

This is the narrative for GCC Energy LLC's ("GCC") application for a variance from the La Plata County Code grading standard for an approximately 2500' portion of County Road 120 ("CR 120"), approximately 2 miles west of the intersection of CR 120 and County Road 140. If granted, this variance would allow this section of CR 120 to continue to operate in its current grading and alignment, an alignment which has existed presumably since its construction in the late 1800's.

## **I. Background**

The relevant section of CR 120 traverses an area of natural though steep terrain and was constructed presumably by local landowners before county maintenance began. The accompanying vicinity map and site plan indicate the location of this section of CR 120. The grading and alignment of this section of CR 120 has existed in its state of non-compliance since construction or at least since paving. GCC utilizes CR 120 to access its mining facility. As part of GCC's application for a Class II Permit from the County, it was identified that this short section of CR 120 currently has a maximum grade of 8.85%. Section 74-91(C)(6) of the La Plata County Land Use Code ("Code") lists a maximum grade of 8% for a local road serving 10 or more units (which is CR 120's designation). CR 120 complies with all other Code Road Design Standards found at Section 74-91.

GCC requests a less than 1% variance for a short distance from the maximum grading specified by Section 74-91(C)(6) in order to allow use of this section of CR 120 for project traffic in its existing state. Notably, the other two local road designations in Section 74-91(C)(6) of the Code specify a 10% maximum grade. If the existing grade of this section of CR 120 was a safety concern, no grade above 8% would be permitted in any instance in the Code.

## **II. Application Meets Code Criteria for Variance**

Section 66-26 of the Code authorizes the County Board of Adjustment to grant a variance if the following criteria are met:

1. Hardship. Specific development standards, applied to the property in question, create an unnecessary, nonmonetary hardship for the owner, as distinguished from an inconvenience or self-imposed hardship.
2. Special circumstances. Special conditions and circumstances exist which are peculiar to the land and structure involved, and are not applicable to other lands and structures. The special conditions do not result from the actions of the applicant.
3. No special privilege. Granting the special exception or variance will not confer on the applicant any special privilege that is denied by this subpart B to other lands or structures.
4. Comparison with other properties. The literal interpretation of the provisions of this subpart B would deprive the applicant of rights commonly enjoyed by other properties.
5. Variance minimum. The special exception or variance granted is the minimum variance possible to make reasonable use of the land or structure.
6. Conforms with goals and purpose. The granting of the special exception or variance will be in harmony with the general goals and purpose of this subpart B.

7. Not injurious to public. The special exception or variance will not be injurious to the neighborhood involved or detrimental to the public welfare, require extraordinary public expense, create nuisances, or cause fraud or victimization of the public.

The variance application meets each of these criteria as further detailed below and, therefore, GCC requests approval by the County Board of Adjustment.

**A. Hardship.**

CR 120 was originally constructed prior to County maintenance began but is now maintained by the County. The grade exceedance of less than 1% of a short section of CR 120 has not, to GCC's knowledge, caused any safety incidents to date and has not previously been identified as an issue by the County. The grade differential was identified as part of GCC's application for a Class II Permit from the County for its existing mine operations. GCC, as one of the public users of CR 120, did not cause or self-impose the current grade or its non-compliance with the Code.

If the County or GCC were required to improve CR 120 to rectify the grading, it would require substantial road work and realignment, use of adjacent private property and unnecessary modifications for a roadway which has served the public well up to this point.

**B. Special circumstances.**

As described in the introduction, this section of CR 120 is located in an area of natural terrain that necessitated the existing alignment and increased grade at the time the original builders of the roadway constructed it. The engineers and experts involved in the original construction determined that an 8.85% grade was safe and appropriate at this particular location. Consistent with the description of the special circumstances criterion in the Code, the existing grade exceeding the grade listed in the Code is not due to any action by GCC.

**C. No special privilege.**

GCC utilizes CR 120 along with many other public users. CR 120 is not a private road solely for GCC's use or benefit, therefore granting of the requested variance similarly benefits all users of CR 120.

**D. Comparison with other properties.**

Requiring GCC to modify the grading and alignment of CR 120 when it is a public county road used by many other members of the public places GCC in a disparate position from other users. Other properties which front along this area of CR 120 and regularly use the road are not parties to this variance request, although all such property owners utilize CR 120. While it is true that GCC's use is more intensive than other properties along CR 120, this criterion states "the literal interpretation of this subpart B would deprive the applicant of rights commonly enjoyed by other properties." The other property owners have the right to utilize CR 120 with its current alignment and grading and GCC should have this same opportunity.

**E. Variance minimum.**

The variance requested in this application is to allow the grade of one small section of CR 120 remain in its existing state of 8.85%, instead of requiring CR 120 to be modified to reduce the grade to 8%. This request of less than 1% of the grade is the minimum variance possible to make reasonable continued use of CR 120 by GCC and members of the public.

**F. Conforms with goals and purpose.**

The granting of this variance would be in harmony with the general goals and purpose of the Code. As noted above, under the Code, other local roads have a maximum grade of 10% without safety concerns or issues. Therefore, allowing CR 120 to remain in its existing state of 8.85% grade in this one section, a grade at which it was built and has operated successfully and would not impact the safety of CR 120 for public use.

**G. Not injurious to public.**

The granting of the variance would not be injurious to the neighborhood involved or detrimental to the public welfare, require extraordinary public expense, create nuisances, or cause fraud or victimization of the public. In this instance, CR 120 has historically operated successfully and without safety incidents at the existing non-compliant grade. Often a variance asks to modify a structure or use. Here, however, GCC is requesting that CR 120 merely be allowed to remain in its existing, acceptable state.

As the neighborhood also utilizes CR 120 in its existing state without issue, granting the variance to allow CR 120 to remain at its current grade would not be detrimental to the public welfare or cause fraud or victimization of the public. Further, not requiring expensive changes or modifications to CR 120 helps avoid any extraordinary public expense. CR 120's current grade does not create a nuisance, so allowing it to remain in its current state would not create a nuisance either.

In closing, as evidenced by this narrative, the requested variance meets or exceeds all of the listed criteria in Section 66-26 of the Code. Accordingly, GCC respectfully requests that the Board of Adjustment approve its application.

31 July 2015