

GRAND JUNCTION BOARD OF APPEALS
Public Hearing August 1, 1994
8:05 a.m. - 9:45 a.m.

I. CALL TO ORDER

The public hearing was called to order by Chairman John Elmer at 8:05 a.m. in Conference Room A located in City Hall.

In attendance, representing the Board of Appeals, were Vice-Chairman William Putnam, Lewis Hoffman and Jeff Driscoll.

In attendance, representing the City Community Development Department, were Kristen Ashbeck, Associate Planner and Kathy Portner, Planning Supervisor. John Shaver, Assistant City Attorney, was also present. Bobbie Paulson, Senior Administrative Secretary, was present to record the minutes.

There were 10 citizens present including the Petitioners during the course of the meeting.

II. APPROVAL OF MINUTES FROM THE JUNE 8, 1994 MEETING

MOTION: (Jeff Driscoll) "I move to approve the June 8, 1994 minutes."

Lewis Hoffman seconded the motion. The motion passed unanimously by a vote of 4-0.

III. PUBLIC HEARING ITEMS FOR CONSIDERATION BY THE BOARD

1. #92-94 VARIANCE FROM SECTION 5-5-1 OFF STREET PARKING REQUIREMENTS

Request for a variance from Section 5-5-1 of the Zoning & Development Code for off-street parking requirements for multifamily residential; required parking is two spaces per residential unit; petitioner proposes to provide a total of 12 off-street parking spaces for 8 units; requirement is to provide 16 spaces therefore the variance request is for four parking spaces.

PETITIONER: Bray & Company

LOCATION: 831/837 Belford Avenue

REPRESENTATIVE: Jack Crimmings

STAFF: Kristen Ashbeck

STAFF PRESENTATION

Kristen Ashbeck distributed photographs, for the Board's review, of the property located at 831/837 Belford Avenue which show the existing parking and site conditions. Ms. Ashbeck stated that there are two existing duplex units along with another two units located in the rear building for a total of six units on the property. The Petitioner's proposal is to convert the garages in the rear building into two additional units for a total of eight units on the site. According to the Zoning & Development Code two off-street parking spaces per unit are required. Ms. Ashbeck assumed that the tenants are

currently parking in the garages and on the street along Belford Avenue, adding that there is no designated parking in the alley behind the apartments. The Petitioner's proposal is to remove the existing landscaping east of the rear apartments and to stripe spaces to provide a total of 12 parking spaces with three of the spaces being stacked (one right behind the other). The approximate property line is 15.5 feet from the rear of the building. Staff did an analysis of the parking situation and felt that realistically there was room for only eight parking spaces without encroaching into the right-of-way. Staff is opposed to the stacked parking situation as proposed by the Petitioner for the reasons outlined in the comments submitted by the City Development Engineer.

Jody Kliska, City Development Engineer - June 29, 1994

The double stack parking as proposed should not be allowed. This arrangement, aside from the tight spacing, will cause problems among residents, particularly those who occupy different apartments in the same complex. While our ordinance does not specifically prohibit this, an example of an ordinance which does can be found in the City of Tempe Off-Street Parking Ordinance which states "Tandem parking is prohibited, except in RMH, Mobile Home Parks and TP, Trailer Parks."

Ms. Ashbeck continued; the Zoning and Development Code does not allow parking within the 20 foot front yard setback. If a curb cut or two along Belford Avenue were provided, a couple more parking spaces may be available but this would probably reduce the existing landscaping such that it may not meet the requirements of the Code. Overall, staff feels the Petitioner's proposal tries to fit too much on a site which does not meet Code as it currently exists. The density of eight units meets the RMF-32 zone district but the Code also requires that site amenities be included. Staff's recommendation is denial, however, if the Board feels it appropriate to approve this variance request, it should consider the "realistic" number of parking spaces that can fit on site rather than what the Petitioner has proposed.

John Elmer asked if the rear building met the rear yard setback?

Kristen Ashbeck replied no. The rear yard setback for a principal structure is 20 feet in an RMF-32 zone. A garage, an accessory structure, setback is 10 feet from property line. It is very difficult to tell where the true property line is without a survey being done. Ms. Ashbeck stated that she measured from the fence on the opposite side of the alley across the alley right-of-way which is 20 feet and then measured from that point back to the building. The distance from the alley to the building was between 15 feet 3 inches and 15 feet 9 inches. A typical right angle parking space should be 18 1/2 feet in length; therefore, these spaces must be angled to fit without encroaching into the alley right-of-way.

