

**GRAND JUNCTION PLANNING COMMISSION
MAY 11, 2004 MINUTES
7:00 P.M. to 11:00 P.M.**

The regularly scheduled Planning Commission hearing was called to order at 7:00 P.M. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the City Planning Commission, were Dr. Paul Dibble (Chairman), John Evans, John Redifer, Bill Pitts, Travis Cox and Tom Lowrey (alternate). Roland Cole and William Putnam were absent.

In attendance, representing the City's Community Development Department, were Bob Blanchard (Community Development Director), Pat Cecil (Development Services Supervisor), Lisa Cox (Senior Planner), Lori Bowers (Senior Planner), Scott Peterson (Associate Planner), and Senta Costello (Associate Planner).

Also present were Jamie Kreiling (Assistant City Attorney), and Rick Dorris and Laura Lamberty (Development Engineers).

Terri Troutner was present to record the minutes.

There were 42 interested citizens present during the course of the hearing.

I. APPROVAL OF MINUTES

Available for consideration were the minutes from the March 23, 2004 public hearing.

MOTION: (Commissioner Lowrey) "Mr. Chairman, I move that the minutes be approved."

Commissioner Cox seconded the motion. A vote was called and the motion passed unanimously by a vote of 6-0.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

Mayor Bruce Hill came forward to thank planning commissioners for time each continued to spend in the selfless pursuit of making this a better community. Their voluntary participation on the Planning Commission board continued to be appreciated.

III. CONSENT AGENDA

Offered for placement on the Consent Agenda were items PP-2003-215 (Preliminary Plan--Riverglen Residential Community), PP-2004-014 (Preliminary Plan--Arcadia North Subdivision), ANX-2004-049 (Zone of Annexation--Cameck Annexation), and ANX-2004-059 (Zone of Annexation--Holley Annexation). At citizen request, item PP-2003-215 was pulled from Consent and placed on the Full Hearing Agenda.

A correction was made to item ANX-2004-049, to reflect an RMF-5, not an RMF-8, zone district as indicated on a previous agenda.

An amendment to item PP-2003-215 was made to delete consideration of right-of-way vacation. The only vacation under current consideration was that of a 40-foot utility easement.

MOTION: (Commissioner Evans) "Mr. Chairman, I recommend that we approve 2, 3, and 4 [PP-2004-014, ANX-2004-049, and ANX-2004-059] on the Consent Agenda tonight."

Commissioner Cox seconded the motion. A vote was called and the motion passed unanimously by a vote of 6-0.

IV. FULL HEARING

PP-2003-215 PRELIMINARY PLAN--RIVERGLEN RESIDENTIAL COMMUNITY

A request for approval for a Preliminary Plan to develop 11 single-family detached dwelling units and 32 single-family attached dwelling units on 9.2 acres in an RMF-8 (Residential Multi-Family, 8 units/acre) zone district, and to vacate a 40-foot utility easement.

Petitioner: Terry Lawrence, Grace Homes

Location: 311 Pinon Street

STAFF'S PRESENTATION

Lisa Cox gave a PowerPoint presentation containing the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Preliminary Plan; 5) background; 6) findings and conclusions; and 7) recommendations. The development was actually proposed for 9.2 acres, not the 11.87 acres noted on the agenda, with a gross density of 4.7 dwelling units/acre (net density of 6.2 dwelling units/acre). Access would be provided via Pinon Street to the south. A stub street would also be constructed to the Triplett property to the west for future extension of Santa Clara Avenue. Open space would be improved with a variety of active recreational amenities. The proposed pedestrian connection from Christopher Way to the open space would be fenced by the developer using 48-inch, split-rail type fencing. Landscaped areas would be irrigated via an underground pressurized irrigation system. Ms. Cox noted the location of the utility easement under consideration for vacation along the eastern property line. The easement was not essential to the development and could be vacated.

Having determined that both the Preliminary Plan and vacation requests met Code criteria and Growth Plan recommendations, approval was recommended for both.

PETITIONER'S PRESENTATION

Bryan Sims, representing the petitioner, clarified that the 11.87 acres denoted in the petitioner's original request had initially included the property to the east, which had since been removed. A neighborhood meeting had been held, and there were no objections to any of staff's conditions of approval.

PUBLIC COMMENTS

FOR:

There were no comments for the request.

