

**GRAND JUNCTION BOARD OF APPEALS  
FEBRUARY 11, 2004 MINUTES  
12:05 P.M. to 1:25 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, Thomas Lowrey and Mark Williams. Mr. Williams arrived subsequent to consideration of the minutes. One position is vacant.

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

John Shaver, Acting City Attorney, was also present.

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

There were no citizens present other than the petitioner during the course of the meeting.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the November 12, 2003 public meeting.

**MOTION: (Mr. Cox) "Mr. Chairman, I move that we approve the minutes of the Grand Junction Board of Appeals, November 12, 2003."**

Mr. Lowry 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-2003-280 VARIANCE--HOLIDAY EXPRESS SIGN**

**A request for a variance of the Sign Code regarding an off-premise location.**

**Petitioner: Budget Motel Management, Inc.--Jim Koehler**

**Location: 624 Rae Lynn Street**

**PETITIONER'S PRESENTATION**

Bill Balaz, representing the petitioner, referenced a site zoning map noting the location of the Holiday Inn within a C-2 zoning district. He felt that a conflict existed between the City's adopted Sign Code and the 24 Road Corridor Guidelines with regard to permanent off-premise business signage.

The hotel fronts Rae Lynn Street and is situated approximately 400 feet from 24 Road. Referencing photos of the site, Mr. Balaz said only non-lit directional signage is present to guide motorists to the hotel. The proposed monument sign, referenced in a drawing submitted by the petitioner, would consist of a Holiday Inn Express sign constructed at its base, with a blank sign available for Lot 1's future use. Lot 1, located closest to 24 Road, was currently vacant. Mr. Balaz said that the request conformed to all but the offsite location component of the 24 Road Corridor Guideline signage guidelines. He concurred

with staff's recommendation to move the sign closer to Cassandra Avenue and 24 Road and remove existing directional signage. The new signage would be placed approximately 10 feet from the right-of-way line perpendicular to 24 Road traffic.

Mr. Balaz said that the requested signage was necessary for several reasons. Depending on the future height of any building constructed on Lot 1, that building could potentially obscure a portion or all of the Holiday Inn building from motorist view. Additionally, the lack of illuminated signage made it very difficult for motorists to find the hotel at night. He noted the lack of development across 24 Road to the east; the lot directly north was mostly vacant, with only a storage facility located there; and to the west of the hotel was a storage yard/diesel repair facility on Leland Avenue. Towards Patterson Road there were additional open fields. All of the areas mentioned had little or no onsite lighting, so the entire area at night was very dark.

Mr. Balaz felt that the requested signage would not only assist motorists in finding the hotel itself, its illumination would better identify the Cassandra Drive/24 Road intersection and make it safer for motorists to navigate. He noted that all other existing businesses along 24 Road had freestanding or monument-style signage which identified their businesses. While grandfathered during adoption of the 24 Road Guidelines, those signs are still present. Thus, approving the variance, he felt, would not convey a special privilege to the petitioner. The requested signage would allow Holiday Inn to compete with other area businesses. The proposed sign would be constructed to a height of only 12 feet, far less than the 40 feet allowed by the City's Sign Code. The hotel's portion of the sign would actually be only 6 feet high and 4 feet by 6 feet in dimension. The remaining "blank" signage would be constructed with development of Lot 1. He pointed out that the 24 square feet being requested for the hotel's signage was far less than the 143 square feet recommended by the Best Sign Practices of the U.S. Sign Council. The proposed sign would also be consistent with the 24 Road Corridor Guidelines' restriction of freestanding/monument signage to no more than 50 square feet per lot.

Mr. Balaz felt that the improved signage would result in higher occupancy rates. Higher occupancies would result in increased tax revenues to the City and result in increased revenues to other area businesses such as restaurants, shopping centers, etc.

### **QUESTIONS**

Mr. Cox asked if the petitioner was in agreement with staff's conditions of approval, to which Mr. Balaz replied affirmatively.