John Elmer asked staff if a planning clearance would be issued to construct the additional units?

Kristen Ashbeck replied that a planning clearance would not be issued if the rear yard setback was

not met, adding that this cannot be determined for sure without a survey.

John Elmer pointed out that a parking variance would be needed as well as a setback variance.

PETITIONER'S PRESENTATION

Mary Anne Novack, representing Bray & Company, stated that the property at 831/837 Belford Avenue had recently been purchased. Ms. Novack distributed pictures of the property for the Board's review. She explained that there were no records and/or building permits issued for the construction of the apartment in the back building and questioned whether or not it was grandfathered? Ms. Novack stated that this proposal also includes cleaning the area in the back and remodeling the apartments above the garages. She stated that the surrounding property owners were either contacted or were attempted to be contacted, to see if there were any objections to the proposal. She said that there were no objections except for the adjacent property owners who were concerned with increased traffic in the alley. She added that these same property owners would not object if a privacy fence were constructed along their rear property line.

Jack Crimmings, also representing Bray & Company, stated that he had attempted to find the property line, but "it was very difficult to do so." He stated that the rear building was 17.5 feet from property line rather than staff's estimate of 15.5 feet. He said he measured from the front of the building to the edge of the alley. He stated that currently there is no assigned parking in the rear but it has been used for parking in the past. The on-street parking problem can be alleviated by establishing assigned parking spaces in the leases. He did not feel that the stacked parking situation would be a problem if those space were assigned to a husband and wife situation.

John Elmer stated that the Petitioner and/or owner is responsible for finding the true property line. He added that even if the building was grandfathered, as soon as improvements are made it must be brought into conformance to the Code or a variance must be granted.

Jack Crimmings stated that he was not sure exactly where the property line was, however, he parked a 3/4 club cab pickup behind the building and could very easily pull in and back out into the alley without the tailgate or any portion of the vehicle encroaching into the alley. Mr. Crimmings added that *"according to law, that parking has been used for over five years and has been designated to that building. Whatever the designation is, the area is and was used as parking."* He suggested that the owner should have filed for *"adverse possession."* Mr. Crimmings stated that if the Board denies this request, the parking situation will continue to be a problem. The current situation of on-street parking is a problem for adjacent commercial businesses when their delivery trucks try to go in and out from Belford Avenue. He felt that by moving the cars off of Belford Avenue to the alley, it would alleviate this problem. There are currently seven units there, however, there are no planning or building permit records for one of the units. This request is to build one more unit. He stated that the assigned parking would be monitored and campers, motor homes and pickups would not be allowed in the assigned parking spaces.

John Shaver stated that he was not sure what Mr. Crimmings was referring to regarding adverse possession and added that there could be no adverse possession of alley right-of-way based upon what has been described.

PUBLIC COMMENT

Mary Shipley, 830 Teller Avenue, stated that she didn't feel there would be room for the trash cans and felt the area was already too congested.

Jack Crimmings submitted letters in favor of the proposal from the following individuals - Todd Mickelsen, 820 Teller; Clint Newton, 950 N 8th Street; Margaret Valles, 847 Belford Avenue; and Wayne Bradford (Sherwin Williams), 845 North Avenue.

David Pipe, 844 Teller Avenue, stated that he lives directly behind 831/837 Belford Avenue. He asked if one of the goals is to decrease the number of cars parked along Belford Avenue. He also asked if there are going to be "no parking" signs put up in front of the building?

John Elmer stated that this is normally not done. The public street could be used for guest and/or overflow parking if needed. If there were "no parking" signs, the City would have the burden to patrol it constantly.

David Pipe asked if the lease agreement would stipulate where the tenants could park and if the front would be reserved only for guest parking? He added that he was not sure this would alleviate the problem of deliveries for adjacent businesses.

Jacque Gerhard, 844 Teller Avenue, stated that she opposed the variance for two reasons. First, the apartment area is already developed to capacity and parking is limited in the immediate area. Secondly, she doesn't feel the owner is being responsive to neighborhood concerns. In talking with the neighbors, the planning department and the property manager she discovered that when this complex was built it was designated for the elderly and that is why parking was not provided initially. A supermarket, laundromat, and all the other conveniences were within walking distance.

