

GRAND JUNCTION BOARD OF APPEALS MINUTES

May 14, 1997

8:00 a.m. to 8:35 a.m.

I. CALL TO ORDER

The regularly scheduled meeting of the Grand Junction Board of Appeals was called to order at 8:00 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 Lewis Hoffman. Joseph Marie was absent. One position is vacant.

Also in attendance were Michael Drollinger, Planning Supervisor and John Shaver, Assistant City Attorney. Bobbie Paulson transcribed the minutes.

There were four citizens present including the petitioners.

II. APPROVAL OF MINUTES

The minutes of the April 9, 1997 meeting were deferred until the next meeting.

III. PUBLIC HEARING ITEMS

1. VAR-1997-080 REAR YARD SETBACK VARIANCE

Request for a variance from Section 4-2-4C.5 of the Zoning and Development Code to permit a new residential home with a 15 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, resulting in a variance of 15 feet.

PETITIONER: Robert & Virginia Scott

LOCATION: 3760 North 15th Court

CITY STAFF: Michael Drollinger

Lewis Hoffman stated that he had a conflict of interest with VAR-1997-080, leaving only two board members who could vote. Because there wasn't a quorum, item VAR-1997-080 was tabled until the next meeting.

MOTION: (Lewis Hoffman) "Mr. Chairman, on item VAR-1997-080, I move that we table this item until the next meeting."

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

There was a brief discussion about rescheduling this item. Mr. Shaver suggested that the Board could hold a special meeting so that the petitioner is not delayed significantly. William Putnam announced that he would be out of town from June 10 until June 21, 1997 so there may not be a quorum at the next regularly scheduled meeting.

2. VAR-1997-081 FRONT YARD SETBACK VARIANCE

Request for a variance from Section 4-2-4C.6 of the Zoning and Development Code to permit a new residential home on a corner lot with a 13 feet front yard setback in a RSF-4 (Residential Single Family - with a density not to exceed 4 units per acres) Zone District where a minimum of 20 feet is required on all abutting streets, resulting in a variance of 7 feet.

PETITIONER: Nick Lobato/Alice Hardesty/Eileen Kempf

LOCATION: 401 E. Mayfield Drive

CITY STAFF: Michael Drollinger

STAFF PRESENTATION

Michael Drollinger stated that the petitioner is requesting a variance to the front yard setback for a principal structure. Section 4-2-4D requires a minimum front yard setback of 20 feet for principal structures. The applicant is requesting a setback of 14 feet along the Highway 340 frontage to permit the construction of a single family residence at 401 E. Mayfield Drive. The existing zoning for this parcel along with the surrounding zoning immediately adjacent to the property is RSF-4. The applicant's reasons for the request are detailed in the project narrative supplied by the applicant.

Mr. Drollinger continued; the subject parcel was originally platted as Lot 1 of the May Subdivision; however, the Colorado Department of Transportation acquired a significant area of the original lot for right-of-way for Highway 340. While a portion of the area acquired for right-of-way was originally platted as an easement, the acquisition of the right-of-way did affect the required front yard setback along Highway 340.

Staff has analyzed the variance request using Section 10-1-1 criteria and based on information supplied by the applicant with the original application, the applicant's response to comments and a site visit.

The criteria for the Board's decision on this application are in Section 10-1-1B. The applicant carries the burden to demonstrate to the Board's satisfaction that all the criteria in Section 10-1-1B.2 "a" through "e" have been satisfied. A variance is not a right. As stated in 10-1-1B.2 a variance may be granted to an applicant only if the applicant establishes that he will suffer undue hardship because of site characteristics and when the variance will not conflict with the intent of the Code.

Under Section 10-1-1.B.2.b, the core question presented by an application to the Board is whether there has been a showing of exceptional practical difficulties to or exceptional hardship upon the applicant arising out of the exceptional conditions peculiar to the applicant's property that doesn't apply to other properties or uses within the same zone district and were not self-inflicted by the applicant. Under a strict interpretation of this criteria, the applicant has supplied no information which demonstrates that this property has any unique characteristics that differentiate it from other lots in the same zone which creates a hardship that warrant a variance from the minimum principal structure front yard setback. The applicant's lot meets the minimum required in the zone and has sufficient land area within the required setbacks to locate principal and accessory structures. The lot, while it does have a slope to it, does not have any unique topographical characteristics that prevent the applicant from locating the proposed home within the required setbacks.

Staff feels that these conclusions can be drawn differently if the phrase "exceptional conditions applicable only to the property involved" is interpreted more broadly to include an analysis of the conditions beyond the property boundary of the subject site and the impacts of the right-of-way acquisition for Highway 340. The location of the existing improvements along the highway are well within the right-

of-way are not in close proximity to the subject parcel. Staff also believes that the applicant has made reasonable attempts as part of the house design to mitigate the noise impacts of the highway by locating the garage along the highway frontage. For these reasons staff believes that while there is no “hardship” in the strict sense, the conditions adjoining the subject lot do create a unique condition in this case.

