

**GRAND JUNCTION BOARD OF APPEALS  
MARCH 14, 2001 MINUTES  
12:10 P.M. to 1:50 P.M.**

Chairman John Elmer called the regularly scheduled Board of Appeals meeting to order at 12:10 P.M. The meeting was held in the City Hall Municipal Hearing Room.

In attendance, representing the Board of Appeals, were John Elmer (Chairman), Mark Williams and Creighton Bricker. Clay Tufly and Mike Denner were absent.

In attendance, representing the Community Development Department, was Kristen Ashbeck (Senior Planner). Also present was John Shaver (Asst. City Attorney).

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

Bobbie Paulson recorded the meeting.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the February 14, 2001 meeting.

**MOTION: (CREIGHTON BRICKER) "I move we approve the February 14, 2001 minutes as submitted."**

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

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

There were no announcements, presentations and/or visitors.

**III. FULL HEARING**

**VAR-2001-017 VARIANCE—CLAYTON HOMES CENTER**

**Request of a variance to Section 3.4D5a of the Zoning and Development Code to allow outdoor storage and permanent display in the front of the lot (along B 1/2 Rd).**

**Petitioner: Coon Hill LLC - Ben Hill**  
**Location: 2693 Hwy 50**  
**Representative: Monument Surveying, Cecil Caster**  
**City Staff: Kristen Ashbeck/Bill Nebeker**

**PETITIONER'S PRESENTATION**

Rich Livingston, representing the petitioner, stated that his client, Mr. Hill, met with representatives of the Community Development Department last Fall and received very specific instructions on what would need to be done for this use to be approved at this location. The petitioner proceeded based on that instruction and developed a site plan. After that process was well underway, Mr. Nebeker advised Mr. Hill that an error had been discovered in the Zoning and Development Code Use/Zone Matrix. The matrix incorrectly indicated that modular home sales and outdoor display are allowed in a C-1 zone. Mr. Livingston stated that Mr. Nebeker also sent a follow up letter to Mr. Hill in November 2000 which said it was an obvious error because there are adopted development standards under the C-1 zone that restrict

where outdoor storage and displays can be located on the property. Mr. Livingston said that this discovery has put a very significant burden and constraint on the applicant because he has already spent quite a bit of money to develop the site plan based on the initial information/direction. Mr. Nebeker advised Mr. Hill that he could apply for a variance. Mr. Livingston explained to the Board that this is not a typical scenario that fits neatly within the technical standards for a variance. Mr. Livingston asked the Board to consider the decision that has been rendered by Community Development with respect to this site plan and after reviewing the facts, conclude that while this particular application may not technically fit within the use/zone matrix or the performance standards that were adopted, it does fit the intent of the C-1 zone and is an excellent use of this property. He added that the applicant is proposing to do a lot of upgrades to the site so that the use will look like a residential subdivision. If this use is compared to other uses allowed in the C-1 zone *i.e.*, metal storage sheds, it will be a major, positive improvement to the property.

Mr. Livingston continued; the property's north boundary faces Highway 50 and the south boundary faces B 1/2 Road. The petitioner is proposing a large area in the front for parking and an office. The remaining portion of the property will have modular units displayed on it. The units will have grass yards, playground equipment and wood decks. Fencing and screening will be provided along the west side of the property and a solid block wall across the south end of the property. Mr. Livingston said that the proposed solid block wall will physically preclude any access from B 1/2 Road so the entire site focuses to the North onto Highway 50.

The proposed site plan is technically in violation of the Code because the property consists of two lots "one stacked on top of the other" and the Code states that outdoor storage or display is only allowed on the back half of a lot. With this scenario the back half of the northern most lot can be used for display and the back half of the lot that fronts on B 1/2 Road can be used. Mr. Livingston stated that because the lots are combined the back half of the entire lot couldn't be used for display according to Code. He contended that once a barrier is installed that denies any access to and from B 1/2 Road then B 1/2 Rd should no longer be considered a frontage.

Mr. Henry Hode, representing Clayton Homes, discussed the aspects of the proposed site plan. Mr. Hode stated that Clayton Homes is requesting to use both lots for the sale of modular homes. Clayton Homes is located in over 300 communities across the country. Grand Junction would be their 6<sup>th</sup> location in Colorado. He stated that Clayton Homes has not only met but also exceeded most of the requirements of other cities adding that they usually propose an extensive landscaping plan. Mr. Hode said that Clayton Homes takes pride in being the best modular home sales business in the city in all aspects. In this particular location each modular would be skirted and well lit and each unit would be on display approximately 6 to 8 months. When a customer wants to purchase a unit they are ordered from the factory with the customer's specifications.

