

**GRAND JUNCTION BOARD OF APPEALS  
February 13, 2008  
12:00 p.m. to 12:47 p.m.**

The regularly scheduled Board of Appeals meeting was called to order at 12:00 p.m. by Vice-Chairman Mark Williams. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Mark Williams (Vice-Chairman), Travis Cox, Patrick Carlow and Ken Sublett. Roland Cole (Chairman) was absent.

In attendance, representing the Public Works and Planning Department, were Ivy Williams (Development Services Supervisor) and Faye Hall (Associate Planner). Jamie Kreiling (Assistant City Attorney) was also present. The minutes were recorded and transcribed by Bobbie Paulson.

One citizen and the applicant were present.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of April 11, 2007 hearing.

**MOTION: (Travis Cox) "I move to approve the minutes."**

The motion was seconded by Pat Carlow. A vote was called and the motion passed by a vote of 4-0.

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

There were no announcements, presentations and/or visitors.

**III. FULL HEARING**

**VAR-2007-369 VARIANCE – 887 Bunting Variance**  
**Request approval for a Variance from the required side yard setback to allow for the enclosure of an existing carport on 0.22 acres in an R-8 (Residential 8 du/ac) zone district.**  
**PETITIONER: Kim Marie Malecki**  
**LOCATION: 887 Bunting Avenue**  
**CITY STAFF: Faye Hall, Associate Planner**

**STAFF'S PRESENTATION**

Faye Hall, Public Works & Planning Department, gave a PowerPoint presentation of the variance request. Ms. Hall stated that the applicant is requesting approval of a variance to the required side yard setback (Table 3.2) of the Zoning and Development Code to allow an existing carport, which is located 2.9 feet from the side yard property line, to be enclosed and turned into a master bedroom.

The property located at 887 Bunting Avenue has an existing home that was built in 1955, when no zoning or setback requirements were in effect. The existing home includes a carport that is 2.9 feet from the west property line with an existing footer, stem wall, structural columns and roof structure. This carport is part of the original residence and also includes a kitchen wall, located directly behind the carport, also 2.9 feet from the property line. The current owner purchased the house, which has only one bathroom and no master bedroom, in November of 2007 hoping to convert the carport into a master bedroom and build a two car garage on the east side of the property. A six foot wooden fence runs down the property line on the west side of the house and the property to the west has a parking area and carport located adjacent to the applicant's carport. The applicant would like to use the existing stem wall for efficiency and to keep the line of the west side of the home even.

If the variance is granted, the Mesa County Building Department will require a one-hour fire wall due to the proximity of the building to the property line.

The future Land use of this property is Residential Medium (4-8 du/ac). The proposed variance is consistent with this designation. The following goals and policies deal with compatibility with neighborhoods and to maintain their characteristics while protecting neighbors from adverse effects of development.

Requests for a variance from the bulk, performance, use-specific and other standards of the Zoning and Development Code will only be approved when the applicant establishes that all of the following criteria are met:

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

**Applicant's response:** The house was built in 1955 with a carport under existing roof and built 2.9 feet from the property line. There is an existing footer, stem wall and structural uprights that would be used for the west wall. It would be a hardship to have to rebuild the footer, stem wall and structural upright. Beyond the carport is nine feet of wall that is inside the existing structure that would be utilized for the master bedroom.

**Staff response:** The applicant purchased a home in November 2007 that does not suit the size of the family for whom it was intended. This may be a hardship, but it is entirely self-imposed.

**Special Privilege**

**Applicant's response:** I do not believe that granting this variance would be showing special privilege because directly west of 887 Bunting there is a three sided carport that the east wall is directly on the property line. This structure is not only directly on the property, but there is no type of firewall material in place.

**Staff response:** The property directly next door has a carport on the property line. In this older area of town it is common to see structures on or near to the property line

because zoning and setback requirements were not imposed until the early 1970's. Therefore, this property would not be granted a special privilege.

**Literal Interpretation**

**Applicant's response:** We are asking to turn our existing carport into a master bedroom and bath. Per our drawings it would be making our home more suitable for our family. The home at present only has one bath and no type of master bedroom.

**Staff response:** Although, other buildings in the neighborhood do not meet setbacks, the applicant is not deprived of rights commonly enjoyed by other property owners in the zone district, all of who would face the same challenge of meeting current Code requirements if they chose to renovate.

**Reasonable Use**

**Applicant's response:** To place the 5 feet setback from property line would be making the room upon completion only 9.75 feet wide. This would be unusual sizing for a bedroom. Typically, a bedroom is 12 to 14 feet wide. The length of the room would be approximately 18 feet and with a variance granted the room would be 12 feet to 18 feet.