AGAINST:

James Jarnagin (314 Pinon Street, Grand Junction) asked Mr. Sims if the 9.2 acre total included property situated north of the irrigation canal. Mr. Sims answered that the 9.2 acres included the sum total of the applicable property, with a buildable area totaling just under 7.5 acres. Mr. Jarnagin referenced the Preliminary Plan and said that it looked as though building would occur over the existing utility easement. Mr. Sims clarified that the easement in question was the one currently under consideration for vacation.

Mr. Jarnagin expressed concerns over the added traffic the development would bring to the area. Pinon Street, he said, had only a 20-foot mat, with no curb, gutter or sidewalk. It seemed dangerous to bring so much added traffic to a street that he viewed as marginal. It would also likely cause problems for emergency vehicles needing to access the development.

Mr. Jarnagin said that he and others were actively pursuing development of a river trail in the area. The development, as proposed, would effectively block all access to the river. He suggested that Pinon Street be extended to the river, and he offered to dedicate an acre (or potentially more) of his own property to that end if the petitioner would agree to extend Pinon Street. Wildlife were present and in abundance, he said, and access to the river would ensure that they could be viewed and enjoyed by the entire community. If Pinon Street were not extended, it may well result in landlocking several area parcels (parcel locations noted). Mr. Jarnagin added that soils near the riverbank were unstable and could pose problems if homes were developed close to the river.

Steve Willhite (310 Pinon Street, Grand Junction) wondered when the subject property had been zoned RMF-8. He'd always thought the property had been zoned to a lesser density. He expressed concern that the development would represent a pocket of low-income housing for residents that would fail to care for their properties.

Lori Triplett (1195 Santa Clara Avenue, Grand Junction) thought that all developments required two completed accesses to facilitate emergency vehicle access. She wanted assurance that if the utility easement were vacated, canal company staff would still be able to gain access to the ditchbank for maintenance. She objected to the placement of so many homes up against her property and expressed concern that the development's density would adversely impact area wildlife.

Lavonne Homes (305 Pinon Street, Grand Junction) stated her concern over the lack of a second access point.

Mary Ann Stanfield (305 Pinon Street, Grand Junction) expressed concern over view impacts. Would homes nearest the river be two-story? She agreed that two accesses were necessary for so dense a project, and she wondered where the development would hook up to the existing irrigation system. Would proposed detention ponds become breeding grounds for mosquitoes? Did the developer have any plans for maintaining detention ponds to lessen the risk of West Nile virus?

PETITIONER'S REBUTTAL

Mr. Sims said that as a resident of Orchard Mesa himself he recognized the value of the riverfront corridor. Rear yard setbacks of homes closest to the river were 60 feet back from the irrigation canal. He reiterated that no homes were being constructed up to or against the canal. Single-family detached homes were proposed for the rear portion of the development; the attached units were proposed for the area south of Santa Clara Avenue near Christopher Court. The City's Fire Department, he said, had reviewed the proposal and had not expressed any objection to their being only a single access. The only vegetation currently existing on the property was a stand of cottonwood trees in the northwest corner. That area would be preserved as a passive recreation area. Mr. Sims felt that detention pond concerns would be better addressed by City staff.

Mr. Sims said that the development did not represent low-income housing; homes would be of standard construction.

QUESTIONS

Commissioner Cox asked if there were any plans to landscape Tract B. Mr. Sims said that Tract B had been designated an active recreation area in response to Mr. Jarnagin's request that there not be a house placed there. That tract, he continued, would offer 3,273 square feet of recreational amenities.

When asked by Commissioner Cox if Tract C would be paved, Mr. Sims responded affirmatively. The pedestrian path proposed for that tract would be 20 feet wide. Vehicles could potentially access the river via Tract C although the installation of bollards should effectively discourage vehicular traffic.

Commissioner Cox asked for clarification on the location of the existing ditch road, which was provided. The existing ditch was open and concrete-lined and would remain intact. He noted how and where irrigation water was obtained. The development, he said, would actually result in more controllable irrigation water delivery to southern properties while providing a reliable irrigation system to development residents.

Commissioner Lowrey asked if Pinon Street would be improved from Unawep Avenue. Mr. Sims was unsure and suggested that the question be redirected to City engineering staff.

Commissioner Putnam observed that the utility easement did not currently provide pedestrian or vehicular access to the river. No current access to the river was being denied as a result of the development proposal.

Mr. Sims confirmed that Commissioner Putnam's observation was correct.

