

**GRAND JUNCTION BOARD OF APPEALS
MEETING MINUTES
SEPTEMBER 10, 1997**

I. CALL TO ORDER

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

In attendance, representing the Board of Appeals, were: John Elmer (Chairman), William Putnam, Lewis Hoffman, Joseph Marie and James Nall.

Also in attendance were John Shaver (Asst. City Attorney), Scott Harrington (Planning Director), Michael Drollinger (Sr. Planner) and Mike Pelletier (Assoc. Planner).

The minutes were recorded by Bobbie Paulson and transcribed by Terri Troutner.

There were three citizens present during the course of the meeting.

II. CONSIDERATION OF MINUTES

Available for consideration were the minutes of August 13, 1997.

MOTION: (PUTNAM) "Mr. Chairman, I move we approve the minutes of the August 13, 1997 meeting as presented."

Mr. Hoffman seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0, with Mr. Nall abstaining.

III. NEW BUSINESS

VAR-1997-153 VARIANCE--SIDE YARD SETBACK, TWO SIDES

A request for a variance from section 4-2-6-C.4 of the Zoning and Development Code to allow a side yard setback of 4 feet in an RSF-8 (Residential Single Family with a density not to exceed 8 units per acre) zone district in which the minimum setback is 5 feet to allow a new residence's encroachment on two sides.

**Petitioner: John Caldwell
Location: 2806 3/4 Bookcliff Avenue
Representative: Ken Heitt**

PETITIONER'S PRESENTATION

Ken Heitt, representing the petitioner, said that the present residential structure encroached into both north and south side yard setbacks. He noted the odd triangular lot configuration and the location of a berm to the rear of the property. The building envelope is very small and required creative designing to make it work. The contractor had thought himself in compliance with setbacks and both the plan and foundation had been approved by the County Building Department. The encroachment became evident in the I.L.C. during closing and prevented the petitioner from securing title insurance. If not remedied, it would also pose difficulties to future buyers in securing financing.

QUESTIONS

Mr. Putnam asked if the petitioner was the first owner following construction, to which Mr. Heitt responded affirmatively. Mr. Putnam asked when construction had been completed. Mr. Heitt answered that the closing had been held in July of this year. He recalled encroachment distances but admitted that measurements had been made from the siding to the property line.

STAFF'S PRESENTATION

Mike Pelletier distributed color photos submitted by the petitioner to Board members. He said that measurements must be taken from the edge of the foundation and not from the siding. Thus, encroachment on the north and south sides of the property would be 1.4 inches and 5.2 inches respectively. Several telephone inquiries were received by staff but no objections were voiced. Mr. Pelletier said that the request failed to meet all of the variance criteria. Staff determined the hardship to be self-imposed resulting from a construction error and recommended denial of the request.

QUESTIONS

Mr. Marie said that during his visit to the site the visual impact made by the encroachment seemed negligible.

PUBLIC COMMENTS

There were no comments either for or against the request.

PETITIONER'S REBUTTAL

The petitioner's representative offered no further rebuttal testimony.

DISCUSSION

Mr. Putnam noted discrepancies arising from three separate surveys of his own property. Given this, the amount of the petitioner's encroachment seemed insignificant.

Chairman Elmer remarked that not all survey pins had been found and that even those found may not necessarily be exact. Considering the few inches being requested and the lack of negative public comment, the request was minor. He agreed that the lot was difficult to build upon and that the berm did pose placement difficulties. Chairman Elmer said that the Code allowed approval of a variance request if it created no harm and provided a general benefit to the neighborhood.

Mr. Marie said that the project represented good infill of existing city lots.

MOTION: (PUTNAM) "Mr. Chairman, on item VAR-1997-153, a request for a side yard variance of one (1) foot to allow for four (4)-foot side yard setbacks to the existing building at 2806 3/4 Bookcliff Avenue, I move we approve the variance for the reason that the variance harms no one and will be a general benefit to the neighborhood and community."

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

VAR-1997-095 VARIANCE FOR TWO POLE SIGNS ON ONE PARCEL

A request for a variance from section 5-7-7.B.7.a of the Zoning and Development Code to allow two free-standing signs on the same parcel of land.

