

GRAND JUNCTION PLANNING COMMISSION
September 10, 2013 MINUTES
6:02 p.m. to 8:58 p.m.

The regularly scheduled Planning Commission hearing was called to order at 6:02 p.m. by Chairman Reece. The public hearing was held in the City Hall Auditorium located at 250 N. 5th Street, Grand Junction, Colorado.

In attendance representing the City Planning Commission were Christian Reece (Chairman), Ebe Eslami (Vice-Chairman), Jon Buschhorn, Loren Couch, Steve Tolle, William Wade and Reginald Wall.

In attendance representing the City's Public Works, Utilities and Planning Department - Planning Division, were Lisa Cox (Planning Manager), Brian Rusche (Senior Planner) and Scott Peterson (Senior Planner). Greg Moberg was present from the Economic and Sustainability Division.

Also present was Jamie Beard (Assistant City Attorney).

Pat Dunlap was present to record the minutes.

There were ten citizens present during the course of the hearing.

Announcements, Presentations And/or Visitors

Lisa Cox, Planning Manager, noted that there were no announcements. Commissioner Couch wanted to recognize that September 11, 2013 was Patriot's Day.

Consent Agenda

1. Minutes of Previous Meetings

Approve the minutes from the June 25 and August 13, 2013 regular meetings.

2. Wild Enclave Annexation – Zone of Annexation

Forward a recommendation to City Council to zone 3.65 acres from County RSF-R (Residential Single Family Rural) to a City R-8 (Residential 8 du/ac) zone district.

FILE #: ANX-2013-334
APPLICANT: City of Grand Junction
LOCATION: 3122 and 3124 E Road
STAFF: Brian Rusche

3. Bibeau Enclave Annexation – Zone of Annexation

Forward a recommendation to City Council to zone 15.84 acres from County RSF-R (Residential Single Family Rural), County RSF-E (Residential Single Family Estate) and I-2 (General Industrial) to a City R-8 (Residential 8 du/ac) zone district.

FILE #: ANX-2013-338
APPLICANT: City of Grand Junction
LOCATION: 2941, 2929, 2937, 2943, 2944, 2952 and 2952 ½ D ½ Road
STAFF: Brian Rusche

Chairman Reece briefly explained the Consent Agenda and invited the public, Planning Commissioners and staff to speak if they wanted an item pulled for additional discussion or a full hearing. With no amendments to the Consent Agenda, Chairman Reece called for a motion.

MOTION: (Commissioner Wall) “I move that we approve the Consent Agenda as read.”

Commissioner Wade seconded the motion. A vote was called and the motion passed unanimously by a vote of 7 - 0.

Public Hearing Items

4. TJ’s Billiards - Conditional Use Permit

Consider a request for a Conditional Use Permit to serve alcoholic beverages in a pool hall on 0.84 acres in a C-1 (Light Commercial) zone district.

FILE #: CUP-2013-354
APPLICANT: Alan Allen
LOCATION: 509 28 ½ Road
STAFF: Scott Peterson

Applicant’s Presentation

Alan Allen, 3770 Blair Road, Whitewater, applicant for the Conditional Use Permit (CUP), stated that TJ’s Billiards was planning to have several pool tables, to provide a simple grill menu and to serve beer, wine and cocktails with the food. They also plan to develop billiards leagues and sponsored teams. They plan to stock billiard items and accessories for sale and to supply tables and repair services. They plan to provide leagues for younger players with instructional opportunities in a family oriented atmosphere, as well as provide jobs as the business grows.

He said he was requesting a CUP in case the sales of alcohol exceed 25% of total sales so the business would be in compliance with liquor license requirements. He stated that the business would have the strictest adherence to all liquor laws, and making sure that the patrons were never over served. They would also arrange for transportation home of patrons if needed as well as providing security to check the ID’s to make sure that anyone who was intoxicated was not admitted. Happy Hour drink specials would not be promoted as part of their business.

Mr. Allen stated that the goal was to provide a calm atmosphere and that they would not have live music or karaoke. He stated that they were not trying to be a nightclub or

sports bar, but that there would be a few TV's available for customers to watch during sporting events.

Mr. Allen stated that they would limit occupancy to 99 persons to comply with Fire Department requests. They would do their best to be good neighbors and limiting the impacts that would result from the granting of the Conditional Use Permit.

Questions for the Applicant

Commissioner Couch asked if TJ's Billiards existed elsewhere in the community. Mr. Allen responded that it was currently a home based business in existence for about 1 ½ years. No one plays pool at the current location, they just sell equipment.

Commissioner Buschhorn asked about the licensed and unlicensed areas. Mr. Allen stated that the building and patio area were all licensed areas, the parking lot area was not licensed.

Chairman Reece asked if there were any other questions from the Commission. Hearing none she then asked for the staff presentation.

Staff's Presentation

Scott Peterson, Senior Planner, made a power point presentation regarding the request for a Conditional Use Permit for TJ's Billiards, to be located at 509 28 ½ Road, to serve alcoholic beverages. He noted the site contains an existing building that has been previously used as a restaurant and bar. The applicant was requesting a CUP in case sales of alcohol exceed 25% of total sales.