When asked by Chairman Dibble, proposed access points were noted and clarified. The extensions of Santa Clara Avenue and Christopher Way were contingent upon the future development of the Triplett and Jarnagin properties; however, stub streets had been required by City staff.

Ms. Cox referenced the site's riverbank frontage and said that everyone involved agreed that the soils could be unstable. Given that and the steepness of existing slopes, the entire area (noted) would be retained as undisturbed open space. That open area would help preserve views and existing wildlife habitat. The area had also been closely scrutinized by the office of the Colorado Geological Survey, the developer's Geotechnical engineer and the City's Development Engineer. Ms. Cox added that staff had also required and received written assurance from the Orchard Mesa Irrigation District that the development would pose no adverse impacts to the District's ability to access and maintain its irrigation canal. With regard to concerns expressed over the property's current RMF-8 zoning, she said that she was not aware of a recent rezone action and that the property had been zoned RMF-8 for at least the last 5 years. She explained the nature of detention ponds and said that stormwater would be released into the ground within 48 hours of its collection. Thus, there should be no problems with mosquito abatement. However, if future problems did arise, they could be addressed at that time.

Steve Sharp, the project's engineer, came forward to clarify planned improvements to Pinon Street. Pinon would be improved with a 24-foot-wide mat. Curb, gutter and sidewalk would be constructed along the street's entire western frontage. He clarified that detention ponds were actually designed so that collected stormwater runoff would be released within 24 hours. The pond would be sodded or hydroseeded and the development's Homeowners Association would assume its maintenance.

Commissioner Cox asked Development Engineer Rick Dorris if a 24-foot-wide mat met City standards for a residential street. Mr. Dorris said that a typical residential street had a 28-foot-wide mat, with curb, gutter and sidewalk constructed along both sides of the street. Because the Jarnagin property was not being developed to the east, it was necessary that the mat be widened and that improvements occur along

the development's frontage. Twenty-four feet was wider than the minimum requirement for fire truck access, and it would be more than wide enough to handle expected traffic flows.

DISCUSSION

Commissioner Cox felt that the project had been sufficiently scrutinized by staff, the developer, and the neighbors. He agreed that Pinon Street needed to be widened. In its present configuration, it was more akin to a driveway. While he understood the neighbors' objections to the loss of the open field that lay there for so long, private property rights allowed for an owner's development of his property. He expressed support for the project.

Commissioner Putnam remarked that when people chose to live next to large open fields, they should realize that at some point that field could be developed. Added traffic and other impacts just naturally came with any development.

Commissioner Redifer felt that staff and the developer had satisfactorily addressed neighbor concerns. The area was in transition, and while transitions were difficult to go through, they were necessary to a community's growth.

Commissioner Evans concurred and expressed his support for the project.

Chairman Dibble agreed with staff's recommendations of approval and felt that Growth Plan and Code criteria had been met. While originally concerned over the lack of available access to the river, it appeared that some level of access would still be available. Staff were aware of the riverbank's soils instability, and it sounded as though future mosquito abatement would still be available should the need warrant.

MOTION: (Commissioner Cox) "Mr. Chairman, on item PP-2003-215, request for Preliminary Plan approval for the Riverglen Subdivision, I move that we approve subject to staff conditions, with the findings and conclusions as outlined by staff above."

Commissioner Lowrey seconded the motion. A vote was called and the motion passed unanimously by vote of 6-0.

MOTION: (Commissioner Cox) "Mr. Chairman, on item PP-2003-215, request to vacate a 40-foot utility easement, I move that we recommend approval to the City Council with the findings and conclusions as outlined by staff above."

Commissioner Evans seconded the motion. A vote was called and the motion passed unanimously by a vote of 6-0.

A brief recess was called at 8:24 P.M. The public hearing was reconvened at 8:35 P.M.

ANX-2004-065 ZONE OF ANNEXATION--BRETSEL ANNEXATION

A request for approval of a Zone of Annexation to zone 11.86 acres from County RSF-4 (Residential Single-Family, 4 units/acre) to a City C-2 (General Commercial) zone district.

Petitioner: Stanley Seligman

Location: 3145 E 1/2 Road

STAFF'S PRESENTATION

Scott Peterson gave a PowerPoint presentation containing the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Existing City and County Zoning Map; 5) findings and conclusions, and 6) staff recommendations. Mr. Peterson overviewed the request as outlined in the May 11, 2004 staff report. The site's location was referenced, and Mr. Peterson said that the petitioner intended to submit a request for placement of an auto dealership on the property. While staff could not support a C-2 zone district for the site, both the Code and Growth Plan would support a C-1. Staff recommended that a C-1 zone district be applied to the property.

