

**GRAND JUNCTION BOARD OF APPEALS  
MAY 8, 2002 MINUTES  
12:10 P.M. to 2:00 P.M.**

Chairman Paul Dibble called the regularly scheduled Planning Commission hearing to order at 12:10 P.M. The public hearing was held in the City Hall Hearing Room.

In attendance, representing the Board of Appeals, were Paul Dibble (Chairman), Bill Pitts and Mark Williams. Clay Tufly and John Paulson were absent.

In attendance, representing the Community Development Department, were Bob Blanchard (Director), Pat Cecil (Development Services Supervisor), Senta Costello (Associate Planner) and Ronnie Edwards (Associate Planner).

John Shaver (Asst. City Attorney) was also present

Bobbie Paulson recorded the minutes.

There were 10 interested citizens present during the course of the hearing.

**I. APPROVAL OF MINUTES**

The minutes from the October 10, 2001 public hearing were considered. Chairman Dibble advised the Board that it could approve the minutes by acclamation. Mr. Williams offered that the minutes be amended to clarify that he was absent from the meeting due to a conflict of interest.

**MOTION: (Commissioner Williams) "Mr. Chairman, I move that we approve the October 10, 2001 minutes changing the minutes to reflect that 'Mark Williams was absent' to 'Mark Williams was not present due to a conflict of interest.'"**

There was no second. A vote was called and the motion passed by a vote of 3-0

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

There were no announcements, presentations and/or visitors.

**III. FULL HEARING**

**VAR-2002-099 VARIANCE FOR A FENCE**

**Request approval for a variance to the requirement of a 5 foot wide landscape strip between a 6 foot fence and the property line when the double frontage lot is adjacent to a major collector road.**

**Petitioner: Carol Kimble & Donald Raff, Paul Trinklein, Linda Brackelsberg**

**Location: 677, 679, 681 and 683 Moonrise Court**

**City Staff: Ronnie Edwards**

**PETITIONER'S PRESENTATION**

Carol Kimble stated that she spoke on behalf of the owners of Lots 1 through 4 in the Moonrise East Subdivision. She explained that the owners have requested a variance to allow a fence to be installed on the rear property line one foot from the sidewalk along 25 1/2 Road in Moonrise East Subdivision. The existing regulation requires that a six-foot high fence be setback five feet from the property line. Ms. Kimble stated that in 1996, City regulations would have allowed a 6-foot high fence to be installed along the back property line along 25 1/2 Road one foot from sidewalk. She stated that the Code was

subsequently amended to require the five-foot landscape strip. She further stated that the City did not require the fence as part of the original subdivision approval, consequently fences were left up to the individual property owners to install. Ms. Kimble stated that apparently the developer was unaware of the new requirement because he informed four of the homeowners that a six-foot high fence could be installed on the property line one foot from the sidewalk. Ms. Kimble added that there was no reason for any of the homeowners to question what the developer told them. Ms. Kimble said that Scott and Melissa McKenna purchased a home in the Moonrise East Subdivision in January of this year and contracted with Taylor Fence a couple of days after their closing to have a six foot cedar fence installed around their back yard. It was at that time that they discovered that a five-foot landscape strip would be required and that the fence had to be setback five feet from the property line.

Scott McKenna said he was told by the developer at the time of closing in January 2002 that he could build a six foot high fence up to his property line. He stated that he hired Taylor Fence who then applied for a fence permit with the City. City staff advised Taylor Fence that the fence would have to be installed five feet behind the property line. Mr. McKenna stated that he needed the fence immediately so he complied with the regulation and had it built. When Taylor Fence began installing the fence posts along the back property line they hit an underground pipe. Prior to construction of the fence, Taylor Fence had gotten a locator check but this pipe was not on that locator. Mr. McKenna stated that as soon as the pipe was struck, Great New Homes was contacted. Great New Homes (GNH) sent a representative out to assess the situation. The representative advised Taylor Fence to continue installing the fence and that they would come in afterwards to fix and relocate the line. Mr. McKenna said that every homeowner in Moonrise East that have lots backing onto 25 1/2 Road will be confronted with the identical problem when they install a six-foot high fence five feet from the property line. Mr. McKenna said that he received a bill in the amount of \$500 from GNH for the repair costs. GNH also sent a letter to the other homeowners that there would be a fine \$5,000 if any pipes were hit in the future.