Ms. Gerhard stated that the businesses along North Avenue need to get their semi-trucks in and out of their parking lots so they don't want on-street parking along Belford Avenue; the Belford Avenue homeowners don't want the lawn torn up to provide parking directly off of Belford and the neighbors (including Ms. Gerhard's property) located behind the apartment building do not want a parking lot built adjacent to their back yards. She stated that she wrote a letter to the property owner detailing all the concerns of the neighborhood and offering the following solution. She asked the owner to provide, at his expense, 98 linear feet of 8 foot high cedar privacy fence (**NOTE: The Code only allows 6 foot fence**) along the back yards of those property owners who

are adjacent to the apartment buildings. In the letter she had requested that the owner, Mr. Lockhart, respond to this request by July 7, 1994. She said that she has not received a response to date; therefore, she felt the variance should not be granted because of the owner's lack of cooperation. She added that Bray & Company told her that whether or not this variance is approved, they will develop the parking area. Bray & Company said that they did not need any special permission to do this because it was already a parking area. She asked the Board to intercede and require that the property owner provide this privacy fence.

Ms. Gerhard disagreed with the Petitioner's assessment that the alley area is trashy, pointing out that there is currently a plum tree, a grape vine, a hibiscus bush and a lilac bush along the alley and felt that this greenery is a nice part of that area. She wondered how the Petitioner would be making an improvement when they would be removing this existing landscaping to put in the parking spaces.

David Pipe asked in order for the owner to develop the last apartment, will there be another variance required because the building does not sit far enough away from alley?

Kristen Ashbeck replied that staff would not issue a planning clearance for the additional unit until the property line has been identified. The building apparently does not meet the setback, therefore another variance would be required. Ms. Ashbeck stated that if the Board is tending toward approval, staff requests that a condition of that approval be that the Petitioner be required to do a survey which shows where that rear property line is.

David Pipe asked if this proposal is approved, would it be for the parking plan submitted by the Petitioner?

John Elmer replied that the parking spaces cannot legally encroach into the alley, but the spaces can be angled sufficiently so that they do not encroach.

Kathy Portner, Planning Supervisor, stated that staff reviews all parking lots whether they are an allowed use or not.

Mrs. Helen Tillotson, who lives at 856 Teller Avenue, submitted a letter of opposition to the Board. The letter stated that she opposed the proposal because it would increase traffic in the alley.

Ms. Gerhard added that Jim McDonnell, who lives at 840 Teller Avenue, also opposes the variance.

PETITIONER'S REBUTTAL

Jack Crimmings stated that Mr. Lockhart had given him Ms. Gerhard's letter and he had decided not to respond to it because he figured Ms. Gerhard would not attend this meeting. Mr. Crimmings stated that the owner would have no problem in building a privacy fence for the adjacent property owners. Whether this variance is approved or not, the owner will still assign parking just because of the concern of the neighbors. The front of the building is solid parking and it is a problem for

delivery trucks delivering to the businesses along North Avenue. He stated that the garages will be cleaned out and new landscaping will be installed in the back. He also noted that the existing landscaping was currently not being maintained. The trash cans can be placed in any number of places in the back. He stated that trash cans were preferred over having a large dumpster. Mr. Crimmings also stated that if this proposal receives support and the owner is allowed to put in another unit, these improvements will be made and the 12 cars that currently park along Belford Avenue will be assigned to parking spaces in the back and a privacy fence will be constructed for the adjacent property owners. If this proposal is not approved, there is no incentive to do any improvements.

Mary Anne Novack added that the Code requires two parking spaces per unit, but there will be fewer vehicles because all of the apartments are one bedroom units.

Jeff Driscoll asked for clarification. The proposal is for two additional units; but is there already one of these units in there?

Jack Crimmings explained that when they originally applied for a building permit to remodel the unit that was already there, it was discovered that there were no building permits originally issued allowing the unit to be there in the first place.

Jeff Driscoll asked staff why their drawing showed one less parking space along the back of the building? Was it because of the angle or width differences between staff's design and the Petitioner's design?

Kristen Ashbeck suggested that it is probably because of the angle although it may also be the width. The Petitioner has also extended space number five past the building's outside wall while staff's design kept the spaces within the width of the building.

Ms. Gerhard still did not understand why they were not contacted by the owner or Bray & Company regarding the privacy fence. She felt at this point they would need an agreement in writing.

Jack Crimmings offered to submit an agreement in writing.

DISCUSSION/QUESTIONS

William Putnam said he was confused. The petition is for a parking variance but is there parking already there even if the request is not approved? If the variance is granted, then what? This is not a request for a variance for the building setback so a permit can not be obtained for remodeling.

