

GRAND JUNCTION BOARD OF APPEALS  
AUGUST 8, 1990  
8:10 a.m. - 9:50 a.m.

The regularly scheduled meeting of the Board of Appeals was called to order at 8:10 a.m. in the City/County Auditorium by Chairperson Jan Pomrenke.

In attendance, representing the Board, were Katie Worrall, Aden Hogan, John Elmer and Jan Pomrenke. Sheliah Renberger was absent.

In attendance, representing the City, were Dan Wilson, John Shaver, Karl Metzner and Linda Weitzel.

I. MINUTES

Worrall/Hogan - Motion to approve the minutes of the July 11, 1990 meeting. Vote 3-0, John Elmer abstaining.

\* NOTE THESE MINUTES DO NOT REFLECT THE ORDER OF THE HEARING.

II. FULL HEARING

- 1. #90-6 Consideration of a request to vary the sideyard setback from 10 feet to 2.8 feet in a Residential Multi-Family (RMF-32) zone to allow construction of an addition.  
Petitioner: Lawrence F. Hansen  
Location: 1028 Ouray Avenue.

PETITIONER'S PRESENTATION

Mr. Hansen explained that he is approaching retirement. He and his wife wanted a smaller home so they bought the property at 1028 Ouray. The house has no closets, and when they purchased the house, Mr. Hansen made the assumption that he could add on to the "notch" at the rear of the house. The addition will be for remodeling and adding closets.

Mr. Hansen said that he didn't know about the setback requirement at the time of purchase. He didn't think that he should have been expected to know of those requirements. He didn't think the 10 foot setback requirement is necessary for the houses that exist now. Most of the houses do not meet the setback requirement.

Mr. Hogan asked Mr. Hansen if his intent was to follow the existing line of the house.

Mr. Hansen said that he just wanted to go straight back on the same line.

Mr. Hogan said that he felt the buyer should be aware of the zoning and its implications. The ten foot setback is not really a debatable item, it is the setback for that zone. He asked if the addition will match roof lines and siding so that it will look like an extension of the house.

Mr. Hansen replied affirmatively. He stated that he has been a carpenter most of his life and takes pride in his work.

Mr. Elmer asked why Mr. Hansen couldn't build on the other side of the house.

Mr. Hansen said that it would be very impracticable the way the house is laid out. There are two bedrooms in the house. In order to get to the bathroom, a person has to walk through one of the bedrooms or the kitchen.

Ms. Worrall asked what it was that Mr. Hansen was adding.

Mr. Hansen replied that he would make the existing second bedroom a bathroom. Where the bathroom is now, would become a walk-in closet. The addition on the back will be a large bedroom. There will still be the same number of rooms in the house.

Mr. Hogan reminded the petitioner that the Board needed a specific hardship in order to grant a variance. He asked Mr. Hansen what he felt his hardship was.

Mr. Hansen said that the only access into the basement is through a trap door. Furniture has to be moved each time he needs to go to the basement. Currently, he is putting an outside access to the basement on the west side. The only place the addition could go is on the east side. The extra room is needed to make the house more livable and that is the hardship.

Mr. Elmer commented that because of the outside access to the basement, it leaves the east side of house the most reasonable place to add on.

#### PUBLIC COMMENTS

Murnadine Sievert and Lora Rhodes of 1036 Ouray Avenue were concerned that this would bring the houses closer together.

Ms. Pomrenke showed Ms. Sievert and Ms. Rhodes the site plan. Ms. Sievert said that her bedroom was near the addition. She had no objection to the addition going straight back. Her concern was that Mr. Hansen may build closer to the line than the existing house is now.

For the record, Mr. Hogan asked Mr. Hansen if his intent was to take the house line straight back.

Mr. Hansen replied affirmatively.

There were no other public comments either for or against this variance.

STAFF PRESENTATION

Linda Weitzel said that in the past, with similar requests, the Board had usually decided in favor of the applicant. The hardships have usually had to do with the livability of the house due to size and floor plan. The variances have been considered as improvements to the house and the neighborhood. Most of the requests have been to follow the existing line of the house. The staff had no objection to this request.

