

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT**  
**DECEMBER 20, 2011**  
**7:00 PM**  
**AGENDA**

1. Meeting called to order
2. Roll call and determination of quorum
3. Approval of the July 19, 2011 meeting minutes
4. CASE: BA-08-11  
APPLICANT: Charles E. Griffith, Jr.  
LOCATION: 9036 Alexandria Pike, Unincorporated Campbell County.  
REQUEST: Two variances to allow for the expansion of an existing business into the rear and side yard setbacks. Specifically, the expansion will encroach 6.02' feet into the minimum 50' foot side yard setback and 22.13' feet into the 50' foot rear yard setback.
5. Director's Report
6. Adjournment

**IF YOU CANNOT ATTEND THIS MEETING PLEASE CALL  
PLANNING & ZONING COMMISSION AT (859) 292-3880**

The Board will make every reasonable accommodation to assist qualified persons in attending the meeting, if there is a need for the Board to be aware of, contact the office.

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT  
MINUTES OF THE DECEMBER 20, 2011 MEETING**

**MEMBERS PRESENT:**

Ms. Fran Reitman  
Ms. Connie Schweitzer  
Mr. Roger Mason, TPO  
Mr. Dave Schaber, Vice Chair  
Mr. Justin Verst, Chair

**MEMBERS ABSENT:**

Mr. Scott Bachmann  
Mr. Paul Johnson

**STAFF PRESENT:**

Mr. Peter Klear, AICP, Director  
Mr. Ryan Hutchinson, Planner  
Mr. Michael Duncan, Legal Counsel, *arrived 7:06 PM*  
Ms. Stephanie Turner, Recording Secretary

Mr. Verst called the meeting to order at 7:03 PM. Mr. Verst asked for a roll call. Following roll call, a quorum was found to be present. Mr. Verst asked if everyone had read the July 19, 2011 meeting minutes and if there were any questions or corrections. There being none, Mr. Verst called for a motion. Ms. Reitman made a motion to approve the minutes as submitted. Mr. Schaber seconded the motion. A roll call vote found Ms. Reitman, Mr. Mason, and Mr. Schaber in favor. Ms. Schweitzer and Mr. Verst abstained. Motion passed.

At 7:06 PM, Mr. Verst recognized the arrival of Mr. Duncan, Legal Counsel. Mr. Verst introduced case #BA-08-11, Charles E. Griffith Jr., who is asking for two variances to allow for the expansion of an existing business into the rear and side yard setbacks. Mr. Hutchinson presented the staff report as follows:

<b>CASE:</b>	BA-08-11
<b>APPLICANT:</b>	Charles E. Griffith, Jr.
<b>LOCATION:</b>	9036 Alexandria Pike, Unincorporated Campbell County.
<b>REQUEST:</b>	Two variances to allow for the expansion of an existing business into the rear and side yard setbacks. Specifically, the expansion will encroach 6.02' feet into the minimum 50' foot side yard setback and 22.13' feet into the 50' foot rear yard setback.

Staff has reviewed the request and finds as follows:

**DESCRIPTION OF REQUEST:**

The applicant is asking for two variances to expand the back of the building 65'x70' feet. The proposed expansion will result in a side yard encroachment of 6.02' feet and rear yard of 22.13' feet.

**CONSIDERATIONS:**

1. This site is occupied by an auto body shop. The property to the north is a park and ride, the property to the west is residential and the property to the south is vacant land.

2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for urban mixed use.
3. The property is currently zoned Rural Commercial (RC). The minimum side and rear yard setback for the RC Zone when adjacent to a residential zone is 50' feet.
4. A review of the public records indicates there have been no previous conditional use or variances granted by the Board of Adjustment for this site.
5. The submitted drawings indicate the following:
  - a. The site plan shows the proposed building expansion of 65'x70' feet. The proposed side yard setback would be 43.98' feet with an encroachment of 6.02' feet and rear yard of 27.87' feet encroaching 22.13' feet in to the minimum setback.
  - b. The site plan shows a relocated fence.
  - c. The site plan shows 3 additional paved parking spaces. Per the county parking requirements, 21 parking spaces would be needed with the expansion, currently 18 spaces exist.
  - d. The drive isle to the parking spaces is not shown to be paved.
  - e. The site plan shows an existing 10' foot screening buffer along the north and west portions of the property.
  - f. The site plan shows 3 lots make up Chucks Auto Body. These lots must be combined into one lot.
  - g. The site plan does not show a dedicated loading and unloading zone. Per the requirements, a 10,000 sq ft building must have 2 dedicated loading and unloading spaces that are paved with concrete.
  - h. The site plan shows 18 existing parking spaces of 9' x 18' feet, the minimum size requirements for a parking space is 10'x20' feet.
  - i. The applicant owns the land directly west of the auto body shop.
  - j. The site plan does not show additional lighting or signage.

