

To access the Agenda and Backup Materials electronically, go to [www.gjcity.org](http://www.gjcity.org)



**GRAND JUNCTION ZONING BOARD OF APPEALS AGENDA  
WEDNESDAY, JUNE 6, 2018  
250 NORTH 5<sup>TH</sup> STREET**

**11:30 A.M.—PRE-MEETING—COMMUNITY DEVELOPMENT CONFERENCE ROOM  
12:00 P.M.—REGULAR MEETING—CITY HALL AUDITORIUM**

**Call to Order – 12:00 P.M.**

**1. Minutes of Previous Meetings**

*Action: Approve October 25, 2017 minutes*

[Attach 1](#)

**\*\*\* INDIVIDUAL CONSIDERATION \*\*\***

**2. Billywags Variance – Setback/Lot Size Variance**

[Attach 2](#)

[FILE # VAR-2018-195]

Consider a request for variances for the minimum lot size and rear yard setback for a new lot on 0.49 ac in an R-4 (Residential 4 du/ac) zone district.

*Action: Approve, Approve with Conditions or Deny*

Applicant: William Wagner  
Location: 300 Cedar Court  
Staff Presentation: Kristen Ashbeck

**Other Business**  
**Adjournment**

## Attach 1

### GRAND JUNCTION ZONING BOARD OF APPEALS October 25, 2017 MINUTES 12:00 p.m. to 1:20 p.m.

The meeting of the Board of Appeals was called to order at 12:00 PM by Chairman Bill Wade. The hearing was held in the City Hall Auditorium located at 250 N. 5th Street, Grand Junction, Colorado.

In attendance, representing the Zoning Board of Appeals, were Bill Wade (Chairman), George Gatseos, and Aaron Miller.

In attendance, representing the Community Development Department – Tamra Allen, (Community Development Director) and Kathy Portner, (Community Services Manager). The minutes were recorded by Kathy Portner and transcribed by Lydia Reynolds.

Also present was Jamie Beard (Assistant City Attorney).

3 citizens were in attendance during the hearing.

#### 1. Minutes of Previous Meetings

*Action: None. Minutes from previous meeting have already been approved.*

#### 2. Morgner Variance – Setback Variance

FILE # VAR-2017-463

Request a setback variance for an accessory structure to encroach 1.4 feet into the side yard setback and 3.4 feet into the rear yard setback.

*Action: Approve, Approve with Conditions or Deny*

Applicant: Karl and Susan Morgner  
Location: 664 High Sierra Lane  
Staff Presentation: Kathy Portner

#### Staff Presentation

Kathy Portner, Community Services Manager, began her PowerPoint presentation with a slide of the location of the property and noted it is located at 664 High Sierra Lane within the Copper Creek subdivision and contains 5,750 square feet. The property is zoned R-8 (Residential, 8 du/ac) which requires accessory structure setbacks of 3 feet from the side property line and 5 feet from the rear property line.

Ms. Portner displayed a slide that illustrated the placement of the structure on the lot and a photo of the structure. Ms. Portner explained that the applicant placed a 6' x 12' storage shed with a 6' x 8' covered porch in the northeast corner of the property, approximately 1.6' from the property lines, resulting in an encroachment of

approximately 1.4 feet into the required 3-foot side setback (north property line) and 3.4 feet into the required 5-foot rear property line (east property line).

The applicant indicates that other parts of the lot were considered for the shed but were ruled out due to existing easements and HOA requirements that accessory structures not be visible from the street.

Ms. Portner presented a slide that listed the Variance Criteria that must be met listed below;

- Hardship Unique to Property, Not Self-Inflicted
- Special Privilege
- Literal Interpretation
- Reasonable Use
- Minimum Necessary
- Conformance with Purposes of Code
- Conformance with Comprehensive Plan

Ms. Portner explained that pursuant to Section 21.02.200 of the Zoning and Development Code, a variance may be granted only if the applicant establishes that strict adherence to the code will result in practical difficulties or unnecessary hardships because of site characteristics that are not applicable to most properties in the same zoning district. Ms. Portner stated that The Board must find that all of the above criteria have been met to grant a variance.

Ms. Portner displayed a slide with an aerial view of the other houses on the block and explained and noted the following criteria “***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***”.

The applicant cited unique features of the lot being its location on a corner and that the HOA would not allow an accessory structure to be visible from the street and that there is a 14’ multi-purpose easement along Waite Ave., further restricting the placement of a structure. Ms. Portner pointed out that the condition is not unique to this property and is in fact shared by all the neighboring properties adjacent to Waite Ave. therefore, staff finds that this criterion has not been met.

The next slide showed the Special Privilege and Literal Interpretation criteria as follows;

- *The variance shall not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district;*
- *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;*

Ms. Portner added that the applicant states that other lots in the R-8 zone district have sheds and that they should also be able to enjoy the same privilege. However, under City regulations these sheds are required to meet setbacks or have been erected without permits.

Ms. Portner went on to say that allowing one property owner to place a shed within required setbacks would confer a special privilege and staff has found that the applicant would not be deprived of the rights commonly enjoyed by others as all property owners are subject to the same setbacks within this zone district; therefore, staff finds these criteria have not been met.

The next slide Ms. Portner displayed was the “Reasonable Use” and “Minimum Necessary” criteria as follows;

- *The applicant and the owner of the property cannot drive a reasonable use of the property without the requested variance;*
- *The variance is the minimum necessary to make possible the reasonable use of land or structures;*

Ms. Portner explained that the Code allows for the placement of accessory structures, such as garages and shed, provided it can meet the setback requirements. Staff finds that the reasonable use of the property will continue without the requested variance; therefore, these criteria have not been met.

The next slide displayed was the “Conformance with Purposes of the Code and Comprehensive Plan criteria as follows;

- *The granting of a variance shall not conflict with the purposes and intents expressed or implied in this code;*

Ms. Portner stated that staff finds that the requested variance conflicts with section 21.04.040 of the Code’s stated provisions that accessory uses and structures are to provide residents with the opportunity to use their property to enhance or fulfill personal objectives so long as the use of the property is not incompatible with this code, which allows for accessory structures as long as they meet setbacks. Therefore, this criterion has not been met.

- *The granting of a variance shall not conflict with the goals and principles in the City’s Comprehensive Plan.*

Ms. Portner pointed out that the Comprehensive Plan does not explicitly address placement of accessory structures, therefore staff finds that there is no apparent conflict between the requested variance and the goals and principles of the Comprehensive Plan.

**Staff recommended denial of the proposed amendment based on the following findings:**

Ms. Portner stated that after reviewing a request for a variance to the accessory structure setback requirements in an R-8 zone District, to allow an encroachment of 1.4 feet into the side yard and an encroachment of 3.4 feet into the rear setback, staff finds the variance criteria have not been met, specifically A-F, and, therefore, recommends denial of the request.