### **STAFF'S PRESENTATION**

Senta Costello overviewed the request as outlined in the February 11, 2004 staff report. She gave a Powerpoint presentation which contained the following slides: 1) photos of the site and similar signage in the area; 2) drawing of proposed signage; 3) site location map; 4) aerial photo map; 5) Future Land Use Map; and 6) an Existing City and County Zoning Map. The proposal met the 24 Road Corridor Guidelines, with the exception of the off-premise placement restriction; however, staff determined that combining the signage for both Lots 1 and 2 met the intent of those guidelines because it would eliminate additional freestanding signage for Lot 2. Having found that the request met Code and Growth Plan criteria as well as the intent of the 24 Road Corridor Guidelines, staff recommended approval.

### **QUESTIONS**

Mr. Cox asked about the ownership of Lot 1. Ms. Costello said that the current petitioner, Mr. Koehler, owned both Lots 1 and 2.

Chairman Dibble questioned the proposed phasing of the hotel's signage. Without knowing what kind of business would ultimately locate on Lot 1, was it prudent to preapprove signage for a business not even there? John Shaver said that for the purposes of establishing a "sign package," the request was

appropriate. Any "contented" signage for Lot 1 would still require proper permitting. Mr. Shaver stated that to ensure that the currently proposed blank signage was used strictly for Lot 1, the Board of Appeals' decision letter could be recorded in the chain of title for both properties.

Mr. Cox felt that phasing would result in a more attractive sign presentation. Constructing the entire two-part sign at once would result in half of it being blank and illuminated for an indefinite period of time, something that would not be very attractive.

Mr. Shaver suggested incorporating the specific drawing submitted with the proposal into Board findings.

Chairman Dibble asked for clarification on the 24 Road Corridor Guideline sign restrictions, which was provided. A brief discussion ensued over whether or not the hotel's hardship was self-imposed, because its management had chosen to construct the business on the back lot instead of the front lot.

### **PUBLIC COMMENTS**

There were no public comments either for or against the request.

### **PETITIONER'S REBUTTAL**

Mr. Balaz concurred with Mr. Cox's assessment that the ongoing presence of blank signage would be unsightly. He also agreed to record both the decision letter and submitted drawing, as recommended by Mr. Shaver, if it would alleviate concerns. Regarding construction of the hotel on Lot 2, Mr. Balaz's understanding was that to comply with the City's parking requirements, the hotel had to be situated on that lot. Locating the business on Lot 1 would have interfered with the City's Transportation Plan and the future extension of area streets. Thus, he contended that the hardship was not self-imposed.

Chairman Dibble said that from Mr. Balaz's perspective, it made the most sense to select and develop Lot 2 as it had been; however, the option to construct the hotel on Lot 1, with parking located to the rear of the building had still been an option, one that had not been explored. As long as the petitioner agreed to consider the Board's decision as applicable also to Lot 1's signage, Chairman Dibble agreed to withdraw his objection. Mr. Balaz expressed his assent.

Mr. Lowry agreed with Mr. Cox's conclusion that phasing was preferable. He also felt that just because a business chose to locate away from a major road, it should not be punished and disallowed reasonable signage. He didn't feel that the hotel's hardship was self-imposed.

Mr. Williams concurred with staff's findings and recommendation of approval, and felt that the request should be approved as submitted.

Mr. Cox felt that staff's conditions also adequately addressed and restricted how the proposed signage would be used. No additional conditions were necessary. That observation drew general assent from other Board members.

**MOTION: (Mr. Williams) "Mr. Chairman, on variance VAR-2003-280, I move that we find the project consistent with the Growth Plan, the 24 Road Corridor Design Standards and Guidelines, and that the findings required by Section 2.16.C.5 of the Zoning and Development Code can be made for approval of the variance subject to the conditions listed above, namely items 1-6 on the preceding page [conditions outlined in the February 11, 2004 staff report under Recommended Conditions of Approval]."**

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

**VAR-2003-281 VARIANCE--HOLIDAY INN EXPRESS LIGHTING PLAN**

**A request for approval of lighting plan consisting of height, timeframe, and type of lights in a C-2 (Heavy Commercial) zone.**

**Petitioner: Budget Motel Management, Inc.--Jim Koehler**

**Location: 625 Rae Lynn Street**

The petitioner's representative, Bill Balaz, asked that this item be continued because the owner and petitioner, Jim Koehler, had been called out of town and was unavailable.