**Staff response:** The applicant can make reasonable use of the property without the variance. The applicant could make the desired renovations with a jog in the west face of the structure, at most imposing greater cost and less efficiency in the design and construction.

**Minimum Necessary**

**Applicant's response:** To impose the 5 foot setback from the property line would not be changing access as that the footer, stem and structural uprights would not be removed. Allowing the variance would make the room more suitable for use and allow the structure to flow more easily to the eye. Imposing the 5 foot setback would make the appearance of the property awkward and render the room awkward.

**Staff response:** It is possible to renovate the carport into a reasonably functional bedroom so as to meet the required 5 foot setback.

**Compatible with Adjacent Properties**

**Applicant's response:** In no way would this affect adjacent properties in a negative manner. The impact of allowing this variance could only be a positive thing for all properties adjacent.

**Staff response:** The existing structure is only 2.9 feet from the west property line and has been that way since it was built in 1955. The adjacent property to the west has a parking and carport area directly adjacent to area in question. Allowing the proposed variance would not change the building footprint. No harm to adjacent properties would occur that would not be mitigated by the firewall requirement.

**Conformance with the Purposes of this Code**

**Applicant's response:** The use of the existing footer, stem wall and structural supports would not conflict with the Code as the property to the west is divided by a driveway. We are going to be bricking the addition with the same material that exists presently on the exterior of the home.

**Staff response:** The main intent of the required 5 foot setback is the physical separation of residences. Currently, the structure is 2.9 feet from the property line as opposed to the required 5 feet. There is already an existing 6 foot wooden fence that separates the property and the adjacent property has a driveway and carport on this side of their home. Therefore, I believe that the intent of the physical separation is being met. Furthermore, there will be no invasion of privacy as this proposed bedroom will also have no window on the west side of the home due to the firewall requirement which the applicant has agreed to meet.

**Conformance with the Growth Plan**

**Applicant's response:** By granting this variance we do not feel that this would be in conflict with the City's Growth Plan.

**Staff response:** The following goals and policies deal with compatibility with neighborhoods and to maintain their characteristics while protecting neighbors from adverse effects of development. I believe that this variance does not conflict with the goals and policies of the Growth Plan (Policies 9, 9.2, 10, 10.3, 10.4, 11, 11.1).

**Staff Conclusion**

After reviewing the 887 Bunting Variance application, VAR-2007-369 for a variance to Table 3.2 of the Zoning and Development Code, staff makes the following findings of fact and conclusions:

1. The requested variance is consistent with the Growth Plan.
2. The application for a variance from required setbacks must meet all criteria contained in Section 2.16.C.4 of the Zoning and Development Code.
3. The application does not meet all criteria contained in Section 2.16.C.4 of the Zoning and Development Code. Specifically, the application appears to meet Criteria B, F, G, and H, but does not meet Criteria A, C, D, and E.

Therefore staff recommends that the Zoning Board of Appeals deny the requested variance to Table 3.2 of the Zoning and Development Code, VAR-2007-369 with the findings and conclusions listed above.

Ms. Hall presented photographs of the subject property to the Board members.

**PETITIONER'S PRESENTATION**

Sandra Norris stated that the home was purchased with the intention of adding another bedroom. In looking at the existing floor plan, plumbing, closet space, etc. it made sense to place a master bedroom on the west side of the existing structure. If this room were built to the existing setback, it would 9 feet wide. With the variance, the room would be approx 11 feet x 15 feet. There are also plans to build a 2-car garage on the east side of the home facing Cannell Avenue. The applicant showed the Board members pictures of the existing structure and pointed out the existing carport which is proposed to be the new master bedroom. She added that the entire structure will be built to code, including firewalls, etc.

**QUESTIONS**

Ken Sublett asked what the current square footage of the home was. Ms. Norris replied that the existing structure is approximately 1400 square feet.

Ken Sublett asked how close the northwest corner would be to the property line if the variance is granted. Ms. Norris replied that it would be 2 feet 10 inches from property line to the closest point of the house.

Travis Cox asked if the property line had been verified. Ms. Norris replied affirmatively, that it had been surveyed.

Pat Carlow felt that given the evidence presented, he would grant this variance. He felt it would be an upgrade and improvement to the neighborhood and the carport is already there.

Travis Cox asked the applicant if they considered closing off the den and putting a closet in there. Ms. Norris said that the room would be too small to be of any use. Mr. Cox asked Ms. Norris if she is the owner. She replied no she was not the owner herself but she would be residing in the residence with the owner.

Ms. Norris presented additional elevation drawings of the proposed addition for the Board to review.

