

**GRAND JUNCTION BOARD OF APPEALS  
NOVEMBER 12, 2003 MINUTES  
12:15 P.M. to 1:30 P.M.**

The regularly scheduled Board of Appeals meeting was called to order at 12:15 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, Mark Williams, and newly appointed board member, Thomas Lowrey. Mr. Lowrey arrived after consideration of the October meeting's minutes. John Paulson was absent.

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 five citizens present during the course of the meeting.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the October 8, 2003 public meeting.

**MOTION: (Mr. Cox) "Mr. Chairman, I move that we approve the minutes for the Grand Junction Board of Appeals, October 8th, as presented."**

Mr. Williams 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-2003-213 VARIANCE--GARTNER ADDITION/REMODEL**

**A request for a variance to the front yard setback for principal and accessory structures in an RSF-4 zoning district to allow construction of a bedroom addition on an existing home and also the construction of a proposed detached garage and tool shed.**

**Petitioner: Daniel Gartner**

**Location: 104 Lilac Lane**

**STAFF'S PRESENTATION**

Scott Peterson offered a PowerPoint presentation containing the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Existing City Zoning Map; 5) site plan; 6) subdivision plat. The request, as outlined in the November 12, 2003 staff report, was reviewed. Minimum front yard setbacks were 20 feet for a principal structure and 25 feet for a detached accessory structure. If construction of the bedroom addition and detached garage were permitted as proposed by the petitioner, then the front yard setback would be reduced to only 7.8 feet for the principal structure and only 3.8 feet for the detached accessory structure.

The petitioner's property is a corner lot located at the intersection of 1st Street and Lilac Lane. Mr. Peterson said that while the City had considered reclassifying Lilac Lane as a private street or shared driveway, Lilac Lane failed to meet the minimum 20-foot-wide requirements necessary to be classified a private street and the 16-foot-wide requirements necessary to be classified as a shared driveway. A shared driveway could also be no longer than 150 feet long, which Lilac Lane exceeds by approximately 150 feet. Further, the proposed addition and garage would still encroach into required setbacks even if Lilac Lane were to be reclassified as either a private street or shared driveway.

Staff reviewed the request against the Code's variance criteria and Growth Plan recommendations and found it to be non-compliant. Mr. Peterson said that approval of the request would permit construction of structures that would prevent future correction of right-of-way and lane width problems on Lilac Lane. Staff recommended denial.

### **QUESTIONS**

Mr. Lowrey asked if Lilac Lane's 10-foot width posed any access problems for City fire trucks. Mr. Peterson said that the minimum street width necessary to accommodate a City fire truck is 20 feet; Lilac Lane does not meet that requirement. He added that although Lilac Lane is considered a City right-of-way, it is an older street and hadn't been constructed to meet the City's street standards.

### **PETITIONER'S PRESENTATION**

Daniel Gartner, petitioner, said that the site is unique by virtue of the excessive length of its dual frontages and the uniqueness of Lilac Lane and the neighborhood. Over the 13 years he and his family have lived on the property, he'd undertaken a number of addition/remodeling projects to accommodate his growing family. He contended that because its original construction in the 1920s, the home's orientation along 1st Street seemed to have "flipped" to Lilac Lane. Access from 1st Street was no longer available; however, there are still folks who routinely climb an existing planter located along 1st Street to get to his front door because they assume the home's primary access is off of 1st Street. Indeed, he urged board members to consider 1st Street as the property's only front yard. Mr. Gartner presented various photos of the site and street frontages and said that Lilac Lane "looked, felt, and worked like an alley." In other cities, he said, properties derived their accesses via similarly narrow thoroughfares. He contended that the 25-foot accessory structure setback was not logical for such a street. Several detached garages already exist within setbacks along Lilac Lane with no adverse affect to the neighborhood. His proposed garage would not set a precedent, would not encroach into the setback any more than does his current garage and surrounding neighbors supported the request.

Mr. Gartner said that he'd met the Code's variance criteria; he said that his property provided a sense of openness along Lilac Lane and that this would not be impacted by either the proposed addition or garage. The continued upgrading of older homes was necessary, he said, to preserve the vitality of the urban core.

