal, findings of fact to support that determination should accompany the Board's decision.

At issue was the appropriateness of the site's expansion. No site plan for the previous use could be found in the City's development files; it was thought that the use had been approved by Mesa County. Mr. Blanchard's interpretation had been based on Code Section 3.8.B. He'd concluded that neither the use nor the structure was the issue; rather, the site itself is non-conforming. Non-conforming sites were defined as properties that were legal or legal non-conforming sites at the time of the Zoning & Development Code's adoption; in this case, the 2000 Code. Mr. Blanchard said that expansion of the site's previous use would result in significantly increased areas of outdoor operations, storage and display. The previous use had been conducted primarily inside the structure with minimal display of product outside the structure and possibly along the right-of-way. Aerial photos were presented to show the area behind the business used for storage and a minimal amount of the front area was used either for parking or display. The applicant was currently using that same area for storage, although that did not represent a deviation from what had been previously approved. The site did not conform to the Code's landscaping requirements. Presented were photos of the site from various angles showing the lack of landscaping other than a minimal amount in a planter in front of the business. Based on his interpretation of the Code, Mr. Blanchard felt that there was sufficient justification to require the applicant to bring the site up to current Code standards, either partially or wholly. For non-conforming sites, current standards state that expansions of more than 35 percent require 100% site up grades. New outdoor display and storage areas are considered expansion. Less than 35 percent expansions require incremental upgrades.

QUESTIONS

Chairman Dibble asked where the 20 percent figure fit into the outdoor display criteria (Section 3.8.A.2). Mr. Blanchard said that the appeal was based on his interpretation of Section 3.8.B only; Section 3.8.A did not apply.

Mr. Williams wondered what level of improvements were being required. Mr. Blanchard said that since no site plan had been submitted for review, staff had not had an opportunity to calculate required parking or other needed site improvements. He suspected that the amount of available parking would be sufficient, that the only discrepancy would involve landscaping.

Mr. Williams asked if the interior of the existing building would also fall under staff review. Mr. Blanchard responded that it would only if the building were remodeled. When asked if the applicant intended to change the site's use, Mr. Blanchard replied that he'd interpreted the request to represent the expansion of an allowed use on a non-conforming site. The allowed use would permit the outdoor display of the applicant's product.

Mr. Williams asked if evidence was available to substantiate the intent to expand the allowed use. Mr. Blanchard said that his conclusion had been based primarily on aerial photos of the site, showing the level of outdoor storage and display occurring over time, then comparing that with the current level of outdoor storage and display of the applicant's business. He reiterated that no site plan had been submitted to confirm or refute an increase in the applicant's current level of outdoor storage and display.

Mr. Cox said that if the former tire business had expanded its outdoor display of vehicles, say, from 10 to 14, he wondered if that would represent an expansion of use. Mr. Blanchard said that while it did represent an expansion of use, staff would focus on the display area itself, *i.e.,* did the display of 4 additional vehicles require an expansion of that display area?

Mr. Carlow asked if the tire sales business had been grandfathered in following adoption of the 2000 Code. Mr. Blanchard said that when the 2000 Code was adopted, the business became a legal use occurring on a non-conforming site. As long as the use continued as grandfathered in, the business would not be subject to additional site improvement requirements.

PETITIONER'S PRESENTATION

Dan Wilson, representing the petitioner, said that the applicant had evidence to support the fact that the tire sales business had used the entire front area on the south side of the building for parking and display. Display had been comprised of tires and vehicles. Often, the business would have repair trucks in that area working on customer vehicles. The applicant intended to provide service work on the inside of the building. Mr. Wilson said that staff had used Code section 3.8.B.3 to assess levels of outdoor display and storage, a criterion that shouldn't have applied in the current instance. He contended that Mr. Blanchard had no evidence other than five aerial photos to substantiate his conclusion. It wasn't clear on which days those photos were taken; they could have been holidays. Mr. Kissner had photos in his possession that showed a number of activities occurring on the site. The lack of a site plan should not be held against the applicant; rather, the burden of proof should be the City's responsibility.