Ms. Kimble stated that the applicant submitted a drawing of the 14-foot multi-purpose easement that shows the irrigation pipe in the middle of the easement. The pipe runs along the property in the exact location where a six-foot high fence would be required to be setback.

Chairman Dibble asked for clarification on the pipe's distance from property line. Ms. Kimble replied five feet.

Mr. Williams asked what the purpose of the pipe is and if it is currently operational? Paul Trinklein stated that the pipe is a drainage return flow pipe installed by the developer. He added that it is currently operational.

Mark Williams asked if there were any other fences constructed in this subdivision along 25 1/2 Road? Ms. Kimble replied the only fence that currently exists is Mr. McKenna's six-foot cedar fence. Mr. Williams asked Mr. McKenna what lot he owned? Mr. McKenna replied that he owned Lot 2. Mr. Williams asked Mr. McKenna why he wanted to move his fence? Mr. McKenna replied that he would like to have a larger back yard, have the pump inside the fence rather than its current location outside the fence, have a buffer from traffic noise and have a safe place to keep his two large dogs.

Ms. Kimble added that Great New Homes sent a letter to all the homeowners in Moonrise East Subdivision that if any underground pipes were damaged they would assess a fine of \$5,000.

Dr. Dibble asked if there are other 6-foot high fences situated on the property line within your subdivision. Ms. Kimble replied yes but not along 25 1/2 Road. She added that the subdivision located directly south of Moonrise has an open 4 foot high fence; all of the other properties north of F Road along 25 1/2 Road have 6 foot high fences located anywhere from six inches to a foot from the sidewalk.

Dr. Dibble asked when these fences were constructed? Ms. Kimble replied that she didn't know specifically but that the subdivision to the south was developed in 1995.

### **STAFF PRESENTATION**

Ronnie Edwards offered a PowerPoint presentation including maps showing the location of the site. Ms. Edwards stated that the applicants are requesting a variance to allow a six-foot fence on property line within the front yard setback without the required five-foot landscape strip adjacent to a major collector right-of-way in an RSF-4 zone district. The subject properties are double frontage lots and double frontage lots require a 20-foot front yard setback from property line for any structure or fence along the road frontage. The definition of a front yard is the area between the nearest line or point of a building and a road right-of-way or access easement line.

Ms. Edwards stated that the subject properties are part of Moonrise East Subdivision, which was approved on January 15, 1997, prior to the adoption of the new Zoning and Development Code. Prior to the adoption of the new Code, fence regulations stated that the height and location of a fence for screening or buffering could be approved as part of the subdivision. In this particular situation, the developer decided to let the burden of constructing a fence fall onto individual property owners.

Ms. Edwards stated that when the new Zoning and Development Code was adopted on April 22, 2000, a section was added concerning fences within front yard setbacks along arterial or major collector roads must be 4 feet or less in height consisting of open design or decorative wall and fences over 4 feet in height would require a minimum 5 foot landscape strip between the fence or wall and the right-of-way.

Ms. Edwards said that Kay Subdivision, which is located 800 feet south of the subject site, has a six-foot high cedar privacy fence along the property line. Research confirmed that this subdivision was developed under Mesa County regulations before being annexed to the City in May 1995. Ms. Edwards stated that if any changes occurred to this particular fence, it would have to be brought into conformance under the current City guidelines.

Ms. Edwards reviewed the Criteria for a variance. She said that in order to grant this variance each criterion must be met. Regarding section 2.16.C.4 subsection (a) through (h), **(a) Hardship Unique to Property, Not self-inflicted**; it is staff's opinion that the subject properties do not present a unique situation. Staff finds this hardship self-imposed by the applicant because further research was not done on the current fencing regulations. **(b) Special Privilege**. The adjacent neighbors have complied with the Code by reducing the fence to 4 feet, thus not requiring the 5-foot landscape strip. **(c) Literal Interpretation**. The street classifications are actually enabling the applicants to have more than what a typical property owner with double frontage lot would have. If it were a local street a fence would have to sit back 20 feet not 5 feet if they wanted a six-foot high fence. **(d) Reasonable Use**. Staff concludes that reasonable use of the property does not depend on the requested variance. The residents were concerned about the irrigation pump being on the outside of the fence. The 5-foot strip is only required due to the height of the fence. **(e) Minimum Necessary**. The minimum necessary to make reasonable use of the property would be to construct a 4-foot fence on property line, which maintains the character of the neighborhood. **(f) Compatible with Adjacent Properties**. Regulations are intended to keep compatibility in appearance in residential areas. This particular section of 25 1/2 Road is lined with 4-foot high white vinyl fencing. Staff finds the 6-foot high vinyl fence is out of character with existing surroundings. **(g) Conformance with the Purposes of this Code**. The requested variance does conflict with the intent expressed in the Code in regards to landscaping and fencing within residential neighborhoods. **(h) Conformance with the Growth Plan**. The granting of a variance shall not conflict with the goals and principles in the City's Growth Plan.