**ALL REQUESTS:**

1. The applicant shall submit and/or present factual evidence demonstrating:
  - a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community.
 

*“The body shop’s volume of work has increased and consequently causing delays to customers. These delays can be alleviated by adding on the proposed addition.”*
  - b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.
 

*“Chuck’s Auto Body will follow the same rigorous relations (local, state, federal) for the addition that it currently follows and will not be injurious to any persons working in the building or the community.”*
  - c. That such use will comply with any regulations and conditions in this ordinance for such use.

*“The addition will abide by all rules currently in use for the existing facility.”*

2. Per Section 18.6 Variances: Change from one nonconforming use to another, conditions governing applications: procedures.

DIMENSIONAL VARIANCES: Before any dimensional variance is granted, the Board of Adjustment must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance. Such dimensional variance shall not be granted by the Board of Adjustment unless and until:

- a. That the requested variance arises from special circumstances exist which do not generally apply to land in the general vicinity, or in the same zone.

*The applicant stated “The requested variance arises because of the zoning code that requires a distance of x number of feet from adjoining property.”*

- b. That the manner in which the strict application of the provisions of this Ordinance would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant.

*The applicant stated “Without the variance, movement into and out of the building would be limited to such a degree that it would render the building useless.”*

- c. That the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

*The applicant states “The original building was built without knowledge of ever expanding and not needing extra room at that time.”*

- d. Reasons that the variance will not allow unreasonable circumstance of the requirements of the zoning regulations and will not alter the essential character of the neighborhood.

*The applicant states “The variance will not alter the neighborhood as the same quality building will be erected and will not affect any of the adjoining land.”*

- e. That granting the variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone. No nonconforming use of neighboring lands and structures in the same zone shall be considered grounds for the issuance of a variance.

*The applicant states “The variance will not confer any special privileges that do not exist with the current building and does not change any adjoining land.”*

- f. That the variance requested will not adversely affect the public health, safety, or welfare, will not adversely alter the essential character of the general vicinity, and will not cause a hazard or nuisance to the public.

*The applicant states “The variance requested for the new addition will comply with all health, safety, and welfare and will not adversely alter the existing community. In addition, this will not cause a hazard or nuisance to the public.”*

- g. That the variance will be in harmony with the general purpose and intent of the Zoning Ordinance as well as the Adopted Comprehensive Plan for the County.

*The applicant states "The variance will be in harmony with the general purpose and intent of the zoning ordinances as well as the adopted comprehensive plans for the county."*

3. Per Section 18.6, A., 2., Notice: Notice of public hearing was given in accordance with Section 18.2 of the Campbell County Zoning Ordinance.
4. According to Section 18.6, A., the Board of Adjustment must find that the granting of the variance will be in harmony with the general purpose and intent of the Ordinance as well as the adopted Comprehensive Plan, and will not be injurious to the neighborhood, or otherwise, detrimental to the public welfare.

#### **STAFF RECOMMENDATIONS:**

1. To deny the requested variances.
2. That the 3 lots for Chucks Auto Body be combined.

#### **BASES FOR STAFF RECOMMENDATION:**

1. DIMENSIONAL VARIANCES: Before any dimensional variance is granted, the Board of Adjustment must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance. Such dimensional variance shall not be granted by the Board of Adjustment unless and until:
  - a. That the requested variance arises from special circumstances exist which do not generally apply to land in the general vicinity, or in the same zone.