John Elmer agreed. He was not sure how this variance can be granted when the action itself creates a need for another variance.

Kristen Ashbeck stated that the property line has not been determined therefore, a variance request

could not be made for the building setback without knowing what that variance request would be.

John Shaver stated that the Petitioner has expressed intention to construct additional residential units and that is what precipitated the request for the parking variance.

William Putnam pointed out that at this time only 14 parking spaces would be required for the existing structures, not 16 since the eighth unit has not been constructed. He asked staff if it made any sense for the Board to take action on one variance request without the other?

John Elmer replied that if the parking variance is approved, it can be tied to getting a variance for the extra unit.

Jack Crimmings stated that they were trying to get the parking situation straightened out before they went on to request a permit to build an additional unit.

Kristen Ashbeck stated that even if this request is denied, a survey should be required if the tenants are going to park in the back.

Jeff Driscoll asked the Petitioner how much parking presently exists at the site?

Jack Crimmings responded that there were approximately six parking spaces in the alley.

Jeff Driscoll stated that the site is eight spaces short in conforming to Code now, so is this nonconformance grandfathered if the Petitioner doesn't remodel or do new construction?

John Shaver stated that Kristen Ashbeck pointed out that there "may have been" parking in the alley, but parking is not designated, therefore, it would not fit into the category of a prior nonconforming use.

Kristen Ashbeck added that it is difficult to tell what is parking because nothing is striped and there is no signage that indicates parking in the alley.

Jacque Gerhard and Dave Pipe stated that the alley is generally not used for parking.

Lewis Hoffman stated that just because the apartments only have one bedroom doesn't necessarily mean there will only be one car. A couple may drive two cars and need two spaces.

MOTION: (William Putnam) "Mr. Chairman, #92-94 I move that the parking variance be granted with the condition that the applicant provide a privacy fence as discussed in the hearing and that a variance for the additional unit come before this Board if necessary."

The motion died due to a lack of a second.

MOTION: (Lewis Hoffman) "Mr. Chairman, I move that we deny the parking variance because it does not meet Code as it exists and if we grant this it will just get worse."

Jeff Driscoll seconded the motion. A vote was called, and the motion failed by a vote of 2-2 with John Elmer and William Putnam voting against the motion.

- 2. #125-94 VARIANCE FROM SECTION 5-7-7B, TOTAL SIGN ALLOWANCE
Request for a variance from Section 5-7-7B of the Zoning & Development Code regarding total sign allowance on a public right-of-way in a commercial zone; petitioner is requesting an additional 186 square feet sign allowance.
PETITIONER: Larry Nicholls
LOCATION: 747 North Avenue
REPRESENTATIVE: Gene Cook
STAFF: Kristen Ashbeck**

STAFF PRESENTATION

Kristen Ashbeck distributed photographs of the site at 747 North Avenue for the Board's review. She stated that the property at 747 North Avenue has recently changed ownership and has been remodeled. The sign allowance for this site is based on the linear feet of the building facade which is approximately 100 feet. The property is allowed two times that amount or 200 square feet of signage. Currently the site has a total of 190 square of total signage which includes the red and white sign on the facade and the "Toyo Tires" free-standing sign. The existing sign on just the facade is 170 square feet. The new free-standing sign would be 216 square feet. The variance is for 186 square feet of additional signage assuming the Petitioner will remove the "Toyo Tires" sign to put up a new free-standing sign.

Ms. Ashbeck continued. The Petitioner is contending that the reason for the variance is that the building is not in a visible location. Ms. Ashbeck agreed that it was difficult to see the building coming from either the west or east approach on North Avenue. Staff feels that the sign allowance that was originally allowed for this site should have been used in a more visible location rather than placing almost the entire square footage on the facade. The situation of the building being set back off of North Avenue so that it cannot be seen is not unique. Other businesses along North Avenue that are setback seem to deal with the sign allowance in a different manner and even some of these are small shopping centers that manage to divide up their signage between each business facade as well as putting up a free standing sign out front that make businesses visible. Staff feels the hardship in the case is self-inflicted by the property owner placing most of the sign allowance on the facade rather than trying to work with the site and splitting the allowance. Staff is recommending denial of the sign variance.

