

**GRAND JUNCTION BOARD OF APPEALS  
SEPTEMBER 10, 2003 MINUTES  
12:05 P.M. to 12:35 P.M.**

The regularly scheduled Board of Appeals meeting was called to order at 12:05 P.M. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Paul Dibble (Chairman), Travis Cox, and Mark Williams. John Paulson was absent. One position is currently vacant.

In attendance, representing the Community Development Department, were Kathy Portner (Planning Manager), Pat Cecil (Development Services Supervisor), and Scott Peterson (Associate Planner).

John Shaver, Assistant City Attorney, was also present.

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

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

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the June 11, 2003 meeting.

**MOTION: (Mr. Williams) "So moved [that the minutes of the June 11, 2003 meeting be accepted as submitted]."**

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

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

There were no announcements, presentations and/or visitors.

**III. FULL HEARING**

**VAR-2003-145 VARIANCE--DE PORTE PATIO COVER**

**A request for approval of a variance to the side and rear yard setbacks to accommodate an existing patio cover in an RMF-5 (Residential Multi-Family, 5 units/acre) zone district.**

**Petitioner: Dave DePorte**

**Location: 2110 Barberry Avenue**

**PETITIONER'S PRESENTATION**

Dave DePorte said that he'd not been aware that a permit was required for construction of a patio cover. He said that the structure has been in place for over a year; its removal would be expensive and represent a hardship. Mr. DePorte offered photos of the patio cover for reference. The structure, he said, had been constructed tongue-in-groove with 14' laminated beams and it covered a concrete patio set and stainless steel barbeque.

**STAFF'S PRESENTATION**

Scott Peterson reviewed the request and presented a Powerpoint presentation containing the following slides: 1) aerial photo of the site; 2) Future Land Use Map; 3) Existing City and County Zoning Map; and 4) property survey (Improvement Location Certificate), showing the patio cover less than 1' from the side yard property line and less than 20' from the rear yard property line. The RMF-5 zone district

required 5' side yard and 25' rear yard setbacks for an attached structure. The petitioner encroached into the rear yard setback by approximately 5 ½ feet and the structure extended within a foot of the property line on the side yard. The petitioner also requested vacation of an existing 7 foot utility easement; however, staff felt that the setback issue should be resolved first. Review agency comments had been solicited from utility providers; however, no comments had been returned.

Mr. Peterson read variance criteria from the Code and stated that there is no non self-imposed hardship nor unique characteristic of the property. Because granting the variance would constitute a special privilege and because the request does not meet Code criteria and Growth Plan recommendations, staff recommended denial.

### **QUESTIONS**

Chairman Dibble asked for clarification of measurements indicated on a plot plan and referenced in the staff report. The plot plan indicated an open area between the patio cover and side yard setback of 20", while the staff report stated that the area measured only 8". Mr. Peterson said that the 20" reference had been prior to the survey; the survey indicated the area to be less than a foot wide (clarified as 8/10 of a foot or 9.6").

Mr. Williams observed that based on the survey, the structure had been built 19.8' from the rear property line. When asked how much this encroached into the rear yard setback, Mr. Peterson replied that because the rear yard setback was 25', the amount of encroachment was 5.2'.

Chairman Dibble asked if concrete slabs were subject to the same setback requirements? Mr. Peterson replied negatively.

Mr. Williams asked about the City's position with regard to rear yard setback encroachment. Had there been any rear yard setback variance approvals granted recently? Mr. Peterson said that he was not aware of any rear yard setback variances having been granted in the last year. John Shaver expounded by saying that staff had no authority to vary setback requirements; that was strictly within the purview of the Board of Appeals. The Board, he said, must consider Code criteria when considering a variance request and apply the criteria on a case by case basis.

Chairman Dibble wondered what had triggered the variance request. Mr. Peterson said that the encroachment had been discovered by Code Enforcement officials, who had addressed just the setback issue, not the building permit violation. When the petitioner was asked if a complaint had been lodged by a neighbor, Mr. DePorte said that he got along well with all of his neighbors. The neighbor closest to the cover on the side had helped with its construction. The Code Enforcement officer did not disclose how the complaint had been generated.

Pat Cecil interjected that to be an allowed structure, the patio cover would have to be brought into compliance with setback requirements and a building permit would have to be obtained. Chairman Dibble asked if a building permit would likely be granted if variance approval were given. Mr. Cecil said that only a building inspector could make that determination. Mr. Shaver added that setback consideration was just one criterion considered in the building permit process.

Mr. Williams asked the petitioner why he hadn't first obtained a building permit before erecting the patio cover. Mr. DePorte said that he had not been aware that an open patio cover was considered a structure and subject to the same building permit requirements as an enclosed structure. He recounted that a building permit had been obtained for a room addition to his home but he hadn't thought the same requirements applied to a patio cover. Because a contractor friend had helped him with the construction of the cover, he was confident that its quality would pass any building inspection. When the violation

was brought to his attention, he'd followed the City's review process and paid the required fees to have the easement vacated and setback issues resolved.

Mr. Williams asked Mr. DePorte if his friend had mentioned to him the need for a building permit, to which Mr. DePorte responded negatively. Neither had his friend asked if he'd had a permit before beginning the project.

**DISCUSSION**

Mr. Cox said that while sympathetic to the petitioner's plight, because the structure didn't meet any of the variance criteria, the Board had nothing on which to base an approval.

Chairman Dibble agreed that the situation was unfortunate but there was little the Board could do.

Mr. Williams wondered if any reference to building permit requirements were included in Spring Valley Subdivision's covenants because the subdivision supported an architectural control committee. Mr. Shaver said that without review of the subdivision's covenants, he could not be certain that they contained any specific reference; however, he conjectured that the covenants probably contained a general reference to codes and ordinances, and that uses in the subdivision must be consistent with the law.

**MOTION: (Mr. Cox) "Mr. Chairman, on item VAR-2003-145, I move that we deny the variance request to reduce the side and rear yard setbacks in an RMF-5 zoning district for an already constructed 15' x 15' attached patio cover, finding the request to be inconsistent with the Growth Plan and Section 2.16.C.4 of the Zoning and Development Code."**

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

With no further business to discuss, the meeting was adjourned at 12:35 P.M.