

**GRAND JUNCTION PLANNING COMMISSION  
OCTOBER 27, 2009 MINUTES  
6:00 p.m. to 7:45 p.m.**

The regularly scheduled Planning Commission hearing was called to order at 6:00 p.m. by Chairman Cole. The public hearing was held in the City Hall Auditorium.

In attendance, representing the City Planning Commission, were Roland Cole (Chairman), Lynn Pavelka-Zarkesh, Reginald Wall, Patrick Carlow, Mark Abbott, Richard Schoenrad (Alternate) and Rob Burnett (Alternate). Commissioners Ebe Eslami and William Putnam (Vice-Chairman) were absent.

In attendance, representing the City's Public Works and Planning Department – Planning Division, were Lisa Cox (Planning Manager), Greg Moberg (Planning Services Supervisor), Scott Peterson (Senior Planner), Michelle Hoshide (Associate Planner) and Eric Hahn (Development Engineer).

Also present were John Shaver (City Attorney), Jamie Beard (Assistant City Attorney) and Shelly Dackonish (Staff Attorney).

Lynn Singer was present to record the minutes.

There were 21 interested citizens present during the course of the hearing.

**ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS**

There were no announcements, presentations and/or visitors.

**Consent Agenda**

**1. Minutes of Previous Meetings**

There was no meeting on September 22, 2009.

**2. Reman Subdivision Rezone – Rezone**

Request a recommendation of approval to City Council to rezone property located at 555 West Gunnison Avenue and two adjacent lots from C-1 (Light Commercial) to C-2 (General Commercial) zone district.

<b>FILE #:</b>	RZ-2009-163
<b>PETITIONER:</b>	Joann Namer – 725 Scarlett, LLC
<b>LOCATION:</b>	555 West Gunnison Avenue
<b>STAFF:</b>	Michelle Hoshide

**3. E & P Wireline Service Storage – Conditional Use Permit**

Request approval of a Conditional Use Permit to allow the storage of Hazardous and Explosive materials on 1 acre in an I-2 (General Industrial) zone district.

**FILE #:** CUP-2009-189  
**PETITIONER:** Geary Hall  
**LOCATION:** 2311 Logos Drive  
**STAFF:** Michelle Hoshide

Chairman Cole briefly explained the Consent Agenda and invited the public, planning commissioners, and staff to speak if they wanted any item pulled for additional discussion. Commissioner Schoenradt requested item number 2 be pulled from the Consent Agenda for full hearing. After discussion, there were no objections or revisions received from the audience or Planning Commissioners on the remaining Consent Agenda item.

**MOTION: (Commissioner Wall) “Mr. Chairman, I move that we approve the Consent Agenda excluding item 2.”**

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

**Public Hearing Items**

**2. Reman Subdivision Rezone - Rezone**

Request a recommendation of approval to City Council to rezone property located at 555 West Gunnison Avenue and two adjacent lots from C-1 (Light Commercial) to C-2 (General Commercial) zone district.

**FILE #:** RZ-2009-163  
**PETITIONER:** Joann Namer – 725 Scarlett, LLC  
**LOCATION:** 555 West Gunnison Avenue  
**STAFF:** Michelle Hoshide

**STAFF’S PRESENTATION**

Michelle Hoshide, Associate Planner, with the Public Works and Planning Department addressed the Commission regarding a requested rezone which would allow a more efficient use of the properties. Ms. Hoshide said that the Future Growth Plan designated the subject properties as Commercial which would allow C-1 and C-2. She further stated that the character of the neighborhood consisted of businesses that housed indoor manufacturing, wholesale, office/warehouse and outdoor storage as well as self-storage uses. She said that the C-2 zoning would increase the ability for the existing business to efficiently expand while maintaining the integrity of the neighborhood. She identified some uses that were allowed in a C-2 with a conditional use permit such as outdoor operations and storage. The C-2 zoning would allow more flexibility and the placement of outdoor storage while C-1 restricted outdoor storage to be only on the rear half of the lot. This

would require all outdoor storage to be placed and bordered against Residential lots. Any uses placed on the vacant adjoining lots would be required to be screened from the bordering Residential lots with the landscape buffer and fence.