### **Petitioner's Presentation**

Karl Morgner, 664 High Sierra Lane stated that he and his wife moved to the area about a year ago and are semi-retired. Mr. Morgner began his presentation referencing the quality of life that is emphasized in the Comprehensive Plan. Mr. Morgner stated that the home he purchased is 1,651 square feet and the shed they installed was to provide needed storage space as they were downsizing.

Mr. Morgner explained that he mistakenly got on Mesa County's Building Department's website and determined that the size shed does not need a permit. Mr. Morgner added that the website did say that the accessory structure would need a three-foot setback from property lines. Mr. Morgner stated that he then went to his neighbors and the HOA and received an ok from both. The shed was built on site and cost \$4,000. The day after the shed was built, the City of Grand Junction's Code Enforcement Officer came to his door and stated that they needed a Planning Clearance for the structure.

Mr. Morgner stated that he went to the Planning Office and met with Ms. Portner and applied for a Planning Clearance. When the Planning Clearance was denied, he then filed for a variance.

Mr. Morgner referenced the following statement from the staff report; "***a variance may be granted only if the Applicant establishes that strict adherence to the code will result in practical difficulties or unnecessary hardships because of site characteristics that are not applicable to most properties in the same zoning district.***" Mr. Morgner felt that his property, being a corner lot with different setbacks, is not like "most properties" and it presents a hardship to be able to have enough room for a shed. Mr. Morgner added that the City has granted approximately 200 permits for accessory structures in the past two years.

Mr. Morgner addressed the "***hardship unique to property, not self-inflicted***" criteria in the staff report and stated that there are 7,217 parcels zoned R-8 in the City and there are 10 lots like his that are "corner lots" in his neighborhood which is only .06% of all R-8 lots in the City. Mr. Morgner feels that his lot should be considered "unique" and therefore qualify for the variance.

Mr. Morgner referenced the following criteria for variance from the staff report "***Special Privilege. The variance shall not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district;***" and stated that

the variance would not give him “special privilege” but would make him equal to the other 7,000+ parcels in R-8 zone district that are able to put up sheds.

Mr. Morgner addressed the following criteria for variance from the staff report; “***Literal 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;*** and stated that as he had mentioned in the beginning of his presentation, this mistake was made out of ignorance and not impunity.

Mr. Morgner referenced the following criteria for variance from the staff report; “***Reasonable Use. The applicant and the owner of the property cannot drive a reasonable use of the property without the requested variance***” and emphasized that having a shed is a reasonable use of his property. Mr. Morgner reiterated that there are 200 other properties that were able to build sheds in the past two years.

In conclusion, Mr. Morgner stated that he is in disagreement with the staff report, feels his property is unique and he would not be getting any special privilege. Mr. Morgner suggested that as a possible compromise, he may be able to move the shed so that it meets the 3-foot side setback to be in conformance with code and 3 feet from the rear property line so that it is only encroaching 2 feet into the rear setback. Mr. Morgner urged the Board to look at the human element of this application and how it affects a citizen of the City.

### **Questions for Applicant**

Referring to a letter Mr. Morgner had sent to staff, Board Member Gatseos asked for clarification about the HOA and the side yard restriction. Mr. Morgner stated that the HOA covenants state that the accessory structure cannot be seen from the street. In addition, the City would not allow a shed in the side yard of a corner lot.

Board Member Gatseos noted that in the minutes from the neighborhood meeting, a citizen had asked when the City was going to correct their website. Board Member Gatseos inquired if the citizen was mistakenly thinking it was the City’s website when it was the County’s website that Mr. Morgner had been researching. Mr. Morgner affirmed that it was the County’s website.

Board Member Miller asked for clarification of the County’s setbacks. Ms. Portner stated that she does not know the setback for the comparable zone in the County but that they do not require building permits for accessory structures under 200 square feet. Ms. Portner explained that the City contracts with the County to do building permits/inspections, but a resident of Grand Junction would need to get a Planning Clearance from the City first.

Chairman Wade asked Mr. Morgner if the HOA had inquired about him getting a City permit when he was getting their approval for the structure. Mr. Morgner stated they did

not mention it. Ms. Morgner added that the only requirements that the HOA addressed were that the color, structure and shingles matched the house. Mr. Morgner mentioned that the application was sent to the Architectural Control Committee and they approved it as well.

Chairman Wade noted that Mr. Morgner had stated that he could possibly move the shed a little and asked how he would accomplish that. Mr. Morgner stated that he only has 10 feet of yard and the structure is 6 feet wide, however the roof line would be an issue.

### **Public Comments**

Roger Fulks, 664 Tabor Ave., stated that the lives to the west of the property and had asked Mr. Morgner if all the rules were followed when they put up the structure and was told they were. Mr. Fulks added that it is an agreeable structure, not an eyesore and fits in well with the area. Mr. Fulks stated that he is support of the variance.

Harold Berry, 2494 Waite Ave., thanked the Board for hearing the item and stated that he feels the structure fits in well with the area. Mr. Berry called attention to the fact that Mr. Morgner tried to comply with the regulations. Mr. Berry noted that it cost \$4,000 and is more than a shed, it is a nice looking structure. Chairman Wade added that he drove by it that morning and concurred that it was a nice looking structure.

Mr. Berry explained that the neighborhood has a community garden and that the homeowners take good care of their properties and abide by the HOA rules. Mr. Berry stated that there are other areas of town where properties have junk cars and homemade sheds up to the property lines. Mr. Berry stated that he does not object to the structure and he doesn't believe the neighbors do either.

### **Board Member Discussion**

Board Member Gatseos empathizes with the petitioner in that he too had to downsize and needed more storage. Board Member Gatseos stated that he read the staff report, and reviewed the criteria for evaluation. Board Member Gatseos feels that there is not a hardship as defined by the criteria and that the hardship is self-inflicted.

Board Member Gatseos felt the property can still be reasonably used, with or without the shed and is in agreement with the staff report.

Board Member Miller expressed empathy for Mr. Morgner's situation, however his duty is to interpret compliance with the code and he too is in favor of the staff report.

Chairman Wade stated that the shed was nice and fits in the neighborhood however they are tasked with interpreting the code. Chairman Wade added that it is unfortunate that the HOA did not encourage him to check with the City first. Chairman Wade stated

that he does not believe the request for the variance meets all the necessary criteria and he is in agreement with the staff report.

Board Member Gatseos added that he appreciates that the neighbors are in support of the variance, but he has to consider all of the 7,000+ parcels that are zoned R-8 following the same rules.

Chairman Wade mentioned that someone else could move in and not feel the same way as the current neighbors feel.

**MOTION:** (Board Member Gatseos) “Mr. Chairman, on the request for a setback variance, VAR-2017-463, I move to deny the request with the findings of fact as included as letter A through F in the staff report.”

Board Member Miller seconded the motion. A vote was called and the motion passed unanimously by a vote of 3-0.

Chairman Wade called for a five-minute break.

