

**GRAND JUNCTION BOARD OF APPEALS
DECEMBER 11, 2002 MINUTES
12:00 P.M. to 12:45 P.M.**

The regularly scheduled Board of Appeals meeting was called to order at 12:00 P.M. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Paul Dibble (Chairman), Travis Cox, John Paulson and Clay Tuflly. Mark Williams arrived after consideration of the November 13, 2002 minutes.

In attendance, representing the Community Development Department, were Kathy Portner (Planning Manager), Pat Cecil (Development Services Supervisor), and Ronnie Edwards (Assoc. Planner).

John Shaver, Asst. City Attorney, was also present.

The minutes were recorded by Bobbie Paulson and transcribed by Terri Troutner.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the November 13, 2002 meeting.

MOTION: (Mr. Paulson) “Mr. Chairman, I make a motion that the minutes of November 13, 2002 be approved as recorded.”

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

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-2002-227 VARIANCE—MOONRISE EAST FENCE VARIANCE

A request for approval of a variance to the requirement for a 5-foot-wide landscape strip between a six foot fence and the property line when a double frontaged lot is adjacent to a major collector road.

Petitioners: Ed & Linda Billings/Larry Simco on behalf of Great New Homes

Location: 685 and 687 Moonrise Court

PETITIONERS' PRESENTATION

Larry Simco said that the subdivision's developer had installed irrigation water piping very close to the five foot landscaping strip setback, outside of established property lines. This made control and maintenance of irrigation pumps for individual lots very difficult. He pointed out that property owners to the south had requested and received a similar variance earlier this year.

STAFF'S PRESENTATION

Ronnie Edwards circulated photos of the four lots which received a variance from the Board of Appeals on May 8, 2002. Staff reviewed this request as detailed in the December 11 staff report. Irrigation piping had been installed by the developer five feet behind the sidewalk along 25 ½ Road. Piping would have to be relocated in order for property owners to comply with the setback requirements outlined in Code section 4.1.J.1.b. Staff determined that the design and construction of the irrigation system by the developer created an undue hardship for property owners along 25 ½ Road. Ms. Edwards acknowledged the other variances given in May and noted that a majority of the variance criteria had been met for the

current request. Ms. Edwards recommended approval although that recommendation would not be consistent with Code section 4.1.J.1.b.

QUESTIONS

Mr. Cox asked for clarification of where fencing was proposed for construction. He asked staff about the subdivision's vested rights and wondered why the old Code didn't apply. Mr. Shaver briefly described vested rights, noting there is not vesting in the current situation.

Mr. Paulson wondered if staff had recommended approval of the variance request for the initial four lots. Ms. Edwards said that staff's initial recommendation had been denial; however, consistency would be maintained without conveying a special privilege if this request was granted. She added that only six lots were affected; the current request represented the last two.

Mr. Paulson wondered if a tunnel-like effect would be created along this portion of the 25 ½ Road corridor should the subdivision across the street erect six-foot-high privacy fencing close to its sidewalk. Ms. Edwards said that the 2000 Code contained provisions to regulate fencing as part of the development approval process. It was unlikely that a similar situation would recur.

Mr. Cox asked for additional clarification why staff recommended approval of the variance when not all of the variance criteria had been met. Mr. Shaver reiterated that the Board's approval for the first four lots did not set a legal precedent; however, it did create a practical one. Board members at that time determined that there had been sufficient justification for granting the variance so because the situation is no different with this application staff recommended approval. He reminded board members that staff's recommendation was just that—a recommendation. The board could make a finding other than what the staff recommended. Mr. Cox noted the controversy surrounding the vote on the first variance request and asked for a legal opinion on voting abstentions. Mr. Shaver provided the same.

PUBLIC COMMENTS

FOR:

Linda Billings (685 Moonrise, Grand Junction), co-petitioner, said that when she purchased the property, she was unsure what a variance entailed although she had been told by one of the developer's representatives that a variance would be necessary to avoid a steep fine for erecting a fence within the setback.

AGAINST:

There were no comments against the request.

DISCUSSION

Mr. Cox said that he was uncomfortable with the petitioners' lack of satisfaction of the variance criteria. He felt that not having been a part of the initial deliberations in May, his decision was made more difficult; however, because the Code stated that all criteria must be satisfied before an approval could be granted, and since three of the eight criteria were not, he felt that denial of the request was warranted. Mr. Shaver cited Code section 1.18 and said that this provision would satisfy variance criterion g.

Chairman Dibble said that the determination made in conjunction with the first approval was that the hardship had been imposed by the developer. Had irrigation lines been installed elsewhere and not subject to possible damage, the decision would likely have been different. Property owners could not meet the Code's setback requirement without further impacting their already small yards. Chairman Dibble felt that the problem had been created by the developer, a problem that unfortunately hadn't been addressed during the subdivision's development stages. This he said is an opportunity for the Board to correct that initial oversight.

Mr. Paulson acknowledged the sentiment of the Board to approve the first variance, although he was concerned that disregarding Code criteria could set an unwelcome precedent for future requests. Chairman Dibble asked for staff's confirmation that these two lots would be the last ones to come before the Board from this subdivision under these circumstances; staff's confirmation was given.

Mr. Williams asked for a brief history of the subdivision's development proposal with regard to the setback issue, which was provided by Mr. Shaver. Mr. Williams felt that the extra landscaping area adjacent to the sidewalk was designed to add to pedestrian comfort levels, giving them a greater sense of security. He expressed discomfit with denying and suggested that the current request and approval recommendation be made.

A brief discussion ensued over the problems inherent to double frontaged lots.

Mr. Cox asked staff what their position would be with development of the northern property (noted on map). Ms. Edwards said that they would be required to follow Code criteria, which would then be part of the development's approval criteria.

MOTION: (Mr. Williams) "On item VAR-2002-227, I move that we approve VAR-2002-227, a request 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, finding the proposed variance is consistent with current neighborhood characteristics."

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

With no further business to discuss, the meeting was adjourned at 12:45 P.M.