Mr. Elmer voiced his concern that this house were ever expanded to a multi-family use, the addition may then be too close to the property line.

Ms. Weitzel responded that the Code may preclude that from happening. The parking requirement would come into effect and make it difficult to expand. She went on to say that the addition would be required to have a fire wall which would protect the neighbors to the east.

Mr. Elmer asked if a fire wall could be requested for the whole side of the house.

Mr. Hansen said that would probably be up to the Building Department to decide. He said that he would be willing to comply with Building Department recommendations.

Mr. Elmer asked how he would comply with the Building Code requirements for the addition.

Mr. Hansen said that if he couldn't put window on the east side, he would put them on the north side.

Hogan/Worrall - Motion to approve the request to vary the sideyard setback to allow construction of an addition on the home with the condition that the existing line of the house be maintained.

Vote 3-0 approving the motion.

Elmer/Worrall - Motion to amend the first motion to include that the request be granted contingent that the use remain single family. Vote 3-0 approving the amendment to the motion.

2. #90-7 Consideration of an appeal of an administrative decision regarding the resubdivision of land in a Limited Business (B-1) zone.  
Petitioner: John W. Bull  
Location: 2119 North 7th Street

**PETITIONER'S PRESENTATION**

Bruce Phillips representing Dr. John Bull, gave some background about the proposed Replat of Lot 5, Block 1, Bookcliff Park Subdivision. Dr. Bull is a practicing dentist with offices at 2119 North 7th Street. He has been leasing space at this location for approximately 8 years and wishes to buy the building he has been occupying. Currently there are two buildings on Lot 5. Mr. Phillips said that there may be many ways to buy the building, however, drawing a boundary line between the two buildings is their preference.

Mr. Phillips handed out photocopies of the replat to the Board. Mr. Phillips emphasized that there would be no change of use and no construction or development was contemplated.

Mr. Phillips reviewed the Review Agency Comments with the Board. He stated that most of the comments could be reconciled without any difficulty. The main concerns came from the City Attorney's Office and those were the ones he would concentrate on. The City Attorney stated that without adequate off-street parking, the City cannot approve the subdivision.

Along 7th Street, from about Walnut to the motel near St. Mary's Hospital, there is parking in City right-of-way. The City Attorney said that because the parking is in the right-of-way, it does not comply with Code requirements concerning new development; therefore, the subdivision cannot be approved. Mr. Phillips stated that if the petition were for new development, he would concur with the City Attorney; however, the request is for a lot split.

The buildings and parking area were constructed in the 1950's, prior to the adoption of the Code. Mr. Phillips stated that this is a nonconforming use. Mr. Phillips referred to the Code and said "that as a nonconforming use you are entitled to continue the use even after the adoption of the Code as long as you don't change the use, expand the use or you don't abandon the use". He further stated that they were not doing any of those.

Mr. Phillips said that this problem occurred in several places in the City. He questioned the City's policy to require parking every time someone comes in to change the legal description. He said that it would cut the property's value at least in half in those areas.

In summation, Mr. Phillips stated that they were requesting the continuation of an existing nonconforming use.

QUESTIONS

Aden Hogan asked if Dr. Bull wished to own both of the proposed lots.

Mr. Phillips replied that Dr. Bull was interested only in Lot 2.

Mr. Hogan then asked if the current owner would retain ownership of the other lot.

Mr. Phillips replied yes.

John Elmer asked if there was enough on-site parking on Lot 2 to satisfy the current parking requirements.

Mr. Phillips and Dr. Bull replied that there was not sufficient parking on-site to meet the Code requirements. Mr. Phillips went on to say that the building as construction does not comply with the parking requirements of the Code. It is a pre-existing nonconforming use and they are using parking in the right-of-way to satisfy the parking requirement. Dr. Bull went on to say that this is the use of public parking for business purposes. It is a prominent feature of the Downtown area as well as along 7th and 12th Streets.

Linda Weitzel interjected that the parking requirement for Dr. Bull's office is one space per 300 square feet.