**3. Grand Junction 1st Church of the Nazarene Variance – Sign Regulation Variance** [FILE # VAR-2017-482]

Request for a sign variance for 1) one 48 square foot monument sign that will exceed maximum sign area by 24 square feet, and 2) a digital message board, which is not allowed in a residential zone district.

*Action: Approve, Approve with Conditions or Deny*

Applicant: First Church of the Nazarene of Grand Junction – Larry Chovancek  
Location: 2802 Patterson Road  
Staff Presentation: Kathy Portner

**Staff Presentation**

Ms. Portner stated that this request is for a sign variance to allow a 48 square foot monument sign with a digital message board.

Ms. Portner started her PowerPoint presentation with a slide of the location map and stated that the applicant is the 1<sup>st</sup> Church of the Nazarene, located at 2802 Patterson Road. The property is located at the northeast corner of Patterson Road and 28 Road and is zoned R-4 (Residential, 4 du/ac) which allows for these types of civic uses. There are residential uses to the north, west and south of the property. The property to the east includes professional offices on the corner of Patterson and 28 ¼ Road, as well as multi-family development.

The next slide was a depiction of the proposed sign. Ms. Portner explained that the proposed sign would be 48 sf, advertising the Church and Day Care and would include



a digital display with varying messages. The sign regulations currently allow for one sign per street frontage, not to exceed 24 sf. Only indirect or internal illumination is allowed for letter faces and/or logos in a residential zone; digital or electronic display faces are not allowed.

Ms. Portner's next slide displayed the variance criteria and explained that pursuant to Section 21.02.200(c)(2) of the Zoning and Development Code, a variance may be granted from the provisions or requirements of the sign regulations only if the applicant establishes that all of the following criteria are satisfied:

1. Undue and Unnecessary Hardship—unique or unusual conditions specific to property.
2. Not Contrary to Property Values in vicinity.
3. Hardship Unique to Property, Not Self-Imposed.
4. Conformance with Character of Area, Corridor Plans—not contrary to moderating size, number and obtrusive placement of signs and reduction of clutter.

Ms. Portner explained that the first criteria is the ***“literal interpretation and strict applications of the sign regulations would cause undue and unnecessary hardship to the sign owner because of unique or unusual conditions pertaining to the specific building or property in question.”***

Currently the property has a 24 square foot internally illuminated sign along the Patterson Road frontage and that is the only sign on the property has been supporting the use for many years. There are no unique features or conditions of the property that are different from other properties in this section of the corridor, therefore staff finds that the literal interpretation and strict application of the sign regulations in this case does not harm the owner, or render the property unusable.

Ms. Portner stated that the second criteria reads ***“Not Contrary to Property Values. The granting of a variance would not be materially detrimental to the property owners in the vicinity;”*** Ms. Portner added that the proposed sign would be placed in approximately the same location as the existing sign, which is 230 feet from the 28 Road and Patterson Road intersection and would have no detrimental impacts to the surrounding properties. The property to the east is zoned PD (Planned Development), with commercial development at the northwest corner of Patterson Road and 28 ¼ Road. The sign would be approximately 350 feet from the townhome development to the west that is separated from the church property by 28 Road and the sign would be over 110 feet from the nearest residential property across the 5 lane section of Patterson Road.

Ms. Portner stated that staff finds that granting of this variance to allow a 48 square foot digital sign would not be materially detrimental to the property owners in the vicinity, therefore, this criterion has been met.

Ms. Portner next slide illustrated the third criteria ***“Hardship Unique to Property, Not Self-Imposed. The unusual conditions applying to the specific property do not apply generally to other properties in the City.”***

Ms. Portner stated that properties located along Principal Arterials are generally not zoned residential, except along Patterson Road, and therefore do not have the same signage restrictions. However, while the location of this property along a principal arterial might warrant a larger, digital sign for visibility, there are not unique or unusual conditions specific to this property that do not apply generally to other properties. In fact, there are two other churches within ½ mile of the property that are residentially zoned, one at 28 ¼ Road and one at 27 ½ Road. Staff therefore finds that this criterion has not been met.

The next slide displayed addressed the criteria of ***“Conformance with Character of Area, Corridor Plans. The granting of a variance shall not be contrary to the goals and objectives of any applicable corridor overlay district or to the general objective of moderating the size, number, and obtrusive placement of signs and the reduction of clutter.”***

Ms. Portner explained that the Comprehensive Plan designates this section of Patterson Road as a Mixed Use Corridor that allows for rezoning to MXOC (mixed use opportunity corridor) that allows for commercial uses and would also allow the signage proposed by the church. If rezoned, the property would be allowed to have a free standing sign of up to 300 sf, not exceeding 15 feet in height and could have a digital display. Under current Code, the property could have a 24 sf sign on each of the street frontages. By combining the sign allowance for each of the 2 street frontages into one 48 sf sign, it would meet the code objectives of moderating the size, number and obtrusive placement of signs. Therefore, staff finds that the request is consistent with the goals of the Mixed Use Corridor designation and the general objective of reducing visual clutter and the proliferation of signs.

**Staff recommended denial of the proposed amendment based on the following findings:**

After reviewing VAR-2017-482, the Applicant has not established that all of the review criteria (A-D) of Section 21.02.200(c)(2) of the Zoning and Development Code have been met, specifically A and C have not been met.

**Petitioners Presentation**

Larry Chovancek, Senior Pastor of the First Church of the Nazarene of Grand Junction, 2802 Patterson Road. Pastor Larry began by thanking Ms. Portner and staff for their work on this issue and stated that he disagrees with the conclusions of staff in that he feels the criteria for hardship is met. Pastor Larry added that the reports states that electronic signs are not allowed in residentially zoned properties, however he has driven around town and noticed several churches with electronic signs.

Pastor Larry explained that the current sign is 20 years old, in disrepair and is not sufficient for the use considering there is now a day care serving 75 children. Addressing the current size limitation of church signs, Pastor Larry stated that the 4" lettering is only visible up to 60 ft. and trying to read it could be a safety hazard for the 38,000 cars per day that travel Patterson Rd.

Pastor Larry stated that they are forced to use temporary signs for special events and for other community groups that use the church.

Pastor Larry explained that the church itself sits 2 feet below the street level and this creates a hardship for signage to be seen on property. He feels there are two hardships; the readability of a smaller sign and how low the church sits on the property.

Pastor Larry referenced Faith Heights Church that is nearby at 28 ¼ and Patterson Rd. They had a small monument sign on the corner and when they realized how hard it is to see, they put lettering on the building with 8 to 10 foot letters.

Pastor Larry stated that he was at a meeting earlier in the day and representatives of other churches and they thought the signage for churches was too limited and they were interested in the fact that Pastor Larry was appealing for a sign variance for First Church of the Nazarene of Grand Junction. Some said they would like to see the signage regulation change for all of Grand Junction.