Mr. Wilson said that the Code section used by Mr. Blanchard in his interpretation used the words "...addition to..." which presumed the expansion of a use. In the current instance, no expansion was being proposed. The structure, the existing impervious surface, and the parking area would all remain the same. Traffic to and from the applicant's business was expected to be far less than that of the former tire sales business. Since the use was allowed to continue so long as there was no expansion, the applicant should not be required to adhere to current Code requirements, and there should be no reason for him to obtain additional City permits. Mr. Wilson pointed out that no planning clearance should be required because there was no change in use.

Referencing an overhead slide, Mr. Wilson said that the C-2 zone permitted retail sales and limited outdoor display. As well, permanent and portable display was also deemed appropriate. In reviewing the review procedures as outlined in Code Section 2.1, he cited the following: "No person shall begin or change a land use or development in the City without first obtaining a permit." He contended that the applicant's request did not constitute a change of use; thus, no additional permits should be required. He felt that Code Section 3.8.A was applicable since it stated that "Any lawful use made non-conforming by the adoption of this Code or other City ordinances may continue only for so long as such use has not expanded, increased or changed, as provided herein." Even though no change or expansion of use was proposed, that section provided for 20 percent expansion before new Code criteria were triggered. And even if a non-conforming use was partially damaged (less than 50 percent), the Code still provided for a rebuilding of that use without penalty. He maintained that the section referenced by Mr. Blanchard dealt with structures; more specifically, lawful structures made non-conforming solely due to the failure of being able to meet the bulk standards or performance requirements, the latter of which included landscaping. In fact, if the applicant chose to remodel the existing structure less than 25 percent of its value, the Code clearly stated that landscape upgrades would not be required. Other Code sections provided that for remodeling of structures between 25 and 75 percent, a certain percentage of compliance would be required, but these factors were applicable only when the use itself was being changed. None of that applied in the current situation.

Mr. Wilson read the first sentence in Code section 3.8.B.3, under Expansion, which stated, "Additions to structures on non-conforming sites shall require correction of existing onsite non-conforming parking." Mr. Wilson felt that Mr. Blanchard had used this as a basis for his interpretation; however, Mr. Wilson reiterated that no addition to any onsite structure was being requested. The only reference that could potentially be relevant, he said, was the section that read, "The same requirements shall apply to the addition..." "The addition," he maintained, applied to modification of a structure, which did not apply. The section further went on to state, "The same requirements shall apply to the addition of new or

increased areas of outdoor operation or display." While that appeared to be the basis for Mr. Blanchard's interpretation, the City had no evidence to accurately ascertain what level of increase that might be, if any. Mr. Wilson noted that the Code allowed for up to a 35 percent increase without penalty. If Mr. Blanchard's interpretation was upheld, the City's lack of evidence would result in "pulling a percentage from thin air" and applying it to the applicant's situation. That, he was sure, was contrary to City Council's intent.

QUESTIONS

Mr. Wall asked if the applicant intended to move his business to the new site or work out of both locations. Mr. Wilson said that the applicant's current site was leased; the new site was owned. He suggested directing the question to Mr. Kissner. Mr. Kissner came forward and said that he sold utility trailers and trucks. He wanted to move his trailer sales business over to the new site and have the option of selling either trucks or trailers from that location. The existing location would remain a part of his business.

Mr. Wall asked if "expansion" was defined as adding on to an existing building or making an existing site larger. Mr. Wilson said that that was one of the main legal points at issue. The Code referenced expansion as adding onto an existing building, which resulted in expansion of a non-conforming use. He could not find a clear definition as it pertained to the site itself. It would have been clearer if the Code had stated, "If you have a non-conforming site, there shall be no changes from prior uses."

