

**GRAND JUNCTION BOARD OF APPEALS
NOVEMBER 13, 2002 MINUTES
12:00 P.M. to 12:58 P.M.**

The regularly scheduled Board of Appeals meeting was called to order at 12:00 P.M. by Chairman Paul Dibble. The public hearing was held in the City Hall Hearing Room.

In attendance, representing the Board of Appeals, were Paul Dibble (Chairman), Travis Cox, John Paulson and Clay Tufly. Mark Williams was absent.

In attendance, representing the Community Development Department, were Bob Blanchard (Community Development Director) and Senta Costello (Associate Planner).

John Shaver, Assistant City Attorney, was also present.

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

There were 8 citizens present during the course of the meeting.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the September 11, 2002 meeting.

MOTION: (Mr. Tufly) “I have reviewed the minutes and move that we approve the minutes of September 11, 2002.”

Mr. Cox seconded the motion. A vote was called and the motion passed unanimously by a vote of 3-0, with Mr. Paulson abstaining.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-2002-196 VARIANCE—ACCESSORY DWELLING UNIT/WAGNER RESIDENCE

A request for approval to allow an accessory dwelling unit to have separate utility meters from the main residence as is required by Code.

Petitioner: William D. Wagner

Location: 300 Cedar Court

Mr. Tufly felt that his participation in deliberations on this item could represent a conflict of interest, given his affiliations with the petitioner on both a personal and professional level. After a brief discussion, Mr. Tufly recused himself.

STAFF’S PRESENTATION

Senta Costello reviewed variance criteria as outlined in the Code and said that while the petitioner’s request met sections A, F and H, it did not meet sections B, C, D, E and G. The intent of the Code and the requirement of accessory dwelling units sharing utility meters with the principal structure were to help ensure that one of the residences would always be occupied by the property owner. Granting the variance would conflict with this intent due to the potential of each unit being easily rented to other than the property owner. Given that granting a variance required compliance with all criteria and given that the request failed to meet a number of those criteria, staff recommended denial.

QUESTIONS

Mr. Cox asked if staff had received any comments from gas/electric utility provider(s). Ms. Costello replied negatively, adding that review packets had not been sent to them.

Chairman Dibble asked if staff had a concern that this accessory unit could become a rental. Ms. Costello reiterated that the Code's requirement of accessory dwelling units sharing utility meters with the principal structure was to help ensure that one of the residences would always be occupied by the property owner.

Mr. Shaver read section 4.1.G of the Zoning and Development Code regarding Residential Sub-Units/Accessory Dwelling Units into the record, which outlined the Code's requirement as stated by Ms. Costello. Existence of an accessory structure on the lot is not the issue; rather, the question is whether to allow separate meters for each structure.

PETITIONER'S PRESENTATION

Bill Wagner, petitioner, said that he is seeking to construct a cottage on his property for his aged mother and father. The cottage would afford them privacy but allow him to be close by to care for them. After reviewing a number of utility options, he'd concluded that the most practical and cost-effective option existed by accessing utilities currently available from Walnut Avenue. Bringing utilities in from that location would represent only an approximate 30-foot extension to the cottage. The City's literal Code requirement would mandate that utilities extend from his existing home to the other side of his half-acre property, resulting in extreme cost, conflicts with an existing underground drainage line and damage to and possible loss of several well-established and mature trees. Mr. Wagner said that if the intent of the City was to preclude construction of a rental on the property, he could just as easily make utility costs a part of the rent and construct the rental anyway. He asked for reasonable flexibility in the interpretation of the Code and for consideration of his request as presented.

QUESTIONS

Chairman Dibble referenced the petitioner's response comments suggesting that granting the variance would confer "no special privilege." He asked the petitioner why he felt that would be true. Mr. Wagner said that in one regard granting any variance confers a special privilege; however, because anyone in the same situation would have the same right to come before the Board of Appeals and request the same variance, this did not convey a privilege on him that was not available to others in the same situation. He added that in keeping with Code section 4.1.A.2 regarding accessory dwelling units, the variance was necessary in order for him to derive reasonable use of his property as he intended. This section, he maintained, provided a way for property owners to derive reasonable use of their properties and fulfill personal objectives.

Chairman Dibble acknowledged receipt of two letters of opposition, one from William Harris (400 Cedar Avenue, Grand Junction) and one from Elizabeth Atkinson (336 Walnut Avenue, Grand Junction). Neither felt that the constructed second unit would be harmonious with the surrounding neighborhood. Mr. Harris outlined a number of alternatives available to the petitioner and feared that surrounding property values would diminish if the ancillary unit were constructed.