Mr. Williams read aloud, on page 6 of the staff report, item number 3 it reads that the application does not meet all the criteria. The report reads that it meets criteria B, F, G and H but does not meet Criteria A, C, D, E. He asked the applicant if they would address the Criteria A, C, D, and E and state why they felt it were being met.

Ms. Norris stated that she had written responses to each of the criteria that were included in the staff report. Regarding Criteria A, Hardship Unique to the Property, when the home was purchased it was two bedrooms one bath. The owner's plans are to add another bedroom and bath and make it a master bedroom. It was determined that the most cost effective way to do this was to wall in the existing carport. It would be cost-prohibitive to build the room on the east side because of the existing plumbing, walls, closet space etc.

Travis Cox stated that a stem wall and the roof for the carport are already there; it would be just a matter of enclosing the area for a third bedroom. The difficult part, he stated, was that he felt it would be a special privilege. He felt that this variance does not meet Criteria B, Special privilege. He added that there are many other carports on or close to the property line along Bunting Avenue. He was concerned that approving this variance might set a precedent. Setbacks exist to keep structures from being built right up against another structure. Aesthetically, the addition would look great and it makes sense with the floor plan to put the bedroom on the west end but was having a hard time seeing that it meets most of the criterion. He asked the applicant to help justify Criteria B.

Ms. Norris stated that if they build the addition at the required setback, the room would only be 9 feet wide and would not serve its purpose. The stem wall is already there and it would be the most feasible spot for a master bedroom. The house will be more functional and marketable with 3 bedrooms, 2 bathrooms.

Pat Carlow stated that if the applicant had to move the stem wall and the roof line that it would take some major renovation. Ms. Norris agreed.

Mark Williams asked the applicant if she intended to conform to the Codes regarding a firewall on the west wall. Ms. Norris replied that it will be a firewall and that all the exterior walls will be bricked to match the existing home. Mr. Williams asked if there would be any windows on the west side. Ms. Norris replied that there would not be.

### **PUBLIC COMMENT**

Karen Kelsey (address unknown) stated that she was in favor of this variance. She said she has been assisting the applicant with the construction. The house will be beautiful and spacious, up-to-date and up-to-code. She stated that it would have a positive impact on the neighborhood.

### **DISCUSSION**

Pat Carlow said that he didn't think it would change the look that much. The carport is already there; the change will be that it is enclosed. He felt that it would be an improvement to have it enclosed.

Ken Sublett agreed that this would be an improvement to the home and for the neighborhood. He stated that if the Board had to make all their decisions based on a check list then they might as well be replaced by a silicon chip. If the Board always goes by the check list, then there will be times that it is the wrong decision. In this situation, it seems that it would improve the home and the neighborhood and therefore stated that he was inclined to vote for this.

Travis Cox stated that the addition on the west end makes sense. He stated that the criterion seems to be almost circular and defeating in itself. A variance by definition is a special privilege. Mr. Cox asked the Assistant City Attorney how the Board could approve a variance if it did not meet the entire criterion.

Jamie Beard, Assistant City Attorney, stated that the Board's decision would stand unless it was appealed to overturn your decision. If the Board is making their decision based on something other than the criteria, then it is allowing the opportunity for a person or entity to choose to overrule the decision. Keep in mind, that when the Board grants a variance, it stays with the land and basically is there forever.

Travis Cox asked if the City or the Board would risk setting a precedent if they approve a variance that doesn't meet the criterion.

Ms. Beard stated that each variance should be granted individually on its own merits; but added that if the Board ignores the criteria and approves a variance anyway, the value and integrity of the Code comes into question.

Mark Williams stated that he felt this request does meet all of the criteria. He said the letter dated February 13, 2008 and the testimony at this hearing has been helpful. He said that based on the testimony from the applicant that they considered other options for the addition but ran into significant difficulties that Criteria A had been met. Criteria C had been met because the literal interpretation would impact the value of this property. Criteria D had also been met as this is a reasonable use given the circumstances and Criteria E had been met because this is the minimum necessary for them to utilize the space in a meaningful way. He added that if the Board denied the variance, he suspected that they would not build the addition. Based on these statements, the variance meets all of the criteria.

Ken Sublett agreed with Mr. Williams and said that he felt one could reasonably say they do meet these criteria. The criteria are not absolute.

**MOTION: (Ken Sublett) "Mr. Chairman, on variance request, #VAR-2007-369, I move we approve the request for a variance to Table 3.2 of the Zoning and Development Code, to allow the west side yard setback to be 2.9 feet from the property line located at 887 Bunting Avenue in an R-8 zone district finding the request to be consistent with the Growth Plan and that the review criteria of Section 2.16.C.4 of the Zoning and Development Code have all been met."**

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

With no further business to discuss, the meeting was adjourned at 12:47 PM.