Mr. Cox observed that staff's report indicated that the new site was located in a C-1, not C-2, zoning district. Mr. Blanchard said that the staff report was in error; the C-2 reference was correct.

Chairman Dibble asked if the new site's existing parking lot was paved. Mr. Wilson responded affirmatively and said that it had been so for decades.

Mr. Kissner came forward and presented a photo of his property with the new site in the background. He estimated the photo to be 4-5 years old. Circled were areas where the prior owner (TDS Tire) had maintained permanent and portable displays. Tires had been displayed in the area on the east side of the building. Chairman Dibble noted that the areas circled did not currently show displayed goods. He asked Mr. Kissner if he had any evidence other than statements of what he'd seen when he'd looked out a window. Mr. Kissner referenced the 5-yea-old photo and noted the location of his property line and the presence of trailers and tire trucks in front of the tire sales building. In the aerial photo referenced by Mr. Blanchard previously, Mr. Kissner said that he'd moved some vehicles over to the new site just to get an idea of how much storage area they would need.

Mr. Wall asked about the trailers and trucks shown in Mr. Kissner's photo. What were they doing there? Mr. Kissner said that those were vehicles awaiting service. Although a rare occurrence, TDS would sometimes pull a tire truck out front to change tires or repair vehicles. They had, however, done a number of trailer repairs outdoors on the east side of the building. Mr. Kissner presented other photos of the site when J.W. Brewer owned it. He pointed out a number of stacked loader and other tires. He said that the reason he'd noticed so much outdoor storage and display over the years was because it often blocked the view of his own vehicles from Highway 6 & 50.

Mr. Wilson pointed out where the planter, referenced previously by Mr. Blanchard, was located. Nothing had been growing there for quite some time. It had been Mr. Kissner's intention to install landscaping materials there to improve the site's aesthetics, but he hadn't thought it would have been mandated. Mr. Kissner confirmed that he was not opposed to "dressing up his property" since it would improve his business.

Mr. Wilson said that several options were available to the Board: 1) to decide whether or not to uphold the appeal; 2) recognize the uniqueness of the situation and grant a variance to the landscaping requirements, to require vegetative materials only for the identified planter(s); or 3) give relief from non-conforming provisions set by Section 3.8, which was within the Board's purview. Mr. Wilson said that staff's interpretation of the Code had thusfar prevented Mr. Kissner from using his property the way he wanted. Until such time as City Council provided additional clarification on those Code sections previously referenced, he felt that the Code should be interpreted based on the Board's reading of it and based on the lack of submitted evidence.

Mr. Kissner added that he'd met with the Mayor on the site a month before, and the Mayor had remarked that he couldn't understand Mr. Blanchard's position. Chairman Dibble asked the petitioner to discontinue presenting this information to the Board as it was not pertinent to them making a decision.

Chairman Dibble asked the applicant if, by moving the bulk of his business to the new site, it represented an expansion of the business. Mr. Kissner said that the new site just afforded him the additional room needed to display his trailers. He expected traffic into and out of the site to be much less than what the tire sales business had generated. Mr. Wilson added that their position was that the applicant would be using the new site in the same way as did the prior owners. Chairman Dibble referenced Mr. Kissner's August 15, 2005 letter, second to last paragraph, where he'd referred to "...expanding our existing business..." Mr. Wilson said that that had meant more room for the same business.

Chairman Dibble wondered what the front area would look like once the business moved to the new site. Mr. Kissner said that in addition to truck and utility trailer sales, he also sold horse trailers, truck flatbeds and utility beds, all of which would be displayed in that front area. When asked how much of the current available area would be allocated to display versus customer parking, Mr. Wilson responded that the parking requirement had been grandfathered in and was not at issue. There was plenty of available parking. The only area in question was that which would be used for display. He felt that the number of vehicles on the site would remain consistent with what had been there before. The only difference was that the applicant's vehicles were for sale instead of waiting for service. The amount of display area used would not in any way impact parking requirements.