*The proposed location of the detached garage is an unreasonable circumvention of the requirements of the zoning regulations. It is possible to construct the garage and still meet the setback requirements of the zoning ordinance, such as repositioning the garage and moving it to meet the setback requirements. In addition Mr. Griffith also owns the land behind the property. He could do a land addition from the residential property to the commercial.*
  - b. That the manner in which the strict application of the provisions of this Ordinance would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant.

*The application of the provisions of this Ordinance would **not** deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant. Special circumstances don't exist for this lot. It is possible to construct the addition and still meet the setback requirements of the zoning ordinance.*
  - c. That the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

*The applicant is requesting this variance after the adoption of the zoning regulations.*

- d. Reasons that the variance will not allow unreasonable circumstance of the requirements of the zoning regulations and will not alter the essential character of the neighborhood.

*It is unreasonable to place the addition in the setback because they have more land and can meet setback requirements.*

- e. That granting the variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone. No nonconforming use of neighboring lands and structures in the same zone shall be considered grounds for the issuance of a variance.

*This variance would be granting the applicant a special privilege because no other variances have been granted in this area for rear and side yard setbacks.*

- f. That the variance requested will not adversely affect the public health, safety, or welfare, will not adversely alter the essential character of the general vicinity, and will not cause a hazard or nuisance to the public.

*The variance will adversely affect the public health, safety or welfare, and alter the character of the general vicinity and will cause a hazard or nuisance to the public.*

- g. That the variance will be in harmony with the general purpose and intent of the Zoning Ordinance as well as the Adopted Comprehensive Plan for the County.

*The variance would not be in harmony with the Zoning Ordinance or Comprehensive Plan since the addition could be relocated to meet setbacks.*

Mr. Hutchinson concluded his report by asking if there were any questions for staff that he could answer. Ms. Reitman asked if staff was proposing that the applicant put the addition closer to the south instead of to the north. Mr. Hutchinson stated that staff was not here to redesign the building for the applicant and was not capable of offering any recommendations as to how the addition could be redesigned as they were not familiar with the functionality of the building; however, the applicant has the option to reduce the size of the addition so that the setbacks are met. The applicant owns the land behind the addition and could submit a land addition that would allow the setback requirements to be met. Mr. Hutchinson stated that staff's opinion is that there are other options available to the applicant that negates the need for a variance.

Mr. Mason asked if the land addition was submitted, if there would be a zone change required since the land being added was residential and it was being added to a commercially zoned property. Mr. Hutchinson deferred this question to Mr. Klear. Mr. Klear stated that technically it would have to be submitted for a zone change; however, it could potentially be performed administratively. There are too many hypothetical situations being suggested at this time to make a determination tonight. Mr. Duncan agreed with Mr. Klear. Mr. Duncan added his legal opinion that if the sliver of land that was residential is only being used to meet the setback requirement; there would not be any need for a zone change. However, at such time as the business attempts to build any type of structure or make use of the area for the business profit (use for parking, loading, unloading, etc.), they would first have to rezone that sliver as commercial.

Mr. Verst asked what the side yard setback was for a commercial property when it did not abut a residential property. Mr. Hutchinson replied that it would be 25 feet, but it is doubled to 50 feet when it abuts a residential property. Mr. Verst stated he assumed it was double for the protection of the residential zone. Mr. Hutchinson agreed. Ms. Reitman asked for confirmation that the Park and Ride is considered residential. Mr. Hutchinson stated that the zoning for the Park and Ride property was residential.

Mr. Verst asked if there were any other questions for staff. There being none, Mr. Verst asked the applicant to come forth and identify themselves for the record. Mr. Jim Morgan, representative for the applicant, and Mr. Chuck Griffith Jr., applicant, came forward. Mr. Morgan began by respectfully disagreeing with staff's recommendation. Chuck's Auto Body has been in its current location for the past 22 years. Mr. Morgan stated it has to be the cleanest auto body shop that he has ever been in. The site has always been kept in pristine condition without any complaints.

