

**GRAND JUNCTION BOARD OF APPEALS
MARCH 2, 2005 MINUTES
12 p.m. to 12:32 p.m.**

The regularly scheduled Board of Appeals meeting was called to order at 12 p.m. by Vice Chairman Mark Williams. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Mark Williams (Vice Chairman), Travis Cox, Reginald Wall, and Patrick Carlow.

In attendance, representing the Community Development Department, were Bob Blanchard (Community Development Director), Kathy Portner (Planning Manager) and Scott Peterson (Assoc. Planner).

Jamie Kreiling, Asst. City Attorney, was also present.

The minutes were transcribed by Terri Troutner.

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

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the December 8, 2004 public meeting.

MOTION: (Mr. Cox) "Mr. Chairman, I move [for] approval of the December 8 meeting minutes."

Mr. Wall seconded the motion.

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

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-2005-025 VARIANCE--LOOP LANE SETBACK REQUIREMENTS

A request for approval to vary the minimum setback requirements for a garage on a loop lane from 30 feet to 20 feet from the property line.

Petitioner: Beoncia Porter

Location: 648 1/2 Brooks Court

STAFF'S PRESENTATION

Scott Peterson began his presentation by saying that the TEDS manual required a 30-foot front yard setback for a front-loading garage accessed from a looped lane. That restriction was greater than the 20-foot front yard setback imposed for an RSF-4 zoning district. He offered a Powerpoint presentation which contained the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Existing City Zoning Map; 5) subdivision plat; 6) approved site plan for the petitioner's

property; and 7) a copy of the approved planning clearance. The site plan had been approved with 20-foot front yard setbacks. Only after the planning clearance and building permits had been issued, and after the petitioner's had begun construction on their home, had the error been discovered and reported by the subdivision's developer to the City.

Mr. Peterson said that since the development of the TEDS manual, only two planning clearances for properties off of looped lanes had been issued. Looped lanes, he said, were generally narrower than typical streets; however, they were desirable because they provided additional open space between garages and the street. While the planning clearance had been issued in error, he maintained that it was also the applicant's responsibility to know the Code. Mr. Peterson addressed variance criteria and said that the hardship could be in the added expense of demolishing the home and rebuilding it to meet the 30-foot setback; however, hardships not self-inflicted were typically defined as those having to do with irregularly-shaped lots or lots having topographic constraints. The City felt that approval of the variance would confer a special privilege. If the variance were approved, the petitioner's home would be the only one on the lane to have a garage closer than 30 feet from the street. The reduced setback of a corner lot could create sight distance and other visual impacts for adjacent neighbors. Staff said that the approved planning clearance had allowed 20-foot front yard setbacks. Given the high cost of demolishing the home and rebuilding it to meet established 30-foot front yard setback requirements, staff had concluded that the variance would be necessary as the "minimum necessary for the reasonable use of the property." Having concluded that the request did not meet all the necessary criteria for a variance nor Growth Plan recommendations, staff recommended denial of the request.

QUESTIONS

Mr. Cox asked if TEDS standards were referenced in the City's Development Code. Mr. Peterson said that no reference in the Code was made to the 30-foot front yard setback requirement along looped lanes.

Ms. Kreiling interjected that the TEDS manual had always been considered a part of the adopted Zoning and Development Code. The Code also referenced the TEDS manual as having been included as one of the manuals that must be referenced in conjunction with the Development Code. She agreed with Mr. Peterson's statement that while there were references to looped lanes in the Code, the specific setbacks outlined in the TEDS manual were not included in the same area of the Code as were other setback references.

Mr. Wall asked if there was any reference made in the Code under looped lanes to referencing the TEDS manual. Ms. Kreiling said that there were references to the TEDS manual throughout the Code; however, there wasn't a specific notation under looped lanes to refer the reader to the TEDS manual for specific setback requirements. Mr. Peterson added that if one were to reference looped lanes in the Code, that person would just see the basic applicable standards.

Vice Chairman Williams asked about staff's reference to the petitioner having also made a mistake. Mr. Peterson said that developers, or anyone else pulling a City permit, had a responsibility to know the Code.

Mr. Peterson reiterated that the TEDS manual included the additional setback because looped lanes were typically narrow. The added setback created provided for additional open space, creating a visual buffer for surrounding properties.

PETITIONER'S PRESENTATION

Jerry Sanchez, co-petitioner, said that he'd complied with all of the requirements imposed by the City during the planning clearance process. This had included shortening his garage by 2 feet and repositioning the structure several times. Once he'd received the planning clearance and building permit, construction on the home had commenced. He hadn't been aware of any 30-foot front yard setback

requirement and had relied on staff's instructions. Demolishing the home and rebuilding would be very costly. He said that while the 30-foot setback restriction was established for garages, principal structures were permitted with only 15-foot front yard setbacks. He didn't feel that sight distance or any other visual impacts would result from the garage's placement at the 20-foot setback line. There was ample parking off of both adjacent streets, with room for parking an additional two vehicles in front of his home (noted as not having been shown on the approved site plan). Approval of the variance would not impact surrounding property values. Mr. Sanchez said that another property, 633 King's Glen Loop, had also received a planning clearance and building permit with 20-foot front yard setbacks indicated. The difference, he said, was that the developer had contacted that property owner prior to his having poured the foundation. Construction had already commenced on Mr. Sanchez's home.

