

**GRAND JUNCTION BOARD OF APPEALS
DECEMBER 14, 1994
8:01 a.m.-9:00 a.m.**

I. CALL TO ORDER

The regularly scheduled Board of Appeals hearing was called to order at 8:01 a.m. in the City/County Auditorium by Chairman John Elmer.

In attendance representing the Board of Appeals were: Chairman John Elmer, William Putnam, Joseph Marie, Lewis Hoffman, III, and Jeff Driscoll.

In attendance representing Community Development Department staff was Kristen Ashbeck.

Also present was Asst. City Attorney John Shaver.

Amanda Campbell was present to record the minutes.

There were approximately 9 interested citizens present during the course of the hearing.

II. CONSIDERATION OF MINUTES

MOTION: (Lewis Hoffman) "Mr. Chairman, I move that we approve the minutes of the August 1, 1994 meeting."

William Putnam seconded the motion.

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

III. ANNOUNCEMENTS, PRESENTATIONS, AND/OR PRESCHEDULED VISITORS

Chairman Elmer welcomed the new Board of Appeals member Joseph Marie.

IV. PUBLIC HEARING ITEMS FOR CONSIDERATION BY THE BOARD.

#197-94 VARIANCE FROM SECTION 4-2-4 - REAR YARD SETBACK REQUIREMENT IN RSF-4 ZONE DISTRICT - 3320 NORTHRIDGE DRIVE

Request for approval of a variance from the required rear yard setback in an RSF-4 Zone District (Residential Single Family with a density not to exceed 4 units per acre) from 30' to 23' for a 7' variance.

Petitioner: Gerald Miller

Location: 3320 Northridge Drive

City Staff: Kristen Ashbeck

STAFF PRESENTATION

Kristen Ashbeck outlined the property owners' proposal to build a sunroom in the rear of the property. The proposed construction would encroach into the setback 7'. Other property owners in the area have constructed similar additions or portions of their homes, many, if not all, of which also encroach into the required setbacks. Staff researched whether setbacks had changed in Northridge, but the original zoning in place also required a rear yard setback of 30' and has remained such. Staff feels there is no hardship in this case and is recommending denial.

QUESTIONS

Lewis Hoffman inquired about signatures on a petition referenced in the file. Kristen replied the stated petition was 8 pages, with 1 property owner per page. The surrounding property owners have no problem with the variance.

Joseph Marie inquired if the surrounding property owners are concerned if this might set a precedent. Kristen Ashbeck stated that property owners facing 1st Street had expressed concerns regarding precedent of properties abutting their neighborhood.

William Putnam asked if staff felt original construction was done in accordance with the 30' setback and that the addition of the sunrooms of the surrounding properties was done without getting a variance. Kristen Ashbeck answered that staff has that impression. Ms. Ashbeck stated that the front yard setback is much greater than it needs to be, and the construction in the rear yard was done mostly to the 30' setback line.

Joseph Marie inquired about the number of surrounding property owners which had asked for a variance before constructing a sunroom. Kristen Ashbeck answered Staff did find one variance which was issued in 1988 for rear-yard setback. John Elmer offered there was an approval for a side yard setback variance on another Northridge address property some time ago, but it was not a similar case.

PETITIONER'S PRESENTATION

Lynn Phillips, of Phillips Construction, representing the Petitioner, said that all surrounding properties are in violation of the 30' setback. The closest setback they could find is 20'. The property directly behind the petitioner's house has only a 25' setback. Mr. Phillips doesn't feel a 7' variance would be detrimental to property values, as there would still be over 50' between the houses. The proposed sunroom is screened by trees and the addition is centered to property. There is adequate space on either side of the building. The addition is mainly glass, and they feel the addition will increase the value of the home. Lynn Phillips also offered two additional petitions signed by surrounding property owners who also have no objection to the addition.

QUESTIONS

Joseph Marie inquired that as the room faces the trees, is the sun on right side. Lynn Phillips answered affirmatively. The room is totally glass with a sliding glass door, and would get a lot of sunlight.