Mr. Peterson stated that the existing building was nonconforming due to not meeting parking, building rear setback and landscape requirements. He explained that the interior improvements would not trigger any site upgrades in accordance with the Zoning Code because they are less than 25% of the current fair market value of the building. There will be no expansion of outdoor operations with the proposed new use, therefore no buffering, screening or landscaping improvements would be required.

Mr. Peterson explained that the Future Land Use Map indicated this area as a Village Center and the zoning was C-1, Light Commercial. He stated that a CUP runs with the land unless the use has been abandoned for 12 consecutive months. He explained the proposed use of pool hall with alcoholic sales. He stated that the pool hall required fewer parking spaces than the previous use and would bring the site more into compliance with current Code requirements.

A neighborhood meeting held on July 15, 2013 by the applicant. Citizens in attendance expressed concerns about intoxicated drivers leaving the establishment, increased vehicle traffic, liquor being smuggled out of the establishment, noise and increased problems with homeless individuals in the area. The applicant responded to the

concerns by stating that there will be the strictest adherence to all liquor laws, making sure patrons are not over served, and arranging for and paying for the safe transportation of patrons to their homes if necessary. Since the neighborhood meeting, staff has received two phone calls and one email from individuals who are opposed to the proposed use.

Mr. Peterson explained the proposed signage plan being requested with the CUP. Several photographs were presented showing the proposed signage. Mr. Peterson then presented several photographs showing the exterior of the building, the fenced patio area and the natural vegetation between the site and the property to the north.

Mr. Peterson stated that the request supported goals three, six and twelve and the policies of the Comprehensive Plan and met the approval criteria of the Zoning Code. Mr. Peterson recommended approval of the request for a Conditional Use Permit, including the sign plan as presented.

Questions for Staff

Commissioner Couch asked if the signage would be illuminated and if the signs would be turned off if it was to be illuminated. Mr. Peterson said he has not talked with the applicant about the signage and explained that in the C-1 zone district that there were no time limitations for lighting.

Commissioner Eslami asked what the hours of operation were. Mr. Peterson didn't know what the hours of operation were and referred Commissioner Eslami to the applicant for that information.

Commissioner Wade asked about the cost of the remodel and noted that it was 21% of the fair market value. He asked if the Planning Division did anything to ensure that the remodel costs stayed below the 25% value? Mr. Peterson explained that the applicant would have to obtain a Planning Clearance from the City and then work with the Mesa County Building Department to determine what work was needed and what the cost would be.

Chairman Reece asked if there were any other questions for staff. Hearing none, the hearing was open to the public for comments or questions. Chairman Reece asked for those in favor of the request to step forward to speak and then asked for those opposed to speak next.

Public Comment

No one from the public spoke in favor of the request.

Lonnie Delancey, 523 28 ½ Road, stated that he did not receive a notice of the meeting and he lives one block from the site. He stated he was concerned about alcohol being served and that there was a problem in their community with it because there were

already two bars there. He stated that he's had his mailbox knocked over by drivers and that even with license plate numbers the police have never been able to do anything about it. He was concerned about people drinking alcohol and then having them turn down 28 ½ Road instead of North Avenue to avoid the police. He stated that drunk drivers use 28 ½ Road and Elm Avenue.

Mr. Delancey said he was fine with the billiards but not with the sale of alcohol. He was concerned with people wanting to drive in a community with children and a school down the street. He was concerned about people walking on the streets at 2 and 3 o'clock in the morning, kids and adults. He said he was concerned about having more people being drunk and running them over.

Marsheela Rabbit Tonlin, 519 28 ½ Road. She stated that there has already been one death in their neighborhood. They also have a problem with picking up beer and liquor bottles in their yard. There are eight houses in her area with five elderly retired people that live in the neighborhood. She stated that her younger sister was burned to death by a drunk driver before she was thirteen. Ms. Tonlin said that she has grandchildren that visit her home but that she doesn't let them cross the street to go to her brother's house because of the traffic. She was concerned about the added traffic that would come with the new billiard business.

She stated that she is for a billiard business that she could take her grandchildren to but that she did not support this business because they would serve alcohol.

Paul Liebe, 519 28 ½ Road, stated that he objected to the alcohol and that it was a big problem for the area. They have had problems with picking up trash and bottles and drunks sleeping in the bushes. He stated that a big problem was that they do not have sidewalks on the streets which means that everyone has to walk on the street. A street light went down a few years past that is about 200' from the bar that has never been replaced that creates a black area where you can't see people on the street.

Mr. Liebe was concerned about traffic and the number of people who attend pool tournaments and the number of people who leave after drinking. He was concerned about the people who would drive down his street to avoid the police. He stated that a motorcyclist was killed at a high speed about 35 feet from his house. He was concerned about children playing in the area with vehicles travelling at high speeds in their neighborhood. Mr. Liebe stated that when alcohol is served, that's not a family oriented business.