When asked by Mr. Williams if there would be a greater occupancy of vehicles out front than the previous tire businesses, Mr. Kissner responded affirmatively. He added that a 30-foot right-of-way was necessary through the middle of the property, and a minimum of 20 parking spaces would be required for customers.

Chairman Dibble asked how much outdoor display was done on the applicant's leased property. Mr. Kissner referenced a photo slide that depicted trailers displayed along the western property line and to the north of the building.

Mr. Williams asked again if there would be an increased number of vehicles stored in the front of the property, to which Mr. Kissner replied affirmatively. Mr. Williams addressed Mr. Wilson and asked how increasing the amount of outdoor storage and display was not representative of expanding the use. Mr. Wilson said that staff had already concluded that there would be no change of use on the property. The only issue before the Board was the site's deficiencies and whether or not those deficiencies were being expanded. His argument was based on the fact that no changes to the site had been proposed. The same amount of display area was being used, just used differently. That did not constitute an expansion of use. While the front area may have been used by the tire company for occasional servicing versus a day-to-day presence of parked trailers, still the same area had been used in the same way. The Code did not differentiate between the two types of outdoor storage/display.

Mr. Cox felt that the issue was whether or not there was an expansion of the actual site. The argument being made by the petitioner and his representative was that there was no expansion of the site; thus, Code Section 3.8.B wasn't applicable. Mr. Wilson concurred with Mr. Cox's assessment.

Chairman Dibble felt that the question of expansion of use was relevant. How could the Board ascertain whether or not the outdoor storage and display area was being increased beyond 35 percent? Mr. Wilson referenced Exhibit 3 in a packet distributed to Board members, Code Section 2.1. Since no change would be occurring to the structure, no planning clearance would be required. Since neither the structure nor the site were being changed to another principal use, no change of use permit would be required either. Since no development of the site was being undertaken, no major site plan review was required. In fact, none of the areas over which the Community Development Director had authority applied to the current situation. The only section that did apply was 3.8.A. (Exhibit 4). That section and section 3.8.B were referenced and overviewed.

Due to a previous commitment offsite, Mr. Williams excused himself from further participation in discussions and left the meeting.

STAFF'S REBUTTAL

Mr. Blanchard agreed that the Board needed to based its interpretation on its own reading of the Code. He reiterated that the use was not at issue. The use was both lawful and allowed. He didn't feel that the reference to destruction of a non-conforming use was applicable. Any assertion that the entire site must be brought up to Code was erroneous; that had not yet been determined. Without a submitted site plan, staff did not know what areas of use were being proposed. Mr. Wilson's reference to there being no Code compliance required for expansion up to 35 percent was not accurate. While it was true that over 35 percent required 100 percent compliance with current Code requirements, expansion of up to 35 percent required incremental Code compliance. He believed that some level of incremental compliance would be applicable in the current situation. Mr. Blanchard said that only the Planning Commission had the right to vary landscaping requirements; the Board of Appeals did not have that authority. He reiterated that his interpretation had been based on Code Section 3.8.B.3 because the site itself did not conform to current regulations. Within that section, it referenced additions to structures and additions of new or increased areas for outdoor operations/storage/display. It was that latter reference that became applicable based on his discussions with the applicant and without benefit of a site plan. When determining a baseline, Mr. Blanchard cited Code section 3.8.F., which stated, "The evidence of the status of a non-conforming use or site shall be supplied by the owner of the property upon request of the Director." He felt that the applicant had attempted to provide that evidence by virtue of the photos submitted and referenced, but no baseline had yet been established.

DISCUSSION

Mr. Cox said it was clear to him that the site itself was not being expanded, and no remodeling of the structure had been proposed. He did not feel that Section 3.8.B applied to the current situation and so felt that he could support the appeal without requiring any additional landscaping or site improvements.

