

**GRAND JUNCTION BOARD OF APPEALS  
JANUARY 12, 2000 MINUTES  
8:00 a.m. to 9:38 a.m.**

The regularly scheduled Board of Appeals meeting was called to order at 8 a.m. by Chairman John Elmer. The meeting was held at Two Rivers Convention Center.

In attendance, representing the Board of Appeals, were: John Elmer (Chairman), William Putnam, Dr. Paul Dibble, James Nall and Pamela Hong.

In attendance, representing the Community Development Department, were Kristen Ashbeck (Sr. Planner) and Joe Carter (Assoc. Planner).

John Shaver (Assistant City Attorney) was also present.

The minutes were recorded by Bobbie Paulson. Transcription was provided by Terri Troutner.

There were 6 citizens present during the course of the meeting.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes of the December 8, 1999 meeting.

**MOTION: (PUTNAM) “Mr. Chairman, I move we approve the minutes as presented.”**

Dr. Dibble seconded the motion. A vote was called and the motion passed by a vote of 4-0, with Ms. Hong abstaining.

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

There were no announcements, presentations and/or visitors.

**III. FULL HEARING**

**VAR-1999-284 VARIANCE—OVERHEIGHT FENCE**

**A request for approval to vary sections 5-1-5.A.1 of the Zoning and Development Code to allow an overheight fence on property line in the front yard setback.**

**Petitioner: Virginia Painter**

**Location: 2743 Olson Avenue**

**PETITIONER’S PRESENTATION**

Doug Peterson, representing the petitioner, said that he’d erected a new fence on the petitioner’s property at her request to replace an old one. The fence’s corner at the driveway was realigned to allow for increased sight distance. Photographs of the old fence, built in 1978, were distributed to board members. He’d received comments from the neighbors that the new fence was a welcomed improvement.

**QUESTIONS**

Chairman Elmer asked if the pickets shown in the photographs were intended to compare the old fence height with the new, to which Mr. Peterson responded affirmatively. The difference in height, he said, was only about 3 to 4 inches and the alignment along the property line had been straightened.

Chairman Elmer asked for a brief history on his procurement of a fence permit, which was given.

**STAFF'S PRESENTATION**

Joe Carter indicated that the proposal actually represented a two-part request—to retain the existing pickets in the front yard setback and approval for a tapering of the fence along the west side of the property. Mr. Carter said that Code specifications required fence heights in front yard setbacks of no more than 30 inches if solid, 48 inches if 2/3 open to 1/3 closed. The property's location and fence placement were noted. The City's position was that the higher fence would create a "tunneling effect" along Olson Avenue and present safety hazards because of its proximity to the road. Individual picket heights went from 50-54 inches for the old fence to 56-58 inches for the new fence. A letter supporting the new fence had been submitted by neighbor, Mrs. Lavonia Inglehart. Staff recommended denial of the variance request.

**QUESTIONS**

Dr. Dibble noted on the fence permit where the height specified was given as "4 feet 30 inches." Mr. Carter stated that both measurements came from the Code as being the maximum allowable fence heights, depending on fencing style. The permit had been pulled after the new fence had been erected. Mr. Carter noted that no fence permit was required for general picket replacement and maintenance of an existing fence. Virginia Painter, petitioner, came forward and said that she had initially been unaware that a fence permit was required. When she went to secure a permit, staff had written in the 4-foot/30-inch figure and told her that the fence could not exceed those heights. Since the fence had already been erected, she realized then that there was a problem. Mr. Shaver clarified the permit.

Chairman Elmer wondered if the new fence would be a grandfathered, non-conforming use since the original fence predated the Code. Mr. Carter responded negatively, adding that the Code originated in 1971. Mr. Shaver said that legally there was no non-conforming use unless approved by the Board or the Code provided for/acknowledged the use.

**PUBLIC COMMENTS**

There were no comments either for or against the request.

**PETITIONER'S REBUTTAL**

Mr. Peterson offered no further rebuttal testimony but availed himself for questions.

**QUESTIONS**

Chairman Elmer asked for clarification of the petitioner's hardship. Mr. Peterson said that he believed he was just replacing an existing fence, which fell under routine maintenance and did not require a permit.

Ms. Hong asked if there were other neighbors along Olson Avenue with similar fences, to which Mr. Peterson replied negatively.