PETITIONER'S PRESENTATION

Tom Volkmann, legal counsel representing the petitioner, said that he'd recommended the C-2 zone district to the petitioner given the site's proximity to I-70B and the railroad. He added that the petitioner also had property to the east of the site under contract. He felt that the activities of a car lot would be better accommodated by a C-2 zone district; however, if planning commissioners could not support a C-2 zoning, the petitioner was prepared to accept staff's recommendation of C-1.

QUESTIONS

Chairman Dibble asked if application of a Zone of Annexation was tantamount to a rezone request, to which Ms. Kreiling responded affirmatively.

PUBLIC COMMENTS

FOR:

There were no comments for the request.

AGAINST:

Bob McGurran (3148 E 1/2 Road, Grand Junction), owner of property to the east of the site, referenced a written outline stating his objections, copies of which were provided to planning commissioners. He also referenced the Grand Junction/Mesa County Intergovernmental Agreement, a copy of which was submitted for the record. Mr. Gurran's objections included all of the following: 1) the City's annexation of the property, 2) the placement of a car lot on the property, 3) the lack of sufficient notification to surrounding neighbors who would be affected by the proposal, 4) the added traffic, noise, lights, crime, and pollution a car lot would bring to the area, and 5) the potential impacts to available irrigation water. He further stated that the developer was currently in a dispute with Mesa County over acquisition of right-of-way from Mr. Bretsel for improvements to the E 1/2 and 31 1/2 Roads intersection.

Chairman Dibble asked staff for clarification on the status of the E 1/2 and 31 1/2 Roads intersection. Laura Lamberty said that Mesa County planned on closing the 31 1/2 Road access onto I-70B, which would improve the safety of that intersection, and reroute the I-70B connection to a signalized intersection at Warrior Way. In Mesa County's long-term Capital Improvements Plan, 31 Road was proposed to be realigned, with an additional connection constructed across the railroad to connect the Pear Park area with I-70B. Those plans, she said, were scheduled for construction over the next 10 years.

Mr. Gurran added that Mr. Bretsel was not cooperating with Mesa County in the sale of the needed right-of-way. The County, he said, would likely have to condemn the property in order to get it.

James Dickerson (3148 Carlton Court, Grand Junction) felt that the City's annexation of the subject property was illegal and represented "flagpole annexation." The City, he said, was subjecting itself to another lawsuit similar to the one brought against them by Clifton in years prior. He argued that placing a car lot so close to the high school, with all of its student drivers, was just asking for trouble.

Chairman Dibble reminded citizens that the only issue before the Planning Commission was the Zone of Annexation. No actual development plan had been submitted for consideration.

Commissioner Putnam asked how much land along I-70B was in C-1 zoning. Mr. Peterson replied that about 90% of I-70B's frontage was currently zoned C-1.

PETITIONER'S REBUTTAL

Mr. Volkmann was unsure what the Intergovernmental Agreement had to do with anything, but it surely didn't apply to the current property. He also questioned the assertion that the City's annexation of the parcel was in any way illegal, and he agreed that only the Zone of Annexation was under current consideration.

DISCUSSION

Commissioner Cox asked what the difference was between the C-1 and C-2 zones with respect to the placement of a car lot on the site. Mr. Peterson said that a car lot was an allowed use in a C-2 zone, a conditional use in a C-1 zone. The petitioner would be required to come back before the Planning Commission for plan consideration if a C-1 zone district were applied to the site. When asked if there were any other zoning options available other than a C-1 or C-2, Mr. Peterson said that the Growth Plan and Code supported only those two options. Staff was recommending approval of the C-1 alternative.

Chairman Dibble remarked that since a C-2 zone district typically wasn't allowed to directly abut a residential zone, the only real choice available to planning commissioners was the C-1.

Commissioner Putnam agreed and wondered why screening hadn't been discussed in conjunction with the C-2 alternative. Mr. Peterson said that screening was generally discussed after a plan was submitted.

Commissioner Cox felt that of the two available alternatives, the C-1 zone district was the more appropriate. Neighbor concerns would be better addressed during site plan review.

Chairman Dibble agreed and urged neighbors to participate in the development review process.