Mr. Gartner said that other options and ideas had been discussed with staff, some of which had been incorporated into the submitted site plan. He asked that the board apply common sense to what he felt was a unique set of circumstances and approve the request. He and other neighborhood residents wanted Lilac Lane to remain in its current configuration and would actually appreciate the City's confirmation that no future improvements would be made to Lilac Lane. They did not want the City to tear down existing fences and garages and destroy 80-year-old trees and other established landscaping. Thus, staff's argument that approval of the variance would prevent future widening of Lilac Lane should be rendered moot. Contrary to staff's assertion that approval of the variance would negatively impact the stability of the neighborhood, Mr. Gartner felt that leaving Lilac Lane as-is would ensure the continued stability of the neighborhood. He noted the locations of fire hydrants situated at various points nearby and confirmed that fire trucks were unable to access Lilac Lane. Did it make more sense, he asked, to require residents to move into newer subdivisions to get the square footage they needed, impacting available agricultural lands or to let them improve their older homes and in the process upgrade their neighborhoods?

## **QUESTIONS**

Mr. Cox asked if the proposed garage would be two-story. Mr. Gartner said that a single 12' x 12' room would be constructed above the garage, giving it an overall height of approximately 17 to 18 feet.

## **PUBLIC COMMENTS**

### **FOR:**

Lenore Donovan (115 Lilac Lane, Grand Junction), owner of property directly across the street from the petitioner, said that by deed she owned all but 30 feet of the 330-foot Lilac Lane right-of-way. While the City had taken the first 30 feet of right-of-way to complete its construction of 1st Street, the Lilac Lane right-of-way had been deeded to her in 1955 for use as a private driveway. It was not a City-owned street as City staff contended. She would be strongly opposed to any City improvements to Lilac Lane and only four homes are directly served by the street. All other homes to the north and west are served by Ella Drive. Ms. Donovan said that improving Lilac Lane would destroy the median constructed within 1st Street along with its lighting and landscaping. That hardly made sense. She agreed that the area and Lilac Lane were both unique in their characters and reiterated that Lilac Lane was a private driveway, not a City Street. Approval of the request would allow the petitioner to improve his property and thereby upgrade the neighborhood. She wholeheartedly supported the proposed improvements as did her neighbors.

At Mr. Shaver's request, Ms. Donovan submitted a copy of her deed for further review.

Ned O'Brien (206 Lilac Lane, Grand Junction) also expressed support for the request and asked that Lilac Lane remain in its current configuration.

John Mok-Lammé (no address given) disagreed with staff's assertion that there was a collective need to widen Lilac Lane and that the community was better served by doing so. Widening the street would only result in the destruction of beautiful old trees, accessory structures and fences. It would also ruin what was already a "really great and gorgeous street." Denial of the variance would prevent the petitioner and other area residents from improving their properties when, in fact, it served the collective interest to improve older properties located within the urban core. To prevent something that would be beneficial to the neighborhood did not make sense, and he strongly urged the board to find in favor of the petitioner.

### **AGAINST:**

There were no comments against the request.

## **DISCUSSION**

Chairman Dibble asked Mr. Shaver for a legal opinion on the status of the Lilac Lane right-of-way. Mr. Shaver read from a portion of Ms. Donovan's deed and said that the phrasing of its "utility language" may have been how the City acquired the right-of-way over time. Additional research is required before a final determination of ownership could be made. Mr. Shaver advised that the Board could opt to defer action pending resolution of the right-of-way issue or it could take action based upon the assumption of City ownership, with the understanding that if the right-of-way were proven to be privately-owned, the action would be vacated.

Chairman Dibble expressed a preference to defer action pending clarification of the deed.

Mr. Cox asked for clarification on which setback was applicable to property abutting an alley. Mr. Cox replied and Ms. Portner confirmed that a side or rear yard setback would be applicable along the alley. Mr. Cox asked for clarification on the legal distinction between an alley and a street. Mr. Shaver said that legally, there is no distinction. Ms. Portner said that Lilac Lane is unique in that it transitioned into a much wider public street further to the west, something that alleys did not do.

Mr. Shaver said that an additional difficulty with Lilac Lane is in the length of time it had served as a street and there is a prescriptive right that may have been created over time.

