

GRAND JUNCTION BOARD OF APPEALS MINUTES

April 9, 1997

8:05 a.m. to 8:40 a.m.

I. CALL TO ORDER

The regularly scheduled meeting of the Grand Junction Board of Appeals was called to order at 8:05 a.m. in the City/County Auditorium by Chairman John Elmer.

In attendance, representing the Board of Appeals, were: Chairman John Elmer, Vice Chairman William Putnam, and Joseph Marie. Lewis Hoffman and Duane Butcher were absent.

Also in attendance were Michael Drollinger, Planning Supervisor and Dan Wilson, City Attorney. Bobbie Paulson transcribed the minutes.

There were no citizens present other than the petitioner.

II. APPROVAL OF MINUTES

MOTION: (William Putnam) "Mr. Chairman, I move that we approve the minutes of the March 12, 1997 meeting as presented."

Joseph Marie seconded the motion. A vote was called and the motion passed unanimously by a vote of 3-0.

III. PUBLIC HEARING ITEMS

1. VAR-97-068 REAR YARD SETBACK VARIANCE

Request for a variance from Section 4-2-4C.5 of the Zoning and Development Code to permit a house addition with a 13 foot rear yard setback in an RSF-4 (Residential Single Family - with a density not to exceed 4 units per acres) Zone District where a minimum of 30 feet is required.

PETITIONER: Mark and Beverly Bebee

LOCATION: 1520 Ptarmigan Court North

CITY STAFF: Michael Drollinger

STAFF PRESENTATION

Michael Drollinger stated that the applicants, Mark and Beverly Bebee, are requesting a variance from Section 4-2-4C.5 of the Zoning and Development Code which requires a minimum rear yard setback for principal structures of 30 feet in a RSF-4 zone. The applicant is proposing an addition to an existing residence with a setback of 13 feet. In reviewing this request, staff analyzed Section 10-1-1B, Criteria for Board Decision on Variances; the materials presented by the petitioner; and examined the site. According to Section 10-1-1B.2.b the applicant must demonstrate that there are exceptional conditions creating an undue hardship applicable to only the property involved or the intended use thereof that do not apply generally to other land uses or uses within the same zone district and such exceptional conditions or undue hardship was not created by the action or inaction of the tenant or owner of the property. In using a strict interpretation of this criteria, staff believes the applicant has not supplied any information that demonstrates that this property has any unique characteristics that differentiate it from other lots in the same zone. The subject parcel, a.k.a. 1520 Ptarmigan Court North, is approximately 17,900 square feet in size which is over twice as large as the minimum required lot size in a RSF-4 zone and which provides significantly more land area within the required setback to locate

principal and accessory structures. Staff feels that there is no unique topographical characteristics that would prevent the applicant from locating the addition within the required setback. However, when analyzing this criteria the conclusions can be drawn somewhat differently if the phrase "exceptional conditions applicable only to the property involved" is interpreted to include an analysis of existing conditions beyond the property boundary of the subject site. Staff feels that the uniqueness of this site doesn't necessarily lie within the property boundary but just outside the property boundaries. To the east and south of the subject property there are very large utility, irrigation and drainage easements that are considered "no build zones" because no structures are allowed to be built within this area. The proposed addition, while closer to the property line than permitted, would still be set back at least as far from the closest building envelope on an adjoining property than would be found between typical RSF-4 lots. Staff believes, while there is no hardship in the strictest sense, the conditions on an adjoining lot do create a unique situation in this particular case. Staff would come to a completely different conclusion if, for example, Lot 6 or Lot 3 of Ptarmigan Ridge were the subject properties. These lots are very typical RSF-4 lots that have no significant encumbrances with any types of easements. Staff believes that if this proposal was on those adjoining lots there would be no hardship and there would be no unique situation.

