

CITY OF GRAND JUNCTION
BOARD OF APPEALS
March 12, 1997

I. CALL TO ORDER

The regularly scheduled meeting of the City of Grand Junction Board of Appeals was called to order by Chairperson Elmer at 8:00 a.m.

Present, representing the Board of Appeals, were Duane Butcher, John Elmer, Lewis Hoffman, Joseph Marie and William Putnam.

Present, representing the City of Grand Junction, were Michael Drollinger, Senior Planner and John Shaver, Assistant City Attorney. Marcia Rabideaux, Planning Technician was present to record the minutes.

II. APPROVAL OF MINUTES

Duane Butcher made a motion to approve the minutes from the October 9, 1996 meeting as revised at the December 11, 1996 meeting. Lewis Hoffman seconded the motion. The motion was unanimously approved.

Joseph Marie made a motion to approve the minutes from the December 11, 1996 meeting as presented. Duane Butcher seconded the motion. The motion was unanimously approved.

III. PUBLIC HEARING ITEMS

1. VAR-1997-042 OVER HEIGHT FENCE IN FRONT YARD SETBACK

Request for a variance from Section 5-1-5.A of the Zoning and Development Code to allow a 6' solid fence in the front yard setback in an RSF-4 (Residential Single Family, 4 unit per 1 acres) Zone District where the Code allows a 30" solid fence.


PETITIONER: George & Lynn Dunham

LOCATION: 608 26  Road

STAFF PRESENTATION

Mr. Drollinger reviewed the request for a variance from Section 5-1-5.A for fence height requirements in the required front yard setback and the variance criteria as listed in Section 10-1-1 of the Grand Junction Zoning and Development Code. Mr. Drollinger said staff has analyzed the variance request using the Section 10-1-1 criteria, information supplied by the Applicant with the original application, the response to comments and a field visit. Based on this analysis, staff recommends approval of this variance request.

PETITIONER PRESENTATION

George Dunham, 608 26  Road said he had nothing to add to what Mr. Drollinger had already stated.

PUBLIC COMMENT

There was no public comment either for or against this proposal.

MOTION: William Putnam - "Mr. Chairman on VAR-1997-042, a request for a variance from Section 5-1-5-A to allow a 6' solid fence in the required front yard setback, I move that we approve this request for the reasons cited in the staff review." Lewis Hoffman seconded the motion. The motion was unanimously approved.

2. VAR-1997-043 REAR YARD SETBACK-ACCESSORY STRUCTURE

Request for a variance from Section 4-2-6 of the Zoning and Development Code to allow an accessory structure a 0' rear yard setback in an RSF-8 (Residential Single Family, 8 units per acre) Zone District where the Code requires 3' minimum to eave.

PETITIONER: Gary Hepner

LOCATION: 548 28 3/4 Road

STAFF PRESENTATION

Mr. Drollinger reviewed the request for a variance from Section 4-2-6 for minimum rear yard setback for accessory structures and the variance criteria as listed in Section 10-1-1 of the Grand Junction Zoning and Development Code. Mr. Drollinger said staff has analyzed the variance request using the Section 10-1-1 criteria, information supplied by the Applicant with the original application, the response to comments and a field visit. Based on this analysis, staff recommends denial of this variance request.

QUESTIONS

Chairperson Elmer asked if there any easements on the property? Mr. Drollinger stated that staff could not find record of any easements.

William Putnam stated that there appears to be a structure on the lot adjacent to this property which also has a building in violation of the code as well. Mr. Drollinger said that staff is looking into what the situation is on that shed as well.

Lewis Hoffman asked if any of the public at large made any comment or offered input on this request? Mr. Drollinger said that no comments have been received from the public.

Duane Butcher said he was concerned that this type of situation would be precedent setting where when people just go ahead and construct fences, structures, etc. without first checking with the Planning Department to see what the requirements are and do it wrong that they then just apply for a variance to attempt to make it right.

Mr. Shaver said frequently staff is asked the question "What do you need setbacks for?". This is a historical issue dating to a 1926 Supreme Court decision where zoning was upheld. One of the practical reasons is access to allow for ingress and egress for purposes of weed control, fire control, etc.

Lewis Hoffman asked how this violation was discovered as it can not be seen except from the church parking lot? Was there a complaint on this building? Mr. Drollinger said the petitioner could better give the background.

PETITIONER PRESENTATION

Gary Hepner, 548 28 3/4 Road, said he didn't feel that precedent would be set by allowing this variance.

Mr. Hepner said this came about when his neighbor, to the east, had his land surveyed for new garage placement to make sure he would locate it in the proper spot. At that point it was found that the shed on my neighbors property was not in compliance with setback requirements. My neighbor plans on moving his shed which is adjacent to mine.

