

**GRAND JUNCTION BOARD OF APPEALS
MEETING MINUTES
DECEMBER 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, Joseph Marie and James Nall. Pamela Hong was absent.

Also in attendance were John Shaver (Asst. City Attorney), Scott Harrington (Community Development Director) and Bill Nebeker (Sr. Planner).

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

II. CONSIDERATION OF MINUTES

Available for consideration were the minutes of September 10, 1997.

MOTION: (MARIE) "Mr. Chairman, I propose we accept the minutes as presented to us for the meeting of September 10, 1997."

Mr. Putnam seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0.

III. NEW BUSINESS

VAR-1997-153 VARIANCE--APPEAL OF AN ADMINISTRATIVE DECISION

Appeal of an administrative decision per section 10-1-1-A.1 to not accept an application to amend a final plan in a planned residential zoning district to vary a setback on a single property, allowing for a building encroachment. Section 7-5-6 does not provide a process for such a request.

**Petitioner: Darlena White
Location: 2167 Redcliff Circle
Representative: Tom Volkmann**

PETITIONER'S PRESENTATION

Tom Volkmann, representing the petitioner, clarified that the appeal was not intended to seek a variance but rather to have the board review an administrative decision made by the Community Development Department (CDD) to withdraw an application the petitioner had made to the department for a minor amendment to the Canyon View Subdivision plan. Mr. Volkmann hesitated going into too much detail on the specifics of the planning application lest the board be placed in a position of rendering a decision on the plan request. He asked only that the submittal be given due process.

Because Canyon View Subdivision was submitted as a planned development, a plan amendment seemed to be provided in Code section 7-5-6. Mr. Volkmann stated that the CDD's position was that this section did not address individual lots--but if not here, then where? Excerpts from section 7-5-6-A.2(D) were read into the record. Verbiage contained within this particular subsection, he said,

seemed to address setback reduction specifically, which was the basis for the plan amendment request. Mr. Volkmann briefly elaborated that the setback encroachment occurred as a result of foundation staking errors. He maintained that the aforementioned section should provide due process to address errors occurring on individual lots.

QUESTIONS

Mr. Putnam asked Mr. Volkmann to explain his definition of “due process.” Mr. Volkmann cited California case law involving the Suitums where there was a refusal to process an application based upon external forces. “Due process” would include the petitioner’s ability to present the application before the CDD for its review and consideration. There seemed to be no reason why this opportunity should be denied to the petitioner.

STAFF’S PRESENTATION

Bill Nebeker explained that there were two types of planned developments-- “single site” and “subdivisions.” The section referred to by Mr. Volkmann pertained to both “single site” and larger residential planned developments. For the latter, a detailed site plan review was undertaken during the subdivision stage; however, no detailed site plan review was required when individual homes were constructed. Mr. Nebeker said that it was the CDD administrator’s position that the Code did not address the petitioner’s situation. He added that the board was bound to uphold the administrator’s decision unless it determined that the decision was not made within the intent of the Code nor in the public interest.

Mr. Nebeker read excerpts of section 7-5-6 into the record and acknowledged that the setback encroachment was something not foreseen at the time of the original plan. He noted that the encroachment did impact adjacent properties, adding that allowing the administrator to vary the setback via a minor change would also violate the CC&R’s placed on the subdivision. The minor change process would essentially grant a variance without the benefit of public notification. It was staff’s position that criteria contained within section 7-5-6 were not met and as such, denial of the appeal was recommended.

John Shaver asked Mr. Nebeker to expound upon his training, background and experience, which he did.

Scott Harrington, Community Development Director, briefly expounded upon his training, background and experience. As CDD “administrator,” he said that the decision not to consider the petitioner’s request had been his. The request, he said, failed to meet stated criteria (applicability requirements), and more specifically, paragraph “A” within section 7-5-6.

Mr. Marie asked if survey data should be entered into the record as evidence. Mr. Shaver cautioned against digressing too far afield of the primary issue which was whether or not to hear the request.

Mr. Harrington stated that there had been no oversight in preparing the original plan which would have precluded placement of a home within the intended building envelope.

