

**GRAND JUNCTION BOARD OF APPEALS  
AUGUST 11, 1999 MINUTES  
8:02 a.m. to 9:35 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, Pam Hong, William Putnam and Dr. Paul Dibble.

In attendance, representing the Community Development Department, was Scott Harrington.

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

Terri Troutner was present to record the minutes.

There were 9 citizens present during the course of the meeting.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the July 14, 1999 meeting.

**MOTION: (DR. DIBBLE) “Mr. Chairman, I move that the minutes of the July 14th meeting be accepted as presented.”**

Mr. Nall seconded the motion. A vote was called and the motion passed by a vote of 3-0, with Ms. Hong and Mr. Putnam abstaining.

**II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS**

There were no announcements, presentations and/or visitors.

**III. HEARING ITEMS**

**VAR-1999-156 (A) A REQUEST FOR A REHEARING OF VAR-1999-156  
A request for a rehearing of a rear yard variance before the Board of Appeals.  
Petitioner: Robert Benac  
Location: 3710 Elderberry Circle**

**DISCUSSION**

Mr. Nall asked that he be recused from participation in deliberations on the current item. He explained that he'd been contacted by the petitioner following last month's decision and because of potential violence was uncomfortable proceeding with hearing the item.

Dr. Dibble, who had also been present at last month's meeting, expressed a willingness to rehear the item but said that he would be looking for additional information not presented at the previous meeting. Dr. Dibble commended Mr. Shaver for his efforts in helping to diffuse a potentially volatile situation with the petitioner, which had arisen as a result of last month's decision. He thought that the rehearing of an item once a decision was made was unprecedented; if the petitioner had not been satisfied with the board's decision, normal channels for an appeal should have been followed. Dr. Dibble referenced a

letter he'd received from the petitioner's contractor asking for the rehearing. As he understood, the Board was authorized to rehear an item if it so chose, but he reiterated that doing so was highly irregular.

Chairman Elmer questioned the Board's authority in rehearing an item once a decision had been rendered. Since the previous meeting contained a quorum, evidence had been submitted, testimony from all parties had been presented, and a lawful decision rendered, he felt the request was unjustified.

John Shaver agreed that the Board's previous decision had been lawful. He explained that while the normal appeal process would have been through District Court, as part of the negotiation process with the petitioner mention was made of allowing him the opportunity to request a rehearing with all five board members present. Mr. Shaver stated that it was made clear to the applicant and should be clear to the Board that the request in no way guaranteed a favorable outcome. Citing a similar "rehearing" of a Northridge Subdivision resident's request, he said that the current situation was not necessarily precedential. As well, he said, there is nothing in the Code prohibiting a citizen from resubmitting a request, even if the information was identical to the initial submission. Thus, the Board could consider the current request as a new submission rather than the "rehearing" of a previous request.

Chairman Elmer said that in the instance of the Northridge submittal, the board had "reheard" the item only after a resultant Code change had been effected.

Mr. Putnam observed that the Code did not solidly address the rehearing possibility. Neither did it expressly prohibit reapplication by a petitioner. Mr. Shaver agreed with those conclusions.

**MOTION: (PUTNAM) "Mr. Chairman, I move that we rehear the petition."**

Dr. Dibble seconded the motion. A vote was called and the motion passed by a vote of 3-1, with Chairman Elmer opposing.

**VAR-1999-156 (B) 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 required.**

**Petitioner: Robert Benac**

**Location: 3710 Elderberry Circle**

**PETITIONER'S PRESENTATION**

Shane Washington, a contractor representing the petitioner, said that neither he nor the petitioner were trying to be intimidating. Citing a similar variance request by another nearby resident which had been approved, he could not understand why the request (Benac) had been denied. The petitioner only asked for 3 feet, and only a small portion of the proposed addition would encroach into the setback.

**QUESTIONS**

Chairman Elmer asked the petitioner's representative to explain the nature of the hardship. Mr. Washington said that measurements had originally been taken from the fenceline because no survey pins could be found. It had not been discovered until later that the fence angled, which skewed initial measurements somewhat. He was still unsure whether the fence was located exactly on the property line.

Chairman Elmer asked if the concrete foundation had been poured, to which Mr. Washington replied negatively. Mr. Washington said that everything was currently on hold pending the outcome of the request. Chairman Elmer said that he thought the petitioner's prior testimony had indicated that footers had already been poured. Mr. Washington reiterated that no foundation work had yet been undertaken.

He added that it was not as though the structure was being built to property line. He stated that granting the variance would harm no one.

