

## GRAND JUNCTION BOARD OF APPEALS MINUTES

June 4, 1997

9:35 a.m. to 10:30 a.m.

### I. CALL TO ORDER

The Grand Junction Board of Appeals was called to order at 9:35 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 was absent. One position is vacant.

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

There was one citizen present in addition to the petitioner.

### II. APPROVAL OF MINUTES

**MOTION: (William Putnam) “Mr. Chairman, I move that the minutes of the April 9, 1997 meeting be approved.”**

The motion was seconded by Joseph Marie. A vote was called, and the motion was approved by a vote of 3-0.

The approval of the May 14, 1997 minutes was deferred until the next Board of Appeals 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**

#### **STAFF PRESENTATION**

Michael Drollinger stated that the applicants, Robert and Virginia Scott, own a vacant lot at 3760 North 15th Court and have requested a variance of the rear yard setback from 30 feet to 15 feet for a future home on the property. The existing zoning for this parcel is RSF-4 and the surrounding land uses and zones are RSF-4 and PR-4. Section 4-2-6C.5 of the Zoning and Development Code requires a minimum rear yard setback of 30 feet for principal structures in an RSF-4 zone.

Mr. Drollinger continued; 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 10-1-1B.2. a-e have been satisfied. Staff has analyzed this variance request using these criteria and based on information supplied by the applicant with the original application, the response to comments and a field visit. Staff's analysis and conclusions relative to each criterion are detailed in the staff report. Staff's analysis of **Section 10-1-1B.2.b** *“there are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not apply generally to other land areas or uses within the same zone district, and such exceptional conditions or undue hardship was not created by the action or inaction of the applicant or the owner of*

*the property*” is that the applicant has supplied no information which has demonstrated that the property has any unique characteristics that differentiate it from other lots in the same zone and create a hardship that warrant a variance from the minimum principal structure setback. The applicant’s lot, which contains almost 14,900 square feet, is 75% larger than the minimum required in the RSF-4 zone, and as such, the lot has significantly more land area within the setbacks to locate principal and accessory structures. The lot is a flag-shaped lot but the buildable area of the lot is a large rectangular shape with a building envelope of more than 5,000 square feet and it doesn’t have any unique shape or topographic characteristics that prevent the applicant from locating a single family residence within the required setbacks. Mr. Drollinger referred to an aerial photograph of the property and the surrounding area. Staff analyzed lots in the surrounding area to compare how 3760 N 15th Court relates in size. Three of the adjoining lots are smaller, two are larger, and one is approximately the same size.

Mr. Drollinger referred to Section 10-1-1.B.2.a criteria, *“the granting of the variance will not conflict with the public interest as expressed by the City’s adopted comprehensive plan.”* Staff believes that the applicant has not demonstrated that the variance does not conflict with the public interest. Staff believes that the granting of this variance will conflict with the public interest as expressed in the goals and strategies of the adopted City Growth Plan, specifically **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.

Section 10-1-1.B.2.c criteria, *“the granting of the variance will not be detrimental to the public health, safety or welfare.”* Mr. Drollinger stated that the focus of this provision is on the variance’s potential effect on surrounding properties. Staff believes that the granting of the variance will undermine the intent and purpose of the minimum rear yard setback as described in Section 4-1-1 *“purposes of zoning”* and would in this case set a precedent for additional variances of this type.

Section 10-1-1.B.2.d criteria, *“the applicant and the owner cannot derive a reasonable use of the property without a variance.”* Given the characteristics of the subject property as previously described, the application of the minimum setback requirement for principal structures in this instance clearly permit reasonable use of the property. The applicant has not demonstrated that there are no feasible alternative locations that conform to the setback requirements.

Analysis of Section 10-1-1.B.2.e criteria is similar to staff’s conclusions regarding criteria “c.”

In summary, staff’s recommendation is denial of the variance for a 15 foot principal structure setback where 30 feet is required.

### QUESTIONS

John Elmer asked staff if this lot was viewed as different from other flag lots in the area that have developed in terms of size and shape? He added that it seems that other flag lots are being built on that have similar problems. Mr. Drollinger responded that by examining the area around the subject parcel and other similar flag lots, staff’s analysis is that this flag lot, being that it is much larger than the minimum lot size and having a large building envelope, is not unique.