Referring to Ms. Portner's report that the Comprehensive Plan designates this section of Patterson Road as a Mixed Use Opportunity Corridor that allows for rezoning to MXOC where a larger and electronic sign would be allowed, Pastor Larry inquired why a church, as a charitable non-profit, would have to initiate a rezone that the City wants.

Because of topography, Pastor Larry would like the sign to be 8' above the grade of the road. He does not want to have to build a bigger berm to put the sign on so it can be at the same grade as the road. Currently the church puts up 4x8 banners on the pump house to announce availability of day care. Pastor Larry stated that if they were able to get this electronic sign, they would not use temporary signs. Pastor Larry stated that they plan to have a nice sign and will have Lonnie of Angel Signs do the work.

### **Board Member Questions for Petitioner**

Board Member Gatseos asked Pastor Larry which is more important to them, the size of the sign or the fact it is digital. Pastor Larry said both.

Chairman Wade stated that he drives by that church and complimented Pastor Larry on how nice the property is kept up. Chairman Wade asked what the churches

objection was to rezoning so that they would be able to have a larger sign. Pastor Larry stated that they didn't realize until he read the staff report that it was a possibility and he wished he had been told that from the beginning of the appeal process.

Pastor Larry stated that in April the Church will celebrate 100 years in the community. They allow 3 HOAs to meet there, host 11 soccer teams at their fields, and wants to be a vital part of the community. Pastor Larry feels the electronic sign will allow them to get the word out about events.

Chairman Wade asked Ms. Portner what the time span and cost it would take for the Church to rezone. Ms. Portner stated that the cost of the rezone is approximately \$430. Ms. Portner explained that a rezone needs to go before the Planning Commission as a recommendation and then on to City Council for approval so therefore it could take up to three months to make it on both agendas. Ms. Portner stated that could try and expedite the process, but they still had to schedule it for both meetings. Ms. Portner noted that a rezone is subject to the vote of City Council, however, the staff could support the rezone because of the Comprehensive Plan designation.

Chairman Wade asked Pastor Larry if the current sign could last three months. Lonnie from Angel Signs joined Pastor Larry and said he has not been out the sign and that if it is 20 years old it is probably unstable. He said there may possibly be some things they could do to help it last the three months.

Board Member Gatseos asked Ms. Portner if the grade level difference could be considered a hardship. Ms. Portner stated that they are claiming there is a 2-foot difference, however after looking at the sign on Google, she feels that the grade is not greatly reducing the visibility.

### **Board Member Comments**

Board Member Gatseos stated that after reviewing the reports, he feels the only unresolved issue he has could be the grade and will rely on staff to make that determination. Therefore, he could not support the variance and would like to see them rezone.

Board Member Miller stated that based on the proposal, it difficult to find that the criteria for a variance has been met.

Pastor Larry asked how staff could determine that the grade level is not a hardship if they have not been out to the site. Ms. Portner clarified that she has been to the site, she just doesn't know the exact measurements of the grade but she did not find the sign difficult to read based on the current grade difference.

Board Member Gatseos added that he would have liked to have had a measurement of grade when evaluating the information.

Chairman Wade noted that he has driven by the sign and it is visible but not maybe to the degree that the church wants. Chairman Wade reiterated that to grant a variance, it needs to meet all four criteria. He sees where it meets two of the four criteria, but he does not see a hardship. Chairman Wade stated for those reasons, he cannot vote in favor of the variance and suggested that they apply for a rezone.

**MOTION:** (Board Member Miller) “Mr. Chairman, on the request for a sign variance, VAR-2017-482, I move to deny the request with findings of fact described in letters A and C in the staff report.”

Board Member Gatseos seconded the motion. A vote was called and the motion passed unanimously by a vote of 3-0.

### **Adjournment**

The meeting was adjourned at 1:20 pm.

## Attach 2



## ZONING BOARD OF APPEALS AGENDA ITEM

<b>Project Name:</b>	Wagner Lot Size and Setback Variances
<b>Applicant:</b>	William Wagner
<b>Address:</b>	300 Cedar Court
<b>Zoning:</b>	Residential 4 units per acre (R-4)
<b>Staff:</b>	Kristen Ashbeck, Senior Planner
<b>File Number:</b>	VAR-2018-195
<b>Date:</b>	June 6, 2018

### I. SUBJECT

Consider requests from the Applicant, William Wagner, for approval of a variance to minimum lot size in the R-4 zone from 7,000 square feet to 4,604 square feet and a variance to the rear yard setback in the R-4 zone district from 25 feet to 5 feet.

### II. EXECUTIVE SUMMARY

The Applicant is requesting variances for a reduction to the required minimum lot size and decrease in the rear yard setback to enable his desired configuration of a new lot line for a proposed subdivision of the property into two parcels. The property is located at 300 Cedar Court and is Lot 1 and a portion of Lot 2 of the Bookcliff Heights Subdivision. The existing lot is 0.49 acres in size or approximately 21,440 square feet. The property is zoned R-4 which requires a minimum lot size of 7,000 square feet and a rear yard setback of 25 feet. The property currently has two homes on it including a primary residence and an Accessory Dwelling Unit (ADU). The Applicant is proposing to subdivide the parcel so that the homes sit on separate parcels. The proposed subdivision would create a 4,604 square foot lot with a rear yard setback of 5 feet. Pursuant to Section 21.02.200 of the Zoning and Development Code, a variance may be granted only if the Applicant establishes that strict adherence to the code will result in practical difficulties or unnecessary hardships because of site characteristics that are not applicable to most properties in the same zoning district.

### III. BACKGROUND

The property at 300 Cedar Avenue currently has two homes on it – a house with a detached garage that face Cedar Court and a detached ADU that fronts Walnut Avenue. The Applicant is proposing to subdivide the lot into two parcels such that each home is on a separate lot. The lot is 0.49 acres in size or approximately 21,440 square feet which is large enough for both lots to meet the minimum lot size of 7,000 square feet and each home could meet the rear yard setback of 25 feet, depending upon where a new property line is drawn. As proposed by the Applicant (see attached Exhibit A), the

lot with the existing house and detached garage would meet minimum lot size and rear yard setback but the proposed lot for the existing ADU would be 4,604 square feet in size with a 5-foot rear yard setback to the proposed lot line. Both minimum lot size and setbacks are considered bulk standards of the zone district.

The ADU was approved through the development review process in 2002 and construction was completed in 2003. At that time, the Applicant received approval of a variance for utility service for the ADU to be separate from the service provided to the main house.

#### **IV. ANALYSIS**

Pursuant to Section 21.02.200 of the Zoning and Development Code, a variance may be granted only if the Applicant establishes that strict adherence to the code will result in practical difficulties or unnecessary hardships because of site characteristics that are not applicable to most properties in the same zoning district. The following criteria shall be used to consider variances from the bulk, performance and use-specific standards. A variance may only be granted if the Applicant establishes that all of the criteria have been met.