Ms. Hong asked how the addition would be affected if the variance were not granted. Mr. Washington said that the resulting addition would be too narrow to be functional for the petitioner.

Dr. Dibble said that other alternatives had been presented during the previous meeting. He wondered if those alternatives had been explored. Mr. Washington replied affirmatively. He offered that moving the addition further south would block bedroom windows, a violation of fire and building codes.

When asked by Mr. Shaver if the petitioner had any additional information to submit, Mr. Washington replied negatively.

### **STAFF'S PRESENTATION**

Scott Harrington noted the site's location using an overhead transparency. Also presented was an overhead transparency of the site plan. No proposed floorplan had been submitted by the petitioner; therefore, no analysis of the addition's layout with regard to fire and building code compliance could be made. He reviewed the request as outlined in the August 10, 1999 Staff Report and said that it still failed to meet variance criteria. The hardship was deemed self-imposed, and with no new information to support a different finding, a subsequent recommendation for denial of the request was made.

### **QUESTIONS**

Dr. Dibble said that if the addition's relocation further south would violate building and fire codes, he felt that there would be a sufficient basis for hardship. Mr. Harrington agreed but reiterated that no floorplan had been submitted. It was unclear, therefore, how windows and other accesses would be affected by the relocation.

Chairman Elmer said that the initial request seemed to suggest that it was more a consideration of economics than of compliance with building and fire codes.

Mr. Shaver suggested that the petitioner's representative note the layout of the house on the available site plan. Mr. Washington was unsure how the house was laid out nor was he sure where bedroom windows were located. He said that the Building Department would allow an open structure as long as an access was provided; if a structure were enclosed, it could not block bedroom windows. If the addition were moved further south, additional doors leading from affected bedrooms would have to be framed in. He noted that he'd considered angling the one corner of the addition to meet setback requirements, but doing so would be aesthetically unpleasing. Ultimately, he said, the petitioner wanted his addition where proposed and as planned; no other location or options would satisfy him.

Chairman Elmer remarked that insufficient information was available to determine whether other workable options were available.

Mr. Harrington passed out photos of the property to board members but said that they still did not correspond to any floorplan.

Mr. Putnam objected to the Board's being placed in a position of redesigning the project. Mr. Shaver said that redesign was not within the Board's purview; however, discussion of placement was appropriate in determining whether other options were available to the petitioner.

Ms. Hong wondered if initial measurements had been taken by the Building Department. Mr. Washington reiterated that they had been initially taken by the petitioner from the fenceline. Ms. Hong

wondered how the violation had been discovered. Mr. Harrington understood that the Building Department had somehow discovered the violation and had issued a stop-work notice to the petitioner. The petitioner was then directed to the Community Development Department for a planning clearance. When it was discovered that the site plan encroached into the existing setback, the petitioner was apprised of the variance process.

**PUBLIC COMMENTS**

**FOR:**

Archie Lickers (3715 Elderberry Circle, Grand Junction) suggested that the fence may not even be located directly on the property line and could be off by as much as 6-8 inches. He felt that the setback figure of 25 feet seemed arbitrary. He reiterated that the violation only affected a small portion of the proposed addition and would not harm anyone. The addition would improve the petitioner's property value. He emphasized that the neighbors had no problem with the request.

**AGAINST:**

There were no comments against the request.

**PETITIONER'S REBUTTAL**

No rebuttal testimony was offered.

**DISCUSSION**

Chairman Elmer could see no reason to amend his previous decision. He agreed with the petitioner's arguments and said that the Code made provision for allowing variances in circumstances where no harm would be done.

Mr. Putnam concurred that the setback requirement may have been an arbitrary figure. He agreed with the petitioner's arguments and said that the encroachment was negligible. He expressed support for the request.

Dr. Dibble was disappointed in the petitioner's lack of additional data. Since it was the Board's responsibility to uphold the Code, and due to the petitioner's failure to demonstrate hardship, he could see no reason why the original decision of denial should be reversed. Variances were not rights. He disagreed that the setback requirement was arbitrary.

Mr. Putnam noted the lack of additional information which could have been submitted from Spring Valley's Architectural Control Committee (ACC).

Chairman Elmer said that such information was not mandatory for a decision but agreed it would have been helpful.

Dr. Dibble asked if the petitioner had secured approval by the ACC to construct the addition. Mr. Washington was unsure if approval had been requested or given. Chairman Elmer said that if the variance were granted, the petitioner would still have to secure the ACC's approval before construction.