**PETITIONER'S PRESENTATION**

Joann Namer, owner of Spring Works, 555 West Gunnison, stated that the reason for the rezone was that she would like to use those lots for additional outdoor storage on a temporary basis.

**PUBLIC COMMENT**

No one spoke either in favor or in opposition to this request.

**QUESTIONS**

Commissioner Schoenradt said that a portion of the Code stated that a rezoning to C-2 would not be permitted adjacent to any residential single-family zone. He said that the subject property was 15 feet across an alley and was concerned about that issue. Additionally, that if this was allowed, there would be a C-2 zone in the middle of a C-1 zone surrounding it. He further stated that the uses by the current owner would be restricted to temporary storage but a C-2 zone would allow a lot heavier use and was, therefore, concerned about future owners.

Commissioner Abbott said that it appeared to him that the storage that applicant proposed would be available with a conditional use permit and also was concerned about the change to a C-2 zoning. Michelle Hoshide said that one of the main reasons for outdoor storage in a C-2 was that it allowed for the impact of outdoor storage to be moved away from the Residential area whereas a C-1 zoning would restrict it to be fronting the residential zone district. Ms. Hoshide said that although the C-2 allowed several more intense uses the size of these properties greatly restricted many of the intense uses that would be able to placed there. She advised that she looked throughout the city and most of the uses that could be considered compatible with residential uses were on bigger lots.

Commissioner Schoenradt asked if applicant requested a conditional use permit could they also request a variance to store the items at the front of the property as opposed to the rear. Ms. Hoshide said they could possibly apply for a variance but was unsure of whether or not that variance would be granted.

Commissioner Pavelka-Zarkesh asked for the difference regarding hours of operation. Michelle Hoshide said that hours of operation were the same in both a C-1 and a C-2.

Jamie Beard, Assistant City Attorney, addressed a reference to a section of the code made earlier by Commissioner Schoenradt. She said that she wanted to be sure there was not a problem going from C-1 to C-2. After a review of the document referred to by Commissioner Schoenradt it was confirmed that that was not the most current section of the code and had been removed from the code. Lisa Cox, Planning Manager, apologized for having provided incorrect and outdated information. She assured that would be corrected and advised that that was not a current provision in the code.

**DISCUSSION**

**MOTION:** (Commissioner Wall) “Mr. Chairman, on the Reman Subdivision Rezone, RZ-2009-163, I move we forward a recommendation of approval to City Council on the request to rezone from C-1 (Light Commercial) to C-2 (General Commercial) zone district with the findings and conclusions listed in the staff report.”

Commissioner Pavelka-Zarkesh seconded the motion. A vote was called and the motion passed by a vote of 5 – 2 with Commissioners Abbott and Schoenradt opposed.

**4. DeRose Bed & Breakfast – Site Plan Review**

An appeal of the Director’s Final Action on an Administrative Development Permit to approve a three (3) bedroom Bed and Breakfast.

**FILE #:** MSP-2009-129  
**PETITIONER:** Ronald DeRose  
**LOCATION:** 604 North 7<sup>th</sup> Street  
**STAFF:** Scott Peterson

Chairman Cole granted Commissioner Schoenradt’s request for recusal from hearing item number 4 due to conflicts previously disclosed.

Chairman Cole outlined the things to be taken into consideration for the appeal. He stated that the Planning Commission must consider such things as whether the Director acted in a manner inconsistent with the provisions of the code or other applicable local, state or federal law; or made erroneous findings of fact based on the evidence and testimony on the record; or failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or acted arbitrarily, capriciously and/or abused his discretion. Chairman Cole suggested basing the appeal on the evidence that was already recorded and already in the file.

