

GRAND JUNCTION BOARD OF APPEALS

February 14, 2007 MINUTES

12:05 p.m to 12:25 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 Dr. Paul Dibble (Chairman), Travis Cox, Patrick Carlow, Ken Sublett and Mark Williams.

In attendance, representing the Community Development Department, were Ivy Williams (Planning Services Supervisor) and Faye Hall (Associate Planner).

Jamie Kreiling, Assistant City Attorney, was also present. The minutes were recorded by Nishi Aragon and transcribed by Bobbie Paulson.

There were no citizens present.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of December 13, 2006. Mr. Dibble asked that the following corrections be made. On page 5, change the word "indulgence" to "due diligence". On page 7, last paragraph, change the word "remise" to "demise". On Page 8, change the word "transverses" to "incursion".

Mr. Cox also requested that the spelling of Mr. Kucel name be corrected from "Kvcel" to "Kucel" throughout the minutes.

The Board also asked staff to review which minutes have been approved to date. Chairman Dibble said that he didn't think the Board had approved the January 2007 meeting minutes.

MOTION: (Travis Cox) "Mr. Chairman, I move to approve the December 13, 2006 minutes with the corrections as noted."

Mr. Williams seconded the motion. A vote was called and the motion passed by a vote of 5-0.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-2006-295 VARIANCE – Deck Variance

Request approval of a Variance from the Code required setbacks for a 10 foot deck on .26 acre in a RSF-4 (Residential Single Family 4 u/a) zone district.

PETITIONER: Denny Behrens – Behrens Building, Inc.

LOCATION: 511 Kansas Avenue

STAFF PRESENTATION

Faye Hall gave a PowerPoint presentation on the variance request for 511 Kansas Avenue. Ms. Hall stated that the applicant is requesting to vary the rear yard setback to allow a 10 foot deck on the rear of the home. The setback requirement is 25 feet; therefore, the reduction that is requested would change the rear yard setback to 15 feet for purposes of the deck. Ms. Hall reviewed the variance criteria (Section 2.16.C.4 of the Zoning and Development Code) as follows:

a. **Hardship Unique to Property, Not Self-Inflicted.**

Staff's Interpretation: There are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not apply generally to the other land areas or uses within the same zone district, and such exceptional conditions or undue hardship was not created by the action or inaction of the applicant or owner of the property.

Applicant's Response: This lot has a very narrow building envelope and a drastic slope on the rear of the lot which constrains the living area that is buildable on this site. The existing location of Kansas Avenue and the Mesa County Public Site located directly behind this property did not allow for the development of this lot to be any deeper. The substantial slope on the rear of the lot constrains it even more and does not allow for a functional back yard. The addition of a 10 ft deck would allow for the occupants of the home to have patio furniture on the deck and use this area as additional living space and as a back yard. The fact that there is a wildlife corridor behind the home, with the Redlands Parkway below that, means that there is a substantial buffer between other homes across the Redlands Parkway. The deck would also allow for the residents to sit outside and view and enjoy the wildlife that uses that corridor to get to the Colorado River located to the North.

b. **Special Privilege.**

Staff's Interpretation: The variance shall not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district.

Applicant's Response: Our Zoning and Development Code allows for unenclosed, uncovered decks to encroach into the setback by 6 ft. The fact that this particular lot has such a large slope in the back yard means that in order for the deck to be on the main level of the home, it is actually considered a second story deck, which negates the encroachment allotment. Therefore, while most other homes built in the same zone district could have a deck into the required setback, because this property slopes off in the rear does not allow them that same privilege. The request for a 10 ft deck would allow the residents to have patio furniture so that they can use this as livable area and to enjoy the wildlife that passes through. This would also allow the residents to utilize some of their backyard and make it functional, as without the deck the back yard is practically useless. Therefore, granting the variance would allow the applicant to use this property to the fullest as other people in the same zone district can.

c. **Literal Interpretation.**

Staff's Interpretation: The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant.

Applicant's Response: If the variance for the 10 ft deck were not approved it would cause hardship on the applicant due to the fact that the back yard would practically be useless and would be a major deterrence to the salability of the home. By not granting the variance the applicant would be deprived of rights commonly enjoyed by other properties in the same zone district, in this case to have a useable outdoor area adjacent to the Open Space.

d. **Reasonable Use.**

Staff's Interpretation: The applicant and the owner of the property cannot derive a reasonable use of the property without the requested variance.

Applicant's Response: The applicant would not have reasonable use of the back yard without the deck because of the topography.

e. **Minimum Necessary.**

Staff's Interpretation: The variance is the minimum necessary to make possible the reasonable use of land or structures.

Applicant's Response: The request for a 10 ft deck would allow for the placement of patio tables and chairs and for people to move safely around them. The 10 ft deck would also make good use of the back yard which without the deck would practically be useless due to the drastic slopes.

f. **Compatible with Adjacent Properties.**

Staff's Interpretation: The variance will not be injurious to, or reduce the value of, the adjacent properties or improvements or be detrimental to the public health, safety or welfare.