MOTION: (Commissioner Cox) "Mr. Chairman, on Zone of Annexation ANX-2004-065, I move that the Planning Commission forward the Zone of Annexation to City Council with the recommendation of C-1, Light Commercial, for the Bretsel Annexation located at 3145 E 1/2 Road, with the findings listed in the staff recommendation."

Commissioner Redifer seconded the motion. A vote was called and the motion passed unanimously by a vote of 6-0.

PP-2003-282 PRELIMINARY PLAT--COUNTRY RIDGE ESTATES

A request for approval of the Preliminary Plan to develop 29 single-family detached lots on 7.33 acres in an RSF-4 (Residential Single-Family, 4 units/acre) zone district.

Petitioner: David and Debra Rowe

Location: 176 28 1/2 Road

STAFF'S PRESENTATION

Scott Peterson gave a PowerPoint presentation containing the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Existing City and County Zoning Map; 5) Preliminary Plan; and 6) findings and conclusions. Mr. Peterson briefly overviewed the request as outlined in the May 11, 2004 staff report. The subdivision would receive access via Country Ridge Road, which would

connect with both 28 1/2 and B Roads. Staff had received letters of opposition from Joseph Hayes (185 Rainbow Drive, Grand Junction), Dale and Denise Nelson (182 Rainbow Drive, Grand Junction), George and Helen Steele (181 Rainbow Drive, Grand Junction), and Allen and Susan Crim (184 Rainbow Drive, Grand Junction). Comments included: 1) suggestions that the City purchase the site and add it to their adjacent park property; 2) concerns that there may be an insufficient amount of irrigation water available; 3) requests that 6-foot-high privacy fencing be installed along the property line bounding the east side of Rainbow Drive; 4) covenants to prevent the proliferation of junk vehicles and trash; and 5) traffic and safety concerns over the 28 1/2 Road/U.S. Highway 50 intersection. Copies of letters received had been included in planning commissioner packets.

Mr. Peterson said that the request met both Code criteria and Growth Plan recommendations. As such, approval of the request was recommended.

QUESTIONS

Commissioner Lowrey questioned the rationale behind allowing access from eight separate driveways onto 28 1/2 Road. Wouldn't that impact 28 1/2 Road in the future should it become a major collector? Bob Blanchard responded by saying that 28 1/2 Road was not on the City's Major Circulation Plan for any planned upgrade. Any change would require approval of a major plan amendment. He felt that the majority of north-south traffic would be carried by nearby 29 Road.

When asked by Commissioner Cox how much developable acreage extended from the site south to the river, Mr. Peterson replied that he was unsure.

Chairman Dibble asked about the distance between the intersections of 28 1/2 Road/Country Ridge Drive and B Road/Country Ridge Drive. Mr. Peterson said that the distance between the two intersections was approximately 200 feet. No signalization was present or proposed for either intersection.

PETITIONER'S PRESENTATION

Debra Rowe, co-petitioner, offered no additional testimony.

PUBLIC COMMENTS

FOR:

There were no comments for the request.

AGAINST:

Joseph Hayes (185 Rainbow Drive, Grand Junction) reiterated his letter's suggestion that the City purchase the Rowe's property and attach it to their adjacent park. It would be a great opportunity to expand the Orchard Mesa Burkey Park, which also served as the trailhead for the Old Spanish Trail. He wondered if proposed homes would be single- or two-story.

Joey Blecha (172 28 1/2 Road, Grand Junction) expressed concerns over the additional traffic traveling through what he felt to be an already dangerous 28 1/2 Road/U.S. Highway 50 intersection. He pointed out that there was no direct access to 29 Road from 28 1/2 Road.

Darrell Minard (168 28 1/2 Road, Grand Junction) agreed that there were already many accidents occurring at the 28 1/2 Road/U.S. Highway 50 intersection; signalization was really needed there. He also wanted assurance that residents who derived their access via the 28 1/2 and B Road intersection wouldn't be adversely impacted by the development. He pointed out that there were two open irrigation ditches in the area. After talking with Orchard Mesa Irrigation District staff, they'd indicated that a major delivery line might be required, one which may have to be situated on the Lowe's property.

Dale Nelson (182 Rainbow Drive, Grand Junction) agreed that traffic through the 28 1/2 Road/U.S. Highway 50 intersection was bad and continued to increase. Traffic from the frontage road running parallel to the highway only exacerbated the problem. Would the existing postal boxes remain where they were or be moved?