**APPELLANT’S PRESENTATION**

Jodie Behrmann, attorney representing appellant, submitted a letter responding to some of the points of the Director’s written submission. She addressed some concerns that were noted earlier in that the Commission’s review was limited to what appeared in the record. She stated that what appeared in staff’s written submission did not include everything that had been submitted. She opined that the record included both the original development application filed by the Timmons, related correspondence submitted from the neighborhood, minutes from City Council meetings and Planning Commission hearings in 1984, the plan from 1984, a memo completed by Karl Metzner, the then planning director, the 1984 rezoning file, a memo from Tim Moore, planning director, dated July 25, 2000 as well as all correspondence that was included in staff’s written submission.

Chairman Cole advised that the Commission did not have a lot of that and was not sure that it was germane to the issue that had been presented. Assistant City Attorney Beard stated that all information identified by Ms. Behrmann had been presented to the Commission except in regard to the Timmons application which was not part of this record as it was a separate application and had been withdrawn.

Jodie Behrmann advised that they were apprised of the opposite by Assistant City Attorney Dackonish who indicated that the Timmons file was part of this record and that the two could not be separated. Shelly Dackonish, Staff Attorney, said that there were some letters from the public that were part of the Timmons application and Scott Peterson was aware of those at the time he made his decision. Ms. Dackonish asked him to include those in the file.

Jodie Behrmann requested consideration of the Timmons' original application and suggested that it be made part of the record if not already done. Scott Peterson, Senior Planner, Public Works and Planning Department, clarified that the Timmons' application was not an official application but merely a checklist. He stated that they had not filed an official application but just the checklist in order for them to process their application for a bed and breakfast at the subject location. Chairman Cole ruled that that was not germane to the hearing as the DeRose application was being heard and the Timmons application did not go forward. Ms. Behrmann said that the Timmons application was continued by the DeRoses.

Jodie Behrmann asked the Commission to take note of the computer printout from the initial conference between the planning staff and the Timmonses. She said that request for a bed and breakfast was initially subject to a full public hearing and rezoning processing and that had changed. She stated that was what was at the heart of this dispute and, therefore, thought the Timmons application was relevant. She went on to state that from a review of what had been submitted by planning it could be summarized their position as basically the 1984 plan for the 7<sup>th</sup> Street Historic Residential District could not be given effect because it was never formally adopted by City Council and if in fact it did have affect it did not matter because the bed and breakfast proposal would be treated as a minor change under that plan and still subject to the same limited administrative review and approval criteria that had been put in place in this process.

Ms. Behrmann said that there was no dispute that in 1984 City Council passed an ordinance rezoning the North 7<sup>th</sup> residential district to Planned Residential. Under the City's code at that time and now currently the provisions were in effect both then and now. She said that City Council at the time of establishing a PD zone would list authorized uses and any modification to that authorized list was subject to a rezoning hearing. She pointed out that City Council could not have rezoned the district as a Planned Development unless there was a plan in place. She referenced a memo written by Karl Metzner and stated that on the basis of Mr. Metzner's plan the district was rezoned to planned zoning. She said there was no dispute that it was the 1984 plan that formed the basis for City Council's decision to rezone the district. Since 1984 the 1984

plan had been given effect with respect to every development application that had been raised within the district until now.

According to Ms. Behrmann, a similar development application was considered in 1995 and was sent through a full rezoning and public hearing process before City Council. That process as differentiated from the administrative review and approval process being used here allowed consideration of factors such as compatibility with the neighborhood, benefit to the community, whether the rezoning was actually needed and the impacts on the surrounding properties and neighbors. With the administrative review, there was no evidentiary record with regard to this application. She went on to state that the City recognized the significance of the district by adoption of planned residential zoning for the majority of the area. The zoning ordinance included policies that supported maintaining existing uses in this area.