Robert Jester, 516 28 ½ Road, stated that he has lived there for 8 years and that traffic has increased in that time. He's a disabled Vietnam veteran and has to call the police when shot gun shells are shot off at night in his neighborhood. He wanted to go on record as being against the alcohol.

At the conclusion of public comments Chairman Reece closed the public hearing and asked the petitioner to return to the podium for questions.

Mr. Allen stated that the hours of operation would be 11:00 am to midnight, on weekends with pool tournaments it may run over.

Chairman Reece asked if alcohol would be served the entire time? Mr. Allen stated that the bar would not be open until 5:00 pm and would close with the business. She then asked what the maximum occupancy of the building was. Mr. Allen stated that the Fire Department requested that it be limited to 99 people until a sprinkler system has been installed.

Commissioner Couch asked what the applicant's plans for illuminating signage were, both street side and on top of the building? He also asked if this would be a package liquor store. Mr. Allen stated that it was not a package liquor store, just limited to use inside the building. He stated that the signs were both internally illuminated on the street and on top of building. Both signs would be turned off when the business closed.

Commissioner Buschhorn asked if the applicant already had a liquor license? Mr. Allen responded that he did not, that he was applying for a CUP in case the business needed it. Commissioner Buschhorn asked if the applicant could still serve alcohol without the CUP as long as it didn't exceed 25% of total sales? Mr. Allen responded that that was correct. A restaurant license allows alcohol to be served but it cannot exceed 25% of total sales.

Planning Commission Discussion

Chairman Reece asked the Commission for their questions, comments and discussion.

Commissioner Wall stated that he had a question for staff. He noted that the report did not state that the bar would open at 5:00 pm, was that not a stipulation but just a choice of the owner? Mr. Peterson responded that that was correct.

Commissioner Couch stated that he appreciated the comments about the sidewalks, something that the Commission routinely discusses. He noted that many of the issues raised were separate from the CUP request. That was an observation he wanted to make.

Commissioner Wall stated that it did appear that there were activities beyond the establishment with historical activities associated with a bar. He stated that it was difficult with questions about alcohol because the question is who are you trying to control, the owner or the consumer? The applicant has put together a plan to prepare himself in case sales exceed 25% which he didn't have to do. Based on the code and the ability to do what he can there, he stated that he would approve this project.

Chairman Reece asked if there were any other questions or comments. As there was no further comment, she asked for a motion.

MOTION: (Commissioner Eslami) “Madam Chairman, on the request for a Conditional Use Permit for TJ’s Billiards, file number CUP-2013-354 located at 509 28 1/2 Road, I move that the Planning Commission approve the Conditional Use Permit with the facts and conclusions stated in the staff report.”

Commissioner Wall seconded the motion. A vote was called and the motion passed by a vote of 6 - 1 with Commissioner Wade voting in opposition.

5. Variance – City Market Fueling Station Variance

Consider a request for a Variance from Section 21.06.080(c)(7), Outdoor Lighting Standards, for a fueling station on 5.74 acres in a B-2 (Downtown Business) zone district.

FILE #: VAR-2013-368
APPLICANT: Drew Warot, King Soopers
LOCATION: 104 White Avenue
STAFF: Greg Moberg

Staff’s Presentation

Greg Moberg with the Economic and Sustainability Division made a PowerPoint presentation regarding the requested variance. He described the site location, zoning, Comprehensive Plan land use designation and stated that the site was within the Greater Downtown Plan area. He cited the Zoning Code Section 21.06.080(c)(7) that requires canopy lighting to be from 10 footcandles not to exceed 15 footcandles. The applicant was requesting a variance to allow an increase of canopy lighting from an average of 10 footcandles and a maximum of 15 footcandles to an average of 22.97 footcandles and a maximum of 29.9 footcandles. He indicated the portion of the site that would be subject to the variance request and stated that the rest of the parking area would still have to meet the Code.

Mr. Moberg explained the seven criteria that the Commission shall use to consider a variance. His presentation was based on the applicant’s initial submittal. Mr. Moberg stated that the applicant would rebut each of them. He then addressed the applicant’s responses to each of the following criteria:

Hardship being unique to the site:

The Applicant stated that the proposed site is being held to a more restrictive lighting standard than the adjacent fueling stations a hardship is created. It is the Applicant’s contention that the new standards create an unfair competitive advantage because the adjacent fueling stations are more visible and appealing to potential customers. This statement is problematic as it can be applied to other properties and therefore not unique to this site. The Applicant has not provided sufficient information that an exceptional condition exists, specific to this site, creating an undue hardship.

Special Privilege:

Since the adoption of the Zoning Code in 2010, the City has had four applications for fueling stations with canopies. Three of the applications have received approval and one is under review. All four have to meet the current canopy lighting standards. Approval of this request would confer a special privilege that has not been granted to the other proposals.