In conclusion, Ms. Edwards recommended denial of the variance request to allow a six-foot fence on property line along 25 1/2 Road.

## **QUESTIONS**

Mark Williams asked who would have jurisdiction over the five-foot landscape buffer? Ms. Edwards said it would be the HOA's responsibility to maintain. Mr. Williams asked what the criteria for maintenance is? Ms. Edwards replied that it would have to be landscaped which includes grass and a tree every 40 feet along the right-of-way.

Chairman Dibble asked if there are any restrictions for the type of fencing allowed, *i.e.* almond color versus white colored vinyl or wood? Ms. Edwards replied that the Code does not regulate the type of fencing materials or the color. She stated that Mr. McKenna's fence is in conformance with the Code.

Chairman Dibble wondered if the fence could be moved within in that five-foot section without disturbing any other lines.

Mark Williams asked what the purpose of the five-foot landscape buffer is? Bob Blanchard explained that fencing along streets creates a tunnel effect. When fencing encroaches upon the visual or comfort corridor, especially when there are attached sidewalks, the result is a tunnel effect. The landscape buffer relieves this visual constraint. If a fence is 4 feet high or less, clearly there isn't the same visual constraint as a six-foot high fence.

Chairman Dibble asked about the differences in fence regulations between the previous Code and the new Code. Ms. Edwards replied that the old Code allowed a six-foot fence to be constructed up to the property line.

Mr. Shaver stated that landscape strips were often approved along with new subdivisions in the past. The Code was updated to make this condition more consistent.

Mr. Shaver stated that the City Council had imposed a fence along 25 1/2 Road for this subdivision, but the developer objected; Mr. Shaver said the fence could not be required because of how the Code was written at that time.

Chairman Dibble asked Mr. McKenna for clarification about the developer's representations. Specifically he asked, "did the developer say that you could build your fence on the property line?" Mr. McKenna replied affirmatively; he said that the developer told him that at closing on the property adding that the developer also said how high it could be and what materials it could be made of.

Chairman Dibble asked when Mr. McKenna became aware of the current Code regulations for fences? Mr. McKenna replied that he became aware of the requirements when Taylor Fence applied for a permit with the City, which was two days after the closing.

Mr. Trinklein submitted four photographs for the Board's review. He described each: photograph #1 shows the pipe that was broken when the post hole was dug; photograph #2 shows the finished fence; photograph #3 shows the irrigation and the return flow pipes re-routed around the fence; and #4 shows the other vinyl fences built to sidewalk directly south of this property.

Mark Williams asked the petitioner to describe what happened when the fence was being constructed. Mr. McKenna said that Taylor Fence shattered the pipe when they were digging the third post hole. After the pipe was hit, Taylor Fence notified Great New Homes. Great New Homes sent a representative to assess the damage. The representative told Taylor Fence to finish and they would come back afterwards to repair the pipe. The pipe was re-routed behind the fence and stacked on another existing pipe three feet from the property line. Great New Homes then sent a bill to Mr. McKenna in the amount of \$500 for damages.

Chairman Dibble stated that he presumed the same problem would be encountered by the rest of the lot owners along 25 1/2 Road in Moonrise Subdivision.

**PUBLIC COMMENT**

There was no public comment.

**BOARD DISCUSSION**

Chairman Dibble stated that it appeared that full disclosure was not made to the petitioner at the time of closing. Chairman Dibble also said that the homeowners are trapped in a situation that they did not create and felt that the hardship was not self-imposed and that the applicant was acting in good faith. Chairman Dibble stated that given the fact that there are other existing six-foot high fences along property lines in the area, the assumption could easily be made that this was allowed. Chairman Dibble felt that the fence would not be a public safety issue and given all these circumstances he could support this variance.

