

**GRAND JUNCTION BOARD OF APPEALS
JULY 14, 1999 MINUTES
8:02 a.m. to 9:20 a.m.**

The regularly scheduled Board of Appeals meeting was called to order at 8:02 a.m. by Chairman John Elmer. The meeting was held at Two Rivers Convention Center.

In attendance, representing the Board of Appeals, were: John Elmer (Chairman), James Nall and Dr. Paul Dibble. Pamela Hong and William Putnam were absent.

In attendance, representing the Community Development Department, were: Kathy Portner (Planning Manager), Kristen Ashbeck (Sr. Planner) and Mike Pelletier (Associate Planner).

Also present was John Shaver (Asst. City Attorney).

Terri Troutner was present to record the minutes.

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

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the June 23, 1999 meeting.

MOTION: (NALL) “Mr. Chairman, I make a motion that the minutes of the June meeting be accepted.”

Dr. Dibble seconded the motion. A vote was called and the motion passed by a vote of 2-0, with Mr. Nall abstaining.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-1999-155 VARIANCE—ENSTROM’S FRONT YARD SETBACK

A request for approval to vary sections 5-1-7.K.2 of the Zoning and Development Code to allow a 45-foot-from-centerline right-of-way setback where 50 feet-from-centerline-of-right-of-way setback is required.

Petitioner: En-Sim Partnership, Doug Simons

Location: 200 S. 7th Street

PETITIONER’S PRESENTATION

Doug Simons, petitioner, presented an overhead transparency of the Site Plan. The variance request extended the length of the property to 8th Street and would facilitate expansion of the business.

QUESTIONS

Chairman Elmer asked the petitioner for clarification on what he felt the hardship was. Mr. Simons said that in 1989 a variance allowing the manufacturing process to be expanded had been approved. The process required a linear path and enrobers used in the process would require extension. That could not presently be effected because, without the requested variance, the building would jog, rendering the enrobers useless. Mr. Simons said that expansion of the business in the downtown area had not been the cheapest alternative but they wanted to stay in their present location if at all possible.

STAFF’S PRESENTATION

Mike Pelletier outlined variance criteria as contained in the July 14, 1999 Staff Review. He concurred that the hardship was valid and met the variance criterion. He said that the request complied with Growth Plan recommendations and no adverse impacts would result from the expansion. Landscaping would be extended the length of the expanded facility. The 5-foot existing setback was supported by the Code for commercially-zoned properties. Staff recommended approval of the request with no conditions.

PUBLIC COMMENTS

FOR:

Mark Hermunstad (200 N. 6th Street, Grand Junction), representing the Downtown Development Authority, voiced his support for the request. He felt it important to allow flexibility in the downtown area for businesses wanting to expand. He said that the request seemed logical and would not be detrimental to the surrounding area.

AGAINST:

There were no comments against the request.

DISCUSSION

Chairman Elmer stated that the request seemed straightforward and noted that an expectation had already been set with approval of the 1989 variance.

Mr. Nall agreed, adding that it also met the intent of the Code.

Chairman Elmer said that the biggest concern in 1989 had been over whether the adjacent street would be widened. Since that had not occurred and was not likely to, no additional right-of-way would be required. He expressed support for the request.

MOTION: (NALL) “Mr. Chairman, on item VAR-1999-155, a request for a 45-foot building setback from centerline of the right-of-way for Enstrom Candies, Inc., buildings on the north portion of the 700 block of Ute Avenue, I move that we approve the variance for the reasons as staff has stated.”

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

VAR-1999-156 VARIANCE—REAR YARD SETBACK

A request for approval to vary sections 4-2-5.C.5 of the Zoning and Development Code to allow a 22-foot rear yard setback where 25 feet is appropriate.

Petitioner: Robert Benac

Location: 3710 Elderberry Circle

Photos of the subject property were distributed to board members by Kristen Ashbeck.

PETITIONER’S PRESENTATION

Bob Benac, petitioner, presented an overhead transparency of the Site Plan. He said that a patio slab had been poured in 1990 (location shown). He would now like to utilize the slab as a foundation for an addition to his home. He realized too late that the rear yard setback had not been measured correctly, but this was due to angling of the rear fence. Neither he nor his contractor had caught the mistake. He said that the addition would add value to his home and to the aesthetics of the neighborhood.

QUESTIONS

Chairman Elmer asked if the 11 feet specified for the addition represented the size of the patio slab. Mr. Benac said that the slab would extend beyond the addition.

Chairman Elmer asked the petitioner why he felt the addition would not make sense anywhere else. Mr. Benac referenced the Site Plan and said that the proposed addition had been designed to abut an existing door. Moving it further to the south would cover an existing window, require an additional door, and conflict with their irrigation system.

Dr. Dibble asked if moving the addition closer to the bay window would work. Mr. Benac said that the addition would still encroach into the rear yard setback.

Chairman Elmer asked if measurements had been taken from the rear fence, to which Mr. Benac replied affirmatively. He reiterated that at the time he hadn't realized the fence angled. However, he discovered that the fence had been erected almost precisely on the rear property line.

STAFF'S PRESENTATION

Kristen Ashbeck overviewed the request and outlined the Findings of Review from the July 14, 1999 Staff Report. She corrected the agenda to reflect a 3-foot variance request, with the revised rear yard setback of 22 feet, not the 23'6" specified on the agenda. The request, she said, failed to meet Variance criteria, and staff felt that the hardship was self-imposed. There were no unique conditions nor unusual shape to the lot, and other placement options were available to the petitioner. Staff recommended denial of the request.