Mr. Elmer asked the size of the building.

Dr. Bull replied that it was 1400 square feet. The other building is much bigger.

Mr. Phillips added that they have done lots of calculations to see if there was a way to squeeze the parking in, and that they were unsuccessful.

Jan Pomrenke asked if they were short two parking spaces.

Dr. Bull replied that, yes if it were private parking; however public parking is universally public parking. It is not under the control of an individual land owner. Dr. Bull contended that there are enough public parking spaces to accommodate the uses in both buildings. The lot split should not change the number of public parking spaces.

Katie Worrall asked if there was 2.75 feet between the buildings.

Dr. Bull replied that there was 6 feet between the buildings.

STAFF PRESENTATION And QUESTIONS

Karl Metzner, Planner, stated that the review comments on the subdivision itself were not significant in terms of the technical issues. The parking situation is the main issue. Mr. Metzner emphasized that the requirements are 1 space per 300 square feet on-site parking. All of the existing parking spaces are in the public right-of-way. The travel aisle is on private property.

The City Attorney had determined that since the use does not meet current Code, the resubdivision creating two parcels could not occur because of the nonconforming use issue. Based on the City Attorney's comments, Mr. Metzner denied the resubdivision request.

Mr. Elmer asked if this request had been reviewed administratively.

Mr. Metzner explained that the resubdivision process allows for administrative review.

Mr. Elmer asked why Council had heard this request?

Mr. Metzner replied that it had to do with a request for a revocable permit for the parking in the right-of-way. That request was tabled pending this appeal.

Mr. Elmer stated that a revocable permit seemed to be a solution to the problem. Did the petitioner not wish to pursue this?

Mr. Phillips stated that a revocable permit could be a condition of granting the plat.

Mr. Elmer asked if the expansion of 7th Street was in a long range plan.

Mr. Metzner replied that it is not in a long range plan, however the City Engineer had indicated that there is a possibility that some expansion may be required in the future.

Dan Wilson, City Attorney said, that one concern was that the City right-of-way is public and should not be dedicated to one use. The revocable permit looks like a solution; however, by its nature it can be a problem. If the expansion of 7th Street should occur, the permit can be revoked with 30 days notice. If that were to happen, the interim dedicated parking that had been provided is then taken away. What had been a legal subdivision and use would no longer be legal. That procedure could constrain the City Council in the future in that the Council may not want to revoke a permit because it would make the use illegal. Mr. Wilson felt it is important to preserve the options of the City Council.

The same analysis applies to the subdivision. Mr. Wilson said that

the request to separate the property is for the convenience of the petitioner. The City is taking no action to discontinue the use or require him to upgrade the parking. Mr. Wilson said that when the request is for the convenience of the petitioner, it seems improper for the City to sacrifice its right-of-way to allow the split.

Another assumption is that when a petitioner goes through the process and is granted approval, the property complies with City regulations. Mr. Wilson stated that there is no dedicated parking for this proposal, therefore it does not comply with City Codes.

Another concern that is precedent. There are an unknown number of properties with similar circumstances and as long as these properties are not rezoned or subdivided, this is not a problem. If the City ignores the parking problem with this proposal, why can't it be ignored for similar development? Mr. Wilson said that this may not be a real problem yet, but it is a possibility.

Mr. Wilson raised the question of the need for the subdivision as far as the continuation of the ongoing use. A number of solutions have been explored such as a revocable permit and the potential for off-site parking within 200 feet of the subject property. Mr. Wilson acknowledged that it may be somewhat costly to pursue this option; however, the off-site parking requirement may be an option for the Board to consider. The Board could approve the request for the resubdivision with conditions that if the property were transferred or had a change of use, then the requirement for off-site parking would have to be met. Mr. Wilson said that this is not the cleanest way of handling this, but it does provide a mechanism to bring a nonconforming use into conformity at some future date. One of the difficulties with this type of solution is that a future buyer may not read all the "fine print". After the purchase of the property, he/she may realize that there is inadequate parking thus limiting the use of the property.