Mr. Morgan wanted to cover the easy items first. Should the variance be granted, the applicant is in agreement with staff's statements concerning: screening buffers, paving of parking spaces, combining of the lots, loading and unloading spaces, and will not install any additional lighting or signage unless submitting plans to staff first. In this day and age, we are all aware of the issues and difficulties that arise when you undertake the task of attempting to release a portion of a property that is held as collateral by a mortgage. Mr. Morgan stated that the gravel drive that was pointed out in staff's presentation is actually a private drive that goes to Mr. Griffith's private residence which is behind the commercial property. There is a mortgage on the property. Mr. Griffith has lived at this residence for the past 18 years. Mr. Morgan stated that the applicant would like to not be placed in a position where he would have to approach the bank and request a release of any portion of the property to perform a land addition if there are any other alternatives available.

Mr. Morgan has an alternative suggestion to offer the Board. Mr. Morgan stated Mr. Griffith has no intention of selling at this point. Mr. Morgan proposes that the variance be approved with the condition that should Mr. Griffith sell his home in the future that the additional portion of land that is necessary to satisfy the setback requirement be added to the commercial property to bring the commercial property into conformity at that time. The mortgage would be paid off and would no longer encumber the land and the sliver needed would be available to perform a land addition prior to the sale.

In regards to the six feet needed on the west boundary, as you can see on the topo map, there is a very large earth "wall", if you will, that separates the property from the residential zone. The property next door is the Park and Ride. The adverse effect is non-existent. This is one of the rare instances in this economy of a business that is doing reasonably well and wants to try to expand and in fact needs to expand. Under these circumstances, this six feet variance is a minimal request and has little to no impact on the community.

Mr. Morgan continued with his discussion on the comments regarding the potential to reduce the size of the addition or to relocate the addition. Mr. Morgan explained that Mr. Griffith has met with a contractor that he has worked with to design this addition. The contractor recommended this configuration based on several factors including the structural integrity of the existing building and the structural integrity and blending of the addition with the existing building. It has to be done so that it is aesthetically nice and yet economically feasible. In addition, it has to take into consideration the mechanics of the buildings: where is the wiring, the air circulation of the building, how can it all be done to accommodate the addition, etc. and all at the same time meet his business needs. This would be no different than the considerations we would take if we were to build an addition to our house.

There are special circumstances here. This property is different than other properties in this area. There is an earth embankment to the north. It abuts the Park and Ride which is owned by the State and restricts his expansion potential in that direction. To strictly apply the Zoning Ordinance would deprive his client of the reasonable use of his property and would place an undue hardship upon him. Mr. Griffith is trying to grow this business during difficult times. He has the opportunity and he is an established business, not a new risk to the community. Mr. Morgan stated that Mr. Griffith never anticipated that he would have a need to expand. Mr. Morgan stated the request before the Board is in no way going to alter the essential character of the neighborhood. Mr. Griffith is not a hazard to the community. The request is not injurious to the welfare of the community. The only property affected would be Mr. Griffith's private residence and he surely doesn't object to his business growing and has already promised to complete the land addition if in fact Mr. Griffith ever sells his private residence. The fact that the business is growing is indicative in itself that the business is not injurious to the community. In all other aspects, Mr. Griffith will comply with the regulations and rulings. Mr. Morgan again respectfully requests approval of both variances.

Mr. Verst asked if there were any questions for the applicant. Ms. Schweitzer asked if the applicant had ever expanded prior to this application for a variance. Mr. Griffith replied that he had expanded his business previously about 12 years ago. Ms. Reitman asked how big of an expansion it was. Mr. Griffith stated they added 4,200 square feet at that time. Ms. Reitman asked if that was to the north of the original site. Mr. Griffith replied that it was. Ms. Reitman asked if Mr. Griffith had applied previously for a dealer's license. Mr. Griffith replied he had. Ms. Reitman asked which parking spaces were reserved for the sales spaces. Mr. Griffith stated they were the parking spaces on the south side of the building. Ms. Schweitzer asked for the size of the original building. Mr. Griffith replied the original auto section was 15 feet by 20 feet and then the addition was 70 feet by 70 feet. Ms. Schweitzer asked for the intended purpose of the addition. Mr. Griffith replied he needed more "inside" space to improve the efficiency of his work flow. The insurance companies he performs work for are now requiring some vehicles be stored inside.

