

**FRUITA BOARD OF ADJUSTMENT MINUTES**  
Monday, October 24, 2011

**ITEMS FOR CONSIDERATION:**

2011-15                      Heath Residence  
Application:                Variance

**A.        CALL TO ORDER & ROLL CALL**

Chairman Bruce Bonar called the meeting to order at 6:30 p.m. Board of Adjustment members in attendance were: Janet Brazfield, Bruce Bonar and Dean Pichler.

**B.        PLEDGE OF ALLEGIANCE**

Janet Brazfield led the Pledge of Allegiance.

**C.        ELECTION OF OFFICERS**

Bruce Bonar- The first order of business for tonight's meeting is election of officers. I believe we need to elect a Chairman and a Vice-Chairman. Do I have a nomination for Chairman?

Janet Brazfield- I nominate Bruce Bonar for Chairman.

Dean Pichler - Seconds

3 Yes Votes; Motion Passes.

Bruce Bonar- We have a Chairman. We need to elect a Vice-Chairman. Do I have a nomination for Vice-Chair?

Dean Pichler- I nominate Janet Brazfield to be Vice Chairman.

Bruce Bonar- Seconds

3 Yes Votes; Motion Passes

Bruce Bonar- Congratulations; we now have a Vice-Chairman.

**D.        APPROVAL OF THE AGENDA**

Bruce Bonar- The next order of business is approval of the agenda. Do I have any additions/corrections to the agenda? Hearing none, do I have a motion to approve the agenda?

Dean Pichler- I make a motion that we approve the agenda as stated.

Janet Brazfield- Seconds

3 Yes Votes; Motion Passes

**E.        APPROVAL OF MINUTES**

Bruce Bonar- The next order of business is approval of minutes of the most recent Board of Adjustment meeting of October 11, 2010. Do I have a motion to approve the minutes?

Dean Pichler- I make a motion we accept the minutes as written.

Janet Brazfield- Seconds

3 Yes Votes; Motion Passes.

**F.        HEARING ITEMS**

2011-15                      Heath Residence

Application:                Variance

Property Owner:            Kym Heath

Representative:            Ryan Burkepille, Housing Resources of Western Colorado

Location:                    203 Javan Court

Zone:                         Community Residential

A request for a six foot Variance to the minimum 20 foot street-side setback required in a Community Residential zone.

Bruce Bonar- Item F is Hearing Item 2011-15 – A Variance. So I guess the first order of business, Janet would you like to say something?

Janet Brazfield- I do. I need to say something. Mr. Chairman, thank you. I need to inform everyone that I am currently involved in legal litigation with Housing Resources of Western Colorado. However, the Board of Adjustments meets to determine whether or not an applicant meets specific approval criteria as set forth in the City of Fruita Land Use Code in Section 17.13.050 for Variances. I am an individual who does not allow personal to interfere with business and the criteria regarding variances is specific and, in essence, removes any personal judgment. Pursuant to Section 2.40.040 C. Voting for the Board of Adjustments: I, one, do not have any direct financial interest in the issue, two, the matter does not involve myself, and, three, because of no direct financial interest and the matter not involving myself, I did not see any potential violations. However, I wanted to be sure and disclose this information to ensure all is above board and fairness questions or issues are met. So, Mr. Chairman?

Bruce Bonar- Thanks, Janet. Is there any objection to Ms. Brazfield hearing this petition? Hearing none, Mr. Pichler, do you have any objection?

Dean Pichler- No objection.

Bruce Bonar- Hearing no objections; I think that there is no conflict and we shall proceed. Given all of that, would the petitioner like to tell us what they think. If you could approach the podium, give us your name and your address.

Ryan Burkepille- My address is 811 27 ¼ Road and that's Grand Junction, CO. First off, basically, what we have is a home that mistakenly got placed six feet too close to the property line. In typical construction, what we do is our concrete contractor lays out the foundation and lays the house out and is typically within an inch of where we need to be. In this particular instance, the lot had straw bales from the previous developer to keep the dirt from washing out onto the street. The property pin is six feet from the sidewalk. Rather than finding the property pin, they assumed that the property line went to the sidewalk, in which most cases in the construction that we do, is very close to the sidewalk; they are usually within one foot. However, like I said, in this case, on this particular lot; it is six feet off the property line. So, by going off of the edge of the sidewalk, it threw the house off six feet.

