

**GRAND JUNCTION BOARD OF APPEALS**  
**Public Hearing July 14, 1993**  
**8:04 a.m. - 9:10 a.m.**

**I. CALL TO ORDER**

The public hearing was called to order by Chairman John Elmer at 8:04 a.m. in the City Auditorium.

In attendance, representing the Board of Appeals, were Chairman John Elmer, Lewis Hoffman, Jeff Driscoll, and Cindy Enos-Martinez. Bill Putnam was absent.

In attendance, representing the City Community Development Department, was Kristen Ashbeck, Associate Planner. John Shaver, Assistant City Attorney, was also present.

Bobbie Paulson, Administrative Secretary, was present to record the minutes.

There were twenty interested citizens present during the course of the meeting.

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**II. APPROVAL OF MINUTES FROM THE FEBRUARY 12, 1993 AND JUNE 9, 1993 MEETINGS**

**MOTION: (Cindy Enos-Martinez) "I move that we approve the minutes of the February 12, 1993 meeting."**

Lewis Hoffman seconded the motion.

A vote was called, and the motion passed by a vote of 2-0 with Jeff Driscoll and Lewis Hoffman abstaining as they were not present at that meeting.

**MOTION: (Jeff Driscoll) "I move that we approve the minutes of the June 9, 1993 meeting."**

Lewis Hoffman seconded the motion.

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

**III. PUBLIC HEARING ITEMS FOR CONSIDERATION BY THE BOARD**

- 1. #93-3 Consideration of a request to vary the front yard, side yard and minimum lot area requirements in an RSF-5 Zone District (Residential Single**

**Family, 5 units per acre)**  
**Tabled at the June 9, 1993 hearing.**  
**PETITIONER: Carl Noble**  
**LOCATION: 120 Mantey Heights Drive**

**STAFF PRESENTATION**

Kristen Ashbeck stated that, as requested by the Board at the June 9th hearing, the Petitioner had a survey performed on his property at 120 Mantey Heights Drive. The survey revealed that one of the existing structures encroached onto the public right-of-way to the south. Ms. Ashbeck stated that the Petitioner requested that this item be continued to a date he will specify at this meeting so that he has time to process a vacation of a portion of the right-of-way. After the vacation has been processed, the Petitioner intends to come back to this Board with a variance request.

**PETITIONER'S PRESENTATION**

Carl Noble requested that item #93-3 be tabled until the October meeting.

**MOTION: (Jeff Driscoll) "Mr. Chairman, I move that we table item #93-3 to the October, 1993 hearing."**

Cindy Enos-Martinez seconded the motion.

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

2. **#93-4 Consideration of a request for a variance to Section 5-1-9.F (Home Occupation) which states "Under normal operating procedures the following types of uses would not be acceptable as home occupations: medical/dental office, motor vehicle repair, restoration or conversion, engine repair, MEDICAL/COSMETIC FACILITIES FOR ANIMALS, machine shop/metal working." Petitioner requests a variance which would allow dog grooming as a home occupation.**

**PETITIONER: Teri Branscom**  
**LOCATION: 356 #B Ridge Circle Drive**

**STAFF PRESENTATION**

Kristen Ashbeck stated that the Community Development Department issued a home occupation permit for a dog grooming business to the Petitioner, Teri Branscom, in May, 1993. Subsequently the Community Development Department received more than one noise complaint. After the Code Enforcement Division investigated, it was discovered that the home occupation permit had been issued in error as per Section 5-1-9F which specifically states that "medical/cosmetic facilities for

animals" are not acceptable as home occupations. At that point, staff requested Ms. Branscom cease her dog grooming operation until she could either bring it into conformance through the variance process or relocate the business to an appropriately zoned location. A letter of opposition was received from Mr. Frederick G. Aldrich who is an attorney representing an adjoining property owner, John L. Noga.