Literal Interpretation:

The Applicant stated that a literal interpretation of the lighting standards creates an unfair competitive advantage depriving the Applicant of the rights enjoyed by other the adjacent fueling stations. The Applicant further states that lighting levels drop over time due to degradation of bulbs and dirt and dust accumulation on fixtures. Whenever a standard is amended to be more restrictive, an argument could be made that the application of the new standard deprives new applicants of rights commonly enjoyed by existing properties and uses. Furthermore, the Applicant has stated that an unfair competitive advantage is created but not supplied any specific information or findings that support this statement. The Applicant has not shown that the literal interpretation of the current lighting standards deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district.

Reasonable Use:

The Applicant provides information contained within the submitted Photometric Evaluation (see attached) that the Illuminating Engineering Society of North America (IESNA) recommends an average luminance of twenty (20) to thirty (30) under a canopy and five (5) to ten (10) in parking and drive aisles. The Applicant further stated that higher lighting levels create a safer environment for handling flammable liquids and that without the requested lighting levels, City Market would be putting their customers and employees in danger. This is a broad statement that signifies a relationship between lighting and safety but leaves out specific information or findings relating to when the lack of lighting becomes unsafe for fueling stations. Furthermore, the statement refers to nighttime use only and does not address daytime use. The Applicant has not shown that a reasonable use of the property cannot be derived without the requested variance.

Minimum Necessary:

The Applicant has proposed an average luminance of 22.97 footcandles and a maximum luminance of 29.9 footcandles. It is the Applicant's assertion that the request is at the low end of the acceptable lighting levels as determined by the IESNA recommendation and well within the range of luminance of existing fuel sites. It is the Applicants contention that the request is the minimum required to maintain adequate luminance necessary to ensure safety and security where highly flammable fluids and vapors are present.

Again these statements are broad and refer to the minimum lighting necessary by IESNA recommendations but do not specifically address what level of lighting creates an unsafe and dangerous situation.

Conformance with Code:

The purpose of the lighting standards are: to minimize light pollution, light trespass and glare; to conserve energy and resources; to provide safe roadways for motorists, cyclists and pedestrians; to ensure sufficient lighting can be provided where needed to promote safety and security and to protect and reclaim the ability to view the night sky. The Applicant indicated that granting the variance would provide better lighting promoting safety and security. However, the Applicant has not provided evidence that the increased lighting would not conflict with any of the other purposes listed above. Without any additional information it would be expected that increased lighting would create more light pollution, light trespass and glare; would use more energy and resources and make it more difficult to view the night sky.

Conformance with Comp Plan:

The Applicant did not address how approval of the requested variance would meet specific goals and policies of the Comprehensive Plan.

Based on the applicant's responses to the review criteria Mr. Moberg stated that he recommended denial of the variance.

Questions for Staff

Commissioner Couch wondered if the variance request was premature, that it shouldn't be before the Commission yet and that perhaps the applicant should return at another time? Mr. Moberg responded that the applicant would show how they felt the criteria had been met during their presentation. He stated that the applicant needed to convince the Commission that there is a unique hardship and that the criteria has been met. Commissioner Couch then asked if alternative findings must be made, by whom? Mr. Moberg indicated that the Commission must make the alternative findings.

Commissioner Wade had a question about the national standards that had been presented in the report. He asked if there was a particular reason why our standards are different than what the national organization present? Mr. Moberg responded that the City was a Home Rule city and that they could adopt standards that they wanted. He went on to say that in 2010 City Council asked staff to present modifications to the lighting provisions, not a rewrite. Citizens were promoting dark sky regulations but Council didn't want to adopt a dark sky regulation at that time. Model dark sky regulations discuss different levels of lighting in communities. He stated that at the time Council was revising the lighting regulations they didn't see reason to modify to the dark sky regulations.

Commissioner Wade stated that he assumed that there had not been an upswing in accidents with the City's reduced standards? Mr. Moberg noted that there had not. He stated that there had been four new fueling facilities approved under new lighting regulations, one with adjustments but that the others all meet the current standards.

Applicant's Presentation

Mr. Drew Warot represented King Soopers/City Market and Mr. Carl Schmidlein was with Galloway and Company. Mr. Warot stated that he hoped to open up a discussion about potential development and consideration of variance request. The variance request was an important part of their development plan and was critical to the long term viability. Mr. Schmidlein explained that he had a lengthy presentation and that he wanted to make it interactive because there was so much information in it. He invited the Commission to ask questions as they moved through the presentation.

Mr. Schmidlein stated that the intent was to provide lighting for the safety of the operations that take place at the proposed fueling facility. He explained how the proposed lighting under the canopy was fully recessed and shielded and that glare is what causes light pollution from light bulbs hanging down below the canopy. Mr. Schmidlein wasn't sure how the lighting levels in the City's code were derived. He stated the whoever wrote that portion of the code may not have had the best information available to them.

Mr. Schmidlein then explained that a footcandle (fc) is a measurement of light on a flat surface. The IESNA is a nationally recognized organization and what engineers refer to. The 2000 IESNA Ninth Edition of lighting standards did not address canopy standards, however the 2001 version did address the canopy standards. The Tenth Edition was released in 2012 and contains information about lighting zones that wasn't available in 2010 when the Grand Junction Code was amended.