Editor’s note: Mr. Williams was not able to stay for the remainder of the meeting.

Mr. Wall said that the way he interpreted expansion pertained to the expansion of a business. Since the applicant did not intend to give up his current site in favor of the new site, that represented an expansion of the business. Based on the testimony and evidence presented, it did seem to him that Section 3.8.B.3 applied since there was the likelihood that the outdoor storage/display area would be increased. He felt he could not support the appeal.

Mr. Carlow concurred with the Director's interpretation, although he agreed that the referenced section's verbiage seemed somewhat vague.

Chairman Dibble said that without some evidence to establish a clear baseline, it was difficult to determine just what level of increase in outdoor storage/display there would be. He was inclined to favor removing the landscaping requirement as an impediment and allow the petitioner to move forward with his application, adding that any landscaping installed on the property would only add value and aesthetics to it.

Mr. Blanchard asked that Board members make a finding on the question of expansion. If a determination was made that no expansion of the site would occur, then no development application would be required. Because there would be no change of use, the applicant would be permitted to move onto the property right away.

Mr. Wilson said that if the appeal was not upheld, he needed direction from the Board on what specifically was required. Also, he asked the Board to establish a baseline based on the evidence presented so that the applicant would have an expectation of what would be required upon submission of a site plan.

Mr. Cox said that he'd lived on 22 Road since he was a child and routinely drove by the site previously owned by J.W. Brewer. There were always massive amounts of vehicles, heavy equipment, service vehicles, etc. parked in that front area that he'd seen over the years. Using the analogy of a taco stand increasing the number of tacos in sold, he didn't feel that requiring the applicant to redevelop the site just because it displayed a few more vehicles was fair, nor was it what the Code had intended. He felt that the Code addressed expansion of the use not expanding the use of the site.

Chairman Dibble felt that there would be a more consistent use of the area in question for outdoor storage and display; however, trying to determine if there was a difference and just how much of a difference it represented was virtually impossible based on the evidence presented. He asked for a legal opinion from counsel. Ms. Kreiling felt that the matter was probably being heard prematurely by the Board. Submission of a site plan would go far in ascertaining whether or not expansion would be occurring.

Chairman Dibble felt uncomfortable with Mr. Williams' absence in that a tie vote would cause the appeal to fail. Yet, Mr. Williams had been present for the majority of the testimony presented and should be given an opportunity to vote. He suggested tabling the request until a meeting could be rescheduled to allow for Mr. Williams' participation. Messrs. Wall and Carlow concurred. Mr. Cox suggested getting input from the applicant.

Mr. Wilson said that the premise of the Code was that a property owner had the right to do what he wanted with his land unless there was a rule saying that he couldn't. In the current situation, there was no rule in place expressly forbidding the applicant from conducting business on his property. Ms. Kreiling's response, however, suggested that the reverse position was being taken by the City that the applicant was not allowed to use his land until such time as a site plan could be submitted for review. If the Code did not expressly require him to submit an application, which in this case it didn't, then he should be allowed to open up his business. If a continuation was considered, he asked that it be for no more than a week or two instead of another month.

Chairman Dibble said that he didn't want to misrepresent the Board's considerations by default. He asked that Ms. Kreiling prepare an answer to Mr. Wilson's request. He apologized for the delay that might arise from tabling the motion.

Ms. Kreiling said that since Mr. Williams had not been present for all of the discussion, he might have additional questions, so the next meeting may be comprised of more than just bringing the issue to a vote.

A brief discussion ensued over possible dates for continuance; however, no consensus could be reached. Ms. Paulson was asked to contact each participant and come up with a date that would work for all.

MOTION: (Mr. Cox) "Mr. Chairman, I move that we continue this item to a date that staff can determine that all five members of the Board, City staff, and the applicant can be present."

Mr. Wall seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0.

With no further business to discuss, the meeting was adjourned at 2:20 p.m.