PETITIONER'S REBUTTAL

Jeff Crane, representing the petitioners, said that a Level 2 Traffic Assessment had been undertaken in conjunction with the development. The Colorado Department of Transportation (CDOT) had determined that no left- or right-hand turn lanes into the development from U.S. Highway 50 were required. CDOT had also determined that the existing 28 1/2 Road/U.S. Highway 50 intersection would not be substantially impacted by the proposed development. Irrigation water would be piped along the west side of the property. Irrigation water would be jointly used by the City and residents of the proposed subdivision. An appropriate turnout would be constructed to measure out appropriate shares to each of the two shareholders. He noted the existence of another possible supply or drainage ditch along the east side of the property, which would also be piped. Water would be delivered to a wastewater ditch existing along B Road. All surface runoff would be directed to the site's detention pond in the northwest corner of the property, where it would be released at historic rates. It was unclear at the present time whether homes would be single- or two-story.

QUESTIONS

Chairman Dibble asked if the City would require piping of the eastern ditch if shown to be for drainage. Ms. Lamberty said that stormwater law required developers to be responsible for any upstream wastewater or surface water runoff. The option of using piping, a swale, or other conveyance was at the developer's option. Piping was more easily maintained. At the 28 1/2 Road alignment there existed a major supply ditch, which would have to be piped to facilitate roadway improvements. Mr. Crane reiterated his willingness to pipe ditches along both the east and west sides of the property. Ms. Lamberty stated that 28 1/2 Road, as it exists now, was developed privately apparently not to any engineering standards.

Chairman Dibble asked for clarification on roadway improvements to 28 1/2 Road. Ms. Lamberty said that the City was requiring a 2/3 street section, which included a minimum street pavement width of 20 feet (28-foot right-of-way) as well as construction of curb, gutter and detached sidewalk along one side. When the park developed, improvements would be extended along the park property as well. The new road will need to be extended and connected to the private section of 28 1/2 Road to the South.

Mr. Peterson said that with regard to the postal box location question, the U.S. Post Office would make that final determination.

DISCUSSION

Commissioner Cox acknowledged the need to improve 28 1/2 Road. He felt that a number of issues had already been satisfactorily addressed; remaining issues such as irrigation water delivery would be addressed during the final development stage. He expressed support for the project.

Commissioner Putnam said that while the suggestion that the City buy the Lowe's property might be a good one, it was not an issue within the Planning Commission's purview.

Chairman Dibble was unsure what the answer was to the 28 1/2 Road/U.S. Highway 50 traffic problems. The City was doing its best to project traffic usage and impacts out 20 to 50 years and plan accordingly. He too supported the project.

MOTION: (Commissioner Lowrey) "Mr. Chairman, on item PP-2003-282, request for Preliminary Plat approval for the Country Ridge Estates, I move that we approve the Preliminary Plat subject to staff conditions, with the findings and conclusions as outlined by staff."

Commissioner Evans seconded the motion. A vote was called and the motion passed unanimously by a vote of 6-0.

VAR-2004-056 VARIANCE--PALACE POINTE 6-FOOT WALL VARIANCE

A request for a variance to the requirement to provide a six-foot masonry wall between a C-1 (Light Commercial) and an RMF-8 (Residential Multi-Family, 8 units/acre) zone district.

Petitioner: Tom Bolger, North Avenue Center, LLC

Location: 2938 North Avenue

STAFF'S PRESENTATION

Scott Peterson gave a PowerPoint presentation containing the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Existing City and County Zoning Map; and 5) a copy of the approved site plan. Mr. Peterson said that the petitioner had originally been opposed to the requirement to construct the masonry wall but he'd agreed to conditions of approval and signed off on the site plan as a means to get construction of the project underway. Variance criteria were read into the record, and staff determined that the petitioner failed to meet those criteria. Staff determined that the petitioner's hardship was self-imposed; that granting the variance would convey a special privilege to the petitioner; that there was nothing special about the property to warrant granting the variance; that the proposed masonry wall would not be an unusual requirement; that granting the variance would be detrimental to adjacent residents; and that the request was inconsistent with the goals and policies outlined in the Growth Plan.

