

**GRAND JUNCTION BOARD OF APPEALS
MEETING MINUTES
AUGUST 12, 1998**

I. CALL TO ORDER

The regularly scheduled meeting of the Grand Junction Board of Appeals was called to order at 8:07 a.m. by Vice-Chairman William Putnam.

In attendance, representing the Board of Appeals were: William Putnam, Joseph Marie and Pamela Hong. John Elmer and James Nall were absent.

Also in attendance were Michael Drollinger (Development Services Supervisor) and Ivy Williams (Code Enforcement Supervisor).

Bobbie Paulson was present to record the minutes.

There were no citizens other than the Board members, the Petitioner and City staff present during the course of the meeting.

II. CONSIDERATION OF MINUTES

Available for consideration were the minutes of March 11, 1998.

MOTION: (JOSEPH MARIE) “Mr. Chairman, I move we approve the minutes of the March 11, 1998 meeting as written.”

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

III. WEED MANAGEMENT PLAN

Ivy Williams, Code Enforcement Supervisor, presented the Weed Management Plan to the Board and advised them of their role as the Weed Advisory Commission. Ms. Williams explained how the City of Grand Junction is managing weed problems specifically the *Russian Knapweed*, which has been the most prevalent noxious weed in the City. The City of Grand Junction adopted an ordinance regulating the management of weeds in 1969 and has had an active weed program since that time. In 1990, the State of Colorado adopted House Bill 90-1175, the Colorado Weed Management Act, which seeks to prevent and control through integrated management systems any undesirable plant infestations of noxious weeds.

The State of Colorado presented a list of noxious weeds including the *Leafy Spurge*, *Russian Knapweed*, *Diffuse Knapweed* and *Spotted Knapweed*. The City of Grand Junction added *Purple Loosestrife* to its list in 1996. All of these weeds have been deemed to present an immediate economic and environmental threat to lands within Colorado. The Board's role as the Weed Advisory Commission includes adopting and recommending a management plan for integrated management of undesirable plants, designating undesirable plants that are subject to the integrated management, and to act as an administrative hearing board. The adopted Weed Management Plan is in Section 16-30 of the Municipal Code. As part of that plan, all weeds are to be cut to within three inches or less of the ground on parcels of one acre or less. On parcels of more than one acre, only a 20 foot perimeter is

required to be cut where the parcel abuts a residential or other developed lands. The City currently has an active weed program with six seasonal employees who identify weed violations, maintain rights-of-way and other City property by mowing down weeds that aren't on the spray contract, monitoring the weed spray contract and abating violations on private properties when the owner(s) of property have failed to do so. The cost of the abatement is the responsibility of the landowner and will result in a tax lien if payment is not rendered. Noxious weed locations have been identified and the affected property owners have been contacted and advised of integrated weed management techniques. At this time the property owners do not have to present their management plan to the City but the Board may want to consider requiring a management plan for larger parcels of land. Ms. Williams presented to the Board a copy of a letter, a picture post card of the *Russian Knapweed* and a violation notice that are normally sent to owners of properties with violations. Ms. Williams added that a noxious weeds brochure that was put together by the Bureau of Land Management is also available. The City is required to send the owner a certified copy of the violation if the property is not owner occupied. On any developed land, whether it is vacant or not, a door knocker is left advising them of the violation. Often times even if the property is vacant someone is checking the property, will see the notice and take care of the weeds. The weed violation states that an administrative hearing may be requested within 10 days of the notice. If the hearing is not requested and the notice is not complied with during the specified time period, the City may remove the violation or issue a summons to municipal court. At this time, staff has not issued a summons to court for weeds but that is an option. Likewise there have been no requests for a hearing to date. In addition, Chapter 16 states that this Board will be the hearing board for the entire ordinance which also includes junk and rubbish.

QUESTIONS

William Putnam asked if the weeds are identified by their botanical names in the laws and ordinances. Ms. Williams replied that the noxious weeds that require management are listed by their common names and are not hard to pinpoint. Other weeds are not identified by name in the ordinance. The policy applied is that any plant that is considered to be natural native vegetation is not considered a weed. Weeds that usually receive violation notices are *White Top Hoary Cress*, the *Yellow Mustard* family and *Kochia*.