PUBLIC COMMENTS

FOR:

There were no comments for the request.

AGAINST:

William (Bill) Harris (400 Cedar Avenue, Grand Junction) said that granting the variance would, in fact, convey a special privilege to the petitioner. He acknowledged the presence of the underground drain which, at one time, had been a benefit to nearby homeowners by providing them with runoff to water their lawns. He doubted that the drainage district would appreciate any interference with its line by the

petitioner. He asked various questions about the dwelling unit proposed by the petitioner, which were answered. He reiterated the various other options available to the petitioner (e.g., apartments nearby, moving his parents into his own home, purchasing other property nearby, running utility lines from his crawlspace, etc.) and felt that Mr. Wagner had not adequately explored other alternatives.

Elizabeth Atkinson (336 Walnut Avenue, Grand Junction) reiterated her belief that the current request would not be in harmony with the surrounding neighborhood. With bigger and more “modern” homes being constructed in the area, she felt that Mr. Wagner’s request would represent a step backwards. She urged denial of the request.

At Chairman Dibble’s request, Mr. Blanchard was asked to clarify for the board and the public representations made by Mr. Wagner concerning the allowed size of the accessory structure. Mr. Blanchard said that the dwelling unit itself would be a permitted structure, that there were no issues inherent to the building permit; he agreed with Mr. Shaver that the sole issue is that of common or separate utility meters. If the established 700 square foot measurement wouldn’t physically work to accommodate construction methods, Mr. Blanchard said, this could be altered during a regular Code review process; however, no provision currently existed in the Code for him to arbitrarily change this unit of measure or decide administratively outside of the Code review process. He added that this 700 square foot measurement did not include garage area.

Chairman Dibble asked how the provision to require owner occupancy of one of the two units would prevent the units from becoming rentals. Mr. Shaver responded that City Council had required this provision as a means of lessening the level of concern from neighbors. This way, at least one of the two units would continue to remain owner occupied. He admitted that while this was the intent, its enforcement was difficult.

Chairman Dibble remarked that factors weighing into determining hardship could include the distance between the two units, the length of utility extension, the existence of an underground drain and the preservation of mature trees. Mr. Blanchard reminded the Board that the variance section of the Code defined hardship as one “not self-imposed.” Because the additional dwelling unit was allowed by the Code, the Board must determine if there were unique features of the site itself which would preclude the provision of common utilities.

Eleanor Belmar (335 Walnut Avenue, Grand Junction) said that the area was upscale. Granting the variance and allowing the accessory dwelling would, she felt, destroy the character of the neighborhood and negatively impact property values.

Joann Tiv (500 Cedar Avenue, Grand Junction) said that while Mr. Wagner may have a right to construct the second dwelling unit, she was certain that after his parents were no longer around to use it, the unit would become a rental. At that time, it would fall out of character with the rest of the neighborhood.

PETITIONER’S REBUTTAL

Mr. Wagner said that there was no way for him to control what may or may not occur with any future owner of the property; however, he noted that the Code requires that the property owner live in one of the units and if there was a violation, the City’s zoning enforcement officer could correct the situation. In addition to the financial hardship, he didn’t want to destroy mature trees for the sake of extending an electrical line. It was also unlikely that the drainage district would want to abandon its line traversing his property. Thus, the hardships were both financial and physical in nature.

DISCUSSION

Mr. Cox felt that the petitioner had the right to construct the accessory unit on his lot; however, he agreed with staff that not all variance criteria had been met. Absent the petitioner’s compliance with all variance criteria, he expressed support for staff’s recommendation of denial.

Mr. Paulson commended the petitioner and staff in working together to try and find a solution to the current situation. Staff had acknowledged that a level of hardship existed with the property. He believed that both the principal and accessory structures would be compatible with the surrounding neighborhood, and he would support the request.

Chairman Dibble agreed that other alternatives were available to the petitioner, yet these had not been adequately explored. He found it likely that the second unit would become a rental when the petitioner's parents had no more need of it. Because the Code's variance criteria was very clear and required full compliance, he could not support approval when the application failed to meet so many subsections (i.e., sections B, C, D, E and G).

MOTION: (Travis Cox) "Mr. Chairman, on variance VAR-2002-196, I move that the findings required by section 2.16.C.4 of the Zoning and Development Code cannot be made for approval of the variance."

Mr. Paulson seconded the motion. A vote was called and the motion passed by a vote of 2-1, with Mr. Paulson opposing. (Staff's recommendation for denial was upheld.)

With no further business to discuss, the meeting was adjourned at 12:58 P.M.