Mr. Drollinger presented an overhead which described the purposes of setbacks:

5-1-7 SETBACKS

A. Setbacks in all zones have been established for the following purposes:

- 1. To be proportionate to the size and scale of the land use;***
- 2. To provide an appropriate street scape in character with the lot sizes allowed;***
- 3. To provide a certain character to an area based on the uses allowed;***
- 4. To provide for the interrelationship between principal uses;***
- 5. To require structures to be separated form traffic corridors and adjoining uses; and***
- 6. To encourage solar energy uses.***

Mr. Drollinger continued; the minimum distances for front yard setbacks are established on corner lots to meet these general goals and objective in Section 5-1-7. Staff believes that they are not all applicable in this case since one of the corner lot frontages is along a state highway. Generally, good planning practice is that homes should not front on a state highway and efforts should be made to buffer the home from the highway and the highway’s negative impacts. Some of the typical requirements and reasons for a setback are to provide an appropriate street scape and to provide a certain character to an area based on the uses allowed, although this criteria may not be applicable in this case. Staff believes that while there is no hardship here in a strict sense, the conditions affecting the subject parcel do create a unique condition.

In reviewing Criteria “a,” which is “the granting of the variance will not conflict with the public interest as expressed in the City’s adopted comprehensive plan,” staff believes that granting this variance won’t conflict with public interest as expressed in the goals and strategies of the adopted City Growth Plan including Goal 11 “to promote stable neighborhoods and land use compatibility throughout the community,” and Goal 13 “to enhance the aesthetic appeal of the community” and the general principal of fair and consistent application of development regulations.

Staff also believes that “granting of this variance will not be detrimental to the public health, safety or welfare.” Again given the conditions described, staff believes that the granting of this variance will not undermine the intent and purpose of the minimum setback as described in Section 4-1-1 “Purposes of Zoning” and will not set a precedent for additional variances of this type given the uniqueness of the conditions with this application.

As of the date on the report, staff received one call from an adjoining neighbor expressing opposition to the project. While the comments and opinions of the adjoining neighbors do constitute a component of the evidence that the Board considers, staff believes that the term “public health, safety and welfare” involves more than just the consent of the present surrounding neighbors and must consider future surrounding property owners and the desires of the public as a whole.

In reviewing Criteria “d,” “the applicant and the owner of the property cannot derive a reasonable use of the property without a variance,” staff believes that the applicant has not demonstrated that there are no feasible alternative locations within the setback requirements.

Criteria “e,” “the variance will not injure or reduce the value of adjacent properties and improvements,” staff’s conclusions are the same as under Criteria “c.”

Staff believes that by granting this variance, it will not be detrimental to public good. Using a strict interpretation of the variance criteria is that the petitioner hasn’t demonstrated that all of the criteria can be satisfied. Staff concludes, however, there is sufficient evidence in this case to establish a uniqueness to the existing conditions affecting the petitioner’s property in which a relaxation of the front yard setback requirement: 1) would not set a precedence for additional front yard setback variances given the facts of this case; and 2) would not undermine the intent and purpose of the minimum setback as defined by Code. Staff’s recommendation is for approval of the variance with the following conditions:

1. The residence shall be constructed no closer than 14 feet to the property line as illustrated on the site plan attached to the staff report.
2. The applicant shall construct a home with a garage on the eastern side of the property as illustrated on the house elevation.
3. All existing structures on the subject parcel will be removed prior to issuance of a planning clearance for the new residence.

QUESTIONS

Lewis Hoffman asked if CDOT made any comments? Mr. Drollinger replied that no comments were received from the Colorado Department of Transportation.

PETITIONER’S PRESENTATION

Nick Lobato, 2489 South Broadway, stated that the proposed house is for his mother-in-law. Referring to the elevation drawing including in the Board’s packets, Mr. Lobato stated that the house would look exactly as it appears on the elevation with possible exception of siding versus stucco on the exterior depending on budget.

John Elmer asked if the footprint would remain the same. Mr. Lobato said it would not change.

PUBLIC COMMENT

For: Jim Nasalroad, 416 E Mayfield, asked who the neighbor was that called to oppose?

Mr. Drollinger replied that they did not leave their name, they just called to express their opposition to the project.

Jim Nasalroad expressed his approval of this project adding that based on the elevation drawing it appeared that this house would fit in with the characteristic of the surrounding neighborhood.

Against: None

BOARD DISCUSSION

Lewis Hoffman said that based on staff's thorough review of this proposal and the site, he would not have a problem supporting this variance request.

John Elmer stated that he felt there was a hardship inflicted because CDOT obtained a portion of the original platted lot for Highway 340 right-of-way reducing the size of the building envelope on the lot. He added that it makes sense to orient the house so it fronts on Mayfield Drive. William Putnam agreed.

Lewis Hoffman added that it was not likely that the State would take additional land to further increase the right-of-way.

Lewis Hoffman and John Elmer stated that the opposing neighbor's complaint could not be addressed because the Board did not have the specifics of his or her objection.

MOTION: (William Putnam) "Mr. Chairman, subject to VAR-1997-081, I move that we approve this variance subject to the recommended conditions in the staff report for the reasons given in the staff report."

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

GENERAL DISCUSSION

Michael Drollinger announced that the next regularly scheduled Board meeting is June 11, 1997 but staff would not know until 5:30 p.m. today if there were any appeal submittals for that meeting. William Putnam said he would be out of town at that time which may cause difficulties in having a quorum. Discussion ensued regarding a date to hear the tabled item, VAR-1997-080. The consensus was to hold a special hearing on June 4, 1997. Mr. Drollinger said he would look into the availability of the Auditorium on that date.

The meeting was adjourned at 8:35 a.m.