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

The Applicant provides that meeting the minimum lot size and having a larger yard attached to the smaller home (ADU) is a hardship because it results in practical difficulties and causes undo financial hardship to make revisions to the landscaping in the yard space between the two homes. As Staff reviewed the request, Staff did not agree with the Applicant that having a larger yard attached to a smaller house is an unnecessary or undue hardship on the Applicant since the action to subdivide the property is created by an action of the Applicant as is the desire to subdivide the parcel in the proposed configuration. Staff also did not agree that the cost to modify landscaping and an irrigation system was an unnecessary nor an undue hardship for the Applicant as expressed in this criteria that requires the demonstration of “exceptional conditions” or hardships not created by actions of the Applicant.

Consistent with the Code, variances should be granted only when a property owner has a unique and unusual hardship created by the physical characteristics of the particular piece of property. Staff has not identified any physical characteristic of the property that interferes with the use and subdivision of the property in accordance with the bulk standards of the zone as it is not unlike other, larger lots in the R-4 zone district within the neighborhood. The variance would allow the creation of lots that do not meet such standards for the

convenience of the Applicant. Thus, staff believes this criterion has not been met.

- b. ***Special Privilege.*** *The variance shall not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district;*

The Applicant provides that there is no new construction contemplated and the existing neighborhood is built out and developed in a fashion that will probably endure and there would be no changes to any other existing conditions. In reviewing this request, Staff found that although the approval of the lot size and setback variances may not change existing conditions, the proposal to subdivide the property would change an existing condition; The proposed subdivision will create a new, smaller lot that does not meet the character of the other lots within the subdivision.

Therefore, staff finds that the variance would afford the Applicant a special privilege by not upholding requirements of the zone district; thus, finds the criterion has not been met.

- c. ***Literal 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;*

Pursuant to the Zoning and Development Code, all properties in the R-4 zone district must adhere to the same bulk standards of lot size and setback requirements. The Applicant is creating the conflict with literal interpretation of the regulations by virtue of wanting to subdivide the property and subdivide it in a certain way. The Applicant states that the costs to revise the landscaping in the yard space between the two homes is an undue burden but this hardship is not the result of the literal interpretation of the regulations. The landscaping changes are not a requirement of the subdivision process. In review of this request, Staff has found the Applicant would not be deprived of the rights commonly enjoyed by others as all property owners are subject to the same lot size and setbacks within this zone district. Therefore, Staff has found this criterion has not been met.

- d. ***Reasonable Use.*** *The applicant and the owner of the property cannot derive a reasonable use of the property without the requested variance;*

The Applicant provides that a reasonable use of the property cannot be derived without subdividing it. The Applicant includes that, without the variances, the resulting additional yard maintenance requirements for the ADU and the smaller yard for the main house are detrimental to the viability of the proposed lots. The Applicant further provides that compliance with Code provisions puts an unreasonable requirement on both properties by meeting standards that were not in place at the time of construction of the homes.



The Applicant is currently using this property for a primary single-family home with an ADU. Zoning standards were in place when both homes were constructed. Staff believes that this use constitutes “reasonable use” of the property. In addition, the Applicant can avail himself of the opportunity to subdivide in accordance with the code requirements and still, in Staff’s opinion, derive a reasonable use of the property. No evidence is provided that the property would not sell at a reasonable price either the way it is or if subdivided in accordance with the standards. In response to the Applicant’s statements, Staff has not found that having to modify a site (e.g. modification of landscaping and an irrigation system) or being able to sell the parcel for “top price” does not constitute a lack of reasonable use. Therefore, Staff has found that this criterion is not met.

- e. ***Minimum Necessary.*** *The variance is the minimum necessary to make possible the reasonable use of land or structures;*

The current size of the overall property allows for the configuration of the lots to meet the established minimum lot size of 7,000 square feet for both lots. In addition, the site would allow for the lots to be configured to accommodate the required 25-foot rear yard setback on both proposed lots. Staff has not found that either of these dimensional standards will impede the ability of the Applicant to maintain reasonable use of the land/structures. As such, Staff finds that this criterion has not been met.

- f. ***Conformance with the Purposes of this Code.*** *The granting of a variance shall not conflict with the purposes and intents expressed or implied in this code; and*

The intent and purpose of the minimum lot size and setback requirements include creating and preserving space between structures. The proposed variances conflict with that purpose in that the subdivision would result in one of the lots being non-conforming, out of character with the neighborhood and preclude any future expansion of the existing ADU. Staff therefore finds this criterion has not been met.

- g. ***Conformance with the Comprehensive Plan.*** *The granting of a variance shall not conflict with the goals and principles in the City’s Comprehensive Plan.*

The Comprehensive Plan does not explicitly address zoning and bulk standards on properties, therefore staff finds that there is not an apparent conflict between the requested variance and the goals and principles in the Comprehensive Plan.

## **V. STAFF RECOMMENDATION AND FINDINGS OF FACT**

After reviewing VAR-2018-195, a request for variances to the minimum lot size and rear yard setback in an R-4 zone district, to allow for the subdivision of the property, staff

finds the variance criteria have not been met, specifically criteria a. through f., and, therefore, recommends denial of the request.

## VI. RECOMMENDED MOTION

The Zoning Board of Appeals may either vote to approve or deny the variance requests.

Staff recommends the following motion:

Mr. Chairman, on the requests for minimum lot size and setback variances, VAR-2018-195, I move to deny the requests with the findings of fact as included as letters a. through f. in the staff report.