Mr. Wilson explained that the way things become nonconforming is that the City adopts rules. All those uses that do not comply are then made nonconforming. The law, as a matter of public policy, says that over time nonconforming uses should be reduced and brought up to current standards for the public health, safety and welfare. Mr. Wilson felt that the best solution to this request is to consolidate the uses and make available on-site parking; however this solution may not be realistic.

One of the difficulties that Mr. Wilson and Mr. Shaver discussed was the consequences of the Board of Appeals, Planning Staff or City Council making this decision. If the Board of Appeals denies this request, the petitioner could seek a court order. In this way, the court makes the decision, not the City.

Ms. Worrall asked about the size of the lot, and commented that it

seemed quite small.

Mr. Metzner replied that it would be a small lot.

Ms. Pomrenke asked if any negotiations have occurred to use the parking in the rear of the building.

Dr. Bull responded that the parking belongs to the adjacent building and is needed for the use there.

Mr. Hogan stated that he was concerned that if the resubdivision were granted, that in the future, a change of use for the buildings could come into being. There is the potential for creating a greater problem.

Mr. Phillips said that expansion is addressed through the nonconforming use section of the Code. That change of use in the Code would trigger compliance. Mr. Wilson agreed with this point. Mr. Phillips stressed that the "what-ifs" did not need to be addressed.

Mr. Hogan said that his position was that right now there is one lot that doesn't comply with Code if its use is changed. By making it two lots that can't meet Code, are we gaining anything?

Mr. Phillips said that it is a valid concern. He contended that they would not be creating any more property that does not conform.

Mr. Elmer asked about the number of current owners.

Mr. Phillips said that there would be fewer owners if he purchased the proposed Lot 2. Currently, there are four owners.

Ms. Pomrenke asked that if the City should grant this request, and at a later date, should choose to widen 7th Street, would that be Dr. Bull's problem?

Mr. Phillips said that is the current owner's problem. Parking would have to be found elsewhere.

Ms. Worrall asked about condominiumizing.

Mr. Phillips said that was expensive. If the concern is that a perspective purchaser isn't going to know about the problem, notice can be recorded on the plat.

Mr. Elmer asked if notice could go on the deed.

Mr. Wilson said that it can. Legal notice can be given.

Mr. Phillips said that Dr. Bull did not realize that the parking was inadequate.



Mr. Elmer asked if there was any danger that the private owners could obtain property (right-of-way) because of the parking use?

Mr. Wilson said no, that adverse possession does not apply against a sovereign. Politically, the right-of-way parking may be an issue. Mr. Wilson went on to say that the Board is an outlet for the application of the rules in situations that just don't make sense. He does not think that the subdivision makes sense. The advantage is one of convenience, i.e., one owner instead of four. The City's denial of the subdivision does not stop the business, doesn't create any costs. The advantage is for Dr. Bull. Some of the solutions suggested may be costly to Dr. Bull, however, in Mr. Wilson's opinion that is not sufficient reason to grant this request.

Mr. Phillips stated the political problem that Mr. Wilson wishes to avoid exists right now. He said that the property owners' already depend on that right-of-way for parking. If a statement about the parking were included on the plat, it would make it clear to all interested parties. He further said that a partnership was not a viable solution because of the problems with dealing with many personalities.

#### PUBLIC COMMENTS

There were no public comments either for or against this appeal of an administrative decision.

#### DISCUSSION

Mr. Elmer asked staff how big a problem this really is. Is it isolated, or is it all along North 7th? If the City decides to widen the street, it seems that there should be some consideration to the property owners.

Mr. Metzner replied that there are other uses with a similar situation but no survey has been done.

Mr. Elmer mentioned that parking districts have been created to solve the problem in other areas. He questioned if a parking district would resolve the problems along the 7th Street corridor.

Mr. Hogan commented that when a subdivision or resubdivision is created, it does change what was there before.

Mr. Elmer questioned whether the hardship is one of convenience for Dr. Bull, which isn't a hardship, or is the hardship due to the parking. Whether the appeal is granted or not, the parking can continue the way it has in the past.