A photo of the 8-foot-wide landscaped area behind the petitioner's building was shown. The photo reflected the existence of the 6-foot-high wooden privacy fence owned and maintained by the Palace Estates Subdivision Homeowners Association (HOA), which currently separated the business and residential uses. A photo of a cinder block wall owned and constructed by Daltile, one that didn't conform to Code requirements was also shown. Referencing the site location map, Mr. Peterson noted the presence of masonry walls on other adjacent properties. Construction of the required wall on the Palace Point property would continue the line of buffering between business and residential uses. Letters of opposition had been received by staff from Dean Pfannenstiel (603 28 1/4 Road, Grand Junction), Bert and Bertha Noesen (2933 Bunting Avenue, Unit E, Grand Junction), and Coleen Arnold (2941 Bunting Avenue, Unit 6, Grand Junction). Concerns included the provision of sufficient buffering against commercial noises, impacts to residential quality of life, and loss of an essential transition necessary to "visually shield, block noise, lights, and other nuisances that the commercial land use creates which negatively influences the existing residential Palace Estates Condominiums." A petition containing the signatures of 94 opposing residents had also been submitted by representatives of the subdivision's HOA.

Having determined that the request failed to meet Code criteria and Growth Plan recommendations, denial was recommended.

QUESTIONS

Chairman Dibble asked staff if they knew for sure whether or not the Daltile wall represented a Code violation. Mr. Peterson said that the issue was currently being researched.

Commissioner Cox asked about acceptable options available to the petitioner. Mr. Peterson said that either a masonry or a stuccoed wall would satisfy the requirement. The wall must be finished on both sides. A solid concrete cinder block wall such as the one portrayed in the Daltile photo, whether painted or unpainted, was unacceptable. Commissioner Cox asked if the existing fence would have to come down to accommodate the masonry wall. Mr. Peterson said that the existing fence would have to be taken down temporarily to facilitate construction of the wall then replaced at the petitioner's expense. The petitioner had stated that the Palace Estates Subdivision HOA had been approached about a cost-sharing proposal, but they were apparently uninterested in participating.

Commissioner Putnam asked if developers of adjacent properties would also be required to erect a masonry wall, to which Mr. Peterson replied affirmatively. The property to the west, he said, had had the same requirement. He reiterated that there was currently a long continuous line of wall separating the business uses from residential uses. The requirement imposed upon the petitioner was not unusual, and other commercial developers had complied.

Commissioner Cox said that if the petitioner was not made responsible for erecting the wall, the responsibility for screening would fall to the residents of the Palace Estates Subdivision. Wood fences were temporary structures, unlike masonry walls, which were considered permanent. He asked staff if it were possible to set up an escrow fund to provide for future construction of the wall, should subdivision residents opt to replace their existing fencing with something more permanent. Mr. Peterson said that there was no system currently in place to accommodate such a request. Developers of commercial properties were always responsible for mitigating the impacts of their developments.

PETITIONER'S PRESENTATION

Bill Oswald, representing the petitioner, cited Code section 6.5.F.1 which stated that "Nothing in this Code shall require the 'back-to-back' placement of fences and/or walls. If an existing fence or wall substantially meets the requirements of this section, an additional fence on the adjacent developing property shall not be required." That was the basis of their argument. It was the petitioner's contention that the subdivision's existing wooden fence satisfied that Code requirement. The site plan had been signed by the petitioner because it was always presumed he would prevail in his request for waiver of the requirement. Similar situations where it appeared the City had waived the requirement included Omega Realty's development at 570 East Creek Circle and the Johnson development located at 584 North Commercial Drive.

Mr. Oswald referenced the photo of the landscape strip behind the commercial building and wondered what the additional buffering would accomplish. Delivery trucks off-loaded in the front of the building so subdivision residents shouldn't be bothered by the noise of delivery vehicles. The building itself was the best possible buffering against such impacts.

Steve Kessler (no address given), representing the petitioner, came forward and said that the Palace Estates HOA had been approached with a cost-sharing proposal but they hadn't been interested. He maintained that subdivision residents preferred their wooden fencing and didn't want a wall erected. If the wall were erected alongside the wooden fence, it would pose any number of safety and maintenance issues.

Chairman Dibble reminded the petitioner that Bob Turner had previously agreed with approval requirements and signed off on the site plan. Did he not understand what he was signing? Mr. Kessler said that the development process had, by that time, taken so long they needed to get started on the project. While Mr. Turner didn't believe the requirement to be a fair one at the time, he signed off on staff's conditions of approval just to be able to get the project underway.

Mr. Blanchard reminded planning commissioners that the only issue before them was the variance request, not Code interpretation. The latter did not fall within the Planning Commission's purview.