QUESTIONS

Mr. Nall asked how far the addition would have to be moved southward to comply with setback requirements. Ms. Ashbeck was unsure but conjectured that it could be as much as 8 ½ feet. She stated that the petitioner could always reduce the width of the addition and reiterated that other options were available.

PUBLIC COMMENTS

FOR:

Archie Lickers (3715 Elderberry Circle, Grand Junction) said that the addition would improve the value of the petitioner's home. He said that the Benacs spent a great deal of time maintaining and improving their property; thus, he was sure that any addition would be aesthetically pleasing.

AGAINST:

There were no comments against the request.

PETITIONER'S REBUTTAL

Mr. Benac said that moving the addition another 8 ½ feet to the south would be impossible due to placement of the adjacent window and conflicts with their irrigation system. He referenced a submitted petition containing a number of signatures from neighbors who supported his request. No opposition had been received by any of the neighbors and no adverse impact would be created by the addition.

DISCUSSION

Dr. Dibble said that the request did not meet Variance criteria, and other options were available to the petitioner. He wondered if approval of the request would set a precedent. Mr. Shaver said that variances were reviewed on a case-by-case basis; thus, no legal precedential effects came into play. He read, for the Board’s consideration, a section from the Code which allowed flexibility for approving variances when there was no opposition and where no detrimental effects would result from such approval.

Chairman Elmer said that the flexibility option had been utilized in the past. While agreeing with staff’s interpretation, he could not see where any harm would result from approving the request, especially given that the variance would only be 3 feet. He noted that no opposition had been received.

Mr. Nall said that it had been the petitioner’s responsibility to ensure that his initial measurements were correct. Because he failed to do so, Mr. Nall felt that the hardship was self-imposed.

Dr. Dibble asked if materials had already been ordered and whether work had already commenced, to which Mr. Benac responded affirmatively.

Chairman Elmer said that given the angle of the fence, it had been an easy mistake. The petitioner had obviously done what he could to ensure the accuracy of his measurements. Not even the contractor had caught the error.

Dr. Dibble asked if estimates for relocation of the irrigation control system had been secured, to which Mr. Benac replied negatively. Chairman Elmer reminded other board members that financial considerations could not factor into board decisions.

MOTION: (NALL) “Mr. Chairman, I move that we deny the variance of the rear yard setback on item VAR-1999-156 where 25 feet is required, for the reasons that staff has stated and per our discussion.”

Dr. Dibble seconded the motion. A vote was called and the motion passed by a vote of 2-1, with Chairman Elmer opposing.

VAR-1999-158 VARIANCE—FRONT/REAR YARD SETBACKS

A request for approval to vary sections 4-2-6.C.5 and 5-1-7.c of the Zoning and Development Code to allow a 14-foot front yard setback and 10-foot rear yard setback where 20 feet and 15 feet, respectively, are required.

Petitioner: Mr. and Mrs. Baughman

Location: 544 – 28 ½ Road

PETITIONERS’ PRESENTATION

William Baughman, co-petitioner, presented an overhead transparency of the Site Plan. He said that he and his wife wanted to replace their old, single-bedroom mobile home with a new, three-bedroom unit. He noted that a number of neighboring mobile homes and accessory structures already encroached into setbacks. The new mobile home had already been purchased. If the variance was denied, he would be forced to move.

STAFF'S PRESENTATION

Kathy Portner said that the new Code proposed to change setbacks for this area to allow for replacement of older units by newer units which were both longer and wider. She said that the petitioners lived in an older neighborhood where lots were typically very small. She confirmed that a number of encroachments had occurred in the subdivision, and she acknowledged that the Community Development Department had been inconsistent when it came to the replacement of older units. She presented an overhead transparency of an aerial of the subject property. The petitioner's property was only 100 feet long where many of the other lots were 110 feet long. With parking generally oriented to the side, the side yard became the bulk of yard space. The hardship lay in the fact that this subdivision contained lots that were too small to accommodate newer manufactured homes. The hardship was really applicable to the entire subdivision.

Two written comments were received from Luze Vincent and Lolar Karl supporting the 10 foot rear yard setback, but opposing the 14 foot front yard setback. Since exceptional conditions applied in the current request and for the entire subdivision, and since setbacks were slated for change with the new Code, staff recommended approval of the request.

QUESTIONS

Mr. Nall asked for clarification on the proposed setback changes in the new Code. Ms. Portner elaborated that they would be: front yard, 14 feet; rear yard, 10 feet; and side yard, 5 feet. In an RSF-8 zone, the maximum allowable coverage area would still be limited to 45 percent.

PUBLIC COMMENTS

There were no comments either for or against the request.

DISCUSSION

Chairman Elmer asked how wide the petitioner's mobile home was, to which Mr. Baughman replied, 16 feet. When asked if this was a standard width for a single-wide unit, Ms. Portner replied affirmatively.

Dr. Dibble acknowledged that the hardship affected the entire subdivision and was not self-inflicted. He agreed with staff's analysis and expressed support for the request.

Chairman Elmer said that a number of other variance requests had been received for the same subdivision and approved using the same hardship criteria. It did not seem unreasonable to expect that the petitioners would want to live in a reasonable amount of living space.

MOTION: (NALL) "Mr. Chairman, I request approval to vary sections 4-2-6.C.5 and 5-1-7.c of the Zoning and Development Code to allow for a 14-foot front yard setback and 10-foot rear yard setback where 20 feet and 15 feet, respectively, is required. This is for variance VAR-1999-158."

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

IV. GENERAL DISCUSSION

Chairman Elmer asked staff to provide sample motions for variance items. They would be especially helpful for new members. Mr. Shaver suggested that the issue be discussed at the next board workshop.

With no further business, the hearing was adjourned at 9:20 a.m.