Bill Pitts stated that he felt the applicants' acted in good faith based on what was represented by the developer. Mr. Pitts said he would support the variance. Mr. Pitts added that as far as aesthetics, a white vinyl fence would be more compatible with existing fences in the neighborhood.

Mark Williams said he felt that if this variance were granted, the Board would in a sense be rescuing the developer from his responsibility. He also stated that the Board would basically be changing what the Code requires. He felt the developer should be the one making amends with the homeowners; he said "it's a private matter and the developer ought to move the line."

Chairman Dibble asked if there was anything the City could do to request the developer to assist in rectifying this problem for the homeowners?

Mr. Shaver concurred with Mr. William's assessment that this is a private matter between the developer and the homeowners with respect to any representations that were made to them and that the homeowners would have to seek enforcement of those representations and any consequent damages by a private suit, however, Mr. Shaver stated, this isn't the question before the Board. He said that the question is whether or not there is satisfaction of the criteria to grant the requested variance. How it was caused or why it was caused are only part of the analysis in looking at the variance criteria specifically as it relates to the hardship being unique to the property. Mr. Shaver continued saying that the applicant has made the argument to the Board that there are unique characteristics to their particular properties based upon how the developer assumed the subdivision would develop. Mr. Shaver suggested that the developer did not anticipate that there would be a code change at the time the lines were placed in the easement. When this subdivision was approved the Code allowed a fence one-foot behind sidewalk. Mr. Shaver said that at the time the subdivision was going through the approval process there was litigation over the a requirement that the developer install a fence. The litigation was not about the placement of the fence but it was about the developer's responsibility, whether or not he was obligated, to construct the fence. Mr. Shaver then commented on the \$5,000 fine. He said that too is a private matter and that it should not sway the Board. The homeowners association theoretically owns the utilities and those utilities exist for their benefit. Lastly, the question was asked how the developer could be held accountable to this Board. Mr. Shaver replied that the answer is he is not. The developer does not have accountability to the Board. Mr. Shaver stated that Mr. Williams is correct in saying that if this variance is granted the Board is varying the law as it relates to this particular application.

Mr. Shaver referred to Section 1.18, Applicability of this Code. He stated that is his legal opinion that there is a good basis, because of the timing of when this subdivision was approved, to conclude that the five-foot landscaping strip is not required. Section 1.18B states the former Code shall apply to any development that has received final approval on or before July 19, 2000. This particular development

did receive approval on or before that date. Whether or not it is legally compelling or whether or not there are reasons to say it doesn't apply, it appears there is good argument to say the five-foot setback is not required

Mr. Shaver referred the Board to the variance criteria and reiterated that all the criteria must be satisfied. Mr. Shaver read aloud each criteria.

Ms. Kimble said that the homeowners association does not belong to the homeowners; it is still controlled by the developer.

Mr. Shaver replied if that is the case then that is the basis for the developer to be able to assess the fine of \$5,000; whether it is done/was done in accordance with the covenants raises another issue.

Chairman Dibble stated that if the Board enforces the new Code then it seemed apparent that the pipes would have to be relocated since they are sitting right at the 5-foot mark. Mr. Shaver stated that it is apparent that the developer worked under the old code.

Mr. Shaver reminded the Board that variances are discretionary and if the Board is not convinced that this criteria has been satisfied then the correct and proper legal answer is to deny the variance.

The Board continued discussion among themselves.

**MOTION: (Mark Williams) "I move to approve the variance to allow a six-foot fence on property line along 25 1/2 Road within the front yard setback without the required five-foot landscape strip adjacent to a major collector right-of-way in a RSF-4 zone district, finding the request to be consistent with the Growth Plan and the findings of Section 4.1.J.1.b and 2.15.C.4 of the Zoning and Development Code."**

Bill Pitts seconded the motion. A vote was called and failed 0-1 with board members Dibble and Williams failing to vote.

Mr. Shaver stated that legally the Board has to vote "one way or another" and suggested that the Board revisit the criteria and attempt to make a new motion. The Board continued its discussion.

Bobbie Paulson read the motion as previously stated by Mark Williams. **"It has been moved to approve the variance to allow a six-foot fence on property line along 25 1/2 Road within the front yard setback without the required five-foot landscape strip adjacent to a major collector right-of-way in a RSF-4 zone district, finding the request to be consistent with the Growth Plan and the findings of Section 4.1.J.1.b and 2.15.C.4 of the Zoning and Development Code."**

Bill Pitts seconded the motion. A vote was called and the motion passed by a vote of 2-0, with Mark Williams abstaining.