#### **PETITIONER'S PRESENTATION**

Teri Branscom stated that she was unaware of the criteria she had to comply with to obtain a variance until yesterday. Ms. Branscom stated that after discussing this criteria with Ms. Ashbeck, it became apparent that some of the criteria would not apply to this particular situation. Ms. Branscom stated that the City Community Development Department issued her an in-home business permit on May 7, 1993, subsequently she made the improvements to begin her dog grooming business. She felt that her business is a low-profile operation. The dogs come in by appointment only. Customers bring their dogs in between 10:00 and 11:00 a.m. and pick them up between 2:00 and 3:00 p.m., Monday through Friday. The dogs are either carried into her garage or led in with a lease. This business is not operated at night, weekends or holidays. She said that she has been grooming dogs for 21 years. She stated that the dogs she groomed were well mannered and did not bark. She stated that she preferred to conduct her business in a commercial location but she had already spent all her savings on improving this location. She stated that if she were not allowed to continue her dog grooming business it would create a terrible hardship for her. She grooms two to three dogs a day in order to pay her bills and take care of her children. She stated that she had not changed the appearance of her home and there are no signs advertising her business. Paragraph 29A on page 9 of the Ridges Covenants specifically prohibits a home occupation for treatment and hospitalization of animals; however, she asserted that she was not a DVM, she was just a dog groomer.

#### **QUESTIONS**

Jeff Driscoll asked if the animals were boarded overnight.

Teri Branscom stated that she has kept animals overnight in the past. She went on to explain that one customer leaves town once a year and she takes care of his dog while he is out of town. This dog is old and doesn't bark. She also kept a pair of poodles one night because a customer brought them in for haircuts and did not come back to pick up her poodles because her mother was admitted to a hospital. She also kept a cat and a puppy another time. She stated that she did not want to board dogs.

Jeff Driscoll asked assuming only one animal can be worked on at a time, where are the other animals kept?

Ms. Branscom stated that the animals are kept in crates inside her garage.

Jeff Driscoll asked what improvements were made after the home occupation permit was issued to her?

Ms. Branscom stated that the garage was plumbed and the interior was fixed up to make it more appealing. She spent money for mailouts to clients. She stated that she spent approximately \$3,000 to \$3,500.

John Elmer asked the Assistant City Attorney if this use was grandfathered when the Ridges was annexed?

John Shaver replied no; dog grooming is not a legal home occupation in a residential zone. The permit was issued in error, but this is not a matter for the Board to consider. There may have been some detrimental reliance by the Petitioner based upon the issuance of this permit but that could only be remedied, if at all, in a damages action or some other settlement with the City. Mr. Shaver reminded the Board that it must consider the criteria in the Code to grant a variance. Mr. Shaver also stated that this activity is illegal under the Code and unless there is a complete demonstration of compliance with the criteria then it may not be varied.

Teri Branscom stated that she was only made aware of this criteria yesterday afternoon and felt she was at a disadvantage. She stated that she wasn't even sure she understands the criteria.

John Shaver stated that he had spoke to Ms. Branscom's representative earlier and specifically referred to the criteria in Section 10-1-1B of the Code at that time.

Ms. Branscom stated that her representative had spoke to her about that, but she thought she had everything she needed when she picked up the variance application.

There was discussion regarding whether this application was an appeal of an Administrative decision or a variance application.

Jeff Driscoll asked what section of the Code made dog grooming illegal as a home occupation?

John Shaver stated that Section 5-1-9F of the Code states that cosmetic services for dogs as a home occupation is not allowed.

Jeff Driscoll stated that Section 5-1-9F had written examples of what is acceptable and what is not acceptable "under normal operating procedures." Because of the low volume of customers, he did

not feel that this was a normal dog grooming business.

John Shaver stated that typically the recitation in the Code would be the home occupations that are not allowed. Mr. Shaver's interpretation was that the recitation would make it illegal.