Dr. Dibble noted that even the original fence was in violation of Code criteria. Why had the new fence height been increased, he asked. Mr. Peterson said that the height had been increased in part to keep the petitioner's dog from jumping over it and also to reduce the amount of construction waste generated. Mr. Peterson reiterated that he thought he'd only been replacing an existing fence.

**DISCUSSION**

Mr. Nall said that since the entire fence had been replaced and both the alignment and height were changed, a permit had been required prior to construction; thus, the petitioner was in violation. He recognized, however, that if perceived by the petitioner that replacement of the pickets had constituted maintenance of an existing fence, the intent had not been to bypass the permitting process.

Dr. Dibble appreciated the contractor's attempts at improving sight distance; however, the height restriction should have been known by the contractor and adhered to whether or not a permit was secured, which had not been done.

Chairman Elmer asked staff if the fence had been erected on the property line or the right-of-way. Neither staff nor Mr. Shaver was sure.

Mr. Putnam observed that an original non-conforming fence had only been made more non-conforming by its replacement.

Chairman Elmer said that his biggest concern regarded safety. Since the fence directly abutted the street, no visibility was provided for people pulling out. The increased height only exacerbated the problem. As well, none of the other neighbors had a similar fence, making the petitioner's fence stand out. Chairman Elmer felt that the difference between maintenance and reconstruction was clear.

Ms. Hong suggested placing the higher, solid fence in the rear yard to contain the petitioner's dog and erecting a shorter, more open fence along the front yard setback or leaving it open.

**MOTION: (NALL) "Mr. Chairman, on VAR-1999-284, I move that we approve the request for a height variance for a fence within a front yard setback for the following reasons as presented by the petitioner."**

Dr. Dibble seconded the motion. A vote was called and the motion failed by a vote of 5-0.

**VAR-1999-287 VARIANCE—FELLOWSHIP SIGN VARIANCE**

**A request for a variance to section 5-7-7.A. of the Zoning and Development Code to allow a 141-square-foot flush wall sign.**

**Petitioner: Fellowship Church**

**Location: 765 – 24 Road**

**PETITIONER'S PRESENTATION**

Pastor Dan Hooper, representing the petitioner, briefly recounted the history of the Fellowship Church and its expected growth. Pastor Hooper outlined a number of the various programs offered by the church, adding that plans included continued expansion of the facility at 24 Road and I-70. The current request represented a temporary solution only and would serve only to advertise the existence of the building from I-70. Within two years another, more permanent sign request would be submitted with construction of additional buildings.

**QUESTIONS**

Ms. Hong asked for clarification of the church's non-profit status with the IRS, which was given.

Mr. Nall observed that people currently coming to the church didn't seem to have a problem finding it. Was the reason for the sign to advertise for new membership traveling along I-70? Pastor Hooper said

that current flush wall signage could not be seen from the highway. Many of those traveling along the interstate were new to the area and unfamiliar with local streets. Proposed lettering would not be visible to the residential areas and would be temporary.

Dr. Dibble asked what the new facility would look like. Pastor Hooper offered visual representations of the site and plans for future expansion, to occur 3- 5 years hence. It was presently unclear what the sign package would be.

Dr. Dibble asked for clarification on the church's Conditional Use Permit, which was provided.

### **STAFF'S PRESENTATION**

Kristen Ashbeck reviewed the request as contained in the January 12, 2000 Staff Report. The maximum amount of allowable signage in residential areas is 24 square feet per street frontage for bulletin signs. No allowance for wall signage is made at all. She briefly recounted a previous sign variance request, which had been granted, and she noted the locations of other signage on the site. Staff opposed the variance request since other options were available for enhanced recognition without the need for a variance. The hardships of setback and architectural character were deemed self-imposed and were not unique to the property. Since the request failed to meet variance criteria, staff recommended denial.

In addition to the two letters of opposition contained in the file (Marilyn Scott, 782 – 23 7/10 Road, Grand Junction and Norma Pennington, 780 – 23 7/10 Road, Grand Junction), Ms. Ashbeck said that an additional phone call had been received from Alan Pennington, who also opposed the request.

### **QUESTIONS**

Dr. Dibble noted the site's present zoning of RSF-R; he asked what the zoning is directly to the east and west? Ms. Ashbeck said that zoning directly west was either C-2 or I-1, with Residential across the street to the east. She added that the Growth Plan had designated a corner of the eastern property as commercial. Dr. Dibble stated that commercial zoning would allow for increased signage. When asked, Ms. Ashbeck said that the objectors had all been from residents to the north.