Mr. Schaber asked how you intend to complete the land addition if you sell your personal home. Mr. Morgan stated once a contract to sell has been negotiated and the mortgage paid, the land addition could be completed prior to the transfer to the new owner. Mr. Schaber stated he is talking about the enforcement side of the condition by the Board. How is the Board to know you are selling the property? How is the Board to know you followed through? As Mr. Morgan previously stated, we are in hard times, what would the Board do if the residential property were to be foreclosed upon? What if both the residential and commercial properties were foreclosed upon? How would the Board rectify this situation then? Mr. Morgan stated any prospective buyer would check into the conformity of the land and would inquire into the steps needed to bring the properties into conformity. Mr. Schaber stated there was no requirement enforcing the correction on the new prospective owner. Mr. Verst stated that actually sounds like a question for our legal counsel. Mr. Duncan stated it would require a series of steps, the first being the condition attached to the approval of the variance by the Board. Next would be the drafting of the ID Plat showing that sliver of land and creating a legal description for it. Third, you would record a Certificate of Land Use Restriction binding that parcel voluntarily so that it would appear in the real estate records and should show in any title exam of the properties. That is as binding as you can get it. Mr. Duncan stated this is as tight as you can do it; however, it is not the best way. The best way is to get the transfer now.

Mr. Morgan stated again that it is difficult to deal with mortgage companies to obtain releases. If there is any way possible to not approach the bank, that would be Mr. Morgan and Mr. Griffith's preference. Mr. Verst asked if there were any other questions of the applicant. There being none, Mr. Verst asked the applicants to be seated. Mr. Verst asked if there was anyone else in the audience that wished to speak

either for or against. There being none, Mr. Verst closed the floor to speakers and opened the floor for discussion among the Board.

Ms. Reitman stated the business has been there for 22 years and there have been lots of changes with the widening of US 27, changes in businesses in that area, etc. Ms. Reitman asked if staff has received any complaints regarding this site. Mr. Klear replied his office has not received any complaints about this site. Ms. Reitman continued that the applicant has been before the Board and/or the Commission previously for request. Ms. Reitman asked if the applicant had complied with all conditions of previous decisions and worked with staff to resolve issues. Mr. Klear stated the previous request by applicant predate current staff. Staff has not worked with the applicant previously. Mr. Klear stated he did not research previous work or complaint history of the applicant but from the pictures you can tell the buffering zone has obviously not been complied with because there are intermittent empty spaces. The buffering zone must be continuous planting to buffer the residential zone from the commercial zone.

Mr. Verst asked if the reservation of parking spaces for the dealer's license was taken into consideration for the request before the Board tonight. Mr. Klear stated the review before the Board was reviewed as an auto body shop and not as an auto body shop and dealer. The sales component was new to staff. Ms. Reitman asked if the parking space calculation was based upon the existing building only. Mr. Hutchinson stated the parking space calculation was based upon the existing building plus the proposed addition; however, they did not consider the dealer's license in their review. Mr. Verst asked if there were any other questions for staff. Mr. Hutchinson stated he had a comment for the applicant since they agreed in their presentation to provide two loading and unloading parking spaces. The loading and unloading parking spaces are not normal sized parking spaces. They must be 12 feet by 60 feet and they cannot be placed in a drive aisle or across existing parking spaces. There is no location on the current site plan that Mr. Hutchinson sees can be converted into two loading and unloading parking spaces. Mr. Hutchinson's concern is that they promise something they cannot provide and then have to come back before the Board to request a waiver of loading and unloading spaces. Mr. Verst stated that the issue of the loading and unloading spaces would be reflected on the site plan that would be presented to the Planning Commission. As such, the Board will not discuss or place any recommendations on those items unless they wish to restrict those items to a more stringent level that the Commission normally would recommend. Mr. Verst thanked Mr. Hutchinson for his comments and recommended the applicant take the comments into consideration for their site plan submission to the Commission.