Ms. Behrmann stated that the residents of the district relied on the 1984 plan for 25 years as she believed that it protected them, their values of their single family residences and also protected the character of the neighborhood. She summarized that unless and until a rezoning process was completed, they were entitled to continue to rely on the effectiveness of the 1984 plan. She said that the director's refusal to do so and the substitution of R-8 zoning for the district's planned zoning were a constitutional violation as well as a violation of the City's code.

She next addressed the argument that this was a minor change not a major change. She said that the director's argument that since a B&B was allowed in all residential zones, that it was an accessory use that did not constitute any kind of a change in use, therefore, it was just a minor change under the 1984 plan and a public hearing was not necessary. She said that argument was negated by the city's code which stated that no use may be established that was not permitted in the PD without amending the rezoning ordinance through the rezoning process. She disagreed that approval of the bed and breakfast served the intent of the 1984 plan.

Next, she argued that the director's reliance on the language of the plan which defined what constituted a major change was incorrect because it was a change in use which required a rezoning hearing. She said that use of the property as a bed and breakfast was by definition a change in use and fit the major change criteria. Lastly, she pointed out that the proposed parking only worked if the representation made by applicant was accepted that the alley was 25 feet wide. She argued that it was only 15 feet wide based on the original plat survey that stated that all alleys were 20 feet wide except the north-south alleys off of 7<sup>th</sup> Street which were 15 feet wide as well as reliance on one of her clients who measured it. Accordingly, applicants could not meet the turning radius and requirements under the TEDS manual and, therefore, the director's approval should be reversed. She said it was their hope that the Commission would reverse the decision of approval and remand it back for a public hearing consistent with the 1984 plan.

**QUESTIONS**

Commissioner Wall asked how the bed and breakfast would detract from the residential character of the neighborhood. Jodie Behrmann said that it was a business use. Also, since there was no evidence in the record on that point, she could not answer that question.

Commissioner Wall then asked if she could explain what was considered primarily a business, i.e., the amount of the building that was used, or the amount of revenue that was generated. Ms. Behrmann said that in her mind primarily a business was anything that was not residential – any business use would be primarily business. Ms. Behrmann said that a home-based occupation was very limited and limited by the fact that you had to live there, you could not have any employees, and could have no more than 6 customers per day. She listed attorneys' office, clerical support, contract work as allowed uses. She did not feel that a bed and breakfast fit within those criteria. She said that even if the B&B was not considered primarily business, it still qualified as a major change under the plan making it subject to a full rezoning process.

Commissioner Wall asked why it would be considered a major change. She said that it was a conversion of a single-family residence to a use that was not allowed under the 1984 plan but was allowed under the use zone matrix.

Chairman Cole stated that it was staff's position as well as that of the director that the 1984 plan was never formally adopted by City Council and, therefore, it did not exist. Ms. Behrmann agreed that the plan itself was never separately adopted by City Council. Chairman Cole said that as the 1984 plan was not adopted, the Commission had no insight as to what their intent was. Assistant City Attorney Beard agreed that the ordinance made no reference to the 1984 plan and as the 1984 plan was not included within the ordinance it had been the position of the City Attorney's office that that plan was not adopted and any references included within that plan were also not adopted.

Jodie Behrmann went on to state that even if it was not primarily a business use, it was a change in use that constituted a major change under the plan which required the same application of the same rezoning criteria and a public hearing.

Commissioner Carlow asked if the plan never existed would it still be appellants' position that this was a major rather than a minor change. Ms. Behrmann said that if the plan never existed, the district would not be zoned as Planned Development. She also stated that a bed and breakfast was not a use that was approved under the 1984 plan.

Chairman Cole asked Ms. Behrmann what she believed the district was zoned. Jodie Behrmann said that it was zoned Planned Residential (PR-8).