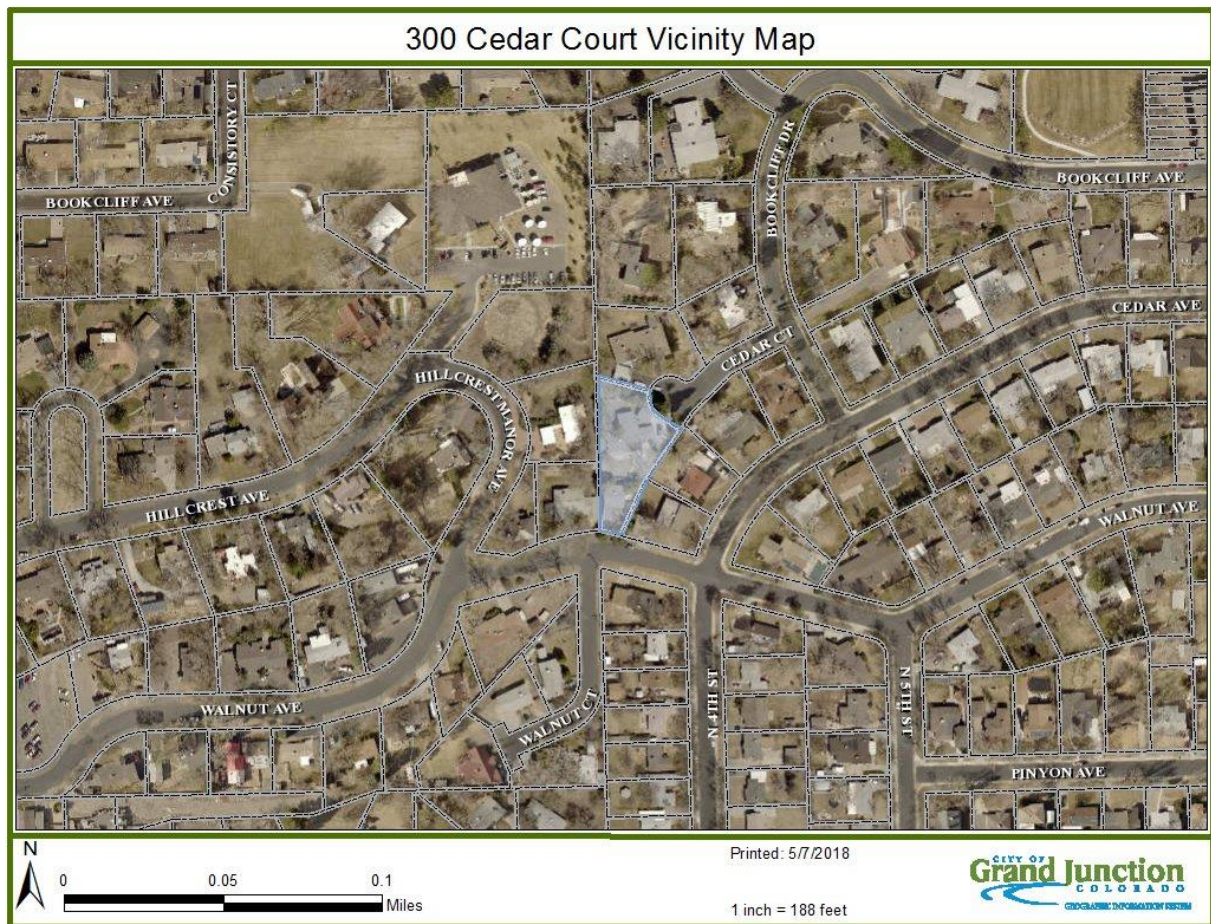
### Attachments:

Vicinity Map

Site Map

Improvement Location Survey

General Project Report and Exhibits Provided by Applicant



# 300 Cedar Court Site Map



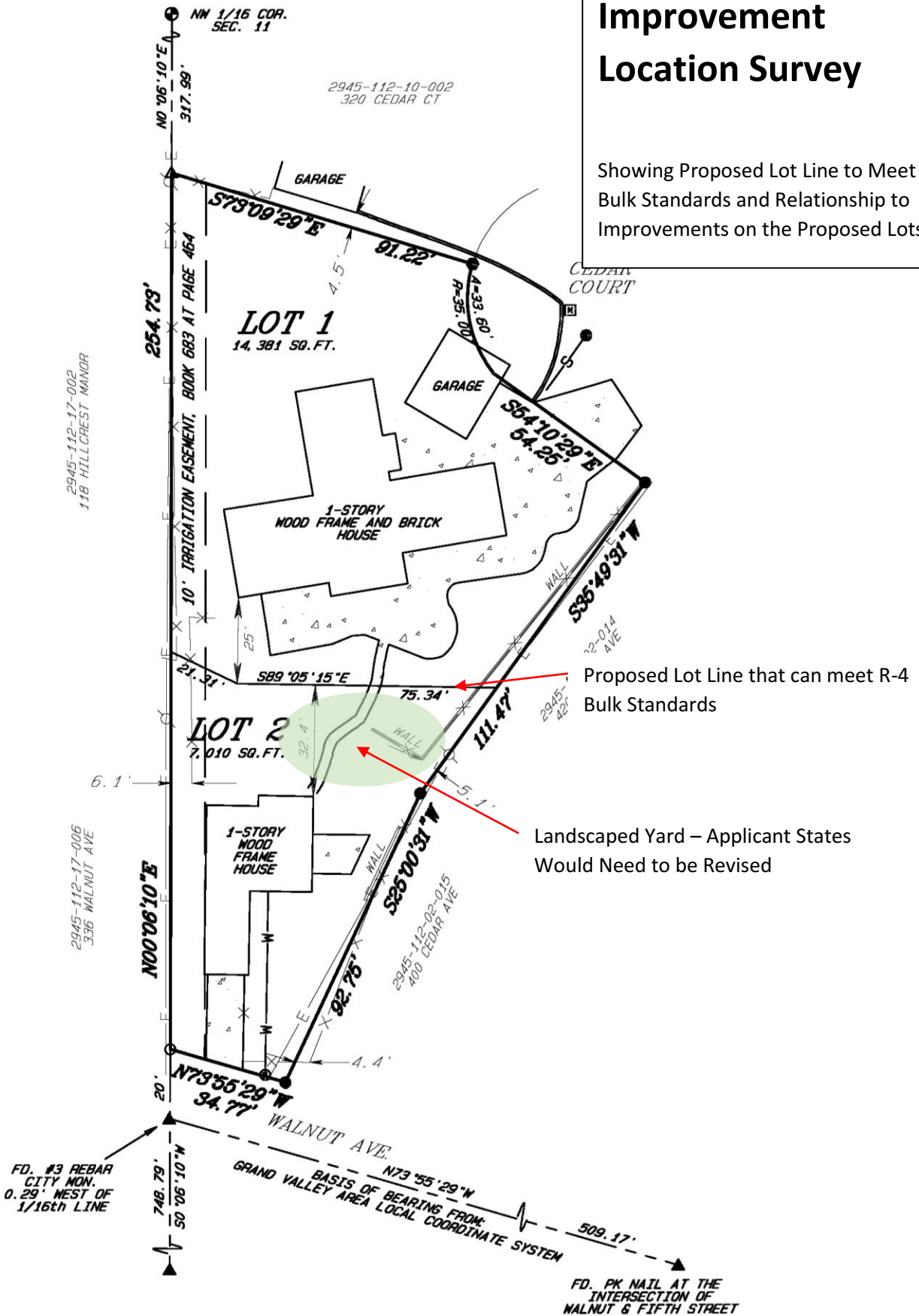
Printed: 5/7/2018

1 inch = 47 feet



# Improvement Location Survey

Showing Proposed Lot Line to Meet Bulk Standards and Relationship to Improvements on the Proposed Lots



Proposed Lot Line that can meet R-4 Bulk Standards

Landscaped Yard – Applicant States Would Need to be Revised

GENERAL PROJECT REPORT  
300 Cedar Ct.  
Grand Junction, CO 81501  
.49A

The project is a simple subdivision of an existing lot with two residential structures into two parcels. The proposed use is the current use, with no changes anticipated. There is no public benefit nor is there a public detriment to the project. There will be no visible change to actual, current use of the property or any of its appurtenances.