PUBLIC COMMENTS

There were no comments either for or against the proposal.

DISCUSSION

Joseph Marie stated that he would like to encourage people to add to their property to increase value, but this particular variance is about as close to maximum variance he feels is allowable without adverse reaction to the properties in the area.

John Elmer stated his opposition. Even though the sunroom is small, the property owners do not meet hardship criteria. The fact that surrounding property owners illegally built is not a hardship in this case.

William Putnam asked if it was better to decide in the public interest or to uphold the code. John Elmer stated it was in the public interest to uphold code. John Elmer agrees that the addition is not detrimental to the public interest, but it is against code, and the property owners do not meet the criteria of the Code.

Joseph Marie wants to encourage people to "up" their property values, but they must be encouraged to work within the code structure. William Putnam added he has a hard time with notion of people who add to their properties without building permits, and someone tries to do it right and can't.

John Elmer pointed out that those owners not in conformance will have a hard time selling their home because the lenders will not give a loan without a variance for improvements if necessary. Joseph Marie asked if there was a remedy for such a case. John Elmer replied that the remedy is to ask for relief (variance) from the Board.

MOTION (William Putnam): "Mr. Chairman, with regard to #197-94, variance from rear yard setback, at 3320 Northridge Drive I move we approve the request for variance."

Lewis Hoffman seconded the motion.

A vote was called and the motion was defeated by a vote of 2-3 with John Elmer, Joseph Marie, and Jeff Driscoll opposed.

#192-94 VARIANCE FROM SECTION 4-2-5 - REAR YARD SETBACK & MINIMUM LOT AREA REQUIREMENTS IN RSF-5 ZONE DISTRICT - 211 WALNUT AVENUE

Request for approval of the following variances from bulk requirements in an RSF-5 Zone District (Residential Single Family with a density not to exceed 5 units per acre) 1) from the required rear yard setback from 25' to 9' for a variance of 14' and 2) from the required minimum lot area from 6,500 s.f. to 6,000 s.f. for a variance of 500 s.f.

Petitioner: Thomas Wilkinson

Location: 211 Walnut Avenue

City Staff: Kristen Ashbeck

STAFF PRESENTATION

Kristen Ashbeck outlined the property owner's proposal to build small residence with a one car attached garage. A copy of the survey of the property was provided for review. The lot is a very unusual configuration, and there was an adverse possession claim on a portion of the property; subsequently the property owner lost square footage on the property due to conflicting deeds to the property. Prior to the adverse possession claim, the property did meet the minimum lot size requirement. Staff finds there are exceptional conditions and undue hardship and believes there would be no detrimental effect on surrounding properties. Three letters from surrounding properties with drainage and other concerns were presented. Staff felt they couldn't make an administrative decision to change the definition of the rear-yard of the property, and are recommending approval for the variance.

QUESTIONS

Joseph Marie requested clarification on where the building would be located, front setback and access. Kristen Ashbeck pointed out the building's proposed location on the map, and replied that the owners would have the minimum front setback and adequate access to the property.

Joseph Marie inquired regarding the RSF-5 zoning, if the addition of this building would exceed zoning. Kristen Ashbeck replied negatively.

John Elmer asked if this parcel was landlocked or would then landlock the drainage ditch. Kristen Ashbeck replied that the property is owned by the drainage company, and the easement would take care of any access necessary.

PETITIONER'S PRESENTATION

Tom Wilkinson, property owner, indicated the easement included the triangle going to Walnut. This easement would allow the drainage people to service the property to the east. Without the easement, the house would then turn 1/4 turn and the property would have 50' or 60' of back yard.

QUESTIONS

John Elmer inquired if Mr. Wilkinson was going to then leave the road for the easement. Tom Wilkinson replied affirmatively, indicating that 15' of the north border is easement.