Dr. Bull stated that when he first began renting the property,

there was an agreement with the owners of the property and himself to purchase the property. He stated that the City is denying the owners to fulfill their contract obligation. It was on a good faith assumption that Dr. Bull invested money into his office. He stated that if the right-of-way did not exist, the City could obtain it through condemnation. The City is not in any trouble in its position, but he felt that he was in some trouble potentially. He felt that the City's position of telling him that he cannot own this property is unreasonable. He further stated that it was unreasonable to say that public parking was not there.

Ms. Pomrenke asked if, at the time Dr. Bull negotiated his purchase option, the building was on one property?. She also asked how the owners represented that property to him?

Dr. Bull responded that a surveyor lined out a portion of the property. The owners believed that they could make that sale.

Mr. Wilson said that the effect of a resubdivision would be to make forever that northern lot, (Lot 2) nonconforming. The lot is small and it would be very difficult to have a use that would conform to the on-site parking requirement.

Dr. Bull said that there are ways of meeting the parking requirement, such as a parking area within 200 feet of the property.

Mr. Hogan stated that he would like to find a way to allow this to happen. He felt that the owners' of the property were possibly more interested in marketing the property rather than examining what could actually be done with the property. It would be difficult to overrule staff recommendation on this; however, Mr. Hogan would be interested in a way to resolve this. The potential of acquiring parking spaces in the area seems the best answer.

Dr. Bull stated that a rezone would probably be in order. Most of the other buildings in that block have the same parking problem.

Mr. Hogan asked if parking can be allowed in any zone and if the parking requirement can be satisfied by leasing parking.

Mr. Metzner replied that parking was not allowed in the multi-family zone. A rezone would be in order.

Mr. Wilson replied if it were long term leasing, meaning a number of years, then yes, it is a viable option. Before the lease expired, the expectation would be that a new one would be negotiated.

Mr. Hogan stated that he would look more favorably on this request if the required parking could be leased.

Dr. Bull said that this parking was not available to be leased. He restated that his position was that public parking existed now. He said that public parking should be used for business purposes.

Mr. Moss, from the audience, asked for clarity about Mr. Wilson's comment about the City denying a building permit to someone wishing to remodel either of the buildings.

Mr. Wilson answered affirmatively, adding that once the parking requirement was met, a permit could be issued.

Further discussion clarified that a the permit would be denied if it were an expansion of the building or a change in use.

Mr. Elmer said that he objected to Dr. Bull's term of "public parking". The right-of-way is not dedicated for that use.

Dr. Bull contended that all on-street parking is public parking. He felt that the on-site parking requirement comes into being when there is a change of use or construction done.

Mr. Elmer said that it does not always take construction to require a site to meet Code.

Mr. Phillips addressed Mr. Hogan's comment about leased parking. He said that about the only way to do it would be a shared agreement to comply with the requirements.

**Worrall/Hogan - Motion to deny the appeal of an administrative decision. Vote 2-1.**

\*Note: there was some confusion about the vote. Ms. Pomrenke reported that the vote was 3-1, with Mr. Elmer the nay vote. Later, Ms. Pomrenke said that she had abstained from voting.

### III. DISCUSSION

Linda Weitzel asked that the Board consider a request to amend the sign regulation section of the Code. A businessman, Jeffry Rikker of Melody Lane sells swamp coolers in the summer and is considering selling furnaces in the winter. Mr. Rikker had placed an illegal A-frame, off-premise sign on North Avenue and had been notified by the Planning Department of the violation.

Mr. Rikker's business has no frontage along North Avenue and is not visible from the street. He wanted to have exposure along North Avenue. His location and that section of North Avenue are zoned Light Commercial (C-1). This zone does not allow off-premise signs.

After a brief discussion, the Board felt that the sign code was adequate and did not need to be amended.

A short break occurred between the end of this discussion and the beginning of the presentation for Dr. John Bull.

At the end of the hearing there was further discussion between the Board and John Shaver regarding the appeal from Dr. Bull.

IV. ADJOURNMENT AT 9:50 A.M.