Mr. Verst started the discussion among the Board with his opinion of the setback status. The normal side yard setback for commercial is only 25 feet. It is doubled to 50 feet because it abuts a residential zone, but Mr. Verst is unconvinced that you can classify a Park and Ride as residential. The side setback variance request of six feet is not a real concern in his opinion. The owner of the business is the owner to the residential home at the rear of the property so the variance request for the rear could be of less concern to him as the owner of both properties. Mr. Schaber stated that it was the Board's duty to make everything as conforming as possible. If the Board could get this lot to be more in compliance, it would be better for all parties. Mr. Schaber agreed that the side yard variance request is acceptable, but the rear yard is a little harder to swallow in his opinion. If the rear yard is supposed to be 25 feet and it is doubled because it abuts a residential property; and if in future the property to the rear also becomes commercial, the business will be abutting one another without any buffer at all. Mr. Klear corrected Mr. Schaber to advise that, regardless of the zone, the rear yard setback is 50 feet. Mr. Schaber stated he would ideally want to see a permanent solution in place and there are a lot of thoughts going through his mind about "what ifs". Mr. Klear interjected a comment at this point. The applicant has indicated that he cannot transfer property from his home to his business to meet the rear yard setback requirement because his mortgage company isn't receptive to that idea. Therefore, he should be given a rear yard variance. Is this a precedent the Board wants to set of allowing a financial institution to determine land policy in Campbell County? This is not the path that Mr. Klear recommends the Board pursue. The path laid out by legal

counsel would be a way to circumvent the bank. Even Mr. Duncan stated it was not the best method. It is contingent upon a title researcher picking up the Certificate of Land Use Restriction during the title examine and of the purchaser willing to proceed with that condition hanging over the sell. What happens if the title researcher doesn't catch it?

Mr. Klear assured the Board that for every case that is presented, staff spends considerable time answering the question: Is there a way to accommodate what the applicant wants to achieve and still adhere to the regulations? The answer is yes, there is a way to do it. The applicant has said they cannot physically move the location of the addition. Does the addition have to be 65 feet by 70 feet? If you change the 65 feet to 60 feet, you will meet the side yard setback. Is that five feet difference do or die? Mr. Klear is uncertain how critical those five feet are to the applicant's business. Mr. Klear stated that he just wanted to point out that staff does grapple with the conflict of which variances warranted and which are not. In staff's opinion, the variances requested tonight are warranted.

Mr. Morgan asked to be recognized. Mr. Verst recognized Mr. Morgan. Mr. Morgan stated that just as Mr. Griffith didn't arbitrarily decide the location of the addition; Mr. Griffith didn't arbitrarily decide on the size of the proposed addition. The air filtration system that is needed as well as the mechanical systems such as wiring, water, and heat were also taken into consideration. In order to accommodate all the items needed, the addition has to be this size. You just can't take your banking business anywhere in this day and age. You have to go where you can find the financing. When they first began discussing the addition, they went through all the "what if's". This is a good legitimate business man trying to grow his business in a practical manner.

Mr. Klear commented that no information of previous drafts have been submitted to staff for review or comment. He doesn't doubt that Mr. Morgan and Mr. Griffith have worked on previous layouts, just that it would have been helpful to involve staff earlier to offer input to try to alleviate as many issues as possible. Ms. Schweitzer stated she is confused what the addition is even for. When she previously asked what its purpose was for, she got the response it was for additional "inside" work space. Now, Mr. Morgan is mentioning air filtration systems and she is unclear what is going on. Ms. Schweitzer asked Mr. Griffith if he was going to be doing special body work that requires special air filtration systems. Mr. Griffith replied that the addition is so he can rearrange existing workstations so that he doesn't have to spend all his time moving cars in and out of the garage all the time. Mr. Griffith has also been receiving pressure from some of his insurance company clients to provide inside storage for vehicles that have damage such as no windshields.

Ms. Schweitzer asked Mr. Griffith what the impact would be if the size of the building were reduced. Mr. Griffith asked if she meant going from 65 feet to 60 feet. Mr. Verst stated going from 70 feet to approximately 42 feet. Mr. Griffith stated there would be no way to move cars internally and do what he needed to do with that amount of reduced square footage. He could reduce to maybe 60 feet, but anything less than that wouldn't be worth it. Mr. Verst asked for clarification of what is going on in the northern half of the building and why the proposed addition could not be added to the south corner of the building. Mr. Griffith replied that the northern area of the building is the paint pits. With the way the land lays, he would be taking on water so severely with no way to pump it out of there. He would be parking in a pond basically. Mr. Verst asked if, operation wise, the paint pits could be moved to the other side and that way the flow would work with the addition on the south corner. Mr. Griffith stated that the paint booths are not movable items. They have three foot holes in the ceiling to accommodate the specialized exhaust and a paint "pit" to gather to waste. Mr. Griffith stated that you really don't move those items once they have been placed. He would if he could, but they are a permanent fixture. Ms. Schweitzer stated that to confirm she understood the matter correctly, the main air filtration system is with the paint exhaust system, but there is going to be a new system put in the addition as well. Mr. Griffith stated that was

correct. There are new EPA requirements for air filtration that require he add a system that vents through the roof of the building.