Chairman Elmer asked if the Planning Commission had had the authority to consider an alternate sign package with the Conditional Use Permit (CUP). Mr. Shaver responded that the CUP generally addresses site impacts; signage was not addressed in the church CUP.

A brief discussion ensued over conditions surrounding the site's annexation into the City and the property's resultant zone of annexation. The discussion also included the changes in character that were taking place along the 24 Road corridor. Following extension of sewer service to the area, Chairman Elmer recalled that commercial areas along I-70 had remained unchanged; some properties had been changed from Rural to Estate; and other property owners had requested and received higher densities. Dr. Dibble suggested that given the changing character of the area, the zoning currently applied to the church's property may be in error. Ms. Ashbeck said that if consistent with the 24 Road corridor study, the church may have better justification for rezoning the property.

### **PUBLIC COMMENTS**

#### **FOR:**

There were no comments for the request.

#### **AGAINST:**

James Abraham (2387 H Road, Grand Junction) expressed opposition to the request. He said that Pastor Hooper had originally told residents that the church would be unobtrusive, which hadn't proven to be the case. Night lighting was still extreme with no mitigation planned, and outdoor concerts were loud and

without regard for surrounding residents. He'd made repeated attempts to communicate concerns with church and city staffs but to no avail. If approved, he wondered if proposed signage would be illuminated.

**PETITIONER'S REBUTTAL**

Pastor Hooper said that no illumination was planned for proposed signage. When informed about the noise issue, the youth group had moved inside. He was unsure how noise could carry to the extent mentioned by Mr. Abraham through the insulation and closed doors of the building. Parking lot lighting had been installed per City requirement. To alter what was in place could be construed as a violation of that requirement. Lighting was on a timer and monitored. He doubted that the noise generated by a church would be more excessive than the noise generated by a park.

**QUESTIONS**

Dr. Dibble asked if floodlights would be used to illuminate the flush wall signage, to which Pastor Hooper responded negatively. He reiterated that the sign would be temporary pending construction of the new building.

**DISCUSSION**

Chairman Elmer said that at the time of annexation the use was given more consideration than the Zone of Annexation. He did not consider the subject area as residential. The proposed sign was not obtrusive nor was it freestanding. He felt that the zone itself created the hardship, and he supported the petitioner's request.

Mr. Putnam said that the church's good works were irrelevant to the request. The congregation clearly was able to find the church and he felt uncomfortable by the Pastor's comparison of it to a business.

Dr. Dibble understood the need to identify the building; however, he disagreed with the semantics. The cross itself announced the use. Other churches were proposed along the same corridor which included identification signage on their buildings. The subject site had the added hardship of a rise in the overpass coming from the east. Recognition of the building was important more to the occasional attendee, and he expressed support for the request.

Mr. Nall said that normally he considered only the type and scope of signage and whether it complied with Code criteria. However, in the current instance, surrounding zoning reflected commercial uses, which would have allowed the requested sign without need for a variance. The type of signage proposed, he felt, was consistent with the character and zoning of the corridor.

Chairman Elmer acknowledged the unique circumstances associated with the current request.

**MOTION: (DIBBLE) "Mr. Chairman, on item VAR-1999-287, I move that we approve the request for the 141-square-foot sign variance of the sign allowance for the parcel at 765 – 24 Road for the reasons that we have discussed."**

Ms. Ashbeck suggested that the motion include references to lighting and a clarification delineating the building façade upon which the sign would be placed. Mr. Shaver added that letter height (not to exceed) could also be referenced.

**MOTION: (DIBBLE) "Mr. Chairman, on item VAR-1999-287, I move that we approve the request for the 141-square-foot sign variance of the sign allowance for the parcel at 765 – 24 Road, to be placed on the south façade on the central part of the building and that there be no illumination of the sign, and that the letters not exceed 30 inches in height, for the reasons that we have discussed (as amended)."**

Mr. Nall seconded the motion. A vote was called and the motion passed by a vote of 3-2, with Ms. Hong and Mr. Putnam opposing.

#### **IV. GENERAL DISCUSSION**

Mr. Shaver expressed appreciation to Mr. Nall and Dr. Dibble, who were currently serving as alternates on the Planning Commission. He noted that no permanent replacements have yet to be appointed but interviews are scheduled.

With no further business, the hearing was adjourned at 9:38 a.m.