John Shaver asked Mr. Drollinger to indicate on the aerial photo the lots along North 15th Court he referred to that were used to compare sizes. Mr. Drollinger stated that the seven lots include the subject property which is Lot 4, and the six surrounding lots on North 15th Court numbered 1, 2, 3, 5, 6 and 7.

William Putnam asked staff if there were any other flag-shaped lots in Ptarmigan Subdivision? Mr. Drollinger stated that there were none in this immediate filing, but there are flag lots in earlier filings of Ptarmigan Subdivision.

Mr. Shaver asked if the lot to the north of the subject parcel was a flag lot? Mr. Drollinger said he did not consider that lot because it has a future road easement or right-of-way and other features that differentiate it from the typical flag lot.

**PETITIONER'S PRESENTATION**

Robert Scott distributed a copy of a letter from Linda Gilmore of ReMax and a letter from D. Dennis Wiltgen of Wilco Enterprises to the Board members. The letters describe difficulties of selling the lot and designing a home to fit the existing building envelope.

Mr. Scott stated that he purchased this lot with the original intent to build himself. He later decided that he could not take care of such a large lot so he purchased another lot and put this lot up for sale. Mr. Scott added that there has been a lot of interest in the lot because it is big, but unfortunately it has not sold because it isn't very functional. He stated that he has had five builders back off and has lost three purchase agreements. Most of the potential buyers have already chosen a house plan which doesn't fit this lot. Mr. Scott stated that he has encouraged interested parties to have an architect look at the lot. The last potential buyer drew the sketch labeled "*home siting options*" that was submitted with the original packet. This sketch shows a house drawn "cockeyed" with one corner encroaching into the setback by 15 feet. If the existing building envelope were used, a house would have to be located so its front faced the neighbor's back yard.

Mr. Scott addressed comments in the staff report regarding the criteria.

In response to staff's comments regarding **Section 10-1-1B.2.a**, "*the applicant has not demonstrated the variance does not conflict with the public interest. Staff believes granting the variance will conflict with the public interest as expressed in the goals,*" Mr. Scott responded that the term "*public interest*" is very broad and subject to various interpretations. He gave his interpretation of "*public interest*" as pertaining to residences in the vicinity or within the 200 foot radius of his lot. He added that to his knowledge there have been no objections to this request and neighbors in the immediate vicinity have been very supportive.

In response to staff's comments regarding **Section 10-1-1B.2. b**, "*the applicant has supplied no information which has demonstrated the property has any unique characteristics that differentiate it from other lots in the same zone and create a hardship that warrant a variance from the minimum accessory structure setback,*" Mr. Scott stated that the "*unique characteristics*" of his lot are the core reason for his filing this variance request and are outlined in his project narrative submitted with the original application. The existing building envelope forces a home to be situated with the front facing the neighbor's back yard is a "*unique characteristics.*" Mr. Scott added that staff's statement "*the only hardship arising from this request appears to be self-inflicted*" infers that "*I have shot myself in the foot!*" Mr. Scott stated that he has done nothing to create the problem except purchase the lot in the first place.

Mr. Scott stated that he did not understand staff's comments regarding **Section 10-1-1 B.2.c**. He added that it was his understanding that each appeal for a variance must be decided on its own merits, not on precedent.

In response to staff's comment "*While the applicant state in the project narrative that the existing neighbors do not object to the proposal, staff believes that the term 'public health, safety and welfare' involves more than the consent of present surrounding neighbor(s) and must consider future surrounding property owners and the desires of the public as a whole,*" Mr. Scott stated that "*the public health and welfare of the public as a whole*" falls in the same category as "*in the public interest*" which he addressed earlier in Section 10-1-1B.2.a. He stated that it was difficult to understand how moving a lot line on a lot located in an established neighborhood had anything to do with affecting anyone's health and welfare in the immediate vicinity, let alone the public as a whole.

In regards to staff's comments on **Section 10-1-1B.2.d** "*the characteristics of the subject property as previously described, the application of the minimum setback requirements for principal structures in this instance clearly*

*permit reasonable use of the property. The applicant has not demonstrated that there are no feasible alternative locations which conform to the setback requirements,*” Mr. Scott agreed that he has not provided any plans for locating a home on the lot but has suggested and assisted potential buyers by recommending home planners and builders. He reiterated that a problem potential buyers have dealt with is that they all have existing home plans that do not fit this lot. He said that he has offered to pay the cost and pursue the paper work to request a variance but no one has been willing to go through the process mainly because of the time involved.