**PUBLIC COMMENT**

**FOR:** There were no comments in favor of the variance request.

**AGAINST:**

Fred Aldrich, attorney representing the neighbors of Ms. Branscom, stated that the Ridges Architectural Control Committee has very specific limitations for businesses such as this. Mr. Aldrich submitted a letter to the Board from Lee Garrett president of the Ridges Architectural Control Committee.

John Noga, 356-1/2 Ridge Circle Drive, stated that he retired in this area 5-1/2 years ago and bought a home in the Ridges. He was concerned that if the dog grooming business was allowed, the residential neighborhood would deteriorate and the value of neighboring homes would decrease.

David Dunder, 356-A Ridge Circle Drive, states that his home has a common wall with Ms. Branscom's garage. He pointed out that he and Ms. Branscom live in a four-plex townhome with common walls. He added that there are many places available in the Ridges where a business can be established. He was concerned about existing property values dropping. He felt that there is no parking available for a business at this location. Ms. Branscom's garage is currently set up for a full kennel operation with overnight boarding. Even during this appeal process the business was continued.

John Elmer asked Mr. Dunder if there was noise from the business?

Mr. Dunder replied that he registered one noise complaint with his neighbor Mr. Noga.

Karen Nelson stated that she previously lived at 352-1/2 #A Ridge Circle Drive and plans to move back there. She stated that she is a certified dog groomer. Dogs bark and there is not much one can do unless they are muzzled. Also, there is noise from drying kennels and hair dryers. She felt that unless there was air conditioning in the garage, it was inappropriate to keep the dogs in kennels in the garage. She felt that the number of cars coming and going at one time could not be controlled. Even if the dogs are set up by appointment, customers come early and late. If the animals are kept overnight, a State Certificate of Health is required.

Fred Aldrich, stated that if this an appeal of administrative decision then the Board's determination is to decide if staff's decision is consistent with the Zoning Code. And as Mr. Shaver pointed out, there are specific provisions for home occupations. He felt that this was a normal dog grooming operation. Operating a dog grooming business in a residential zone is in violation of the Code. If this is a variance petition, there are specific criteria that must be met. Even though Ms. Branscom has personal financial difficulties that does not meet any one of the criteria. The section that refers to undue burden and hardship deals with the ability to use properties. For example, if the configuration of a lot prohibited construction of a building because of setbacks, this might be an undue hardship. Another criteria is if the owner can derive no other reasonable use of the property. There are multiple reasonable uses of the property over and above dog grooming. He contended that the criteria has not been met to approve this variance.

Mr. Aldrich continued; there are protective covenants in the Ridges that address Filing 5 where Ms. Branscom lives. Two provisions of the covenants would be violated if this use were allowed to continue. One provision deals with household pets. The covenants state that normal household pets are permitted; however, someone else's pets as a business is not. Another specific prohibition in the covenants is animal treatment or medical facilities. This business is clearly a form of treatment, *i.e.* clipping, grooming, and bathing animals. These covenants are outside the zoning and it is not an issue for the City to enforce, but these covenants have something to do with the integrity of the Ridges community. One of the criteria of home occupations is to preserve the integrity of the neighborhood.

City Councilperson Linda Afman, 388 Hidden Valley Court, stated that she has been a licensed realtor for 23 years. She stated that a dog grooming facility in a residential area would definitely effect the property values in the negative way. She stated that she is the representative for District A City Council. She polled people in her neighborhood which is directly across from the property in question and they wanted to also voice their objection.

Jeff Driscoll asked Ms. Afman if she ever had anyone not buy a property because of a business being operated?

Linda Afman replied yes. The odor, traffic etc. discourage people from buying property. This property is across the street from a school site and a play ground, so there is an issue of added traffic with the children playing. There are designated areas in the Ridges for low-profile businesses.

Lee Garrett, Ridges Architectural Control Committee, stated that Mr. Noga contacted him in reference to this situation. Mr. Garrett stopped by to talk to Ms Branscom. He stated that when he went inside the garage there were approximately eight cages in which there were seven dogs and one cat. He stated that the seven dogs were very complacent, very mild, and teary eyed. He felt

that this was unusual and thought the dogs had been possibly sedated so he called animal control to have them investigate. He then followed up by checking with the Community Development Department as to why a permit was issued for this home occupation.

