



PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO:** El Paso County Board of Adjustment  
**FROM:** Nina Ruiz, Project Manager/Planner II  
Gilbert LaForce, Engineer II  
Craig Dossey, Executive Director Planning & Community Development  
**RE:** BOA-17-001: The Metro at Constitution Retaining Wall  
Assessor's Schedule No: 54052-18-002

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Garrison Hassenflu 2020 Broadway Blvd. Kansas City, MO 64108	Terra Nova Engineering, Inc. 125 N. Wahsatch Avenue Colorado Springs, CO 80903

**Commissioner District: 2**

Board of Adjustment Hearing Date:	5/10/2017
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**EXECUTIVE SUMMARY**

A request by Terra Nova Engineering, Inc., on behalf of Garrison Hassenflu for approval of a dimensional variance to allow the construction of a fence on top of a retaining wall for a total combined height of 12 feet at the lot line where an accessory structure side setback of fifteen (15) feet is required. The property, known as Lot 1 of the Eight Line Subdivision, is located at the southeast corner of the Constitution Avenue and Peterson Road intersection and is within Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> P.M. The parcel is not included within the boundaries of a small area plan.

A rezoning request from the CC (Commercial Community) to the RM-30 (Residential Multi-Dwelling) was approved by the Board of County Commissioners on January 26, 2016 (P-15-003). Following approval of the rezoning, a site development plan was submitted for review to allow for the construction of a 100 unit apartment complex on the 5.84 acre lot. Staff identified a six foot tall fence atop a six foot tall retaining wall, for a total maximum height of 12 feet, during the review of the site development plan and that such wall and fence were proposed to be constructed within the required 15 foot side setback. Section 6.2.1.C.4 of the Land Development Code (2016) states that "The height of a fence, wall, or hedge built on berms or retaining walls shall include the height of the berm or wall." In addition, Section 6.2.1.D.2 of the Code states "A fence or wall



over 7 feet in height is considered an accessory structure, and shall meet the accessory structure setbacks" of the applicable zoning district. In the RM-30 (Residential Multi-Dwelling) zoning district the accessory structure side setback is fifteen (15) feet. For this reason, the applicant has requested a dimensional variance to allow a twelve (12) foot tall retaining wall and fence to encroach 15 feet into the 15 foot accessory structure side setback.

**A. REQUEST**

A request for approval of a dimensional variance to allow the construction of a fence on top of a retaining wall for a total combined height of 12 feet at the lot line where an accessory structure side setback of fifteen (15) feet is required.

**B. APPROVAL CRITERIA**

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2015), states the following:

*"The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:"*

- 1) *"The exceptional narrowness, shallowness, or shape of the specific piece of property."*  
*Legal use of the property is not severely restricted due to any exceptional narrowness, shallowness, or shape of the property.*
- 2) *"The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property."*  
*Legal use of the property is not severely restricted due to any exceptional topographic conditions or other extraordinary or exceptional situation or conditions".*

However, Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

*"The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;"*

- *"The variance provides only reasonably brief, temporary relief; or"*

Approval of the variance would provide permanent relief.

- “*The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements; or*”

There are no anticipated impacts that would require an alternate plan, standard, or condition.

- “*Some other unique or equitable consideration compels that strict compliance not be required.*”

Section 6.2.2.D.2 of the Land Development Code requires a six (6) foot privacy fence along the property boundary when multi-family development abuts a commercial or residential land use. The applicant is proposing to comply with this requirement. In addition, the applicant is proposing to construct a maximum six (6) foot tall retaining wall directly underneath the six (6) foot privacy fence in order to address the topographical changes on the site. Section 6.2.1.C.4 of the Code states that “The height of a fence, wall, or hedge built on berms or retaining walls shall include the height of the berm or wall.” When Section 6.2.1.C.4 is applied to the subject request, the result is a proposed fence at a total height of twelve (12) feet.

Staff recommends that the Board of Adjustment could base a motion for approval of the request upon the criteria included above pertaining to the “exceptional topographic conditions” present on the subject property. There is an eight (8) foot elevation gain along the southern property line from the eastern access at Canada Drive to the western access at Peterson Road. The adjacent property to the south was built at roughly the same elevation as the Canada Drive access resulting in an increasing vertical difference of eight (8) feet between the two properties from east to west. Without the retaining wall the site layout and building footprint would have to be significantly modified.