Common construction practice ... that doesn't get checked by the County until the house is framed. Rough-in electrical is in and rough-in plumbing is in. So by that point, you have a good portion of the house constructed. On this particular house, we are not on any easements. It's not benefiting anybody by any means. If anything, it's made a little bit of a hardship, so it's not a mistake that's helping anybody. What our program does is we build self-help housing. And we have applicants that come in similar to Habitat, but it's got it's big differences; and construct eight, in this case, 13 houses and nobody can move in until that last house is finished. In this build, right now, we have 11 in Palisade and 2 out here in Fruita. This house happens to be the last of the 13. So this is pending the rest of the 12 homeowners to move in. Like I said, nobody is gaining anything. If anything, the homeowner is losing a little bit of her front yard. I think that is all I have.

Bruce Bonar- Thank you. We will ask questions later.

Dahna Raugh- As explained by the applicant, this does appear to be a mistake based on the unusual location of the property line in relation to the sidewalk along Columbine Street, which is the street against which the house is built too closely. The Land Use Code has specific approval criteria that must be considered for variance requests. And I will quickly go through those. The first one is that the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Land Use Code and the Master Plan, including the specific regulation in question. In this case, it is a set-back and the building is six feet closer to Columbine than what would otherwise be required. Columbine is a right-of-way that is much

wider than what we normally have for local roadways. Typically, the right-of-way is about 44 feet; in this case, the right-of-way is 60 feet.

The house isn't within an easement. The clear sight triangle at the intersection is not impaired. The house does not look out of place compared to other houses in the area. And because of this, the intent and the purpose of setbacks in the Land Use Code, which is the main intent of the Land Use Code and the Master Plan, is to protect the public health, safety and welfare; staff does not believe that public health, safety and welfare is in any way compromised by the setback variance requested.

The second approval criteria, in a nutshell, is there needs to be something unique about the property that is not shared by all of the other properties within the same zoning district. This is a Community Residential zone and the uniqueness, here again, is the fact that the right-of-way is much wider here than it is in other areas. I'm putting the location map and just off map, you can see where Columbine Avenue phases down into the 44 foot right-of-way just about in this location (just west of Tamarisk Court and N. Cedar Court). So there is a stretch, right here (E Columbine Avenue to Tamarisk Court and N. Cedar Court), where the right-of-way is extra wide. So, there is more than one property that has this issue, but certainly not all properties in the Community Residential zone have this particular problem. Staff believes that this approval criterion has been met that this property is somewhat unique. The house was set at approximately six feet too close to the road and the applicants are asking for that six feet. They are not asking for more than what would be required in order to let that house continue to be built as it currently sits, so staff does not believe that they are asking for more than the minimum necessary in order to resolve this issue.

I think I mixed up approval criteria four and approval criteria two. I'm too close to the issue, so I think I've already talked about the zoning district in general does not share this particular issue. And that was supposed to be number four. And then the uniqueness, again, of this property is the fact that it is an extra wide right-of-way. Lastly, the fifth approval criteria that must be considered, again, is the minimum necessary relief, as you can see these all kind of run together and I am talking about them all in general. So bottom-line, the health, safety and welfare of the public is not compromised by this mistake in placing the house six feet too close to the right-of-way. The uniqueness is the fact that the right-of-way is extra large. But staff believes that, even though this issue was directly caused by the builder by making that mistake, it was an honest mistake. So, four out of the five approval criteria staff believes are absolutely met and most of the fifth criteria has been met. Again, it appears to be an honest mistake and staff fully supports this variance request and there are no conditions of approval recommended.

None of our reviewers had any concerns regarding this variance request and we have had no comments from the public regarding this request. So again, staff supports this request and that concludes my presentation.

Bruce Bonar- Thank you. At this point, I will open this up to a public hearing. Is there anyone in the public who would like to speak for or against this Variance? Would anyone like to speak? Hearing none, I will close the public hearing and open it back to the petitioner for rebuttal. Do you have anything to say in rebuttal?