Petitioner: Michael Krecek

Location: 752 Horizon Drive

PETITIONER'S PRESENTATION

Michael Krecek, petitioner and owner of the *Howard Johnson's* motel on Horizon Drive, said that the national franchise mandated replacement of the signage and that new signs may not be combined with

signage from other businesses. He said that he submitted three appeals to the national franchise asking to be allowed to continue sharing a sign with *Starvin Arvin's*, the motel's in-house restaurant, but all three appeals had been denied. He recognized the importance of properly identifying the restaurant and introduced the restaurant's owner, Arvan Leany.

Mr. Leany presented a copy of the most recent franchise denial to staff dated September 4, 1997. He said that the restaurant was bound to operate within the parameters of the *Howard Johnson's* franchise. Failure to comply with lease covenants would jeopardize the restaurant's lease. Canopy signage proposed as an option would not work because it was not visible by traffic unless traveling directly in front of the business. Mr. Leany said that following removal of the sign, there had been a marked decrease in restaurant business. He noted the number, type and proximity of signs associated with other Horizon Drive restaurants and businesses. Proposed signage would be approximately 243 feet from the *Howard Johnson's* sign and 253 feet from *W.W. Pepper's* sign. Mr. Leany said that the hardship was in that the restaurant was not given the option of continued signage participation with the motel. The limited visibility of wall and canopied signage made this option unviable.

Mr. Leany said that no objections had been voiced from surrounding neighbors. Continued decreases in businesses could result in layoffs. He stressed that the *Howard Johnson* franchise put him in the present situation and that no special considerations beyond the requested signage were being sought.

QUESTIONS

Mr. Marie referenced one of the photos and asked if the sign would be placed where Mr. Leany's pickup truck was parked, to which Mr. Leany replied affirmatively.

Mr. Marie asked Mr. Leany to describe the sign being sought. Mr. Leany said that it would be a two-faced sign facing Horizon Drive coming from the highway but it could also be seen coming from the airport. It would be offset from the sidewalk and would be about the same height as the existing parking lot lights (approximately 21 feet).

Mr. Hoffman referenced *Howard Johnson's* letter and said that verbiage seemed to provide for some deviation. Mr. Leany said that he called the franchise office on this point and the response given was that verbiage pertained to the sign itself and not its location.

Mr. Shaver said that copies of the September 4, 1997 letter from *Howard Johnson's* had been distributed to Board members.

Chairman Elmer remarked that there seemed to be inconsistencies in the letter regarding the restaurant's sharing space in the same building as the motel. Mr. Leany said that because his business was not associated with the motel's franchise, it was regarded separately. There was a separate entrance and parking area for the restaurant.

Jeff Leany, Arvan Leany's son, clarified that one of the two available curb cuts was primarily used by motel patrons; the other was used primarily for access to the restaurant. He stressed the individuality of the two accesses and parking areas.

Mr. Marie asked for clarification on where a canopy sign could be installed, which was given. Jeff Leany reaffirmed that a canopy sign could not be seen by travelers unless they were passing right in front of the business.

When Mr. Drollinger was asked for the maximum allowable signage height along Horizon Drive, he responded that it was 40 feet.

STAFF'S PRESENTATION

Mr. Drollinger presented overhead transparencies which outlined the context for a Board decision, analysis of criteria, additional issues and conclusions and recommendation. Transparencies included shared signage photos of other Horizon Drive motels/hotels and in-house restaurants. Hard copies of the transparencies were included in Board member's packets and made an official attachment to the September 10, 1997 staff report. Mr. Drollinger stated that he was aware of instances where shared signage was allowed; specifically he referred to a *Howard Johnson's* motel and an *I.H.O.P.* restaurant. Code sections 5-7-1 and 10-1-1.B.3. were discussed. Additional concerns included having received incomplete/contradictory information from the petitioner and the franchise, and the petitioner's failure to demonstrate that all other remedies had been exhausted, namely negotiations and/or litigation with franchise. He maintained that the conflict seemed to be more tenant/landlord related.

