

**GRAND JUNCTION BOARD OF APPEALS  
FEBRUARY 8, 2006 MINUTES  
12:05 p.m. to 12:45 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 Dr. Paul Dibble (Chairman), Mark Williams, Travis Cox, Patrick Carlow and Ken Sublett.

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

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

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

Other than the appellant and his representative, there were no interested citizens present during the course of the meeting.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the January 11, 2006 public meeting.

**MOTION: (Mr. Williams) "I move we approve the minutes."**

Mr. Carlow seconded the motion. A vote was called and the motion passed by a vote of 3-0, with Dr. Dibble and Mr. Sublett abstaining.

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

Dr. Dibble extended a welcome to the newest board member, Ken Sublett.

**III. FULL HEARING**

**MSC-2006-003 VARIANCE -- APPEAL OF DIRECTOR'S INTERPRETATION**

**A request for approval from the Board of Appeals to overturn the expansion criteria of the Zoning & Development Code.**

**Appellant: Robert Jones II for Jerry Carosella (owner)**

**Location: 2451 Highway 6 & 50**

**STAFF'S PRESENTATION**

Bob Blanchard said that at issue was his interpretation of Code criteria and a decision he'd made last December regarding the potential demolition and expansion of the subject property. He noted the site's location on a 2002 aerial photo map. Surrounding business uses were also noted. The site currently accommodated a commercial office use in conjunction with the display and sale of recreational vehicles. Within the C-2 zone, the use was allowed; however, the site itself was non-conforming because it did not meet the Code's bulk standards regarding landscaping requirements and possibly parking.

The appellant had proposed demolishing approximately 1,265 square feet of an existing 3,300 square-foot building, then constructing a 2,100 square-foot addition, resulting in a new overall building size of 4,143 square feet. Because of the site's non-conforming status, Code section 3.8.B.3.a. had been applied,

which stated, "Complete redevelopment or expansions which would result in a 35% or greater increase of the gross square footage of the existing structure(s) require the entire property to meet all of the landscaping and screening/buffering requirements." As the Code was written, when part of an existing building was demolished, it created a new existing building. The entire proposed expansion area of 2,100 square feet had been used to calculate the degree of the site's Code conformance. Since that calculation exceeded 35%, 100% conformance to existing Code criteria had been required. While the appellants did not disagree that the site was non-conforming, they felt that the calculation should be based on just that amount of area that exceeded the building's existing 3,300 square feet.

Board members would be making their decision in accordance with section 2.18 of the Zoning & Development Code. Any decision rendered should include findings and a rationale for the board's conclusions. Denial of the appeal request was recommended.

### **QUESTIONS**

Dr. Dibble asked for clarification of the Code's section regarding non-conforming uses. Mr. Blanchard said that the intent of that Code criteria was to address situations where, as non-conforming properties changed their use(s), expanded, or remodeled, that those sites were brought up to compliance with existing Code standards.

Dr. Dibble asked if a landscaping and parking plan would be incorporated into any site review plan submitted by the appellant. Mr. Blanchard referenced the Site Plan contained in board member packets and said that this represented the first time staff had seen any actual proposal.

Mr. Williams asked if the proposal would be subject to current Code requirements if the appeal were denied. Mr. Blanchard said that the remodel/expansion of the existing use was viewed as a new proposal, regardless. The only question was whether there would be a 100% adherence to landscaping requirements or if an incremental adherence percentage were appropriate.

Mr. Williams disclosed that he had worked previously for Mr. Carosella and greatly admired him. While not currently employed by the appellant, and while not having any financial interest in the outcome of the current request, he felt there might still be a perceived conflict of interest. When questioned further by Chairman Dibble and Ms. Kreiling, Mr. Williams felt that even though he may be influenced somewhat by his relationship to Mr. Carosella and his family, he felt he could consider the facts as presented and render an impartial decision based upon those facts. Mr. Williams understood that his decision could potentially impact all future requests of a similar nature. Ms. Kreiling concluded that no conflict of interest was present and that Mr. Williams could continue unless other board members felt uncomfortable. No dissention was expressed.