Speaking to the applicant, Commissioner Couch asked if it was their contention that safety concerns were not provided by the City Council's decision to use the 10-15 footcandle standard? Mr. Warot responded affirmatively. He noted that Kroger manages with best management standards. They find from the safety of transactional process with credit cards that Kroger said these are minimum safety conditions for their facilities. He noted that the fuel center was operated 24 hours, staffed from 6:00 am to 10:00 pm.

Mr. Schmidlein stated that oil companies were using 50 fc which were too bright for many years. Kroger tried to come in with a target fc to save energy and provide safety that can be accepted everywhere. He felt that it meets all intents of the standards. He then continued explaining the IESNA Lighting Handbook standards, 10th ed. and then explained the Model Lighting Ordinance (MLO), 2011 edition. The MLO was developed as a standard for communities to use when writing their lighting codes, copyrighted in 2011. Mr. Schmidlein discussed several of the purposes of the MLO such as reduced sky glow from the canopy, to protect natural environment and reduced energy costs.

Mr. Schmidtlein then provided a summary of the survey that was conducted on July 23, 2013 at night. Eight sites were surveyed. He showed samples of site surveys that showed how measurements were made and then showed a slide with the survey results. Mr. Schmidtlein showed a slide that compared survey results with what City Market was proposing: targeted maintained minimum averages recommended by the IESNA.

Commissioner Wall asked about the policy of how often bulbs are changed or were they changed just when burned out? Mr. Schmidtlein replied that generally when bulbs burn out they are changed quickly. Fixtures/lenses need to be cleaned out as they become darker. If not cleaned out they can cause 50% loss of lighting levels. Mr. Warot stated that management inspects sites and checks equipment with regular inspections.

Mr. Schmidtlein then addressed the light loss factor when older lights have reduced lighting. City Market on 24 Road has reduced light levels due to older lights. Chairman Reece asked if they were constructed with LED lights? Mr. Schmidtlein responded that they were not. Commissioner Buschhorn asked about lighting levels over time. Mr. Schmidtlein stated that the Loco station may have been 30 fc and the Shell up at 26 fc. He noted that you can easily have light loss factors of 40%, but the older stations have drop down fixtures that cause glare.

Commissioner Wall asked if loss of light could be attributed to maintenance or to the age of the light? Mr. Schmidtlein stated that you may be able to attribute it to that but that they did not have that information this evening. He said that the proposed luminance at the site was the minimum level of lighting based on the IESNA and what they recommend. He then went on to address the City's approval criteria. He stated that the City's Code was updated in City in 2010 before the model code was available. He felt the variance request was consistent with the Comp Plan, and felt that they met goals 4, 6 and 12. here was no special privilege conveyed because there have been no fuel stations constructed under the new code at this time. He further stated that the IESNA established reasonable use standards for hazardous materials or dangerous conditions which they felt they met. He noted that the City Market on 24 Road was approved before new 2010 City Code and is not built to current code. He felt the request conformed with purpose of the Code with minimum light pollution and glare; conserving energy resources, and creating safe roadways. He felt they achieved that with cutoff fixtures and safer conditions for pedestrians. Their proposal protected the ability to view the night sky by covering lights and because the canopy doesn't have up-lighting. Mr. Schmidtlein felt that the request conformed with the Comprehensive Plan by meeting three of the goals as noted earlier.

Mr. Schmidtlein noted that they had received comments during the planning process from the Police Department. The Police use CPTED standards which City Market is trying to achieve those same goals in their lighting plans: Identify potential trespassers and criminals and to achieve minimal lighting levels. He stated they need lighting to

prevent drive-offs (people who don't pay for gas). He continued to review several components of CPTED that they felt they met.

Mr. Schmidlein stated that they feel they will have minimal impact on neighboring property. He then showed slides of several sites that were taken at night that showed the brightness and glare from each fuel site in the survey that have drop down fixtures. He noted again by stating that they will have cutoff fixtures for their canopy. He showed the City Market site on 24 Road and how there wasn't glare occurring there. Mr. Schmidlein said that directional focused lighting was used at that site which is much more efficient.

Commissioner Wall had a question about lumens and wanted to know if it is the measurement of all lights or just one light? Mr. Schmidlein noted that lumens is the amount from one light, fc is what is on surface/ground. Lumens and footcandles measure differently.

Commissioner Wade said he wished there were two slides and that he would like to see one slide with light levels required by the City's Code and the other slide with the City Market site. He noted that the representatives had made a point of safety. He asked if they were saying that the City Code levels weren't sufficient for use of their cameras at the station? Commissioner Eslami asked if the cameras work under 14.9 light levels? Mr. Schmidlein responded that they did work under that light level. Mr. Warot stated that they don't want to be in a dimly lit environment at such as an ATM.

Commissioner Wade asked how much difference would it make if the burned out light was operating? Mr. Schmidlein said that they didn't measure that. It may be 15.9 at one site and 17.9 at the other site if the light wasn't burnt out.