Joseph Marie asked if burning weeds is an option. Ms. Williams replied affirmatively, but only during the burn seasons as allowed by the Fire Department. She added that the Fire Department requires at least 50 feet between the burn pile and the nearest flammable object so typically it is not practical in the majority of the city.

William Putnam asked if a request for an administrative hearing is made, does the Board have criteria to review the request. Ms. Williams replied that the process is very specific and is outlined in the ordinance.

Ms. Williams asked the Board to also consider adding "*Goat Head*" to the noxious weed list. The "*Goat Head*" technically is never in violation because it does not grow higher than three inches; however, if it is added to the noxious weed list, the City can require that it be sprayed.

IV. PUBLIC HEARING ITEMS

VAR-1998-135 VARIANCE--REAR YARD SETBACK

A request for a variance from Section 4-2-5C5 of the *Zoning and Development Code* in a RSF-5 (Residential Single Family with a density not to exceed 5 units per acre) Zone to allow for construction of an accessory structure with a rear yard setback of six feet from property line where the minimum required setback is ten feet.

Petitioner: Dr. Harry Tiemann, Jr.
Location: 1326 Ouray Avenue
City Staff: Michael Drollinger

PETITIONER'S PRESENTATION

Dr. Harry A. Tiemann, Jr., 1335 Chipeta Avenue, stated that he moved a house onto the property at 1326 Ouray Avenue, put it on a new foundation and totally refurbished it. He stated that the location of the proposed garage would be the same as the prevailing setback of the neighboring garages which is approximately six feet and the variance would allow an additional 100 square feet of yard area in the back. Dr. Tiemann stated that he received a list of suggestions from the Historic Preservation Board on the appearance of the garage. He assured the Board that he would comply with their requests, i.e. exposed rafters, wood siding and shingles that match the house, and a roof pitch that it is comparable to the house.

Dr. Tiemann stated that he has received no complaints from the neighbors. Everyone he spoke with was very pleased with the improvements.

Joseph Marie asked when the house was moved to this location. Dr. Tiemann replied that it was approximately five years ago. He added that he has contracted with Charles Eddy, a licensed contractor, to construct the garage.

William Putnam asked for clarification that Dr. Tiemann would comply with all of the Historic Preservation Board's recommendations. Dr. Tiemann replied affirmatively.

STAFF PRESENTATION

Michael Drollinger stated that the petitioner is requesting to vary a rear yard setback for an accessory structure in a RSF-5 zoning District. The minimum rear yard setback for principal structures in a RSF-5 zone is 10 feet. The applicant is proposing 6 feet. The criteria for the Board's decision on this application are contained in Section 10-1-1B of the Zoning and Development Code.

Mr. Drollinger continued; the findings of staff's review of criteria 10-1-1.B.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 owner of the property,”*** is that the applicant could not satisfy a strict interpretation of this criteria; however, the conclusions may be drawn differently if the phrase “exceptional conditions applicable only to the property involved” are interpreted more broadly to include an analysis of conditions beyond the property boundary of the subject site and the impacts of the alley on setbacks. The RSF-5 Zone District is typically found in newer subdivisions. Mr. Drollinger added that in fact this is the only area in the downtown and the only area where properties have rear alleys where the RSF-5 Zone District is found in the City. The single family neighborhood in this project vicinity are more typically zoned RSF-8. The accessory structure setbacks are to provide a minimum setback between structures and in between structures and the property line. More typically in a RSF-5 zoning situation rear lot lines touch and the rear yard setback provides for 20 feet between structures. This situation is different in the RSF-5 zone where the rear lot line abuts an alley. The alley serves as a buffer and provides for a substantial rear yard setback between lots. In fact it is larger than what is typically found in a more typical configuration of an RSF-5 Zone District. Because of the alley, an accessory structure that is located closer to the rear lot line still has adequate spacing from the adjoining lot. Mr. Drollinger added that a variance from the minimum setback, however, should still be no greater than the minimum necessary for placement of the structure. The applicant is requesting a four foot variance from the requirement that would place the garage in line with the prevailing setback which is the average setback of other structures in the immediate vicinity. Staff has concluded that this proposal is acceptable.