Mr. Livingston stated that he would not go through the specific variance criteria in the Code because he felt this was not a normal variance request. He felt there was a hardship imposed that was not created by the applicant himself rather it was created by the adoption of a Code that has the error in the Use/Zone Matrix. He felt that it was not fair or reasonable and that it has created a burden for the property owner.

Mr. Bricker asked when the owner subdivided the lot. Mr. Hill replied that the lot was subdivided 2 or 3 years ago. Mr. Bricker asked why it was subdivided? Mr. Hill replied that it was subdivided in order to accommodate a quick stop lube that was considering locating on this property and did not need a large piece of property. Later they opted for a different location.

Mr. Williams asked the petitioner to go through the chronological order of when the application was submitted and when the error in the Code was discovered.

Mr. Cecil Castor, Monument Surveying at 741 Rood Avenue, stated that he initiated this proposal in approximately September, when he met with Mr. Nebeker. Mr. Castor stated that Mr. Nebeker gave them direction on how to proceed at that time. Mr. Castor stated that the application was submitted in about November. He followed up saying he was unable to recollect the specific dates.

Mr. Williams asked Mr. Castor when he learned about the error in the Code? Mr. Castor replied that he could not recall specifically when the error was found.

Mr. Williams asked if he could recall how much time lapsed in between when the project was initiated and when the error in the Code was found? Mr. Livingston replied that the conflict in the Code was discovered after the application was submitted but did not have a time frame. Mr. Hill added that the application was submitted and the problem was not discovered until after several months into the process. Mr. Hill stated at that point Mr. Nebeker suggested he proceed with a variance application.

Mr. Bricker pointed out that one of the scales depicted on the site plan was wrong. The drawing shows a scale of 1" equals 50' in the corner and a scale of 1" equals 30' in the signature block. The correct scale is 1" equals 30'. Mr. Livingston thanked him for pointing out the error and said it would be corrected.

### **STAFF PRESENTATION**

Kristen Ashbeck said she is representing Bill Nebeker who is the planner originally assigned to this project. Ms. Ashbeck stated that the issue isn't whether mobile homes sales are allowed in a C-1 zone or not, the issue is the Code section 3.4D5a that says outdoor storage and permanent display shall only be allowed on the rear half of the lot in the C-1 zone district. Staff is not concerned with the use the applicant is proposing; the concern is whether the front yard should be used for outdoor display and storage. In reviewing the Growth Plan and the Code, the C-1 zone district wasn't intended to allow this type of use. The future land use plan permits a wide range of commercial development with no outdoor storage operations. With the adoption of the new zoning map, the C-1 replaced the HO zone and was intended to implement the commercial land use classification of the indoor sales and service in locations along arterials. As Mr. Livingston alluded to, Ms. Ashbeck said, this is not a normal variance request. The only access to Lot 2 is through an easement from the front parcel, Lot 1. The Code defines a front yard as "a yard extending across the full width and depth of the lot between a road right-of-way or access easement line and the nearest line or point of the building." The Code doesn't comment about where the parcel is accessed. Even if this were one lot, staff would view it as a double-fronted lot. Staff considers the part of the lot facing B 1/2 Road a front whether it has access or not. It isn't unlike any other typical corner residential lot where you have a corner and the driveway may access one side but both sides are considered front yards. For clarity of the presentation staff is requesting that the Board first consider whether the frontage along B 1/2 Road should be classified as a front yard or rear yard before going through the variance criteria. If the Board determines this is a front yard then this application is really a moot point. If the Board determines otherwise then the criteria should be reviewed as to whether the applicant has met the criteria.

Chairman Elmer asked why it would be a moot point?

Ms. Ashbeck replied the matter would be moot because if the Board determines it is a front yard, at that point the Board would be varying a use on the site, which is not a variance/what a variance application is to be used for.

Mr. Shaver explained further. He said, "as the Board is probably now well aware this is a very complicated application; it doesn't fit neatly in any of the customary variance applications provided for in the Code." Mr. Shaver said he discussed with Community Development staff whether the presentation of

this application should be as an appeal of an administrative decision of whether the B 1/2 Road frontage is a front yard or whether it is a variance. He said “if the Board determines that the B 1/2 Road frontage is not a front yard then the proposal to display and sell modular homes is not a problem.” He also said that this is not a question of whether modular home retail sales should be allowed, it is about the requirement in the Code that says storage has to be located on the back half of the lot; it is only because of the B 1/2 Road frontage that this application is a problem. He continued by saying that the Board has the option of reviewing this application as an appeal of an administrative decision. If the Board determines that the B 1/2 Road frontage is not a frontage because of the access restriction on the plat and the landscaping being proposed, then the use is not a problem and there is nothing to vary. If the Board determines this is a front yard and the variance criteria are applied, Mr. Shaver opined that the Board has no legal authority to grant this variance because of the way the criteria are written in the Code. Mr. Shaver added that in his opinion all of the criteria could not be demonstrated, as they would have to be in order for the variance to be granted.