Commissioner Buschhorn asked what the expense was to replace light fixtures? Mr. Schmidlein noted a difference in diodes and light bulbs with different fixtures. Mr. Warot said they try to standardize all bulbs at stations.

Commissioner Eslami stated that you can go from 25 watt to 2500 watt without additional expense. Logic and common sense told him that if the code changes they can change light bulbs without much expense. Mr. Schmidlein stated that there's a range in fixtures for a range of light bulbs and bulbs versus diodes. Commissioner Eslami noted that breakers had to be specified which clarified Commissioner Buschhorn's question.

Commissioner Wall compared footcandles on the City Market site on 24 Road in the photo metric plan. Was each number shown on the plan under the canopy a light? Mr. Schmidlein explained the lighting plan and how lights are measured. Commissioner Wall was counting lights under the canopy. Mr. Schmidlein also stated that LED lighting is much more efficient. Commissioner Wall asked if a light is in a directional fixture with 14.6 level, how is the lighting more secure? He noted that the picture on 24 Road looked pretty lit up. How would brighter light make him feel more secure as a

customer? Mr. Warot said there were different kinds of safety, it could be being safe from a slip or fall, or the ability to perform transactions. He stated that Kroger finds that whether is its 15 or 20 lights, its' the safety level that they want to have to make this a viable project. Commissioner Wall asked how was the current lighting level standards causing a hardship? Mr. Warot stated that it was not an option at this location for their project. Commissioner Wall then asked what was it about the lighting that creates the hardship? Mr. Warot replied that no other facilities were built to this level and that they cannot invest in this site and take the chance that the Code would change in future. He stated that Kroger would not build at this site. Commissioner Wall stated that that would be the result not the hardship. He was trying to determine hardship. Mr. Warot stated that safety was big. With customers driving down the street with brighter options, which one would you choose?

Chairman Reece asked what time of day had the highest customer rate? Mr. Warot asked if she meant the capture rate? He said that customers already shopping at store will go to the fuel station. Fueling customers in general typically are in a half mile radius but that they are capturing what is existing in front of the store. Chairman Reece asked if they could say specifically if there's more in the morning or the afternoon or evening? Mr. Warot responded that he could say there's more in the morning.

Commissioner Eslami asked if they were going to build if Chevron and Conoco changed their lights too? Mr. Warot responded that the City's Code is too restrictive for them to meet. Chairman Reece asked if Kroger had ever looked at a dimmer or light sensor system that the lights would get brighter when there's activity under them? Mr. Warot was not sure that they had although he stated that they do that on their freezer isles in stores.

Commissioner Wade wanted to go back to the 24 Road slide with 14.6 light levels. Mr. Schmidlein explained how lighting loss occurs over time.

Commissioner Couch noted that the applicant had spoken a great deal about the IESNA and that Galloway believed that the City standards are not adequate for safety, security and convenience. Was the IESNA the most expert organization or one that they simply belonged to? He noted that the City Council made a decision and it may or may not have been based on the IESNA information. Mr. Schmidlein stated that the IESNA was what they reference as engineers. The MLO was based on the dark sky regulations. He noted that Longmont codes were written on older information and that they are currently amending their codes. Boulder also uses the same standards and that many codes are being rewritten.

Commissioner Couch noted that the Dark Skies Initiative was relatively new when City Council made their decisions. Mr. Schmidlein noted the code references to dark skies. He believed in those and was in agreement with them. But the MLO suggests using both of the IESNA standards and dark skies regulations to create standards.

Commissioner Couch asked the applicant if they believed that a gas station is an attractive part of a community or a necessary part? Mr. Warot responded that is was if you were out of gas. He said that this site would allow them to open up the view corridors that would allow a view of downtown Main Street. He noted that he had presented an upgraded canopy and station with nice elevations and upgraded landscaping. The proposal contained many nice amenities and maintained a lot of open space and views through the canopy.

Commissioner Buschhorn asked with respect to safety and the IESNA standards, was the City Market facility on 24 Road operating an unsafe station? Mr. Warot responded that they continually fight to maintain the average of 20 fc levels. If you start out at 10 you constantly fight to keep it up. So you're right, its' questionable. Commissioner Buschhorn then asked if the 20-30 fc was the "design to," or the operating level? Mr. Warot stated that it was the "design to" level.

Chairman Reece noted that according to Zoning Code 21.02.200(c), under approval the criteria for a variance, a variance is not a right. It may be granted to an applicant only if the applicant establishes that strict adherence to the code will result in practical difficulties or unnecessary hardships because of site characteristics that are not applicable to most properties in the same zoning district. She went on to state that in the downtown zone district, you would find that there's many businesses that would like their footcandles increased to 20 or 30. Chairman Reece stated that she did not think that the applicant was a special case or unique. She stated that variances are for special, unique circumstances that are not likely to occur in the same zoning district and did not feel that the applicant met that qualification. She felt that the applicant did not meet the criteria for a variance, however, she thought that the applicant could propose amending the Code such as the other cities in the front range, to change the footcandles. This issue was something that is of concern to other businesses in downtown. Chairman Reece went on to state that the variance runs with the land, so it remains with the property. If the fueling station wasn't there in five years, the variance doesn't go away just because the business is no longer there, it remains with the property. She didn't think there's been a clear and obvious example of how the land or the zoning of the land makes it unreasonable to produce a reasonable return. She stated that she thought the applicant could produce a reasonable return, but that it was the Kroger standards that don't allow for that because they would not build. That was not a problem with the development code, it was an issue that has been created by the applicant. She did not feel that the parcel was not unique in that aspect. She stated that a Zoning Code amendment with the new IESNA standards would be applicable, but that a variance and code amendment were two very different things. The variance was for a unique circumstance and the code amendment would be applicable throughout the zone district.