PUBLIC COMMENTS

FOR:

There were no comments for the request.

AGAINST:

Max Fent (513 29 3/8 Road, Grand Junction), president of the Palace Estates HOA, submitted a copy of the petitioner's original site plan to planning commissioners. He said that subdivision residents did want the wall erected but they didn't feel that they should have to pay for a requirement that had been imposed solely upon the petitioner. He was unsure how the petitioner could take the position that he'd spoken with representatives of the Palace Estates HOA. In the two years of his presidency, no one from the Palace Point development had ever come and talked with him or any other board members. He reiterated that the wall requirement had been imposed solely upon the petitioner; thus, the cost of taking down and reinstalling the existing subdivision fence should also be borne by the petitioner. He recalled the petitioner saying 14-15 months prior that he wanted to be a good neighbor. Where was that good will now?

Mr. Fent said that already a noise complaint had been lodged against the westernmost tenant of the commercial facility, and the building wasn't even half-full.

Jan Kohles (2933-B Bunting Avenue, Grand Junction) said that she'd served on the Palace Estates HOA for the last five years and this was the first she'd heard of any cost-sharing request. She urged denial of the request since it clearly did not meet the City's variance criteria. Reading from her objection letter, she stated that the existing wooden fence was an insufficient barrier against commercial development impacts (e.g., noise, pollution, lighting, etc.) but the costs associated with satisfying the City's requirement belonged to the petitioner, not subdivision residents. She admonished the petitioner's representatives for using the two waiver examples cited previously. Those properties were across town, and in one instance the waiver had been granted because the adjacent property owner hadn't objected. The other situation involved a City staff oversight. So those were poor examples and completely dissimilar. She felt that the quality of life and property value protection currently enjoyed by subdivision residents should be protected.

Keith Boughton (703 24 3/4 Road, Grand Junction) said that the Palace Estates Subdivision was a fine neighborhood, and he agreed with opposition comments.

PETITIONER'S REBUTTAL

Tom Bolger, representing the petitioner, said that he'd gone to condo owners and asked them who their representative was. He'd been told that they were covered by several associations; however, he was directed to speak with Mr. Pfannenstiel of Monument Realty. He presented a letter from Mr. Pfannenstiel dated March 4, 2003 (copy submitted to planning commissioners), which responded to Mr. Bolger's request for consideration of cost-sharing. He was unsure what exactly the neighbors wanted.

Mr. Fent asked for a brief recess while he and board members considered options. A brief recess was called at 10:42 p.m. The public hearing reconvened at 10:47 p.m.

Mr. Fent said that the HOA was willing to allow the petitioner to remove the existing wooden fence at the petitioner's expense, replace it with the masonry wall, and not require replacement of the wooden fence if the petitioner agreed, in writing, to provide perpetual maintenance of the wall on both sides. Mr. Kessler made the comment that "they were being set up" and walked out of the auditorium.

DISCUSSION

Commissioner Lowrey said that the petitioner's use of Code section 6.5.F.1 was inapplicable since staff had already determined that the existing wooden fence did not substantially meet the requirements of that section. A masonry wall did a much better job of buffering commercial impacts than any wooden fence could. Since the request failed to meet variance criteria, and no non self-imposed hardship had been demonstrated, he could not support the variance request.

Commissioner Cox agreed with staff's interpretation and the conclusion drawn by Commissioner Lowrey. Clearly, variance criteria had not been met, so no approval could be given.

Commissioner Putnam agreed with Ms. Kohles' conclusion that the current request was very different from the two examples cited by the petitioner's representatives. He did not feel the request could be supported.

Commissioner Redifer commented that it hardly made sense to have two fences back to back in the same spot; however, he felt that the Code's criteria was clear. The responsibility fell to the petitioner to resolve the issue and construct the required wall.

Commissioner Evans concurred.

Chairman Dibble reiterated that the commercial developer was always responsible for mitigating the impacts of the development, regardless of what may or may not already be there. The original site plan had been signed and agreed to by Mr. Turner. Thinking the requirement unfair did not negate the validity of the contract.

MOTION: (Commissioner Cox) "Mr. Chairman, on item VAR-2004-056, I move that we approve the variance to waive the requirement to provide a six foot masonry wall between a C-1 and an RMF-8 zoning district, finding the request to be consistent with the Growth Plan and section 2.16.C.4 of the Zoning and Development Code."

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

With no further business to discuss, the public hearing was adjourned at 11:00 P.M.