Lewis Hoffman inquired why the 20' north boundary is not measured from Walnut. Kristen replied that it could indeed do that, but the property owner wanted 5' for greenery. Mr. Wilkinson also said that the road would not be graveled, but dirt only. Pat Gormley gave the easterly piece to the district some years back instead of granting an easement.

PUBLIC COMMENT

There was no public comment in favor of the variance.

AGAINST:

Charles Coleman, 148 Orchard. Mr. Coleman's property borders the back of residence. Mr. Coleman's property is in dispute of survey. Mr. Coleman stated he can not find a corner pin to measure the property from. Mr. Coleman feels he should have a right to the drainage ditch, has been using the ditch company easement and wants to continue to use it, although he knows he has no legal right to. John Elmer replied that the Board can't respond to property disputes. Tom Wilkinson agreed to set pins at the property lines. The surveyor did not set the pins when the property was surveyed because there was a vehicle on the spot where the pin was to be set.

Alan Bauer, 210 Orchard. Mr. Bauer believes the property is not in proportion to the rest of the properties being evenly spaced and it will make the neighborhood "look funny". The ditch company gave access to the ditch for irrigation to the neighboring property owners. Developing this property will deny that access for the property owners to get to their irrigation pumps. Also, how will the phone company and power company get to their lines to work on them? Mr. Bauer also raised water drainage concerns, and over-crowding concerns.

Linda Red, 221 Walnut Avenue. She has had problems with water flooding in her back yard. Ms. Red said that the property in question also has major flooding problems, and that the back yard of the property is usually quite muddy and wet. She also raised parking concerns.

Jamie Richardson, 132 Orchard Avenue. Inquired if a right of way established over 18 years if that property is allowed for access. John Shaver responded that that is correct, but the Court would have to approve an adverse possession claim. Simply using the property is not enough. The use of the property for 18 years is evidence which could be used to support a finding of adverse possession claim, but the person claiming right of way establishment would have to go to court to have that upheld.

PETITIONER'S REBUTTAL

Tom Wilkinson replied to these comments, indicating the value of proposed house is in \$80,000 range, which is equal to area houses. He feels this value and the house would compliment neighborhood.

John Elmer inquired if the Community Development staff would review drainage problems. Kristen Ashbeck replied negatively, responding that that is the Building Department's area.

DISCUSSION

Joseph Marie inquired if west of the West Middle school a drainage pond is located where water can accumulate. Charles Coleman replied affirmatively, and that the drainage company had rerouted the ditch across his property.

John Elmer said the lot is unique, and it is in the public interest to allow it to be built on. There are certainly some problems that would need to be dealt with, but Mr. Elmer does not believe it is too different than problems on surrounding properties.

Jeff Driscoll inquired whether there are any pending disputes on the property. Kristen Ashbeck replied there are no pending disputes that are of known record.

William Putnam indicated they would have to rely on the engineers' ability to deal with drainage problem.

John Elmer inquired if the Board could make city engineering look at drainage problem a criteria for approval in the Motion. John Shaver replied that if the expectation is the low parcel be made dry, that may not be a valid expectation. Certainly the Board can condition the approval to deal with drainage problem.

Joseph Marie asked for clarification of setbacks if the request is approved. John Elmer replied that if the Board approves the request, the Board approves setback variances.

MOTION (William Putnam): "Mr. Chairman, with regard to #192-94, variance request along Walnut Avenue, I move that we approve the variance request."

Joseph Marie seconded the motion.

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

V. DISCUSSION ITEMS

William Putnam asked if the minutes could be sent out faster if there is no meeting the following month. Staff agreed. General discussion was had regarding the possibility of the next meeting being in January.

General discussion was had regarding bulk requirements, and whether a parcel which is non-conforming to minimum lot area can be appealed. It was noted that Community Development staff would be doing a text amendment to clarify whether property owners can request variance from minimum lot area to develop non-conforming lots.

VI. ADJOURNMENT

The meeting was adjourned at 9:00 a.m.