Applicant's Response: The requested 10 foot deck would not negatively impact adjacent properties. Rear Yard setbacks are to protect the privacy of adjoining properties; however, in this case the adjoining property is heavily vegetated open space adjacent to the Redlands Parkway. The Bluffs West Subdivision HOA, located to the North East of the property, has included a letter to which they state that the deck extension poses no intrusion or threat to any other entity and will not be noticeable and hardly visible to anyone. That letter is attached to the staff report.

g. **Conformance with the Purposes of this Code.**

Staff's Interpretation: The granting of a variance shall not conflict with the purposes and intents expressed or implied in this Code.

Applicant's Response: The granting of this variance will not conflict with the purposes and intents expressed by the Code as this site has constraints that other lots in the same zone district do not have to deal with. The fact that this lot is narrow and has drastic slopes is the reason for the requested variance so that

the back yard can be utilized as is intended with the rear setback of 25 feet. The additional open space achieves more than the required setback for separation.

h. Conformance with the Goals of the Growth Plan.

Staff's Interpretation: The granting of a variance shall not conflict with the goals and principles in the City's Growth Plan.

Applicant's Response: The granting of this variance does not conflict with the goals and principles in the City's Growth Plan. The parcel was developed under the Residential Medium Low 2-4 du/ac, and is very narrow due to the existing location of Kansas Avenue and Mesa County Public Open Space. Also, the drastic slope on the rear of the lot does not allow the back yard to be fully utilized. The desire to build a nice home that enhances the value and quality of the Kansas Bluff Subdivision does not detract from the beauty of the Redlands and the Mesa County Public Open Space.

Ms. Hall presented photos of the subject property for the Board's review. The photos included the front of the lot, the side of the lot looking from the South, the rear yard which shows the vegetated area, a retaining wall that was approved along with the permit for the construction of the home and the rear property pin. A site plan of the home, without a deck, has been submitted to the Planning Division which has been approved and is currently under construction. Ms. Hall indicated the approximate location of the proposed deck which is proposed to be constructed off the main level on the back of the home. The pictures show that there is quite a slope on the back half of the property. Ms. Hall presented additional photos of the back of the subject property which shows the open space, owned by Mesa County. The open space is approximately 80 feet wide and the Redlands Parkway is approximately 165 feet wide. Staff feels that the open space, the parkway and the heavy vegetation provide a good buffer. Ms. Hall added that it would probably be difficult to see the deck, once it is built, from the Parkway. Ms. Hall presented additional photos of surrounding homes that were built with decks along the Parkway. Ms. Hall felt that this proposed deck and home would be compatible with other homes in the area.

Ms. Hall stated that after reviewing the variance application for the deck, staff finds that the requested variance is consistent with the Growth Plan and the review criteria in Section 2.16.C.4 of the Zoning and Development Code have been met and the requested variance would result in a reduced rear yard setback to 15 feet. Ms. Hall recommended that the Zoning Board of Appeals approve the requested variance to Table 3.2 of the Zoning and Development Code with the findings and conclusions listed above.

QUESTIONS

Chairman Dibble asked if the proposed deck would encroach 10 feet into the setback?

Ms. Hall replied affirmatively. She stated that the rear yard setback is 25 feet and the applicant is asking that it be reduced to 15 feet.

Chairman Dibble asked if the deck could encroach six foot into the setback if it were built on the main level?

Ms. Hall stated that the Code does allow an open deck on the main level to encroach six feet into the rear yard setback but that does not apply to this property because even

though the deck is being proposed on the main level, the appearance from the rear is that it is the second level so the applicant was told he needed to apply for a variance.

Pat Carlow asked if the setback is measured straight out from the structure or along the slope?

Ms. Hall replied that it's measured as a straight line regardless if there is a slope or not.

Ken Sublett asked when the applicant became aware that there was an issue with the required setback?

Ms. Hall replied that the applicant submitted a site plan which showed the home with a deck. Staff discovered the encroachment when the plan was reviewed. A planning clearance was issued only for the home and the applicant was told he would need a variance approval to allow the deck. The applicant proceeded to get his building permit for the house only and submitted the variance application for the deck.

Travis Cox asked Ms. Kreiling if the recommended motion was clear enough that the rear yard setback was being reduced to 15 feet just for the deck and not some other future addition.

Ms. Kreiling stated that the findings of facts and conclusions and the board's discussion indicate that the setback reduction is for the deck but suggested that the Board remove "to 15 feet" to make sure that the intent was clear.

PETITIONER'S PRESENTATION

The applicant declined to comment.

The public hearing was closed.

DISCUSSION

Mr. Cox said he felt that this was a reasonable use but felt that the lot should not have been allowed when the subdivision was platted.

Mr. Sublett stated that the letter attached to the staff report, stating that the home would be more saleable with a deck, should not be considered by the Board when making their decision.

MOTION: (Travis Cox) "Mr. Chairman, on variance request #VAR-2006-295, I move we approve the request for a variance to Table 3.2 of the Zoning and Development Code reducing the rear yard setback for the sole purpose of allowing a 10 foot deck on the rear of the home in an RSF-4 zone district, finding the request to be consistent with the Growth Plan and the review criteria of Section 2.16.C.4 of the Zoning and Development Code."

Mr. Sublett seconded the motion and the motion passed by a vote of 5-0.

The meeting was adjourned at 12:25 p.m.