Mr. Hepner said the reason he built the shed the size he did is because no building permit was required for one of this size. He said he placed it where it is located because every other part of the property is in garden, has sprinkler systems or is too large to accommodate this small of a shed.

Joseph Marie asked if there are any plans to extend the shed? Mr. Hepner said no.

Duane Butcher asked if there is still room for the Fire Department to access with the shed in this location. Mr. Hepner said yes as long as his neighbor moves his shed.

PUBLIC COMMENT

For - Patrick Pottorff, 546 28 3/4 Road, said he is Mr. Hepner's neighbor to the east and he has been notified that his shed is in violation. Mr. Pottorff said he has agreed and will be moving the shed located on his property to bring it into compliance.

He said that his main concern is maintaining of the distance from his house for other buildings and as long as there are no encroachments across the fence onto his property that he has no objection to this request at this time.

Against - none.

DISCUSSION

Lewis Hoffman said this request will harm no one, is not unsightly and from the fire safety aspect there is adequate room for access.

Duane Butcher agreed that the shed is well done.

Duane Butcher said he wasn't sure why we have regulations if we just waive them because an individual choose to put something where it doesn't belong just because that is where he wants it to go. Staff analysis shows this is a situation where the property owner's hardship is self-inflicted.

John Elmer agreed that he didn't see where this request fits into the criteria for a variance request. He commented that if sheds are allowed with 0' setbacks everywhere there will be additional clutter which the requirement for setbacks is trying to avoid.

Duane Butcher said the Board is also supposed to establish that the owner can not derive reasonable use of the property without the variance and that conditions exist which are unique to this property. This request does not seem to meet either of these criteria.

Lewis Hoffman said that in spite of this request not meeting criteria "a" through "e" that it still doesn't cause any harm and is a general benefit to the neighborhood.

Joseph Marie agreed with Lewis Hoffman.

MOTION: Lewis Hoffman - "Mr. Chairman on VAR-1997-043, request for variance from the minimum accessory structure rear yard setback in an RSF-8 zone at 548 28 3/4 Road, I move that we approve this as it will cause no harm and will be of general benefit to the neighborhood." Joseph Marie seconded the motion. The motion was defeated 2-3 with John Elmer, William Putnam and Duane Butcher voting against the motion so therefore the variance is not granted.

3. VAR-1997-045 OVERHEIGHT FENCE

Request for a variance from Section 5-1-5.B.2 of the Zoning and Development Code to allow a 10' solid fence in rear and side yard in a C-1 (Light Commercial) Zone District where Code allows a 6' solid fence.

PETITIONER: B.E.R. Inc.

LOCATION: 2865 & 2865 North Avenue

STAFF PRESENTATION

Mr. Drollinger said there are two separate issues which the Board will hear about today - 1) the variance request and 2) security of the property. He said Officer Lisa Dicamillo from the Police Department is present today to answer any questions you may have on her analysis of the problem.

Mr. Drollinger reviewed the request for a variance from Section 5-1-5.B.2 to allow a 10' solid fence in the front and side yards in a C-1 (Light Commercial) Zone and the variance criteria as listed in Section 10-1-1 of the Grand Junction Zoning and Development Code. Mr. Drollinger said staff has analyzed the variance request using the Section 10-1-1 criteria, information supplied by the applicant with the original application, the response to comments and a field visit. Based on this analysis, staff recommends denial of this variance request.

QUESTIONS

Lewis Hoffman asked for clarification - if the variance for height is granted, is a variance for setback required as well? Mr. Drollinger said if the applicants for a 10' fence were approved the Board would in fact be approving setback variances for the side adjoining the residential use and also for the front yard.

Duane Butcher asked if there are situations similar to this on North Avenue already. Mr. Drollinger said no, not that he could find by driving North Avenue nor have any variances of this type been applied for in this area of the City.

William Putnam asked if the variance is approved will this require another variance for setbacks? Mr. Shaver said if the variance application is approved as proposed by the applicant there is a setback problem from Harris Road as well as a setback problem on the south. If the variance is approved as proposed there is a presumption that the setback variances are granted as well.

John Elmer said that for the record, if a variance is approved, the Board should state what that variance is.

PETITIONER'S PRESENTATION

Jeff Rector, 2865 North Avenue, said they had recently purchased the property. Before buying the property they tried to get the owner to do something about the fence as it is in total shambles. Mr. Rector stated that they have lost approximately

\$42,000 to thefts from the property in the last 1-1/2 years. He said they can afford the loss of a battery or smaller items but can not afford to lose anymore ATV's or other large, expensive items from the yard. With chain link fencing it is still quite easy to tear it down or get over the fence which is why they are prosing this type of fencing with motion detectors.