## C. BACKGROUND

A rezoning request from the CC (Commercial Community) to the RM-30 (Residential Multi-Dwelling) was approved by the Board of County Commissioners January 26, 2016 (P-15-003). A site development plan is under current review to allow for the construction of a 100 unit apartment complex on the 5.84 acre lot.

## D. ALTERNATIVES EXPLORED

There are several alternative options for the applicant that would not require a dimensional variance request:

1. Redesign the apartment building so that it stair steps with the natural terrain.

2. Redesign the site so that there are multiple buildings instead of one, allowing them to be at various grades.
3. Eliminate the access point onto Peterson Road allowing the site layout to be roughly the same elevation as the adjacent property with a tiered retaining wall under seven (7) feet in height and the fence not being located directly on top of the retaining wall.

## **E. CONDITIONS OF APPROVAL**

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance for the construction of a fence on top of a retaining wall for a total combined height of 12 feet at the lot line where a setback of fifteen (15) feet is required, and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

### **Conditions**

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed fence on top of a retaining wall may require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met. In addition, any material change to the alignment or location of the combined fence and retaining wall, or any combination thereof totaling more than 7 feet in height, shall also require separate Board of Adjustment application(s) and approval(s).
2. Approval of a fence on top of a retaining wall by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building Department are required prior to construction of the retaining wall and fence.

### **Notation**

1. Physical variances approved for a proposed structure (except for lot area variances) are valid only if construction of the structure is initiated within twelve (12) months of the date of the Board of Adjustment approval.

## **F. APPLICABLE RESOLUTIONS**

Approval: Resolution 1 – Hardship

Disapproval: Resolution 2

## **G. LOCATION**

Abutting zoning and land use:

North: CC (Commercial Community)	Commercial
South: CC (Commercial Community)	Commercial
East: RM-30 (Residential Multi-Dwelling)	Multi-family
West: CC (Commercial Community)	Vacant

**H. SERVICE**

**1. WATER/WASTEWATER**

Water is provided by Cherokee Metropolitan.

**2. WASTEWATER**

Wastewater is provided by Cherokee Metropolitan.

**3. EMERGENCY SERVICES**

The site is located within the boundaries of the Cimarron Hills Fire Protection District. The District was sent a referral and had no response.

**I. ENGINEERING**

**1. FLOODPLAIN**

No portion of the property is within a 100-year floodplain as designated on the revised FEMA Floodplain Insurance Maps (FIRM).

**2. DRAINAGE AND EROSION**

There were no drainage or erosion issues identified with this request.

**3. TRANSPORTATION**

There were no transportation issues identified with this request.

**J. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified ten (10) adjoining property owners on 4/17/2017 for the Board of Adjustment meeting. Responses will be provided at the hearing.

**K. ATTACHMENTS**

Vicinity Map

Letter of Intent

Site Plan

Elevation Drawings

# El Paso County Parcel Information

File Name: BOA-17-001

PARCEL	NAME
5405218002	JASPERCO LLC

Zone Map No.: --

ADDRESS	CITY	STATE
5532 SADDLE ROCK TRL	COLORADO SPRINGS	CO

ZIP ZIPPLUS  
80918 3006

Date: April 17, 2017



Please report any parcel discrepancies to:

El Paso County Assessor  
1675 W. Garden of the Gods Rd  
Colorado Springs, CO 80907  
(719) 520-6600



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March 22, 2017

El Paso County Development Services Department (DSD)  
2880 International Circle, Suite 110  
Colorado Springs, CO 80910  
Attn: Nina Ruiz, Planner II

Re: Letter of Intent for The Metro on Constitution Board of Adjustment Variance

Dear Ms. Ruiz,

This letter is being written as part of the Site Development Plan (SDP) Application as described in the Early Assistance Meeting (EA-15-95) minutes dated October 7, 2015.

This application is made for the Type D form (1-2C) for a requested variance to allow for a proposed fence on a wall exceeding 7' in height in the southerly building setback.