Commissioner Wall asked the applicant if they could show the bar chart that showed the amount of light given off after years of use. He asked if they were looking at 20-25% reduced lighting after 3 years for the 24 Road site? Mr. Schmidlein indicated that that was correct, that is was a reduction of 25% for a 3 year period. Commissioner Wall

asked if that was due to maintenance and the bulb getting older or degrading. He asked if there was a maintenance schedule that showed when Kroger changed the bulbs to maintain the lighting. Mr. Schmidlein stated that they realized that lights need to be cleaned regularly from an operational maintenance standpoint. Chairman Reece asked if any of the fuel stations in the graph were lit with LED lights? Mr. Schmidlein responded that they were not.

Commissioner Buschhorn stated that the 25% reduction did not relate to LED lights, that it only related to the older style lights. He stated that they shouldn't consider the 25% reduction for this site because the applicant wouldn't be using the older style of lighting. Mr. Schmidlein stated that that was correct. Commissioner Buschhorn asked if the newer lights that would be used were expected to stay lighter longer as compared to the lights on the 24 Road site and other stations? Mr. Schmidlein said that was correct.

Commissioner Wade asked if the 24 Road site had LED lights. Mr. Schmidlein responded that they had metal halite lights under the canopy.

Questions for the Applicant

Chairman Reece asked if there were any other questions for the applicant from the Planning Commission.

Commissioner Buschhorn then asked if Kroger had already purchased this property? Mr. Warot stated that they had not, the property was under contract.

Hearing no further questions, she thanked the applicant for their presentation. The hearing was then opened to the public for comments or questions. Chairman Reece asked for those in favor of the request to step forward to speak.

Public Comment

Comments from the public in favor:

Harry Weiss, Executive Director of the Downtown Development Authority with offices located at 248 S. 4th Street. Mr. Weiss stated that he was not speaking in support or opposition to the variance. He brought a letter from the DDA Board and would briefly summarize it's content for the record.

Mr. Weiss noted that the DDA is a review agency when developments are proposed in the Greater Downtown Area, providing advisory comments. Kroger was considering the Wachovia site and the DDA asked them to consider the current site. The DDA considers the proposed development as a positive contribution to the downtown. The Value Lodge site is a blighted site and needs to be redeveloped. Mr. Weiss also noted that the proposed development is on an automobile corridor and that siting the fuel station some distance from Main Street is a balanced approach.

Mr. Weiss stated that the DDA Board believed it is not unreasonable to consider variable standards with a more flexible approach to development within this area. Sometimes a one size fits all standard does not fit all situations.

Commissioner Couch asked if generally the lighting standards were different for downtowns for pedestrians and would lighting at this site impact lighting downtown? Mr. Weiss responded that where the pedestrian grid and the auto grid intersect, they did not feel there was a problem.

Planning Commission Discussion

Chairman Reece closed the public hearing asked the Commission for their questions, comments and discussion.

Chairman Reece asked if staff had additional comments? Mr. Moberg stated that he had talked with the code consultant who had revised the City's code in 2010 and that the 10-15 fc was a compromise between the dark sky advocates and others in the community.

Commissioner Eslami thanked the applicant for their presentation. He stated that if the Code has a deficiency, then they have to address that later. He stated that they have to stick with the Code, if you start deviating then he didn't feel comfortable. Commissioner Eslami stated that the project was a good project and can survive with 15 fc and that they could change the lighting later if the Code changes. He was not in favor of the variance.

Commissioner Wall stated that the presentation was very informative. He was looking at approval criteria number six, conformance with the purpose of the Code. The Code says that canopy lighting can't exceed a maximum of 15 fc which makes sense, except that he was not sure that when the Code was written that the maximum of 15 fc would be how long the light bulb would run for its life. He did not feel that light bulbs losing power over time had been considered. He felt that maintenance and keeping a fixture clean was the responsibility of who owned the light. He stated that he was involved when the Code was rewritten and lot of it was written with dark sky regulations. In this instance, he was convinced that the Code implies that we did not want more than 15 fc but that the Code didn't make exceptions for how things work. He thought that 20 fc was perfectly ok and still conforms with the purposes of the Code. The way he came to 20 fc is that 24 Road project is at 14.9 fc after three years, that would be roughly a 25%. The 24 Road project does not have the kind of lighting that this project would use so he thought that a 25% loss was on the high side of how much light would be lost over three or four years. He thought that the footcandles would actually be greater than 15 fc after that time. He proposed to approve a variance to 20 fc candles based approval criteria number six where the variance would not conflict with the purposes of the Code.