Ryan Burkepile- No.

Bruce Bonar- Then I will open it up to the Board. Mr. Pichler?

Dean Pichler- See I wanted to go last and he puts me first. *Laughter by all.* Serves me right. In driving through, I agree, it's a lovely home and it's not out of place. My concern is that it appears that the homes that do have fencing in there that they have honored that setback where the fences are in place. Now if fencing were to go in there would that have to be setback at that same distance, so it's going to shrink that Columbine side of the house, that yard, even more so? In other words, you can't run a fence up to the sidewalk?

Dahna Raugh- The Land Use Code currently permits fencing on corner lots to extend up to the property line on one of the street frontages. In this case, the fence would not be permitted to be on the public property, on the right-of-way, without an Encroachment Agreement. So without the Encroachment Agreement, the fence could be no further than 14 feet from where the house currently sits.

Dean Pichler- As opposed to up against the sidewalk?

Dahna Raugh- Right, but you are making me wonder, now that I'm thinking about it, did other people fence our right-of-way?

Dean Pichler- No, I saw adjacent homes that they were graveled on the outboard side and, to me, that looked like a good idea. But in this particular ... you are speaking about line of sight and everything and if anything other than that were to occur, I would be pushing for a 30 or 36 inch max on fence height. So ... go ahead.

Dahna Raugh- I was going to say, staff looks at the clear sight triangles at intersections any time a fence permit or any kind of development near a corner is requested. The City routinely grants permission to put fences in right-of-ways in certain areas, such as this, when it is clear that we will not be needing the right-of-way for quite some time, if at all, and also absolutely no fence in the clear sight triangle. So if the property owner did come in to request a fence that went close to the sidewalk, number one, they would need an Encroachment Permit from the City in order to put that fence in the right-of-way, but also, staff would be looking very closely at the clear sight triangle issue.

Dean Pichler- And that point is well taken, right now, when everything is flat and level; however, if again, it were pulled out and I'm familiar with the corner lot fences; people deserve a little bit of yard just because they have the corner, they shouldn't be penalized on that part of it. But in this case here, again, that's probably a school route going through there and if that's not going to be setback that same distance it can be a little dangerous coming out of that cul-de-sac, if that were a six footer. Outside of that, again, it looks like it's made well, fits well, and I hope the folks will be happy with it because I tried to pick; best I can do.

Janet Brazfield- I also, myself, drove by. I do not ... I agree with staff, it does not impair as far as view as long as you noted the fence, that was also my concern. From what I remember, I think, Dahna, it is 14 feet, correct?

Dahna Raugh- Correct.

Janet Brazfield- So the fence would go pretty much from the back corner of that house towards Columbine. It couldn't go passed the corner of that house, if you look at the plot.

Dahna Raugh- I think that I need a picture. I'm going to step up to the podium and put up a drawing. This is where the driveway is. (Dahna drew the driveway and sidewalk on the Site Exhibit.) So, the house sits at 14 feet from the property line. The sidewalk is another six feet away, here. So if I understand correctly, the concerns of Mr. Pichler and Ms. Brazfield, if the fence is to be constructed and it came out to this point here right, then cars coming out this way or going this way might have trouble seeing around it. That is your concern?

Janet Brazfield- The concern is coming out of Javan Court onto Columbine, the sight looking, blocking traffic. I have no issue as long as the fence takes into consideration the setback that the house already has experienced on that issue.

Dahna Raugh- So the City of Fruita has a manual called: The Engineering Design Standards, which has very specific calculations for a clear sight triangle, which is dependent upon the flow lane of the roadway, speeds along the roadway and other issues such as that. So if a fence

permit was requested for this property, whether the fence was coming to the property line or requested to be in the right-of-way, it doesn't matter; we would be running the calculations and so that is one of our major concerns with anything that is built near any intersection. Does it violate the clear sight triangle? So, I guarantee that staff will be looking at that whether or not there is a Variance granted on this property or not, and regardless of where or how the fence is constructed. Staff will definitely be looking at that to insure that there is no ...

Janet Brazfield- Safety issue?