### **APPELLANT'S PRESENTATION**

Robert Jones, representing the appellant, reread Code section 3.8.B.3.a and felt that its verbiage, "Complete redevelopment or expansions which would result in a 35% or greater increase of the gross square footage of the *existing structure(s)*..." did not reference or pertain to the square footage of existing structure(s) after demolition; rather, that the Code's reference to *existing structure(s)* pertained to the structure(s) as it/they existed prior to demolition or expansion. The existing structure's area was currently 3,303 square feet. Following demolition and remodeling, the overall gain in area to the existing structure would be 835 square feet, or a 20% gross increase. Since that figure was well under the 35% threshold referenced by the Code, the appellant should not be bound to 100% conformance with existing landscaping/parking criteria. Had the project called for a simple addition with no demolition of any part of the existing structure, the appellant could have increased the building's overall area to 4,500 square feet and still not exceeded the Code's 35% expressed threshold.

### **QUESTIONS**

Chairman Dibble said that as interpreted by the appellant, if the existing building were torn down, or all but, say, 200 square feet were torn down, one might argue that the square footage of the building prior to demolition should serve as the basis for any new construction. Mr. Jones reiterated that the existing structure was in existence and was currently being utilized to conduct the appellant's business. The illustration was not applicable in the current instance since the 3,303 square-foot structure had been in existence at the time of application and was in existence today. In that illustration, he would have interpreted that the 35% threshold would have occurred if an addition of 70 square feet or more were added on to the newly created structure (200 x 35%). Mr. Jones felt that upholding the Director's interpretation would penalize businesses with existing buildings in the following ways: 1) if any demolition of an existing structure occurred, the building's overall square footage would be reduced, and 2) it would minimize the amount of future expansion area. It didn't make sense that the Code would allow an additional 1,100 square foot expansion (assuming no demolition of the existing structure) with no penalty when an 835 square-foot expansion would result in less overall square footage but was subject to 100% conformance with existing landscaping and parking criteria. Chairman Dibble felt that the Code's applicable criteria had intended to improve non-conforming sites' aesthetics and upgrade parking. Mr. Jones clarified that the appellant was not unwilling to install landscaping, merely that 100% conformance was excessive given their interpretation of the Code.

Jerry Carosella, appellant, said that the portion of the structure slated for demolition was an old garage/storage room. The new addition would be for a shop large enough to undertake onsite RV repairs. The existing garage was unattractive; the new addition would be aesthetically pleasing and would match the existing building. A new metal roof would be installed similar to that of nearby Wal-Mart.

### **PUBLIC COMMENTS**

There were no citizens present to offer public testimony.

### **DISCUSSION**

Mr. Cox noted that the current situation was not about landscaping; rather, the interpretation of the Code. He felt that the intent of the applicable Code section was to bring non-conforming uses into conformance if significant development occurred. And if part of an existing structure were demolished, the Code considered that it no longer existed. He supported staff's original interpretation and felt that denial of the appeal was warranted.

Mr. Carlow asked if the appellant could use the same argument for any future expansion request. Ms. Kreiling said that if the board agreed with the applicant's interpretation of the Code, within a 5-year redevelopment period, the total square footage would factor into the Code's compliance threshold.

Mr. Sublett expressed a concern that if staff's position were not upheld, the City could potentially face a situation where an entire structure could be demolished and rebuilt with no requirement that the site conform to existing Code criteria. Support of the appeal could potentially set a precedent. As such, Mr. Sublett expressed support for staff's interpretation.

Mr. Williams concurred with the appellant's position and did not feel that the existing structure was being expanded more than 35%. He felt that the Code's criterion constrained the use of property, and that the Code's verbiage be strictly construed under the law. The "plain" language used in the Code's criterion allowed the appellant to do what he asked to do, and he should be allowed to do it.

Chairman Dibble felt that construction began when demolition ended. The demolition of any part of an existing structure created a new basis for an existing structure, and the threshold of compliance for non-conforming sites was based on that new basis. He reiterated that the intent of the Code was to upgrade the appearance of a non-conforming site, and the added landscaping and/or parking would do just that. He supported the Director's interpretation of the Code and felt that the appeal should be denied.

**MOTION: (Mr. Cox) "Mr. Chairman, on item MSC-2006-003, I move that we overturn the Director's interpretation that the appropriate way to measure the amount of expansion for a structure on a non-conforming site is based on the size of the building after any demolition occurs."**

Mr. Sublett seconded the motion. A vote was called and the motion failed by a vote of 1-4, with all but Mr. Williams opposing.

With no further business to discuss, the meeting was adjourned at 12:45 p.m.