John Elmer asked Mr. Garrett if he felt this business was in violation of the Ridges covenants?

Lee Garrett replied affirmatively.

Nancy Murray, 358-B Hillview Drive, stated she was also concerned with the effect this would have on property value in this area.

**PETITIONER'S REBUTTAL**

Ms. Branscom stated that she has never sedated her dogs and contended that they were just well mannered dogs and added that she was never contacted by animal control. Ms. Branscom stated that she has not conducted this business in her home since the time she was told to cease the operation. However, she said her friends have dogs and they bring their dogs by to visit. She stated that she picked up a dog at a local boarding kennel yesterday because a man was going to get back after the kennel closed.

Chairman John Elmer reminded Ms. Branscom to address the criteria in her rebuttal.

Ms. Branscom continued; she felt her dog grooming business was not a normal grooming facility. A normal facility would run up to 15 to 20 dogs a day. She stated that her dryers are old and quiet and very slow. She stated that the Colorado State Department of Health dropped their requirements for boarding kennels in 1990. Ms. Branscom stated that there isn't a school across from where she lives; it is a big field with weeds. She exercises the dogs and picks up their feces twice a day and hoses everything down in the back yard.

Jeff Driscoll asked Ms. Branscom if she owned or rented this townhouse?

Ms. Branscom's mother-in-law stated that she owned it but she lets Teri live there.

Jeff Driscoll asked how many crates there are in the garage?

Ms. Branscom replied that she has ten crates, but most of them are used for storage.

**ADDITIONAL PUBLIC COMMENT**

Donna Hockmuth, 2436 Santa Rosa Lane, stated that she has known Teri for approximately 15

years and that Teri has groomed all of her dogs. Ms. Hockmuth stated that Teri's facilities have always been clean and that she has never noticed any odor in any of the facilities she has ever had. She suggested that the board give her three to six months to work out an alternative solution.

Jeff Driscoll asked staff if Ms. Branscom was to not board the dogs overnight and kept the contacts to under six customers per day would that be in line with the examples of the low volume home occupations listed in Section 5-1-9F of the Code?

Kristen Ashbeck stated that when the list of examples of home occupations that would not be allowed were considered, noise was the potential reason why it would not be acceptable.

Jeff Driscoll stated that his understanding of this section of the Code somewhat qualifies the listing of this type of business as being illegal under the wording "normal operating procedures". He felt that to mean a more traditional commercial type business. He felt that the low volume business with less than six customers per day is more in line with the examples listed as the acceptable.

Cindy Enos-Martinez asked if this business were allowed, who would monitor it to make sure there were no more than six customers per day?

Kristen Ashbeck stated that staff would not do it; the owner would have to do that. Staff would only respond on a complaint basis.

John Elmer addressed the board, suggesting that all motions be made in the affirmative.

**MOTION: (Cindy Enos-Martinez) "I move that the variance requested to allow a dog and pet grooming as a home occupation at 356-#B Ridge Circle Drive be denied and that the appeal for the permit that was issued be settled between the Assistant City Attorney and Teri Branscom."**

Lewis Hoffman seconded the motion.

John Elmer suggested deleting the appeal for the permit from the motion and let that be handled by the Assistant City Attorney's office.

John Shaver added that the comments made throughout the meeting were sufficient direction to work toward a resolution regarding this matter.

Cindy Enos-Martinez agreed to drop it from the motion.



Lewis Hoffman seconded the amended motion.

A vote was called, and the motion passed by a vote of 3-1 with Jeff Driscoll voting against the motion.

John Elmer wanted to clarify the reason for denial was because the criteria for a hardship was not demonstrated to grant the variance.

The meeting was adjourned at 9:10 a.m.