Dahna Raugh- ... violation of the clear sight triangle creating safety hazards, with or without the Variance.

Dean Pichler- When you yield a Variance, again, it makes you; it's a tender spot and you have to broach that before hand, not after the fact.

Dahna Raugh- Absolutely, we looked at that with the house too. Does it violate the clear sight triangle? No, we are good on the house.

Janet Brazfield- I had a question on the ... Housing Resources mentioned when the setback is checked. I'm surprised that that's not done before a foundation is poured. Is that something; is that usual? Am I making sense?

Dahna Raugh- It is. Most people check these things; although, I have to say that this is not the first time I've run across this very same issue. I've seen a lot over the years. It always surprises me when it happens because pouring concrete and building houses has got to be one of the most expensive things that most people embark on and you want to get it in the right spot. So I think people really are trying to get it in the right spot, but sometimes we make mistakes and so here's one of those where a mistake was made. It's not the first time; I'm sure it won't be the last time. It is somewhat unique, but not unheard of to "oops it" like this.

Bruce Bonar- I did not drive by the property, so I am looking at the 2005 aerial photograph which shows the north side of east Columbine there to be uninhabited. Is there currently any structure to the immediate west of the proponent property?

Dahna Raugh- Yes, there is.

Bruce Bonar- There is, okay. So, this would not establish a precedent for other houses along that street to also build closer to the street?

Dahna Raugh- I don't believe it would set a precedent. I think if we, in the near future, get someone accidentally building something six feet too close, we would look at them with a little more scrutiny than we might we have looked at the current applicants. Fair warning to anyone out there who is listening.

Bruce Bonar- Okay. Yes, I just didn't want someone to say, you let them do it. Why won't you let me do it? And the only place that this could really be an issue would be immediately to the west of them, and if there is already a house there; that takes care of that problem. I did observe the second paragraph of the City Engineer's report that the reviewer made reference to the pyramids. I'm assuming that Sig was relying on anecdotal information and he didn't personally have any knowledge of this.

Dahna Raugh- I don't think is that old.

Bruce Bonar- No. I think that Dean and Janet have covered most of the other questions. As you have pointed out, the Land Use Code is very specific that these five conditions must be met in order for a Variance to be granted. And, even though, you had a good time trying to confuse us on which order they came in.

Dahna Raugh- Sorry about that ... *laughter* ...

Bruce Bonar- It appears to me that each of the conditions has been met. As you pointed out, the one that states: was not induced by any action of the applicant; it cannot be practically corrected ... well certainly, the applicant did put the house there. That is an action. But I have to agree that it seems that this was not an intentional error and it does not materially gain anything for the applicant to have done so. And the practically corrected, outside of tearing down a house and moving it six feet and putting it back up again, I don't think anyone would make a strong case that that is a practical alternative. So it seems to me that the applicant meets the five criteria necessary to approve a Variance. So, that's pretty much all I have to say.

Janet Brazfield- The applicant is, I take it, is Kim Heath? Another way to look at that issue is Ms. Heath was reliant upon the developer and the concrete contractor and other entities to properly place the house. The applicant, per se, herself, I'm not sure induced anything.

Bruce Bonar- Okay.

Janet Brazfield- So I would have to agree that the criterion has been met.

Bruce Bonar- Okay, any further discussion?

Dean Pichler- I'm a little mystified that a footprint wasn't put on paper before this happened, but so be it, it wasn't done at this time and I see no reason to at this late time to do anything detrimental. I would make a motion that we go continue and give the variation on this, as you stated.

Bruce Bonar- Would you like to phase that as a motion or was that it?

Dean Pichler- That was the motion.

Bruce Bonar- I believe we have a motion, did you get that?

Mary Van Ackeren- I did.

Bruce Bonar- We have a motion, do we have a second?

Janet Brazfield- I'll second.

3 Yes Votes; Motion Passes

Bruce Bonar- Motion Passes. Thank you all for being here. Is there any other business?

Dahna Raugh- No.

## **G. ADJOURNMENT**

Bruce Bonar adjourned the meeting at 7:00 p.m. Thank you for being here.

Someone in the audience – Thank you.

Dean Pichler- Enjoy your home.