Commissioner Abbott raised a point regarding the width of the alley as measured by one of Ms. Behrmann's clients. He said that he had measured the distance from the alley to the garage was in excess of 13 feet. He then brought up a point in her letter to Tim Moore dated September 4<sup>th</sup> that the distance from the garage door to the alley was only

6 feet. However, he measured it at 9 feet. He stated that the information she provided in her letter was flawed and said that he was appalled that she would provide information that she had not personally verified. He did not believe there was a problem with the parking situation. Ms. Behrmann stated that she did not have the means to verify any of the measurements other than the alley. She added that the representations made in her September 4<sup>th</sup> letter were based upon the scale from the GIS photo that the city relied on. Due to the many variances and different information, Commissioner Abbott did not believe any of the parking information was valid.

Chairman Cole asked for clarification regarding whether Ms. Behrmann believed this should be a rezone with a full hearing. Jodie Behrmann said that it should be a full hearing with application of the rezoning criteria and not necessarily that the property had to be rezoned out of the district to Planned Business or Commercial. It could take place as a major amendment to the 1984 plan to allow a bed and breakfast as a new use. Chairman Cole asked if the Commission found that the 1984 plan was adopted, it was his reading of the plan that would still be a minor change and still subject to the administrative review without a public hearing.

**APPLICANT’S PRESENTATION**

Dan Wilson, Coleman and Wilson, appeared on behalf of applicant. He said that the Commission’s questions focused on the essence. First, was there a 1984 plan. He said that if there was no record or indication of the Council adopting it as a matter of law, no one could rely on the 1984 plan. As such, the closest thing today was that of R-8. Next reviewed were issues such as parking and fencing. Mr. Wilson assured the Commission that appellees had been heard. He also objected to the submission of new evidence as this was based on what was in the packet. Mr. Wilson added that Ms. Behrmann’s letter presented to the Commission tonight was simply a restatement but was not part of the record.

**STAFF’S PRESENTATION**

By way of a PowerPoint presentation, Scott Peterson, Senior Planner, reiterated that this was an appeal of the director’s decision to approve a three bedroom bed and breakfast. The subject property was currently zoned Planned Development. He confirmed that in 2000 the city did a city-wide zoning code update with corresponding map changes. He said that it was established that the R-8 was the default zoning for this PD. He added that the adjacent area outside of the 7<sup>th</sup> Street Historical District was zoned R-8 and was the preferred zone in 1984 at the time of the rezone. He stated that the 7<sup>th</sup> Street district was rezoned in 1984 from RMF-32 to the Planned Residential 8 units by City Ordinance 2211. He reiterated that no plan was adopted in 1984 and that the rezone file document was not referenced in or by or attached to Ordinance 2211 which established the zoning district of the PR-8 zoning.

Mr. Peterson said that it would be inappropriate to subject applicants to zoning restrictions that were never adopted by City Council. Mr. Peterson outlined several reasons which led staff to conclude that a three bedroom bed and breakfast was among those types of applications intended to be processed administratively by the terms of the



rezone file document. He advised that under the Zoning and Development Code a bed and breakfast of three or fewer rooms was allowed in all residential zoning districts in the city.

Next, the rezone file document stated that the intent of forming this Planned Residential District was to preserve the historical character of the 7<sup>th</sup> Street corridor. He stated that the bed and breakfast would preserve property values for residents and property owners because it would allow the continued use of a primary residence while providing a source of income for occupants of the home allowing them to better maintain the residence. He said that staff had determined that the impacts of the B&B on existing uses would be minimal given the essential character and primary use of the structure which would remain as residential. Also, no change of use was being proposed in this instance. The B&B was accessory to the primary residential use. He pointed out that the only proposed changes pertained to parking and site access.