Mr. Shaver asked if it was standard practice to review an application to ensure its meeting “applicability requirements” prior to a more formal review process. Mr. Harrington provided examples where requests could not even be considered because they didn’t meet applicability requirements (e.g., opening a gas station within a residential neighborhood). These limitations extended to the Board of Appeals (e.g., the board could not hear variance requests for planned zones). Mr. Harrington reiterated that it had been his determination that the Code did not provide a process for hearing the type of request brought forth by the petitioner. He agreed that this was an unusual case.

Mr. Putnam asked if it was then the Board's responsibility to determine if the CDD administrator had rendered his decision based upon the intent of the Code, to which Mr. Harrington replied affirmatively. If determined to be within the intent of the Code, Mr. Harrington suggested that direction be given as to whether the board viewed the request as a "minor" or "major" amendment to the plan.

PUBLIC COMMENTS

There were no public comments either for or against the request.

PETITIONER'S REBUTTAL

Mr. Volkmann denied that the request was essentially a "use variance" as suggested by Mr. Harrington. He reiterated that the right to be heard by the local planning authority on land use issues, whether ultimately approved or denied, should not be withheld from the petitioner. He felt that minor changes were addressed clearly in section 7-5-6. Major changes fell within subsection B, "...all other changes..." He agreed that the request needed to be clarified as one type or the other. Without the ability to submit the request for review, he didn't feel that the public interest was being served. The intent of the Code, he maintained, was to provide a mechanism by which requests of this type could be addressed.

DISCUSSION

Mr. Marie felt that the board should support the Code as written until its re-write was completed.

Mr. Nall agreed with Mr. Volkmann's interpretation that section 7-5-6 didn't make distinctions between the types of engineering errors occurring on a given site. Certainly the staking error was unforeseen in the same way a geotechnical error could be unforeseen.

Chairman Elmer felt that section 7-5-6 was written more on how to evaluate a change, not necessarily how to judge the process is whether or not the request should be submitted. There appeared to be no compelling evidence to support not hearing the request. This section, he said, was written with enough ambiguity to at least allow the process.

Mr. Putnam said that if no process was currently established for addressing changes in planned zones, what process would the petitioner follow if the administrator's decision was overturned by the board? Chairman Elmer felt that the request qualified as a minor change subject to the administrator's review. If the administrator denied the request, the petitioner should have the right to appeal the decision to the Planning Commission.

Mr. Shaver reminded Chairman Elmer of possible interpretive options available to the Board. Ultimately, the Board needed to specify the process.

Mr. Putnam conceded that this was a difficult decision to render given the unusual nature of the variables involved.

Mr. Marie felt that the intent of the Code was to serve the public interest.

MOTION: (PUTNAM) "Mr. Chairman, on item VAR-1997-195, an appeal of an administrative decision per section 10-1-1-A.1 not to accept an application to amend a final plan in a planned residential zoning district, I move that we overturn the director's decision of denial because we do not agree that it was made within the intent of the Code and in the public interest."

Mr. Shaver asked for clarification from the Board on what the result should be, to specify the process (minor change, major change or variance).

Chairman Elmer asked if this process specification should be included in a motion, to which Mr. Shaver replied affirmatively.

Chairman Elmer said that as an amendment to the original plan, the request should qualify as a minor change. A brief discussion ensued on how best to define the request and which process was best suited to address it.

Mr. Putnam decided to keep his original motion as-is. A second motion would define the request and related process.

Mr. Marie seconded the original motion. A vote was called and the motion passed unanimously by a vote of 4-0.

MOTION: (PUTNAM) “Mr. Chairman, I move that we suggest to the administrator that the previous matter be considered as a minor change amendment to a Final Plan.”

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

IV. GENERAL DISCUSSION

Chairman Elmer felt it appropriate during the re-writing of the Code that staff look at this section of the Code to determine if amendment was warranted. Mr. Harrington said that this section was being reviewed to establish a process for addressing changes within planned zones. He briefly explained the rationale for his previous decision.

Mr. Harrington elaborated on proposed changes to the planned zone section of the Code. A brief discussion ensued on the differences between this section of the Code currently in existence and how changes will affect future planning decisions.

If denied as a minor change, Mr. Volkmann asked if he would still be allowed to submit the application as a major change. Mr. Harrington said that if denied as a minor change, it could be appealed to the Planning Commission.

With no further business, the meeting was adjourned at 9:18 a.m.