Mr. Sanchez said that he'd spoken with several builder friends, none of whom had been aware of the TEDS requirement. He had, in good faith, gone to the Community Development Department to find out what the requirements were, and he'd complied with all of them. It was unreasonable, he felt, for average citizens to "know every law."

Mr. Wall asked the petitioner if he'd worked with the developer on securing the planning clearance, to which Mr. Sanchez replied affirmatively, adding that it was the developer who ultimately caught the mistake.

Mr. Carlow asked if denial of the variance would require demolition and redesign of the home, to which Mr. Sanchez replied affirmatively.

Mr. Cox asked what phase of construction the petitioners were in. Mr. Sanchez said that the foundation had been poured and framing was nearly three-quarters finished. Once notified of the problem, he'd ceased any further construction. When asked if he was a developer, Mr. Sanchez responded negatively.

Mr. Wall asked for additional clarification on previous statements made that the garage had been shortened by 2 feet. Mr. Sanchez said that the 2-foot reduction had been required to comply with side yard setback requirements. He'd thought perhaps he could place the home so that it received access from Milburn Drive but he'd been told that access to the property had to be from King's Glen. Mr. Sanchez indicated that because his was a corner lot with two front yard setbacks, there were fewer placement options available.

Mr. Wall asked if there was a general contractor involved in the construction of Mr. Sanchez's home. Mr. Sanchez said that a general contractor from Kodiak Builders was assisting him in the process; however, that assistance was just limited to the home's framing.

Mr. Wall asked the petitioner if he was aware of any negative comments from other neighbors. Mr. Sanchez said that the only person he'd spoken with was the owner of 633 King's Glen, who seemed to be generally sympathetic with the situation and supportive of his finding a solution. Mr. Sanchez said that he'd spoken with the developer, who said that the decision on whether or not to allow the setback variance would be left up to the City. Mr. Sanchez reiterated that criteria allowed for placement of homes with only 15-foot setbacks; the 30-foot setback applied only to garages.

Mr. Carlow asked if the subdivision's Homeowners Association was in favor of the request. Mr. Sanchez said that the Association's approval was pending the City's approval of the request.

Ms. Kreiling said that she'd received a letter from the subdivision's Homeowners Association indicating a lack of objection to the request provided the City approved it.

PUBLIC COMMENTS

There were no comments either for or against the request.

QUESTIONS

Mr. Cox asked for confirmation from staff that placement of principal structures could be to a 15-foot setback. Mr. Peterson confirmed that the allowance was mentioned.

Mr. Wall asked staff of what purpose was setting the garage back 30 feet when the principal structure could be placed to 15-foot setbacks. Mr. Peterson said that looped lane standards required the additional garage setback to provide for more off-street parking and for increased visibility.

Vice Chairman Williams remarked that even with a 20-foot setback, the petitioners would still be able to have a two-car garage while providing for another two vehicles in the driveway.

PETITIONER'S REBUTTAL

The petitioner offered no additional testimony.

DISCUSSION

Mr. Cox concluded that all variance criteria had been met and that the hardship was not self-inflicted. The petitioner had relied on information given him by the City, and it was clear that staff hadn't even been that familiar with the applicable section of the TEDS manual on looped lane criteria. No special privilege would be conferred since others along the street would build their homes with the reasonable expectation that their homes were in the right spot. The variance would allow the petitioners the same expectation that others along that street would enjoy. Granting the variance would give the petitioners the minimum necessary to enjoy reasonable use of their property. Mr. Cox felt that he could support the request.

Mr. Wall felt that errors had been made from all parties, but the petitioners had a reasonable expectation that the information they were getting from the City was reliable. Clearly, the setback reference was somewhat difficult to find and not readily known by City staff. The hardship, while financial, was as a result of information not known by either party at the time of planning clearance issuance. He'd driven along King's Glen Loop and found the street very narrow, so he could understand the need for 30-foot garage setbacks. He felt he could support the variance but felt that criteria should be made clearer.

Mr. Carlow said that the petitioners had done all that they were asked to do, and the error had not been the result of blatant disregard. It appeared to him that everyone involved had acted in good faith.

Vice Chairman Williams concurred with previous board statements and felt that he could also support the request for the reasons stated.

MOTION: (Mr. Cox) "Mr. Chairman, on item VAR-2005-025, I move that we approve the variance request to reduce the front yard setback for a front loading garage obtaining access from a loop lane at 627 King's Glen Loop, finding the request to be consistent with the criteria set forth in section 2.16.C.4 of the Zoning and Development Code."

Mr. Carlow seconded the motion.

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

With no further business to discuss, the meeting was adjourned at 12:32 p.m.