Mr. Drollinger continued: in regards to Section 10-1-1B.2.a, (the granting of the variance will not conflict with the public interest as expressed by the City's adopted Comprehensive Plan), staff believes that granting a variance for this proposal does not conflict with public interest as expressed in the goals and strategies in the City's Growth Plan or the general principal of fair and consistent application of development regulations.

Criteria in Section 10-1-1B.2.c states that "the granting of the variance will not be detrimental to the public health, safety or welfare." Because of the adjoining no build zones the proposed addition, if constructed to a 13 foot setback rather than 30 feet, would not be any closer to adjoining lots because of the surrounding easements than in a case of a typical RSF-4 lot.

Mr. Drollinger stated that in considering the criteria in Section 10-1-1B.2.d, "the applicant and the owner of the property can not derive a reasonable use of the property without a variance," given the characteristics of this property the minimum setback requirements do permit reasonable use of the property and staff believes the applicant has not demonstrated conformance with this particular criteria.

The conclusions regarding the criteria in Section 10-1-1B.2.e are similar to those discussed in criteria in Section 10-1-1B.2.c.

If staff uses a strict interpretation of the variance criteria, the petitioner has not demonstrated that all of the criteria can be satisfied. Staff concludes, however, that there is sufficient evidence in this case to establish a uniqueness to the existing conditions and that uniqueness being the existence of the large easements adjoining the property in which a relaxation of the rear yard setback requirement would not (1) result in principal structures being closer together than the 60 foot separation required by the Code; (2) would not set a precedence for additional rear yard set back variances given the facts of this case; and (3) would not undermine the intent and purpose of a minimum setback as defined in the Zoning and Development Code. In conclusion, staff recommends approval of the variance for a 13 foot principal structure setback where 30 feet is required.

QUESTIONS

Joseph Marie asked what the square footage of the proposed addition is?

PETITIONER'S PRESENTATION

Mark Beebe replied that the footprint of the addition is approximately 16 feet by 18 feet. Mr. Beebe stated that when he initially constructed his home the foundation had to be built up approximately four feet on the south side as the lot slopes down in that area at more than a 45° grade. He agreed with City staff's observations that his lot was large; however, he added that the configuration of the lot made it difficult to build on. He disagreed with staff in the designation of the side where the proposed addition is located as a "rear yard" rather than a "side yard." Mr. Beebe explained that the lot has several sides making it difficult to identify what is side yard and what is back yard. He stated that staff defined rear yard as opposite from the front and the most distance from the back property line. He agreed that it was the opposite from the front, but it was not the greatest distance from the back. At the time he built his home he stated that his intent was to, someday, build this addition. Mr. Beebe stated that at the time he designed his home he assumed this particular side of the lot would be considered a "side yard" rather than a "rear yard" in terms of setback requirements.

QUESTIONS

Joseph Marie asked if the proposed addition would be single level and what it would be used for. Mr. Beebe replied that the existing home is single story but the addition will be two stories. The lower level of the addition will be utilized as a family room.

John Elmer asked the petitioner if the addition could be relocated within the setback requirement? Mr. Beebe replied that there is a covered patio and master bedroom on the north end on the rear elevation of his home and that is why the addition is proposed on the south end of the rear elevation. He disclosed that he did not think the existing house met the minimum 30 foot setback; he measured the distance at 29 feet.

John Elmer suggested restricting the size of the addition to a maximum of 20 feet by 20 feet to limit the encroachment and to consider making the existing house a legal nonconforming use if it indeed encroaches within the setback area.

Dan Wilson agreed with Mr. Elmer's suggestion and added that the existing home was probably constructed without either the applicant and the approving staff being aware of a problem. It isn't the City's intent to approve something that is nonconforming at the time of construction given the public policy of reducing nonconforming status over time. He suggested that the Board consider reflecting in their motion the approval of the existing structure so that it is considered a "legal nonconforming use" to prevent any difficulties the homeowner may come up against 15 years from now in terms of refinancing or any other issues.