Lastly, he said that he had determined that no significant impact would result from the proposed B&B and, therefore, applicants' proposal constituted a minor change and would be processed administratively. He next discussed review criteria as specified in the Zoning and Development Code that the B&B had to follow in order to be approved. Such criteria pertained to alteration of the structure so that the general residential appearance would not be changed, number of parking spaces necessary, proposed signage, maximum length of stay, among others. He added that the application met all requirements for setbacks and parking density. Applicants received approval from the City on August 25, 2009 to establish a three-bedroom bed and breakfast having met all applicable sections of the Zoning and Development Code.

Mr. Peterson concluded that the application was administratively approved according to the City's reasonable interpretation of applicable laws and plans and the application was approved in accordance with all applicable criteria and ample evidence and records suggested the approval of this application. The Future Land Use Map indicated this area to be Residential Medium at 4 to 8 dwelling units per acre with a zoning of Planned Development.

Mr. Peterson advised that it had come to the attention of staff that the alley was 15 feet in width; however, there was still ample room to create two parking spaces next to the alley along with a third parking space within the garage for the residents. Staff approved the site plan on August 25, 2009 with two corrections – the actual width for the parking spaces of the property was 62½ feet making the 24 foot front setback and the 22 foot distance off by 3 feet.

**QUESTIONS**

Commissioner Carlow raised a question regarding a contention in the June 25<sup>th</sup> letter that the City arbitrarily adopted rezone of the entire district. Scott Peterson replied that the 7<sup>th</sup> Street district was zoned PD with an underlying R-8 default zone.

Commissioner Abbott asked for clarification regarding whether the zoning was RMF-8. Mr. Peterson said that in 1984 the rezone was from RMF-32 to 8 dwelling units to the acre.

Shelly Dackonish, staff attorney, asked Scott to provide the Commission with a brief resume regarding his qualifications. Scott Peterson said that he had a Master's Degree in Community Regional Planning from North Dakota State. He had worked in three cities and had close to 20 years experience in the planning profession working for city government.

Ms. Dackonish clarified that it was not disputed that the zone was Planned Development. Staff applied the underlying zone of R-8 due to the lack of adoption of a plan.

**APPELLANT'S REBUTTAL**

Jodie Behrmann submitted that a planned zoning or a Planned Development in name only was just that. If R-8 zoning was going to be substituted for purposes of consideration of this bed and breakfast, they would have to substitute R-8 zoning for purposes of the next. She went on to state that if the 1984 plan was negated, there was really no meaning that the area was rezoned as a Planned Development. She next addressed the TEDS parking issue. She said that the 24 foot parking aisle requirement could not be met.

**APPLICANT'S REBUTTAL**

Dan Wilson believed the discrepancy was the difference between the platted right-of-way and the curbing on the east side. He advised that over the past 25 years this district has had a boarding house, multiple apartments, multi-family and a daycare approved.

**DISCUSSION**

Chairman Cole referenced the letter presented by Ms. Behrmann and in his reading of the letter it appeared a repeat of many of the points that had been made in the hearing and as a result did not see it as anything new and would, therefore, allow it to be in the file. Jamie Beard agreed; however, she was concerned with whether or not each of the Commission members had had enough time to review it.

Commissioner Abbott stated that he had read through it. Commissioner Wall concurred. Chairman Cole announced that the letter would remain.

Chairman Cole said that as the subject property was surrounded totally by R-8 zoning for a number of properties, he thought staff's decision to use R-8 as an underlying zoning was a reasonable interpretation and regarding the argument that it should follow the plan from 1984, he believed that since it was not adopted by City Council it did not exist. He, therefore, could not agree with the argument that that plan should be followed. He said that he would favor denying the appeal.

**MOTION: (Commissioner Wall) "On Item Number MSP-2009-129, I would like to make a motion that we grant the appeal."**

Commissioner Abbott seconded the motion. A vote was called and the motion failed by a vote of 0 - 6.

**General Discussion/Other Business**

None.

**Nonscheduled Citizens and/or Visitors**

None.

**Adjournment**

With no objection and no further business, the Planning Commission meeting was adjourned at 7:45 p.m.