A variance is requested to allow the rear yard setback of the "cottage" to be reduced to 5 feet, and the minimum lot size to be reduced to 4604 square feet. Currently the R4 zone requires a minimum lot size of 7000 square feet and a minimum setback of 25 feet. According to Ms. Ashbeck, there are nearby properties which are below the minimum requirements of the R4 zone. These size requirements would be allowed in an R5 zone. The original placement of the "cottage structure" was determined by easements on both sides for Grand Valley Irrigation and Grand Valley Drainage. There is currently 57 feet between the two houses. However, without the requested variance, the setback for the larger "family home" would place the property line just off the patio, without any landscaping, while a large lot would be created with the cottage, adding a maintenance factor which negates the original contemplated use of the cottage as a mother-in-law home for the applicants parents, now deceased. The cottage and its landscaping and outdoor living was designed to be used as it is, with minimum landscaping, and private exterior features with a side patio and front porch and yard, all irrigated with a drip system. To require a 25 foot rear yard setback would add a burden of upkeep of the landscaping to the cottage, as well as a large expenditure to separate two sprinkler systems and the ensuing issues.

A neighborhood meeting was held at Traders Coffee Shop on March 5, 2018 as the first step in the process. It was attended by the applicant William D. Wagner, Kristin Ashbeck from the City of GJ, and two neighbors, Bill Findlay and Bob Dorf. An invitation to the meeting was sent to all neighbors via a list provided by Ms. Ashbeck. The applicant described the property, which the attendees are familiar with, and presented a concept plan for the subdivision of the property into two parcels to accommodate the two houses on the property, as well as the variance requested for minimum lot size and rear yard setback. The discussion was generally a conversation about the fact that there would be no negative impact by either the subdivision or the variance. In fact, no one would even notice that there would be a change. No changes from the current access would be required. There is no change of density proposed. Internal circulation on the property will not affect any adjoining properties. The use of the property will continue to be as it is presently, two single story residential structures with no visible change. In their present condition, the setup of the houses on the lots is beautiful, with privacy and use attributed in an ideal fashion to both houses. There is no ability to visibly see the property without invitation, as the lots are completely screened from adjoining properties.

There was no objection to the proposed subdivision and variance. In fact both neighbors stated their approval of both aspects.

The applicant, now 70 years old himself with a desire to sell part of the property because of its landscaping maintenance requirements, has attempted to market the property with two houses for over six months. There has been minimal interest in the property, with considerable feedback that the cottage portion of the property is a detriment because it can only be specifically used as guest house or a rental, neither being what those who have looked at it would want. Therefore, the applicant has determined to subdivide and sell the family home portion of the property, while keeping the cottage for his own use. Such subdivision would make the property entirely more marketable to a greater proportion of the homebuyer market. But the minimum lot size and rear yard setback requirements for the current zone create a hardship for the applicant because strict adherence to the code results in practical difficulties and unnecessary financial hardship in making the current siting of the improvements to fit the current zoning requirements, via changes which would be required by revision of landscaping in place, as well as the various legal agreements which would be required for access to maintenance items, landscaping etc. The property is ideally designed for minimum maintenance for the cottage, and it should be allowed to be used just as it is designed, on its own lot.

No special privilege is conferred on the applicant by the approval of the variance request. There is no new construction contemplated, and the existing neighborhood is built out and developed in a fashion that will probably endure. The approval of the variance would not change any existing condition.

The literal interpretation of the regulations would work unnecessary and undue hardship on the applicant because of the added cost to revise and maintain the property in order to comply with those regulations. There are other properties, though not common in the neighborhood, which do not attain the minimum lot size required by the zoning.

The applicant cannot derive a reasonable use of the property without subdividing it. The maintenance needs for the cottage, and the detriment to the backyard area of the family home without a variance puts an unreasonable requirement on both properties by now requiring compliance with standards not in place at the time of construction fifteen years ago.

While the property can be used by subdividing without the variance, the beneficial use would be attributed to the cottage, and detract from the family home. The lots created by grant of the variance would thereby portend a more reasonable use of the properties for their intended and actual existing use.

The granting of a variance will not conflict with the purposes or intent of the code, as the actual existing use will not change.

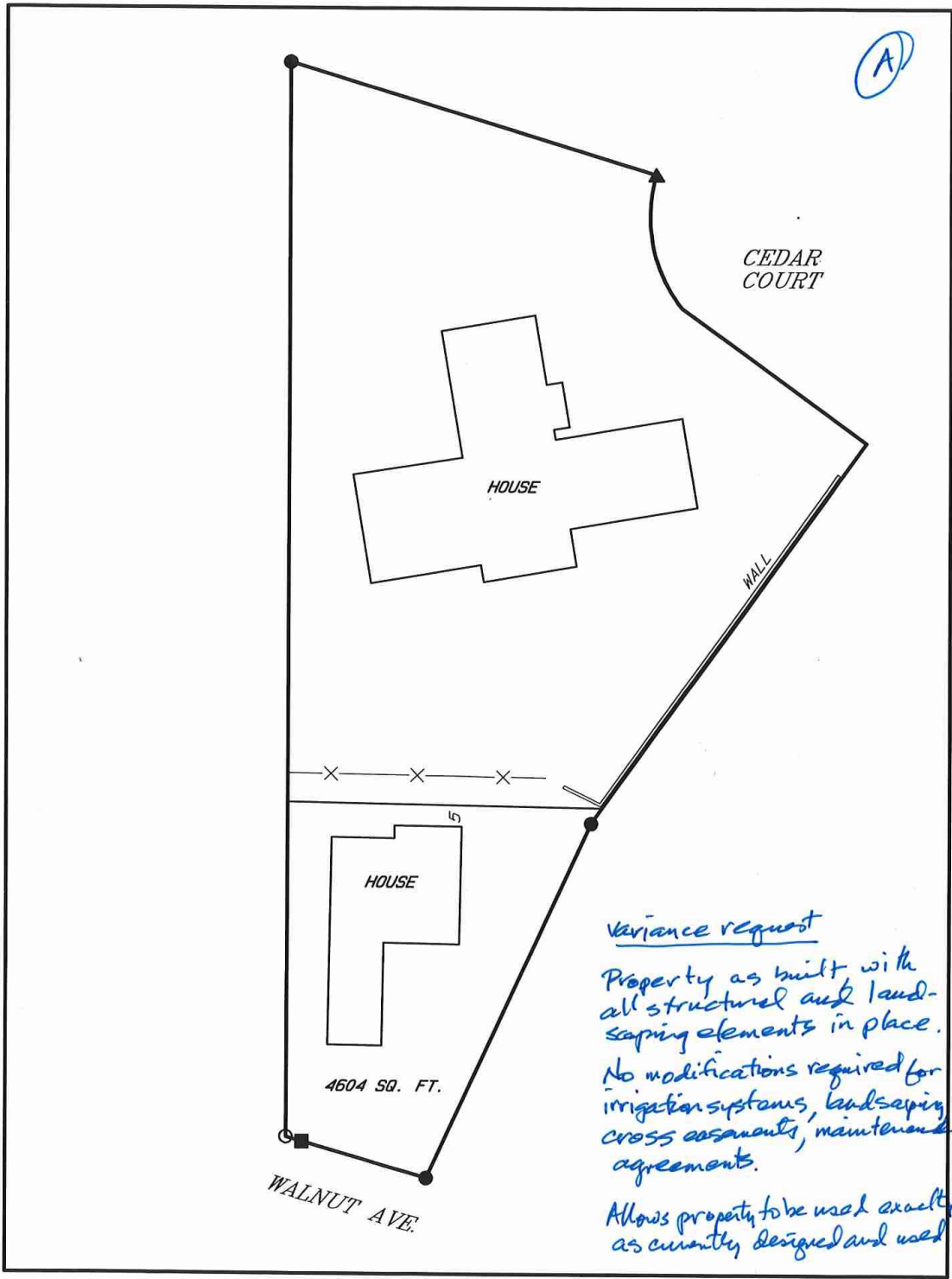
The goals and principles of the Comprehensive Plan will not be affected as no actual change in the properties, how they now look and are currently used, will change. The only change to the properties by granting a variance will be on paper.