Mr. Rector said the Police Department's problem with the fence being proposed is that they can not see in the fence. He said that currently crates are stacked 3 high around the fence already (making it 12' high) so already it can not be seen through. He said he doesn't care if someone gets in the fence just so long as they can not get out with a snowmobile or motorcycle. With a 6' chainlink fence they can do this.

Mr. Rector said he will set back the fence on the east side (Harris Road) five feet and also put an angle on the fence so visibility is improved. He said the neighbor on the south side of the property has no problem with the fence being proposed - he has more of a problem with the fence as it exists now.

Mr. Rector said he needs to get something done and resolved as he has been working on this for almost 3 months now and the first time he heard from Mr. Drollinger was yesterday afternoon about 3:00 or 4:00 when he called and wanted to resolve this issue. Mr. Rector said he didn't understand this - why wait until late afternoon the day before the meeting and contact us to try and work something out.

Mr. Rector said the proposed fence will be nice looking and he is willing to make the fence any color so it will blend well.

QUESTIONS

Joseph Marie asked Mr. Rector to explain his plans on reinforcing the fence. Mr. Rector said the fence will be made out of square tubing and will come in 10 foot sections. The sections will be set in cement footers with sheet metal and all riveted together. The gates are accessible only from the inside and a security system will be installing inside the fence - if someone gets inside he will know about it. Mr. Rector stated the whole purpose for this type of fence is security. He has lost approximately \$42,000 in the last 1-1/2 years.

Duane Butcher asked if Mr. Rector asked if he had checked into chainlink fencing with either the insurance company or the police department and asked why chainlink fencing would not be satisfactory.

Mr. Rector said the problem with chainlink fencing is that it is easy to get into with wire cutters or to simply just hook onto the fence with a pickup truck and pull it down. Chainlink is just too easy to tear down no matter what; the strongest chainlink fence made can be cut with a pair of dikes. With the type of fence he has proposed people can still get in, but can not get out as easily and with it being 10' tall it is difficult to get machines over it.

John Elmer asked for clarification as to why a 10' fence is more important than 6'.

Mr. Shaver said it is actually not the fence height that is the issue, it is the location of the 10' fence within the required setback. He said Mr. Rector could move the fence further onto his property and a variance would not be required.

Duane Butcher asked if the fence can be moved further onto the property?

Mr. Rector said there is an existing 18' x 20' building on the property which is located exactly 7' from the south property line right now and if the fence was moved in it would create a fire hazard with regards to this building. He said if he moves the fence line to the north they will lose part of the parking lot and create a situation where semis can not get into the parking lot and the neighbors down the street are already unhappy about the semis. Mr. Rector said he can move the fence in off of Harris Road another 5' and angle it but the fence can not be moved from any other direction without creating a fire hazard and pointed out again the location of the 18' x 20' building and how fire vehicles could not access either the building or other portions of the lot within the fencing if the fence is moved up.

Mr. Rector stated that if he could move the fence in as is being talked about he would be happy to do so but he can not afford to lose the room.

PUBLIC COMMENT

For - Steve Menzies, AAMCO Transmissions, 2871 North Avenue said he has 6' chainlink fence and can't count the number of times it has been repaired. Mr. Menzies stated that all someone has to do is to come up with a pair of dikes, cut the barbed wire on top and climb over the fence. Mr. Menzies said there are site problems; Mr. Rector has a concrete slab from a former

residence in his parking lot which would make it more difficult to park if the size of the parking lot were reduced. Mr. Menzies said that he thinks Rector's design is good and if the fence is moved in he (Rector) will not only lose access to the building but will lose access to 2 of his major doors into the shop building.

Duane Butcher asked Mr. Menzies if he planned on coming to the City with a similar variance request? Mr. Menzies said no as there is not a whole lot to take from his lot as people don't want used transmissions.

Blake Brueggeman, landowner directly to the south of the subject property, said he was in favor of the request as the current situation is an eyesore; people trespass across his land to go in holes in Mr. Rector's fence and he has seen people trying to break the fence down on the other side to access the property.

Against - Lisa Dicamillo, Grand Junction Police Department, said she and Officer Dave Stassen went and checked this property out during the day and at night. She stated that she also talked to J & S Fence about chainlink fencing and if there was anything they could suggest that would help stop some of the problems. J & S Fence said there was not a whole lot they could suggest as decent wirecutters could take care of a chainlink fence.

Officer Dicamillo said she believes there is a better solution available than the fence being requested. A decent chainlink fence, without slats and improved lighting would help a lot in taking care of the situation especially if sensors are installed.

Officer Dicamillo said there are old crates next to the outside of the fence as well as a tree; this gives people a chance to get over the fence, gather what they want near the front and then break down the gate and/or fence and load the goods in a matter of minutes and be gone.