Chairman Elmer said that his opinion is that this is a front yard; the use doesn't change the definition in the Code. He asked for discussion from the other Board member; should the Board hear this application as an appeal of an administrative decision?

Mr. Shaver explained further that if Community Development staff asked his opinion before the application was made it shouldn't have been made as a variance. The problem is with a use-specific standard of the zoning; because the property is zoned C-1, the display outdoor merchandise is not permitted on the front of lot. The problem is not one a variance can address; it doesn't fit the criteria for a variance because if it is analyzed strictly under the variance criteria, the legal conclusion is the variance can not be legally granted. Because of that Mr. Shaver said that he is suggesting that the Board treat this request as an administrative appeal.

Mr. Livingston agreed with Mr. Shaver's analysis and asked the Board to consider this application an appeal of an administrative decision.

Mr. Bricker asked when this parcel was subdivided into two lots, why was the access to the rear lot restricted off of B 1/2 Road? Mr. Shaver said it was a specific condition of the plat and added that he suspected it was because there was no specific uses approved with it. He reminded the Board that once a use is requested then a more in-depth traffic analysis would have to be done.

Mr. Livingston added that there is a legal prohibition with the condition on the plat and a practical prohibition with the block wall that does not allow access from B 1/2 Road. Mr. Livingston added that is why treating this lot with B 1/2 Road frontage is not logical.

Ms. Ashbeck said B 1/2 Road access has been restricted to prevent commercial traffic from accessing from a residential street. The former Code, which was in place when the property was subdivided, stated that in a C-1 zone that commercial sites are only to be accessed from arterials.

Mr. Williams asked if there is not an access off of B 1/2 Road why does staff consider it a front yard? Ms. Ashbeck replied because the Code defines any lot adjacent to a right-of-way as a front yard. Ms. Ashbeck added that the block wall along B 1/2 Road is required by Code to buffer between the commercial use and the residential uses.

Mr. Livingston stated that Code in defining C-1 refers to front and rear lot street frontage by what is in front and what is behind the “principal structure.” On the back lot there is no principal structure.

Chairman Elmer asked Mr. Shaver, if the Board determines this is not a front yard, what is the next step? Mr. Shaver replied the Board might do one of two things. The Board can both determine it is a front yard and end it at that point effectively over-ruling staff's interpretation. Then the site plan can proceed or as discussed earlier the Board can apply the variance criteria and treat the application as a variance as was applied for.

Mr. Shaver stated that his advice was that the Board determine it to be a front or a rear yard and conclude the matter. If the Board proceeds by determining this is an appeal of administrative decision and that staff's determination that it is a front yard is in error, then application can proceed.

Mr. Shaver said that the Board has discretion to ignore legal advice and apply the variance criteria "because it came to you as a variance request." If analyzed as a variance request the question is whether to allow a use on the front half of the lot on B 1/2. If the Board reviews this as a variance, Mr. Shaver said he does not believe the criteria can be met and it would be his recommendation that the application be denied.

Chairman Elmer asked if the Board determines it is a front yard then how do they proceed? Mr. Shaver said the Board could then proceed with the analysis of the criteria and make findings relative to the criteria.

Chairman Elmer stated that if the Board determines there are two front yards then the variance would be to allow storage in the front half of the lot. Mr. Shaver replied by saying the Board cannot authorize a use variance.

Mr. Williams asked which option was the "easiest administratively to handle and gives the City the best control?"

Mr. Shaver replied that there are two answers to that question. The first is a philosophical perspective. Because this process has been so convoluted, because of the error in the Code and the problems that have resulted because of that error, substantial justice needs to be done. Substantial justice would be a finding that the B1/2 Road lot is not a frontage. The other answer, from a practical perspective, is to treat it as a front yard, consistent with the Code definition, hear the item as it has been submitted to you and deny it based on failure to meet the criteria.

Kristen Ashbeck added that from a practical standpoint staff feels that calling this anything other than a front yard is contrary to the intent of the Code and would not be consistent with how double fronted lots and corner lots have historically been treated. The use the petitioner is proposing on this property is not unique. This use could work on both lots without needing a variance. She said that this variance request is about what the applicant wants to do, not what is unique about this property.