Ms. Reitman asked Mr. Griffith if he is tight for space as he is where he anticipates the loading and unloading spaces to be placed. Mr. Griffith stated it was recommended to him to make the hard surface on the driveway his loading and unloading zone. Mr. Klear and Mr. Hutchinson advised him that would not work. Mr. Griffith stated he would work on this site plan to submit to the Commission to complete that item. Mr. Verst asked if there were any additional of the applicant. There being none, Mr. Verst asked the applicant to be seated.

Mr. Schaber asked Mr. Klear to confirm that if the variance were approved if the applicant would be required to submit a site plan to the Commission or if the Board has to make it a condition of their approval that a site plan be submitted to the Commission. Mr. Klear stated the applicant is required to submit a site plan to the Commission. The only item before the Board is the status of the variances requested. Mr. Schaber thanked Mr. Klear for that clarification. Mr. Verst stated that the only things that the Board would have to address are items they wish to restrict further than normal standards considered by the Commission. Mr. Klear respectfully disagreed. Staff's recommendation is a denial. If it is the pleasure of this body to look at an approval, the Board could look at the screening. Mr. Verst stated that screening is part of the site plan as well though so it could just be left until the site plan review process, correct? Mr. Klear stated that was potentially correct as well.

Mr. Mason, Ms. Reitman and Mr. Verst agreed that the screening should be left until the site plan process. Mr. Mason stated the way he looks at this issue is that there are two variances. Mr. Mason doesn't feel like the Board should place any encumbrances with Certificates of Land Use Restrictions, but either require the land addition or not. Mr. Mason doesn't see the problem with the variances given the earthen hillside beside it, the Park and Ride on one side, and the fact that the applicant is the owner of the property behind the commercial property.

Mr. Verst asked if there was any need of the findings of the motion or if they felt comfortable with what they had. Mr. Duncan reminded the Board that they needed to find that the applicant met the findings outlined in the staff report in some way. Mr. Verst stated he heard discussion as to some issues on the lot such as topography issues that caused water to drain upon the site and an earthen hillside to the east of the site. There wasn't much discussion among the Board. Mr. Verst asked if the Board felt inclined to approve the variances. Ms. Reitman stated that given the location of the property and the topography of the site and the water issues on the site that the variances are warranted. Ms. Reitman continued that the request is not injurious or a hardship to the community and will not adversely affect the public health, safety or welfare. Ms. Reitman concurs with the Land Use Map that sees the area as Mixed Land Use which the auto body shop would fall within that category.

Mr. Hutchinson interjected at this point that the concern of staff is the rear yard variance. Land additions are done administrative each week. Ms. Schweitzer asked how routine are land additions. Mr. Hutchinson and Mr. Klear stated they are done every week. Mr. Hutchinson stated of the two variances – staff is most concerned with the rear yard variance. The amount requested is almost half of the total rear yard setback distance and affects two different zones. Land additions are done on ID Plats and are completed within approximately seven days from their submission. Ms. Schweitzer stated that it is a common thing. Ms. Schweitzer asked Mr. Klear if his problem was with the bank dictating the addition. Mr. Klear clarified that the applicant has suggested that bank doesn't want the land addition to take place. Mr. Hutchinson stated if the bank doesn't want to do a land addition then maybe they would consider a land swap for like acreage. Mr. Klear stated that, to keep the issue simple, the Board has two requests before them: there is a variance for six feet into the side yard setback and a variance for approximately 22 feet into the rear yard setback. The Board can approve both variances, deny both variances, or even

approve the side variance but deny the rear variance. Mr. Verst stated if the Board approves the side variance, but denies the rear yard variance that would put it back in the applicant's hands to either do the land addition or move the proposed building addition out of the setbacks. Mr. Klear reiterated Mr. Hutchinson's previous comments that staff is less concerned with the side yard variance because it was doubled due to the abutment of the residential zone; however, the rear setback is 50 feet for both the commercial and residential zones.