Mr. Shaver asked Officer Dicamillo to explain to the Board what her current assignment is. Officer Dicamillo said she is with the Crime Prevention office of the Police Department which goes out to businesses and checks out lighting, fencing, etc. and based on what is seen make recommendations to businesses about what they can do to increase security and better protect their property.

Duane Butcher asked if sensors will work with a chainlink fence? Officer Dicamillo said she didn't know and that she didn't investigate that.

Mr. Rector said that All Sports Honda had a chainlink fence with sensors - they tried everything they could think of to stop the thefts. They now have a metal building as nothing they tried worked.

Officer Dicamillo said lights would help a lot in preventing these crimes. Mr. Rector said the new fence will have lights on it - "if I thought a chainlink fence would take care of it, I would already have a new chainlink fence installed," Rector said.

DISCUSSION

Mr. Shaver said there is now another issue the Board needs to think about - and it is at the discretion of the Board if they want to do something about the situation yet this morning - that is the building Mr. Rector referred to that is within the current fence. His testimony would seem to indicate that the building is not within the appropriate setbacks either.

Mr. Shaver pointed out that an economic hardship is not a hardship for purposes of granting or denying a variance. The criteria as specified under the law relate to the actual land and physical conditions of the land.

Mr. Shaver said this is an issue which is relative to the setbacks on the south and east, it is not the height of the proposed structure, it is purely a setback issue.

John Elmer asked for confirmation of what setback variances are actually being requested. Mr. Drollinger said the petitioner is requesting a 0' setback on the South and a 14' setback on the East property lines so therefore they are requesting a 10' variance on the south and an 11' variance on the east.

Lewis Hoffman asked what the screening requirement is when commercial abuts residential? Mr. Drollinger said that commercial is required to provide solid screening 6' in height either by means of a fence or landscaping.

Duane Butcher asked if a 6' metal fence could be constructed on the property line? Mr. Drollinger said any fence of 6' in height or less can be constructed on the property line, anything taller is considered a structure, requires a building permit and must meet setbacks.

William Putnam said he has a problem being asked to make a decision based upon security issues and how a business is operated, this is, he suggested, beyond the Board's area of knowledge. He said he was very impressed with the information submitted. If all or a lot of the interior of this business is filled with stuff stacked even higher than the fence is proposed, the comment about not being able to see through a metal fence does not apply especially as it appears to be lawful to do so.

Lewis Hoffman agreed and said that is why he was asking about the screening, as this 10' fence would be excellent screening. He said there are only two grades of chainlink fence to his knowledge and one of them is extremely easy to cut and the other one is not very tough either.

John Elmer said the request as stated is a setback issue and, as the City Attorney stated, hardship can not be based on economics. He said he didn't see where any hardships had been proven as they are self-inflicted and the security issues can be resolved in other ways, there are other alternatives.

Lewis Hoffman said he didn't have a problem with the south side and if the petitioner would pull the fence back from the Harris Road centerline more, and angled it as he talked about, it would be better.

John Elmer asked if he didn't have a problem with a wall being placed on a property with a residential property?

William Putnam said that was his point, if crates are already stacked around the perimeter of the fence inside the property to 12' there is already an effective wall.

MOTION: Duane Butcher - "Mr. Chairman on VAR-1997-045, request for variance from the maximum fence height in a required setback at 2865 & 2865 North Avenue, I move we approve the variance for the following reason - that the owner of the property requires the variance to provide himself a reasonable use of his property as stated in 10-1-1.B.2." Lewis Hoffman seconded the motion. The motion was approved 3-2 with John Elmer and Duane Butcher voting against the motion.

Mr. Shaver asked for clarification purposes, to address exactly what variances were granted for both the south side and the Harris Road side so the Board and staff are all clear. Is the intention that the Harris Road variance be for what was originally shown on the drawing or for it to include modifications discussed here today?

Lewis Hoffman clarified that the fence on the Harris Road side be pulled back and to improve the sight triangle as the petitioner agreed to and to work with staff so it is acceptable.

Mr. Shaver asked if the full setback would be required on Harris Road. Lewis Hoffman said no, more than there is now with a site triangle as proposed here today or as required by the staff. Lewis Hoffman further clarified that the setback from the centerline of Harris Road would be 19 feet.

John Elmer said for clarification then that - setback from centerline of Harris Road would be 19 feet with a sight triangle as worked out with staff.

The Board agreed with the clarifications as stated above and the motion was approved 3-2.

IV. OTHER ITEMS

Duane Butcher commended Michael Drollinger for the good job on the staff reports.

V. ADJOURNMENT

The meeting was adjourned at 9:42 a.m.