Following is information required as part of this letter:

1. Owner/Applicant:

Gary Hassenflu owner of MW Development Enterprises, LLC  
2020 Broadway  
Kansas City, MO 64108  
Office ph: (816) 898-9285  
Mobile ph: (816) 474-4867

Consultant:

Terra Nova Engineering  
L Ducett, P.E.  
125 N. Wahsatch Ave.  
Colorado Springs, CO 80903  
Office ph: (719) 635-6422  
Mobile ph: (719) 499-2255

RECEIVED  
MAR 27 2017

2. The site is located at 2450 Canada Drive, is 3.4 acres in size (after a 20' wide right-of-way reservation along Constitution Ave.), and has a current zoning of RM-30 or Residential Multi-Dwelling.
3. The property is currently being used as an outdoor storage where customers park their Recreation Vehicles, trailers or trucks. The zoning of the property is RM-30 or Residential Multi-Dwelling. The request with El Paso County Development Services is to process a Site Development Plan Application for a multifamily residential use.
4. The property is currently being used as an outdoor storage where customers park their Recreation Vehicles, trailers or trucks. The zoning of the property

is RM-30. The request with El Paso County (EPC) development services is to develop the property as an apartment building with associated parking.

The request is justified since the zoning is appropriate for this use. The physical property is suitable for a housing development as indicated by the zoning. There is an adjacent property to the east of this site that has been developed as an apartment complex. Property along the south boundary is mostly zoned as CC or Commercial Community which consists of a warehouse-style building currently being used as an indoor soccer field. To the west of that site are two lots zoned RS-6000 or Residential Suburban on which single family homes have been constructed.

5. The property currently consists of 3.4 total acres (after a 25' wide right-of-way reservation) of unimproved area. There is a fence around the site with an undefined gravel road entering the site through a gate near the southeast corner of the property. Customers using the storage facility enter through this gate which is accessed from Canada Drive. An additional right-in/right-out access drive was approved for this site to be positioned 365 feet south of Constitution Ave. With the existing access point from Canada Drive, this completes the necessary two access points to the site as required by the Cimarron Hills Fire District.

Site development improvements are proposed to include an apartment building with associated parking and playground facilities as well as a storm water containment/treatment system. Existing and proposed site conditions associated with storm water are addressed in the Final Drainage Report for this site.

The remaining Items 6 through 20 appear to be applicable to zoning & re-zoning requests and do not apply to this project.

The Cimarron Hills Fire District has been contacted requesting their input on Fire protection for this project.

This application includes an Erosion Control Plan (ESQCP). The owner will install measures to control sediment and construction debris from their site as per the ESQCP drawings and narrative.

A Traffic analysis is being provided as part of this SDP submittal package.

We are prepared to get final SDP approval.

We are requesting a variance due to hardship for the proposed fence within the building setback. The fence on the wall exceeds 7' in height due to the surrounding grades on the adjacent lot and exceeds the height limit. This would require a building permit which the owner has agreed to obtain, and the height would not typically be allowed in the building

setback. Due to the constrained nature of the site and the grade on this site and on the adjacent site, the only place we can locate the fence is on top of the wall. To do otherwise would require a redesign of the site and a loss of parking and units that would make the site economically unviable. In addition, placing the fence on top of the wall provides for security and safety and ensures that the wall will not be a hazard to the general public.

The owner respectfully requests that BOA grant a variance for the height and location of the fence on the wall within the building setback and accept this project for approval.

Sincerely,



L Ducett, P.E.  
President-Terra Nova Engineering

**THE METRO ON CONSTITUTION**  
SITE DEVELOPMENT PLAN  
**EL PASO COUNTY, CO**

CONSTITUTION & PETERSON PARTNERS  
OFFICE  
ZONING: CC

JAMES IRWIN EDUCATION FOUNDATION  
CHURCH  
ZONING: PLD

UNTIL SUCH TIME AS THESE  
DEMONSTRATIONS ARE APPROVED  
BY THE APPROVAL COMMITTEE  
FOR NEW ENGINEERS  
BY THE APPROVAL COMMITTEE  
FOR NEW ENGINEERS  
ONLY FOR THE  
PURPOSES DESCRIBED BY  
WRITTEN AUTHORIZATION

PREPARED FOR:  
CONSTITUTION HOSING LLC  
ATTN: CARRY HASSENFELD  
2020 BROADWAY  
KANSAS CITY, MO 64108  
(816) 989-9285

2003-02-00000000  
2003-02-00000000

SITE DEVELOPMENT PLAN		EASING SITE PLAN	
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