Mr. Verst asked the Board if there were any additional comments or discussion. Ms. Reitman made a motion to approve case #BA-08-11, Charles E. Griffith Jr., who is asking for two variances to allow for the expansion of an existing business into the rear and side yard setbacks to grant the 6.02 feet variance to the north of the property; to have the applicant combine the lots 47, 48 & 49 into one lot; to fix the screening problem that's at hand between the commercial and residential zones; to pave the parking lot as staff is requesting; to address the loading and unloading area which involves obtaining a land addition to the west of the building to make that work; and that no signage or extra lighting will be put in place at this time. Mr. Schaber asked if this only addresses the side yard variance then what does she want to do with the rear yard variance request. Ms. Reitman stated she addressed that in her motion as well with the land addition to the west. Mr. Schaber stated her motion confused him. Mr. Schaber read back Ms. Reitman's motion to her. His question is on the land addition. How is the land addition required? In the manner that Mr. Duncan stated? In the manner that Mr. Klear requested? What is her desired response? Mr. Verst stated that if your intention was to make them get the land addition then you would in fact just deny their rear yard variance. Ms. Reitman stated that was her intention. Mr. Verst asked Mr. Duncan if they would deny the variance and then make it a condition to require a land addition. Mr. Duncan stated they would deny the request and then have a fact of finding as supported by the staff report or finding of your own. Mr. Duncan recommended that they separated the variances out into two separate motions so that there was less confusion.

Ms. Reitman withdrew her original motion. Ms. Reitman made Motion #1 to approve a variance of 6.02 feet to the north side of the lot for the side yard with the condition that lots 47, 48 and 49 be combined into one lot. Ms. Reitman cited that the 6.02 feet variance requested will not adversely affect the public health, safety, or welfare, will not adversely alter the essential character of the general vicinity, and will not cause a hazard or nuisance to the public. Mr. Schaber seconded the motion. A roll call vote found Ms. Reitman, Ms. Schweitzer, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Ms. Reitman made Motion #2 to deny a variance of 22.13 feet for the rear yard setback. Ms. Reitman cited that the variance requested will adversely affect the public health, safety, or welfare, will adversely alter the essential character of the general vicinity, and will cause a hazard or nuisance to the public. Mr. Schaber seconded the motion. A roll call vote found Ms. Reitman, Ms. Schweitzer, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

There being no other items of action before the Board, Mr. Verst recognized Mr. Klear to present the Director's Report.

## **DIRECTOR'S REPORT**

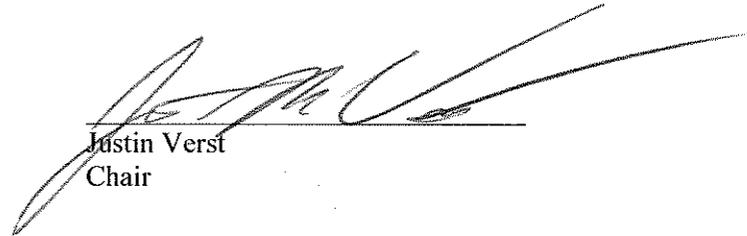
Mr. Klear stated that in January there will be election of officers. In December, our By-Laws state we should select our Nominating Committee. After discussion among the Board, it was determined the Nominating Committee would be dismissed. Mr. Verst called for a motion. Mr. Schaber made a motion to dismiss the Nominating Committee. Ms. Reitman seconded. A roll call vote found Ms. Reitman, Ms. Schweitzer, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Verst asked if the Board had any other matters to discuss. There being none, Mr. Verst called for a motion to adjourn. Mr. Mason made a motion to adjourn the meeting. Ms. Reitman seconded the motion. An oral vote found all in favor and none opposed. Motion passed. Meeting adjourned at 8:44 PM.

Prepared by:

Approved:

  
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Peter J. Klear, AICP  
Director

  
\_\_\_\_\_  
Justin Verst  
Chair