Mr. Scott concluded; for the reasons previously stated he applied for a variance, adding that he realizes the chances of approval are less by not having a specific plan to show the Board.

### **QUESTIONS**

Joseph Marie asked Mr. Scott how long he has owned the property. Mr. Scott replied approximately four years.

Joseph Marie asked if there were covenants for this neighborhood requiring a minimum square foot house? Mr. Scott replied that the covenants did require a minimum of 1,700 square feet.

Mr. Marie suggested that a home be designed specific to this lot, for example an “L” shaped home may be a possibility. Mr. Scott reiterated that he was not an architect and most buyers have a plan picked out already.

Mr. Putnam asked for clarification from Mr. Scott; “do you feel that a reasonable use of the property cannot be derived because you haven’t found anybody that is willing to conform to the setbacks?” Mr. Scott replied that he does not deny that a house can be built within the existing building envelope. He added that even though he is asking for a 15 foot variance he doubts if the full 15 feet would be used. He suggested that what would probably happen is that only a portion of a home would encroach into the setback not the entire back of the house.

### **PUBLIC COMMENT**

There was no public comment.

### **BOARD DISCUSSION**

Joseph Marie asked staff to explain Section 10-1-1B.2.c referring to “health, safety and welfare.” Mr. Drollinger replied that staff’s interpretation of what needs to be considered in reference to Section 10-1-1B.2.c is basically the effect of a variance on surrounding properties and the impacts of the variance upon the zoning regulations as a whole.

In terms of the effects on surrounding properties, this goes into the analysis of what the impact on the public health, safety and welfare. While there may, in some cases, be a consent of present surrounding property owners, there may be property owners in the future or adjacent property owners of vacant lots that have an expectation that when they buy a lot that the adjoining lot will be developed as per the zoning. Also, the variance’s impacts on the zoning regulations are considered. Staff feels that the granting of this variance would not be consistent with the purpose of a minimum setback requirement and the purposes of zoning. There are certain criteria set out as to why there is a minimum setback and staff feels this requested variance does not fit that definition. There needs to be a minimum setback in this case and granting of the variance in staff’s opinion will set a precedent for additional variances of this kind because of the lack of uniqueness in this case.

John Elmer stated that this seems to be a typical problem with the flag lot designs. He expressed his concern of the amount of the variance request. He felt that a 15 foot variance would allow someone to build a huge home on this lot significantly closer to adjacent homes without any further review. He added that this lot will probably require an architectural design rather than the typical home design.

Mr. Shaver reminded the Board of the provision in the Code that in addition to considering all of the criteria in Section 10-1-1B.2, a variance can still be approved so long as the Board can make a determination that it would be

general benefit to the neighborhood or community. Mr. Shaver added that this is not staff's position but felt that it was important that the Board be reminded of the existence of that particular section of the Code.

John Elmer stated that even considering that provision he felt that without a footprint, the Board could not make a reasonable decision based on how it could impact adjacent properties. Usually a variance request includes a specific building plan. In those cases, the Board can review the encroachment and impacts and make an educated decision based on actual plans.

Mr. Marie asked if there were any written public comments? Mr. Drollinger replied that there were not.

**MOTION: (William Putnam) "Mr. Chairman, in reference to VAR-1997-080, a request for a rear yard setback variance at 3760 North 15th Court, I move that we deny the request for the reasons that the petitioner has not shown to satisfy the criteria in 10-1-1B.2."**

Mr. Marie seconded the motion.

Mr. Shaver suggested that an addendum be made to the motion to include discussion of the exception criteria that he previously spoke about. He explained that Section 10-1-1 criteria have to be satisfied, but the Code allows that if they are not all satisfied and there is the finding that there would be a general benefit to the neighborhood and the community, the variance may still be permitted.

**AMENDED MOTION: (William Putnam) "I amend the motion by adding the Board does not find there is a general benefit to the community for the reasons cited in earlier discussion."**

Mr. Marie seconded the amended motion. A vote was called and the motion to deny the variance was approved by a vote of 3-0.

#### **GENERAL DISCUSSION**

Michael Drollinger announced that the regularly scheduled Board of Appeals meeting on June 11, 1997 has been canceled. The one item on the agenda was pulled as the applicant did not respond to comments nor did he post his sign on time.

The Board discussed the importance of addressing the criteria in 10-1-1B.2 and the exception criteria when looking at variances to bulk requirements.

The meeting was adjourned at 10:30 a.m.