The land use of the surrounding area is single family residential, with a few condominiums and apartment buildings nearby. The site is accessed by public city streets Walnut Avenue and Cedar Ct.

All utilities are separately available to each property. The fire department has already seen the proposal and placement of fire hydrants is acceptable. There are no changed or required new or existing demands on utilities as a result of this project. There will be no effect on public facilities as a result of the project. There is no contemplated construction, therefore no employees will be engaged for any work as a result of the project. There will be no signs except those required by the city. There is no new development resulting from this project, therefore no soils, site mapping, geologic hazards impact conditions apply.

Because the property exists as proposed, there is no timeline for scheduled completion of any portion of the project aside from the administrative requirements.

(A)



Variance request

Property as built with all structural and landscaping elements in place. No modifications required for irrigation systems, landscaping, cross easements, maintenance agreements.

Allows property to be used exactly as currently designed and used



(B)

CEDAR COURT

HOUSE

WALL

25'

32.4'

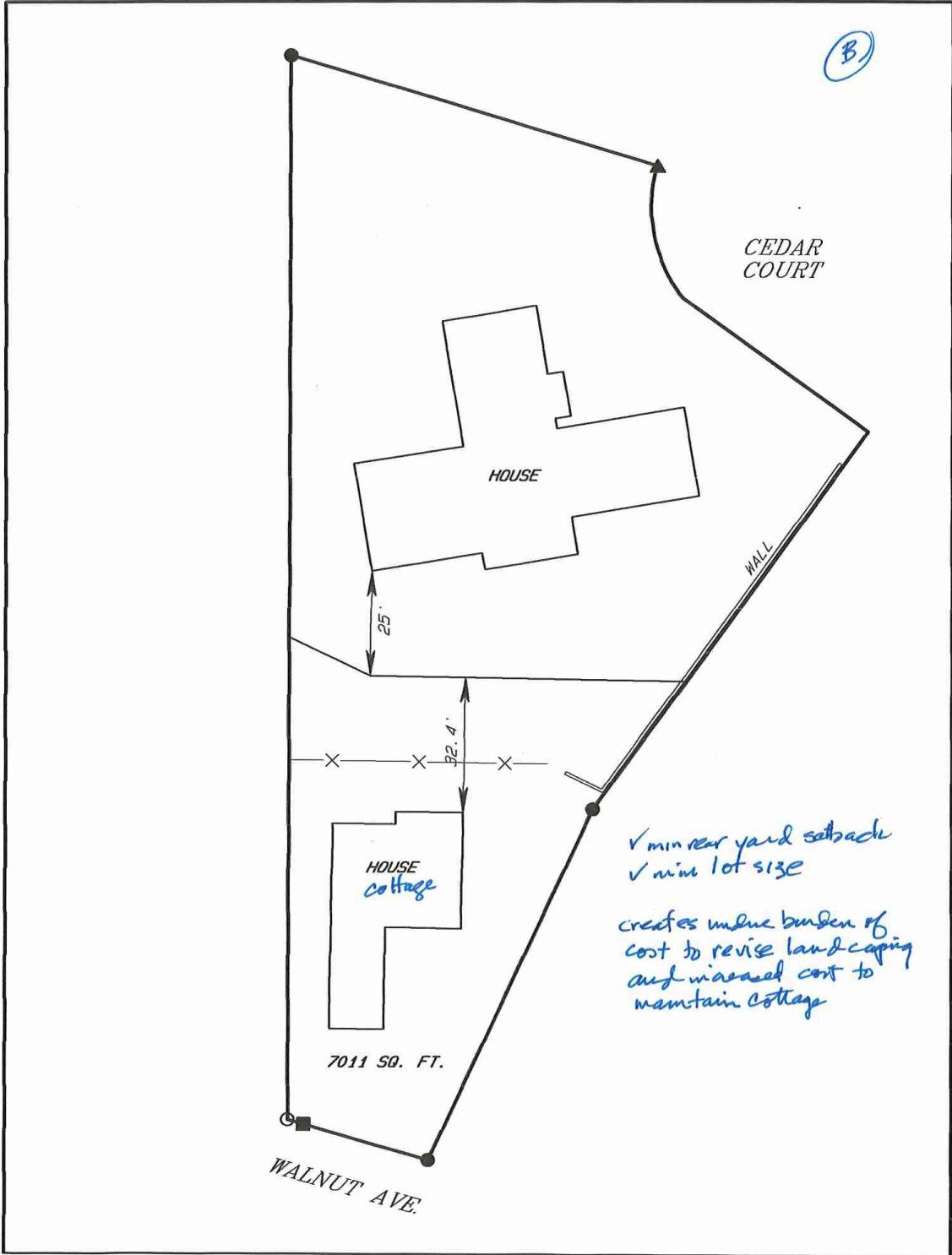
HOUSE  
Cottage

7011 SQ. FT.

WALNUT AVE.

✓ min rear yard setback  
✓ min lot size

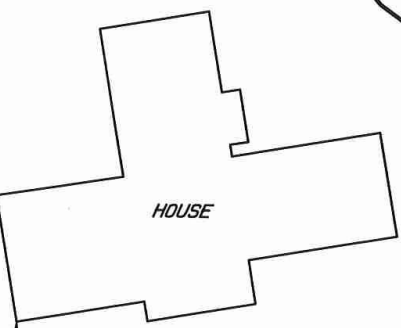
creates undue burden of  
cost to revise landscaping  
and increased cost to  
maintain cottage



©

CEDAR COURT

HOUSE

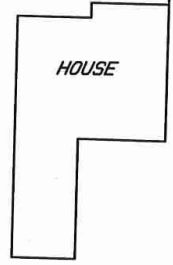


32.4'



25'

HOUSE



6244 SQ. FT.

✓ min rear yard setback  
min lot size

WALNUT AVE.