Mr. Lowrey said that he would be willing to render a decision with the caveat that if the right-of-way were proven to be privately-owned, the action would be vacated. He felt that it would likely be proven that the right-of-way belongs to the City.

Mr. Peterson clarified that if Lilac Lane turned out to be a private drive, and the petitioner's Lilac Lane frontage is considered a side yard, then the request would comply with the Code. The side yard setback for a principal structure is 7 feet while the side yard setback for a detached accessory structure is 3 feet.

Chairman Dibble asked the petitioner for clarification of his legal address. Mr. Gartner said that when he originally purchased his property, his address had been 2107 North 1st Street; it was later changed to 104 Lilac Lane. Ms. Portner said that the address change request would likely have been owner-generated. Staff would not have redefined existing frontages in conjunction with the address change.

Mr. Lowrey said that arguably the property was unique and that the request could be found to have met many of the Code's criteria; however, he did not feel that a non self-imposed hardship had been demonstrated. With a lot size of approximately 24,000 square feet, there is still plenty of buildable area available to the petitioner, which allowed other placement options. He also felt that granting the variance would convey a special privilege and so he could not support the request; however, the petitioner's request did have merit by virtue of the uniqueness of Lilac Lane. He suggested the City consider vacating Lilac Lane as a street and rededicate it as a pedestrian access for continued use. Lilac Lane in its current configuration, he felt, is dangerous to pedestrians when also used by vehicles.

Mr. Williams agreed with the uniqueness of Lilac Lane but he said that he'd heard nothing to suggest that no other placement options were available to the petitioner or that the property could not continue to be reasonably used unless structures were placed as close to Lilac Lane as the petitioner proposes. He also expressed concern over the lack of access available for City fire trucks, which suggested that the City was treating the neighborhood with special consideration as it is. Trash trucks currently used Lilac Lane as if it were a City street. He opposed the request as submitted.

Mr. Cox said that Lilac Lane posed some unique considerations and that granting the request would not give any special privilege to the petitioner over any other resident in the neighborhood. He agreed that the request would be compatible with other properties in the area. As such, he felt that the request met Code criteria and the intent of the Growth Plan. Reinvestment in the downtown area is a desirable thing. The only sticking point in his mind is the "reasonable use" factor. The petitioner is already able to derive reasonable use of the property and the house situated upon it. Approval of the variance would have to find that any reasonable use of the property is dependent upon the actual placement of structures in the proposed locations and no such finding could be made. For that reason Mr. Cox said that he could not support the request. As an aside, Mr. Cox said that Lilac Lane is more like an alley than a street.

Chairman Dibble agreed that the request failed to meet the non self-imposed hardship criterion as well as the criterion regarding reasonable use. Because all variance criteria must be satisfied before approval could be given, he supported staff's recommendation for denial.

**MOTION: (Mr. Williams) "Mr. Chairman, on item VAR-2003-213, I move that we deny the variance request to reduce the front yard setback for principal and accessory structures, finding the request to be inconsistent with the Growth Plan."**

Mr. Cox seconded the motion. Mr. Lowrey asked if the motion should include reference to the previous discussion regarding the status of Lilac Lane and the possible vacation of the action if Lilac Lane turned out to be a private drive.

Chairman Dibble suggested that the Board make all motions in the affirmative so that it is clear if the request has been approved or denied.

Mr. Williams opted to withdraw his previous motion and allow for a revised motion.

**MOTION: (Mr. Lowrey) "Mr. Chairman, on item VAR-2003-213, I move that we approve the variance request to reduce the front yard setbacks for principal and accessory structures in an RSF-4 zoning district, finding the request to be consistent with section 2.16.C.4 of the Zoning and Development Code, subject to vacation if it is shown that the City does not have the public right-of-way along Lilac Lane contiguous to this property."**

Mr. Shaver clarified that denial of the motion as revised would mean that the petitioner would not be able to move forward with his construction plans as submitted unless it was demonstrated that the City did not own the Lilac Lane right-of-way.

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

Mr. Shaver said that a legal finding on the status of Lilac Lane would be provided to the board at its next regularly scheduled public meeting.

With no further business to discuss, the meeting was adjourned at 1:30 P.M.