A recess was called at 1:35 P.M. The meeting reconvened at 1:40 P.M.

**VAR-2002-108 VARIANCE - DEA FENCE**

**Request for a variance from the allowed height of 6 feet to 10 feet in a C-1 zone district.**

**Petitioner: Colorado Imperial LLC**  
**Representative: Glenn Dugan**  
**Location: 2734 Crossroads Boulevard**  
**City Staff: Senta Costello**

**PETITIONER'S PRESENTATION**

Tim Howard, representing Colorado Imperial LLC, stated that a new facility for the Drug Enforcement Administration (DEA) is currently being constructed at 2734 Crossroads Boulevard. This particular facility will serve the western half of Colorado. Colorado Imperial is proposing a 10-foot high ornamental iron fence around the entire project. The purpose of this fence is for security. Since the September 11, 2001 terrorist attacks, the DEA security specifications have increased countrywide. DEA feels that the 10-foot high fencing gives them the additional level of security not afforded by a six-foot high fence. By keeping the site more private and secure, it will be more difficult for persons to identify vehicles in the secured parking garage and activities that DEA wishes to remain confidential. An ornamental black iron picket fence is proposed rather than chainlink or block wall. Mr. Dugan said that the fence will be more aesthetic but still provide the security. DEA also requires the building to be setback 100 feet from roadways or other building structures. The fencing alignment follows the property line along the North, East and West sides of the property. Along the South side and the front of the building the fencing is proposed to be installed 10 feet off the sidewalk.

Mr. Shaver asked if the fence drawing included in the submittal accurately depicted what would be installed on the property?

Mr. Howard replied that it is essentially the same fence however the spacing of the pickets may change slightly. Taylor Fence of Grand Junction will construct the fence out of ionized aluminum and be powder coated or painted black.

Mr. Shaver asked if there would be other security measures on the property?

Mr. Howard replied affirmatively (inaudible on tape recording).

**STAFF PRESENTATION**

Senta Costello stated that the petitioners are requesting approval of a variance to install a 10 foot ornamental iron security fence in a C-1 (Light Commercial) zone district. The Zoning and Development Code requires that a fence over 6 foot in height meet the required setbacks for the zone district it is located in. The setbacks for this particular zone district are 15 feet in the front, 10 feet in the rear and 0 feet on the side. The applicant wants to install the fence on property line along three sides of the property and 7.5 feet from the front property line. The proposed fence does not conflict with the intent of the Zoning and Development Code or the goals and principles of the City's Growth Plan. Ms. Costello stated that she recommends approval of this variance.

**QUESTIONS**

Mr. Shaver asked if there is any dispute with the Canal Company over the property boundary?

Ms. Costello replied that the applicant recently went through a subdivision process and that the property line was not an issue.

**PUBLIC COMMENT**

Barry Blanchard, owner of Cactus Holdings just east of this proposed DEA building site, stated that he was concerned about the appearance of the fence.

The Board offered the drawing contained in the applicant's packet for Mr. Blanchard to review.

Mr. Blanchard said that he preferred the ornamental iron to chainlink with wire along top or a cinderblock wall but was still concerned about the appearance of a 10-foot high fence. Mr. Blanchard asked if the applicant was requesting a variance to the height or the setback?

Ms. Costello explained that the variance would not be needed if the applicant built the fence to the setbacks.

Mr. Howard explained the layout of the building. Parking is located along the front of the building then there is retention pond and closer to the street there will be a berm to add additional buffering to the structure.

Mr. Williams asked if the berm would be landscaped? Mr. Howard replied affirmatively.

Chairman Dibble asked Mr. Williams to describe the security gate system. Mr. Howard replied that the gates would cantilever swinging in and out. Just outside the entrance an eye phone will be situated which is basically a video intercom system for visitors that don't have access. In addition to that there will be a Knox box inside the block wall for emergency services.

**MOTION: Bill Pitts "Mr. Chairman, on Variance VAR-2002-108, I move that we find the project consistent with the Growth Plan and that the findings required by Section 2.16.C.4. of the Zoning and Development Code can be made for approval of the variance."**

Mark Williams seconded the motion. A vote was called and the motion passed by a vote of 3-0.

With no further business to discuss, the meeting was adjourned at 2:00 P.M.