John Elmer advised the petitioner that if there is an Architectural Control Committee for Ptarmigan Ridge, they will have a separate approval process. The petitioner acknowledged this.

PUBLIC COMMENT

For: Frank Kuretich, 1525 Ptarmigan Ridge Court, stated that he felt there was sufficient open space surrounding Mr. Beebe's lot to allow the addition.

Against: None

DISCUSSION

Dan Wilson stated the foremost public policy is the notion that the community plans a whole community and establishes rules for public health, welfare, and safety. That's the justification for doing anything like zoning. The planning is done at the time a subdivision is proposed based on topography and other site constraints. People who purchase lots should know this and should construct the home to meet within those guidelines. If there is a problem with the guidelines, the preferable option is to go back to the legislative body, i.e. City

Council, and change the original plan rather than continually approving individual variances based on individual circumstances.

Mr. Wilson continued: this particular proposal would not conflict with public interest, it certainly would not be detrimental to the public health, safety and welfare except in some theoretical sense and it clearly would not injure any adjacent properties. However, Mr. Wilson pointed out that there are two criteria that the Board should struggle with or acknowledge a potential struggle with. The first is if this variance is not granted does it create an undue hardship? Legal interpretation would be no; this is a nice home in a nice subdivision, therefore there is no undue hardship if the addition is not approved. The second criteria is, can the applicant derive a reasonable use of the property? It is not a question of being able to construct a 1200 square foot home versus a 1800 square foot home because a 1200 square foot home would be a reasonable use. Nevertheless, Mr. Wilson agreed with staff's recommendation of approval because of the unique topographical features, that is, the outlying easements surrounding the subject parcel.

John Elmer asked staff if there are building envelopes drawn for these lots? Michael Drollinger replied that he was not aware of any.

MOTION: (William Putnam) "Mr. Chairman, on VAR-1997-068 request for a variance from the required 30 foot setback to a 13 foot setback in a RSF-4 zone at 1520 Ptarmigan Court North, I move that we approve the variance for the reasons given in the staff report and specifically that the approval is for the site plan as is presented in the file and that it consist of approval of the present location of the house as well as for the proposed addition."

Dan Wilson recommended that the Board amend the motion to include that "the proposed addition shall not exceed 20 feet by 20 feet." Mr. Putnam agreed to incorporate that amendment into his motion.

Joseph Marie seconded the amended motion. A vote was called, and the motion passed unanimously by a vote of 3-0.

IV. GENERAL DISCUSSION

John Elmer stated that the Planning Commission has changed the format of their meetings so that the petitioner is required to present their case first followed by staff's analysis and review. The reason for this change is the public's past perception that staff was arguing for (or against) the petitioner rather than independently presenting the pros and cons of the project. It also means that the petitioners have to do a little more homework to make their case. He asked the Board if they would consider a similar change in format for Board of Appeals?

Dan Wilson stated that it is generally more efficient to have staff do the initial presentation. Projects that go before the Planning Commission and City Council are usually more controversial and generate larger crowds than Board of Appeals. Comments received from the public attending Planning Commission and City Council meetings were that it appeared staff and the Commission had already decided on approval or denial prior to the meeting.

Mr. Drollinger added that this format does have its usefulness in that it makes the applicant think through the process a little more and prepare a bit more. It does, however, involve more of staff's time to sit down with the applicant(s) to discuss the format, explain the variance criteria and to give them the information they need to understand the process and be able to prepare for the hearing. He added that staff is more than willing to do this if the Board chooses to change the format.

John Elmer stated that the majority of applicants who come before the Board are homeowners who generally don't have a planning background versus developers who normally are seen at Planning Commission and City Council meetings.

The consensus of the Board is to leave the format as it is for now.

Michael Drollinger announced that a luncheon/workshop will be scheduled in the near future to further discuss the format of meetings, information supplied in the Board's packets, etc.

Meeting was adjourned at 8:40 a.m.