PETITIONER'S PRESENTATION

Larry Nicholls, who recently purchased the property at 747 North Avenue, lives on 38 Mountain Road in Logan, Utah and is also the president of American Car Care Centers. He gave an overview of the American Car Care Centers business. He stated that in the tire business, brand names are very important such as Michelin and Goodrich. He said he is restricted by the American Car Care Centers franchise to provide a certain type look in front of a building and that is one of the reasons why the awning sign was installed the way it was. Mr. Nicholls distributed pictures of the business approaching from both east and west along North Avenue. He stated that a concern was being visible enough so that people would know there is a tire store there. The buildings on both the east and west sides are built out to the sidewalk. His building is difficult to see if one is traveling west on North Avenue adding that the curb cut is approximately one block away from the store. There have already been two recent fender benders in front of his store by people traveling east on North Avenue and not being able to find the store and when they do they try to turn too abruptly. He said his intention is to remove the existing free-standing sign and replace it with a new illuminated identification.

Mr. Nicholls stated that he talked to the property owners within 500 feet of their store and presently have support from all of them. He submitted letters of support for the Board's review.

John Elmer asked the Petitioner what happens when a new line of tires is added?

Larry Nicholls responded that no additional signage would be added because the poles will not support more signage. The size of the sign could be reduced but it would be a major expense because the poles are what cost and the poles are already installed. He considered going with a 3'x12' sign but it would five times the expense. Sign manufacturers have signs in standard sizes; they are either 3'x12' or 4'x18'. The existing poles are made for a 4'x18' sign.

Jeff Driscoll asked the Petitioner if his franchise agreement restricts his flexibility for signage?

Larry Nicholls replied affirmatively.

John Elmer asked whether or not it dictated the size of sign put on the building?

Larry Nicholls replied that he did not believe that it did, but it does require the business name and logo.

Jeff Driscoll asked staff why they are stating there is 100 feet of frontage when the Petitioner shows the lot as 145.6 feet wide.

Kristen Ashbeck stated that the building has a 100 feet frontage and the property width is also 100 feet wide. The drawing submitted by the Petitioner is incorrect.

Larry Nicholls pointed out that he owns two buildings but because they are separated by an alley, only one building is considered when calculating the sign allowance on North Avenue.

John Elmer asked staff if the Petitioner would have another 200 square feet of sign allowance off of Belford Avenue for the other building.

Kristen Ashbeck replied that the sign allowance for the Belford Avenue side would be calculated differently because it is only a two-lane street. They would be allowed a certain amount of signage on the Belford side but it could not be transferred to the North Avenue side because each building is on a separate parcel.

Jeff Driscoll asked if a solution would be to combine the two parcels into one?

Kristen Ashbeck stated in order to do this the Petitioner would have to vacate the east/west alley first. The fee is \$450 and it would be about a 60 day process.

PUBLIC COMMENT

No public comment.

DISCUSSION

John Elmer asked John Shaver if there was any way to transfer signage from one parcel to the other with some type of an agreement with the owner?

John Shaver replied that so long as there are two distinct parcels he advised against this. The Code specifically does not allow more than one sign per parcel. If an exception were made for these parcels, he could envision requests being made for transfers from parcel to parcel all over the place. The difficulty is in terms of making a transfer enforceable. Mr. Shaver suggested that, if the Board is favorably inclined, that a specific denomination be recorded with the property to say this is what was done. The difficulty is when or if the Petitioner decides to sell the back parcel to someone else. Staff would have no way to prevent the new owner from putting up his allowed signage. It's a question of how far the Board wants to go to accommodate this request. Staff can do some things to make notice to the existence of the fact but it is certainly not preferred.

John Elmer stated that one way is to list both properties as part of the request. The hardship is the visibility of the building but at the same time it is not a unique hardship. The sign company built the sign without checking sign code and that would be considered self-inflicted.

Discussion ensued regarding replatting the two parcels into one parcel.

Lewis Hoffman stated that he felt North Avenue was so cluttered as it is, it couldn't be made worse.

John Elmer stated that he felt the sign on the building is almost non-existent because it wasn't visible until you are right in front of the building. He felt that from that aspect it was a hardship. He suggested that if the Board approves this variance, a condition should be made that this owner not be able to put up additional signage on the other parcel even though it is not legally enforceable if he sells the south half.

MOTION: (Lewis Hoffman) "Mr. Chairman, I move that we approve the sign variance for an additional 186 square feet with a condition that no additional signage be allowed on the Belford parcel."

The motion was seconded by William Putnam. A vote was called, and the motion was unanimously approved by a vote of 4-0.

The meeting was adjourned at 9:45 a.m.