Chairman Elmer asked the other Board members if they agree this should be treated as a front yard and if so should they proceed by weighing the criteria.

Mr. Livingston asked the Board to review this as an administrative appeal of what a front yard is.

Mr. Shaver added that even though this was submitted as a variance request the Board has the discretion to consider this as an administrative appeal.

Discussion ensued on how the Board should proceed. The Board agreed they would proceed to review the interpretation of whether B 1/2 Road is a front yard.

**PUBLIC COMMENT**

Connie Cass, 266 27 1/2 Road, said the City has held numerous meetings and advertised extensively when the zoning map was being reviewed. Also the residents of Orchard Mesa spent a lot of time developing the Orchard Mesa Plan which has recently been revisited. Ms. Cass stated that the owner has had ample time to challenge the zoning and classification of his property. Ms. Cass said that there is an extremely high vandalism rate in this area and she felt that this type of development would pose an increased threat to the existing residential homes. Ms. Cass said she feels the units are inappropriate for the area because they are going to be empty. Even though the site plan is well designed Ms. Cass questioned the appropriateness of this use in this area. If there is a fire, she felt it posed a threat to the rest of the neighborhood. She added that the applicant is not proposing a turn lane off of Highway 50, which she felt, was needed.

Chairman Elmer stated that a petition was submitted with approximately 30 signatures from people who are against this application. The petition was entered into the record.

Frank Esquibel, 2693 B 1/2 Road, stated that he is concerned that there will be graffiti on the wall and increased vandalism.

**PETITIONER'S REBUTTAL**

Mr. Livingston stated that he was available to answer questions from the Board.

Chairman Elmer asked Mr. Livingston to summarize again why he is requesting the Board to consider this an administrative appeal and why he considers the part of the lot adjacent to B 1/2 a rear yard.

Because of the prohibition on the plat of any access from B 1/2 Road and further limiting this access with a block wall, Mr. Livingston said he feels it should not be classified as a front because it is not usable for access to the property. The definition in the Code of what a back yard is refers to uses that have a principal structure and the back yard is definable as the area behind the principal structure. The only principal structure on these two lots is the office on the front lot, another piece of property. There is no principal structure on the back lot to define what constitutes a front or back yard. Mr. Livingston said what it is, is a legally defined lot that is part of another lot that is the back half of that combined parcel of property. The back portion of the property adjacent to B 1/2 Road should be treated as a back yard not a front yard.

**BOARD DISCUSSION**

Mr. Williams asked staff to define front yard. Ms. Ashbeck said the Code defines a front yard in Chapter Nine, page 64. She read the definition and also said; "if there is a right-of-way adjacent it is considered a front yard."

Mr. Williams asked what if there is no principal structure? Ms. Ashbeck replied that the front yard setback is the line between the right-of-way and the required setback, which is 15 feet for the C-1 zone.

Mr. Williams asked staff if the applicant displays the modular units 15 feet north of B 1/2 Road would it meet Code requirements? Ms. Ashbeck replied probably not since there isn't a principal structure to deal with. She wasn't sure that there could be an accessory use on a lot without a principal use.

Ms. Ashbeck clarified that the display/storage is not allowed in front half therefore the 15 feet wouldn't apply; the display would have to be on the rear half of the property.

Mr. Bricker asked about fire truck access. Ms. Ashbeck said she didn't believe that fire access had been reviewed and added that she didn't think the site plan had been accepted.

Chairman Elmer said that when a site plan is submitted, fire access issues would be looked at. Mr. Livingston said that the Fire Department has reviewed and accepted this site plan.

Chairman Elmer stated that he felt the petitioner could put this use on these lots and still meet Code; however, the area used for outdoor storage and display would have to be restricted.

Chairman Elmer stated that at one point the petitioner was aware of the problem. He added that there is always a place to stop and analyze the damage and proceed with risk or cut the losses and stop. He said that the petitioner had that option. Chairman Elmer didn't think, even though there was a mistake in the Code that there is sufficient evidence to approve this application based on that mistake. The C-1 Zone is not intended to permit outdoor storage on the entire lot. The fact there is a conflict in the use/zone matrix is a different issue.

**MOTION: (Mark Williams) "Mr. Chairman, on item VAR-2001-017, a request to vary Section 3.4.D.5.a, I move that we deny the request as it is presented for the reasons discussed by the board, staff and public."**

Mr. Bricker seconded the motion. A vote was called and the motion passed by a vote of 3-0.

The meeting was adjourned at 1:50 P.M.