When asked why the petitioner wasn't present for the hearing, Mr. Balaz said that Mr. Koehler had made prior business commitments last fall and had only confirmed them a week prior to the Board's hearing date. Ms. Costello said that the variance request had originally been submitted in December 30 2003, giving the petitioner over a month to accommodate the hearing.

Chairman Dibble noted a reference in his packet indicating the petitioner had already been cited for violating the City's Code criteria on lighting. Ms. Costello briefly overviewed the specifics of the violation and its current status. She said that a trial had been set for Tuesday, February 17. If this variance request were approved, one of the approval conditions would require that existing fixtures be replaced by those which were "full cut off." Staff supported moving forward with the request to resolve the issue.

Chairman Dibble asked if a building permit had been obtained by the petitioner for current lighting fixtures. Ms. Costello replied negatively. She said that the fixtures had been installed in conjunction with building construction but they had not been part of the hotel's originally approved development plan.

Mr. Cox asked Mr. Balaz what he thought the petitioner could offer in testimony that could not be presented by Mr. Balaz. Mr. Balaz said that the petitioner wanted the chance to prove that their lighting fixtures did meet Code requirements, was necessary to prevent ongoing vandalism (graffiti) and would better assist motorists in finding the hotel. Mr. Koehler, he added, also wanted the opportunity to point out the lack of development occurring along the corridor as a result of the 24 Road Corridor Guideline's restrictions.

When Chairman Dibble asked if the graffiti had occurred after the lighting had been installed, Mr. Balaz replied affirmatively. Chairman Dibble concluded that the hotel's existing lighting had apparently not discouraged vandals. Mr. Balaz said that the petitioner wanted permission to keep the lights on after 10 P.M. and to add additional uplighting.

Mr. Shaver suggested to the Board that a continuance might be beneficial so that the "lawfulness" of existing lighting could be determined in a court setting. He said that if the court determined that the lighting was unlawful, a variance might be the appropriate remedy for that unlawful condition. If the court deemed the lighting lawful, there would be no need for the variance.

Chairman Dibble asked Mr. Blanchard to comment on the issue. Mr. Blanchard said that the upper lights on the building had never been approved, so they were in his opinion unlawful. Also, the Code's lighting standards required full down-directional cutoff lighting to ensure that onsite lighting was kept onsite and to reduce impacts to neighboring uses. He said that the 24 Road Corridor Guidelines prohibited uplighting and restricted lighting heights.

Ms. Costello was asked to clarify specifics of the citation issued by the Code Enforcement Department. Ms. Costello said that the petitioner was in violation of Chapter 7 of the Zoning and Development Code regarding lighting height and that the business continued to operate non down-directional lighting past 10 p.m. The hotel's upper lighting had been placed at heights at or exceeding 40 feet; the Code restricted

lighting heights to no more than 35 feet. The lighting had also not been included on the approved site plan.

Chairman Dibble asked if the original site plan contained any lighting references. Ms. Costello said that approved elevation drawings showed "little circles" atop the towers. They were unlabeled and appeared to be some kind of architectural feature. The mid-way lighting had been shown in similar fashion; however, those circles had been labeled as building lights. The floodlights currently being requested by the petitioner had not been included on the original site plan. Mr. Blanchard reiterated that the legality issue was paramount because the upper level lighting was never formally requested, never reviewed and never approved, but had been installed by the petitioner anyway.

When asked by Mr. Williams how the court would review the violation, Mr. Shaver surmised that, depending on how the charges had been filed, the court would likely review both the installation and character of the lighting. He added that consideration of the variance now could potentially complicate the legal process, because the court could potentially fashion a remedy contradictory to that of the Board.