Commissioner Buschhorn stated that for the most part he agreed with Commissioner Wall and that the presentation was hugely informative. He felt that you do have to stick to the Code, and that the IESNA information was not available at the time of 2010 Code. He went on to say that looking at the two closest stations which are close to 20 fc, the Code didn't consider different parts of town. The other projects that were recently approved were not in the downtown, they were in rural locations. The 10-15 fc may be ok for those areas but not in a highly lit downtown. He said that he would prefer to see the Code changed to account for that, but that a variance to 20 fc maximum would be appropriate.

Commissioner Couch asked Assistant City Attorney Beard if the change that could be made, could be made through a motion and then forwarded on to Council for approval. Chairman Reece asked if Commissioner Couch was talking about a Zoning Code amendment and he responded that he was in regard to the footcandles. Ms. Beard responded that the Commission didn't have an amendment to change to the Code before them and that staff had not reviewed it for that purpose. What was before the Commission was a request for a variance and that the Commission should be dealing with the variance request as requested.

Commissioner Wade noted that he had a difficult time considering variances because if you do it all the time, you negate the purpose of the Code. On other hand, he agreed with his fellow Commissioners that in this particular case, due to the kinds of lights and the structure that is proposed, and that the competitors close to them have higher footcandles than the Code provides for, but that he felt they should grant the variance in this instance because it would provide some discussion about how the Code should be altered. He stated that he didn't like variances except in special cases.

Chairman Reece noted that this was a conflicting issue because they had a variance versus a Code amendment. Everyone would agree that it looked like the Code should be reevaluated to bring it up to recommended standards. She stated that if a variance was granted and then a car dealership locates two blocks away with a canopy that they will want a variance too. She felt that this sets a precedent. She would like to see a fueling station downtown but as far as the request fitting the criteria for a variance she was not convinced.

Commissioner Tolle stated that he would like to concur. He had problems with anything that we wouldn't adopt or look at to increase safety across the board. He supported the Chairman and everyone's position, however, he didn't think the variance was the right way to do it. He thought that there was a better solution that could be worked out, but his main intent was that City and staff don't lose the emphasis on safety and how they will review this sort of a process.

Commissioner Wall asked if a motion could be made changing the variance request? Ms. Beard responded no, that the Commission had a request before it and that's what the motion should concern. Chairman Reece noted that it would be helpful to remind

the Commission just what the applicant was requesting. Mr. Moberg repeated the applicant's request.

Ms. Beard then reminded the Commission that the motion before them in the staff report was in the form of denial. She stated that if you make motion in the affirmative you wouldn't approve it if you don't want to grant the variance. She noted that it's clearer if you ask for the motion in the affirmative.

Chairman Reece asked if there were any other questions or comments. As there was no further comment, she asked for a motion.

MOTION: (Commissioner Eslami) "Madam Chairman, on variance request VAR-2013-368, I move that the Planning Commission approve the request with the findings and conclusions listed in the staff report."

Commissioner Couch seconded the motion. A vote was called and the motion failed by a vote of 1 - 6 with Commissioner Wall voting in favor.

General Discussion/Other Business

Recommendation to City Council to adopt proposed revisions to the Grand Junction Planning Commission Bylaws.

Jamie Beard, Assistant City Attorney, stated that she had prepared revised wording as requested by the Planning Commission concerning meeting attendance by Commissioners at regular meetings and workshops. The final draft revisions were handed out to the Planning Commission for their review and comments. Changes requested by Commissioner Wall were included on page two under paragraph two. Commissioner Buschhorn noted that on paragraph three there was a missing word. Ms. Beard responded that the word "in" was missing and would be replaced.

Ms. Beard noted that the Commissioners were to consider the hard copy in front of them and changes that were noted at the last workshop.

Commissioner Wade had a question about Item #1 in the bylaws. He wondered if there had been any discussion of what that sentence means because he felt that determining whether or not an absence was excused left the decision totally to the discretion of those two people (Chair and the Vice-Chair). Ms. Beard explained that the process was to notify staff (in this case it was the Planning Manager) and then that staff person would notify the Chair. The Chair was informed of the absence. She noted that she did not believe that there had been a problem with excused or unexcused absences, but instead with a large number of excused absences which had prevented a Commissioner from being able to perform their duties.

Chairman Reece asked if there were any other questions or comments. As there was no further comment, she asked for a motion.

MOTION: (Commissioner Wade) “Madam Chairman, I move that we forward a recommendation to adopt the proposed revisions to the Grand Junction Planning Commission Bylaws, including the provisions regarding meeting attendance, to the City Council.”

Commissioner Wall seconded the motion. A vote was called and the motion passed unanimously by a vote of 7 to 0.

Nonscheduled Citizens and/or Visitors

None.

Adjournment

With no objection and no further business, the Planning Commission meeting was adjourned at 8:58 p.m.