**MOTION: (PUTNAM) "Mr. Chairman, with reference to the rehearing of the request for VAR-1999-156, a request for approval to vary section 4-2-5.C.5 of the Zoning and Development Code to allow a 22-foot rear yard setback where a 25-foot setback is required, I move we approve the variance because the variance requested would harm no one and would be a general benefit to the neighborhood."**

Ms. Hong seconded the motion. A vote was called and the motion was defeated by a 2-2 tie vote, with Ms. Hong and Dr. Dibble opposing.

**VAR-1999-172 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 7'6" rear yard setback where 25 feet is required.**

**Petitioner: Peter Robinson**

**Location: 220 Hillcrest Drive**

**PETITIONER'S PRESENTATION**

Peter Robinson, petitioner, presented an overhead transparency depicting the site's location and building footprint. He explained that the presence of an open irrigation ditch on the eastern portion of the property had, over the years, leached water into the foundation of his existing garage. The foundation had been badly damaged and the structural integrity of the garage structure had been seriously compromised. The condition of the structure had also been verified by a certified engineer, and corroborating data had been submitted to staff. Settling was so severe that the garage door currently had large gaps at the bottom where neighborhood pets could enter at will; security was non-existent. Mr. Robinson noted that the house had been constructed prior to the County's zoning and the garage currently did not meet setback requirements. His intent was to reconstruct the garage to the same existing setback on the east property line and to extend the south end of the garage 7 feet. The 7-foot extension would avoid the problem area and would match the offset in the south portion of the west side of the residence. He explained that the roof gable would be uniform in appearance and a brick exterior would match that of the existing home. The northern wall of the garage would be extended approximately 16 feet to allow for additional living space. The proposal would eliminate what was currently deemed a neighborhood eyesore, improve the petitioner's property value, and provide additional living and garage space.

A floorplan had been submitted to staff for review and specific layout detail of the home and garage was noted using an available site plan. He explained how there had been no other location alternatives available for the garage unless a portion of the house itself was demolished and established landscaping removed. Letters of support had been submitted to staff, and approval of the request was sought.

**QUESTIONS**

Mr. Putnam asked if the garage would be erected on pilings to prevent the leaching problem from recurring. Mr. Robinson explained that the extension would help avoid the problem, and he would seek permission to pipe the ditch in the area of the reconstructed garage.

There was some discussion over the accuracy of measurements taken. Mr. Robinson said that measurements had originated from a hedge which he deemed to be his property line. Chairman Elmer strongly urged the petitioner to have a survey undertaken to ensure accuracy of measurements. Mr. Robinson thought that because the hedge had been there in its current location for so long, any question over the property line would have been settled by means of adverse possession. Mr. Shaver corrected the petitioner's assumption and briefly explained the particulars behind such action.

Mr. Putnam wondered what would happen if measurements were inaccurate. Mr. Shaver said that only if measurements were off substantially (by feet for example) would there be a problem. In that case, the petitioner could come back before the Board with a subsequent variance request.

**STAFF'S PRESENTATION**

Scott Harrington outlined findings as contained in the August 10, 1999 Staff Report. He concurred with the petitioner's presentation and said that the request demonstrated hardship and met variance criteria.

He said that a staff member had researched the property's zoning history, which predated adoption of the County's Zoning Code. With no outstanding issues, staff recommended approval of the request.

**QUESTIONS**

Dr. Dibble asked for clarification on the structure's status. Mr. Harrington said that it was deemed a legal non-conforming use. As such, the petitioner could rebuild in the same location if the structure was not destroyed more than 50 percent.

**PUBLIC COMMENTS**

There were no comments either for or against the request.

**PETITIONER'S REBUTTAL**

No rebuttal testimony was offered.

**DISCUSSION**

Chairman Elmer observed that placement of the home created both uniqueness and hardship. No one else in the neighborhood had garages in their front yards, so relocation of the garage did not seem practical and would be out of character. He reiterated that the petitioner was allowed to rebuild to existing setbacks as a legal non-conforming use. He noted the significant distance between the structure and the nearest house; thus, impact to the nearest neighbor would be negligible. He agreed that the reconstruction would benefit both the property owner and the neighborhood and expressed support for the request.

Mr. Putnam agreed.

Dr. Dibble commended the petitioner for his thorough presentation. The request would correct a currently hazardous situation, and the additional spacing from the ditch would help to avoid a recurrence of the problem. He also expressed support for the request.

**MOTION: (HONG) "Mr. Chairman, on item VAR-1999-172, I move that we approve the request for a 17 ½-foot variance of the rear yard setback to allow a 7 ½-foot setback as presented by staff and the applicant for the reasons cited in the staff report."**

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

With no further business, the hearing was adjourned at 9:35 a.m.