Mr. Balaz said that he and the petitioner both felt that a decision by the Board of Appeals was essential prior to any court proceeding. Thus, he asked that if the Board postponed its hearing by a month, the court date also be postponed to a date following the Board's decision. When asked if a denial by the Board would result in the petitioner still wanting to go to court, Mr. Balaz replied affirmatively, adding that the petitioner would then have no other choice.

Mr. Williams expressed concern that postponement of the hearing would ultimately not allow for a legal decision by the court prior to the next Board hearing. It was clear that the petitioner intended to ask for a continuance of the court proceeding as well. He wondered if the court could be apprised of the rationale behind the Board's postponement of the item. Mr. Shaver said that he would share the Board's rationale with the prosecutor and ask that she object to any continuance request.

**MOTION: (Mr. Williams) "I move we postpone this, Mr. Chairman, and request that the City Attorney direct a member of his staff to inform the court of the rationale behind our postponement, that we postpone it until it's been resolved by the court."**

Chairman Dibble expressed concern that a series of postponements could result in the petitioner's continued operation of illegal lighting. Mr. Shaver said that the courts had injunctive powers, that they could prevent any continued operation of disputed lighting. Continued operation could result in a contempt citation.

Mr. Cox asked if a final court decision would be rendered on February 17. Mr. Shaver predicted that a court date would be set at that time and that no final decision would be rendered. Mr. Shaver reiterated his willingness to share the Board's rationale with the prosecutor and ask that she object to any court continuance request

Mr. Balaz clarified that the arraignment had been held in January; the trial would actually commence on February 17.

Mr. Williams withdrew his original motion and made the following motion instead.

**MOTION: (Mr. Williams) "I move that we postpone this until our next hearing on March 10 and that we request the City Attorney contact the prosecutor on the case with a request that the judge be informed that we wish to have a judge render a decision before we move on with it ourselves."**

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

Chairman Dibble asked Mr. Balaz to request Mr. Koehler's presence at the March 10 Board meeting.

#### **IV. DISCUSSION ITEMS**

##### **VAR-2003-213 VARIANCE--GARTNER ADDITION/REMODEL**

**A report back to the Board of Appeals regarding legal status of Lilac Lane and the variance request at 104 Lilac Lane.**

**Petitioner: Daniel Gartner**

**Location: 104 Lilac Lane**

Scott Peterson recounted specifics of the Gartner addition/remodel variance request including construction of an addition attached to the existing single-family home the demolition of the existing garage, and construction of a new detached garage. He noted that the City had approached the request based on the presumption that Lilac Lane was a legally dedicated street. Neighbor Lenore Donovan had come before the Board during the November 2003 hearing to state that she had a deed for the portion of Lilac Lane in question. The deed's validity had been verified, which rendered the petitioner's variance request moot. Since the petitioner's proposed addition met the side yard setback for an RSF-4 zone district, no variance for the addition was necessary.

Chairman Dibble asked if legal access to the private lane had been resolved. Mr. Peterson said that the petitioner had pulled a building permit for the home addition and had filed an ingress/egress easement with Ms. Donovan to give him access from Lilac Lane to his southwest property line where the new garage would be located. Mr. Gartner had not yet pulled a building permit for the garage.

When asked if the ingress/egress easement had been recorded, Mr. Peterson confirmed that it had been.

Given Lilac Lane's new status as private property, in this area, Mr. Cox wondered what the City would do about that portion of the street from 1st Street to the petitioner's property. Mr. Peterson said that several options were available and staff had not heard from Ms. Donovan; it was unknown at this time which option would be selected. Staff recommended the Board formally vacate its original decision to deny the variance based on its failure to comply with front yard setback requirements. Mr. Shaver concurred that vacation of the original decision was the most appropriate course of action in the current situation.

**MOTION: (Mr. Williams) "Mr. Chairman, I move that we vacate our decision of November 12, 2003 regarding case #VAR-2003-213 as new information regarding the legal status of Lilac Lane has come to light, which has changed the classification of the property line from a front yard to a side yard for setback purposes."**

Mr. Cox 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 1:25 P.M.