Staff also believes that the applicant has satisfied criteria 10-1-1.B.2.a *“The granting of the variance will not conflict with the public interest as expressed by the City’s adopted comprehensive plan,”* and criteria 10-1-1.B.2.c. *“The granting of the variance will not be detrimental to the public, health, safety or welfare.”* If strictly interpreted, Criteria 10-1-1.B.2.d. *“The applicant and the owner of the property can not derive a reasonable use of the property without a variance,”* the applicant cannot satisfy this criteria, however, given the uniqueness of the situation which has been outlined for the board staff believes that essentially this criteria can be satisfied. In addition, staff believes, Criteria 10-1-1B.2.e is similar to c. and that the impacts on adjoining properties from a granting of this variance would not be detrimental.

In conclusion, using a strict interpretation of the variance criteria, the petitioner has not demonstrated that all of the criteria can be satisfied, however, staff feels 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 accessory structure rear yard setback requirement would not set a precedent for additional rear yard setback variances in other districts and would not undermine the intent and purpose of a minimum setback as defined by Code.

Mr. Drollinger continued; this application was reviewed by the Historic Preservation Board because the subject property is located within the Lincoln Park Residential Historic District, a local district created in 1997. The Historic Preservation Board, an advisory board created by City Council, has offered recommendations which are contained on pages 4 and 5, numbers 1 through 5 of the staff report. Staff suggests that once the applicant has put together a design for the garage that it be given to the Historic Preservation Board so that they can offer additional comments or suggestions.

Mr. Drollinger stated that staff’s recommendation is for approval subject to the following conditions:

1. The garage shall be constructed no closer than six feet to the rear property line as illustrated on the “Site Plan” which is attached to this staff report.
2. The applicant shall consider the recommendations of the Historic Preservation Board in design and construction of the garage to maintain and enhance the character of the Historic District.

Mr. Drollinger pointed out that this property is located in a small area approximately three square blocks of RSF-5 zoning extending from 12th Street to 14th Street and from Grand Avenue to Gunnison Avenue. Staff was unable to find the original ordinance or time when this zoning was approved. However, in analyzing this area, staff found that of the 53 total properties in this RSF-5 district, only 23 or 43% meet the minimum lot size for RSF-5 Zone District. Effectively, including the subject property, more than half of the properties are nonconforming by this RSF-5 District. The difference between the RSF-5 and the RSF-8 is that the applicant’s request could have been accommodated in the RSF-8 where the minimum accessory setback is 5 feet rather than 10 feet as required in the RSF-5 zone. Staff also reviewed the proposed zoning of RMF-5 the Planning Commission and City Council will be considering later this year. The RMF-5 is equivalent to the RSF-5 except it also allows an additional unit on the parcels. In consideration of this, staff feels the proposed zoning may also be inappropriate since it would not rectify the non-conforming situation of many of these lots. Staff suggests that the Board consider forwarding a recommendation to Planning Commission to examine the zoning in this area so to avoid the need for additional variances.

PUBLIC COMMENT

There was no public comment.

MOTION (PAMELA HONG) “Mr. Chairman, on item VAR –1998-135, a request for a variance from the minimum accessory structure setback in an RSF-5 zone at 1326 Ouray Avenue, I move that we approve the variance per staff’s recommendations that the garage shall be constructed no closer than six feet to the rear property line as illustrated on the Site Plan and the applicant shall consider the recommendations of the Historic Preservation Board in design and construction of the garage to maintain the character of the Historic District.”

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

Discussion continued regarding the Board making a recommendation to Planning Commission to review the zoning in this area. It was agreed that discussion and a recommendation would be postponed until the September 9, 1998 meeting when a full Board is present. Mr. Drollinger stated that he will put a presentation together for the Board at that time.

The meeting adjourned at 8:55 a.m.