QUESTIONS

Mr. Hoffman asked how much sign allowance *Starvin Arvin's* had available (separate of the *Howard Johnson's* sign). Mr. Drollinger answered that of the 375 total square feet allowed for the property, 181 square feet would remain after *Howard Johnson's* new sign was erected. Mr. Drollinger clarified that Mr. Leany was not requesting additional sign allowance, just the addition of another free-standing sign.

Mr. Shaver asked Mr. Drollinger to state his credentials and experience in dealing with this type of request, which was done.

Mr. Hoffman asked staff if the franchise might reconsider should the request for separate signage be denied. Mr. Drollinger said that his conversations with franchise representatives did not include that question, so he was unsure what their response would be. He reiterated that there appeared to be instances where exceptions had been made.

Mr. Marie asked if the request should be tabled to give the petitioners a chance to pursue other options. Mr. Shaver said that because the franchise and not the City created the problem, the Board must decide whether or not to involve itself in what staff appropriately referred to as a tenant/landlord dispute. Mr. Leany had based his presentation on the assertion that there were no other option(s) available, yet the third paragraph of the franchise's September 4, 1997 letter suggested otherwise.

PUBLIC COMMENTS

There were no comments either for or against the request.

PETITIONER'S REBUTTAL

Mr. Krecek said that no conflict existed between the motel and the restaurant. He said that a franchise representative had visited the Grand Junction motel and had determined that since the restaurant did not provide the motel with catering or room service, it was not integral to the operation of the motel. A small sign denoting the motel's access had been placed at its Horizon Drive entrance. Mr. Krecek reiterated that he had pursued continuation of shared signage with the franchise to the extent possible but had been turned down three times.

Jeff Leany said that alternate signage had been erected on the roof of the motel but had been removed at the City's request and later vandalized. He again stressed the individuality of the restaurant and said that as such, they should be entitled to separate signage, even though both businesses were located on a single parcel. Mr. Leany said that Mr. Drollinger's reference to shared signage in other locations was perhaps prior to the franchise's new signage mandate. He said that dialog from the franchise chilled considerably when, in recent correspondence, staff suggested litigation. Mr. Leany said that while the franchise may have access to a team of attorneys, his family did not, nor did they have the financial resources to litigate the issue. He reemphasized the decrease in the restaurant's revenue since the elimination of the shared signage.

Arvan Leany said that a wall sign would be essentially invisible. Since the restaurant was tourist-oriented, it was necessary for the business to be "seen" at a distance.

DISCUSSION

Mr. Nall asked if it was possible to grant a temporary variance for the life of the restaurant's lease. Mr. Shaver said that while the Code provided for time-restricted sign code variances, more problems may be created in the long run since signs raised generally very strong opinions.

Mr. Marie acknowledged both sides of the issue and felt there should be some room for compromise. While he was opposed to increased clutter along commercial corridors, he thought this a unique situation.

Chairman Elmer said that the hardship seemed to revolve around economics, an element which could not factor into Board deliberations. He expressed disappointment in the unwillingness of *the Howard Johnson's* franchise to work with its long-standing business partner. Chairman Elmer acknowledged that while the situation was not created by the Leany's, there was no compelling hardship dictating the need for another free-standing sign on the site.

Mr. Putnam was sympathetic to the petitioners' plight as well but agreed that the problem had arisen from the franchise's inflexibility.

Mr. Marie stressed the mutually beneficial relationship between the restaurant and the motel and he felt that shared signage would continue to serve both.

Chairman Elmer said that other communities were more strict in enforcement of their sign codes but the underlying goal of each code was to reduce the proliferation of signage.

MOTION: (PUTNAM) "Mr. Chairman, on item VAR-1997-095, a request for an additional free-standing sign on a single street frontage for the parcel at 752 Horizon Drive, I move that we deny the variance for the reasons delineated in the staff's findings and review pertaining to this request."

Mr. Hoffman seconded the motion. A vote was called and the motion passed by a vote of 4-1, with Mr. Marie opposing.

Chairman Elmer offered to generate a letter to *Howard Johnson's* outlining the relationship of the two businesses and the petitioners' attempts to conform to City codes. Mr. Shaver said that a copy of the minutes would be available for submission to franchise representatives. Other correspondence could be generated as well if the Board so directed.

The meeting was adjourned at 9:25 a.m.