

**GRAND JUNCTION PLANNING COMMISSION
JULY 23, 2002 MINUTES
7:02 P.M. to 10:14 P.M.**

The regularly scheduled Planning Commission hearing was called to order at 7:02 P.M. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Planning Commission, were Paul Dibble (Chairman), John Evans, Roland Cole, John Paulson and Bill Pitts. William Putnam, Richard Blosser and John Redifer were absent.

In attendance, representing the Community Development Department, were Bob Blanchard (Community Development Director), Pat Cecil (Development Services Supervisor), Kathy Portner (Planning Manager), Lisa Gerstenberger (Sr. Planner), and Kristen Ashbeck (Sr. Planner).

Also present were John Shaver (Asst. City Attorney).

Terri Troutner was present to record the minutes.

There were approximately seven interested citizens present during the course of the hearing.

I. APPROVAL OF MINUTES

Available for consideration were the minutes from the July 9 public hearing.

MOTION: (Commissioner Cole) “Mr. Chairman, I would move for acceptance of the minutes for July 9 as written.”

Commissioner Pitts seconded the motion. A vote was called and the motion passed by a vote of 3-0, with Commissioners Paulson and Pitts abstaining (non-attendance).

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. CONSENT AGENDA

No items were available for placement on the Consent Agenda.

V. IV. FULL HEARING

TAC-2002-131 TEXT AMENDMENT—ZONING & DEVELOPMENT CODE REVISIONS

A request for approval of amending the Zoning & Development Code sections 3.4.B and 4.4.G.1 regarding the B-1 zone district.

Petitioner: City of Grand Junction

STAFF’S PRESENTATION

Kristen Ashbeck gave a PowerPoint presentation which included the following slides: 1) background; 2) summary of revisions; 3) definition/establishment of zone district; 4) land use map; 5) site design performance standards; 6) architectural design standards; 7) photos depicting examples of existing businesses that meet architectural design standards (i.e., retaining residential character of structure); and 8) lighting and signage standards.

Ms. Ashbeck said that the revision dealt primarily with a developer who wanted to situate a business within a residential zone district. In looking at the request, staff and Council members recognized that if the B-1 zone district were to be applied in a wider range of residential areas, then performance standards should be enhanced to address neighborhood compatibility. She reviewed the request and highlighted key points, which included: 1) B-1 zones would have to be located along, and have access from, an arterial or collector street; primary access from residential streets could not be used to meet this criterion; 2) newly established B-1 zones would have spacing requirements of $\frac{3}{4}$ mile from other business or commercially-zoned sites and 1.5 miles from another B-1 zone district; and 3) a newly established B-1 zone district would have a maximum size of 8 acres in order to limit the size, scale, and intensity of the business area.

Proposed standards include a “tenant mix” with a minimum of three storefronts, with a single use limited business center disallowed. Drive-through uses would not be allowed in areas designated residential on the Growth Plan Land Use Map. Eighty percent (80%) of required parking would have to be located either behind or beside the building; there would be a maximum building setback; pedestrian connections would be encouraged; separation of pedestrian and vehicular circulation systems would be encouraged; the overall building form and design should closely approximate that of a residential structure in height, mass, and scale; roof forms should also be similar in slope and height to the surrounding residential scale; building sides must consist of several bays or sections, and a fenestration pattern compatible with surrounding residential structures would be required; site lighting would permit canopy lighting but only between the hours of 5:00 A.M. and 11:00 P.M.; signage lighting would also be restricted to the aforementioned hours of operation and must be externally lighted (lettering may be lighted if the sign is to be internally illuminated); only flush wall and freestanding signs would be allowed, with freestanding signs limited in size to 64 square feet and 8 feet in height; and wall signage would be reduced so that signage would be consistent with a residential, pedestrian scale.

Ms. Ashbeck noted that the hours of operation were a concern to one citizen (Larry Beckner letter dated July 9, 2002). She said that currently stated hours of operation reflect what was already stated in the current Code; however, she suggested that perhaps further discussion on this item would be warranted.

Staff recommended approval of the proposal.

QUESTIONS

Commissioner Cole referenced a letter received from Development Construction Services, Inc. (DCS, Inc.). Its author and president of the company, Jana Bingham Gerow, expressed concern over what she'd felt was a lack of community notification and involvement in the development standards revisions. Commissioner Cole asked staff to elaborate on the level of notification given. Ms. Ashbeck said that those specifically interested in the revision, of which DCS, Inc. was one, had been notified. Copies of the proposal had been mailed to those interested approximately mid-June. Public notice had also been given via a legal ad.

Commissioner Cole asked for clarification on the restriction of drive-through businesses. Ms. Ashbeck said that her research into drive-through businesses in other areas reflected that they weren't generally allowed in B-1 zones. Commissioner Cole noted that this would exclude drive-up restaurants. Ms. Ashbeck acknowledged that drive-through restaurants were deemed inappropriate in residential areas and are already not allowed in the B-1 Zone District.

PUBLIC COMMENTS

FOR:

There were no comments for the proposal.

AGAINST:

Mike Joyce (2764 Compass Drive, Grand Junction) said that while not entirely against the proposal, he asked that certain sections of the text amendment be revised. He noted that certain staff-proposed revisions would continue to preclude the bank from locating within a residential area. These included the proposed spacing restrictions, which he felt were too restrictive; limiting access to an arterial or a collector when the only available access may be a residential collector street; mandating at least three storefronts (again, this was felt to be too restrictive, and he suggested that one or two should be considered); and prohibition of drive-through services. Mr. Joyce felt that perhaps eight acres was too large, and that the business hours of 6:00 A.M. to 9:00 P.M. may be more reasonable to ensure residential compatibility. He agreed with staff's suggestions of parking placement and the separation of pedestrian and vehicular circulation systems.

Larry Beckner (1241 Gunnison Avenue, Grand Junction), representing The Bank of Grand Junction, felt that the language of the text amendment should be modified to allow siting the bank at the corner of 27 ½ and Patterson Roads. If this could be accomplished, he said, The Bank would then fall under consistency review without conflicting with Growth Plan recommendations. He agreed that the spacing text revisions were too restrictive. The photo presented by staff of the Nickel Want Ad building probably wasn't a good B-1 business example. He also agreed that perhaps the proposed hours of operation were too intensive for a residential area and expressed support for the points mentioned by Mr. Joyce.

Bob Johnson (913 26 Road, Grand Junction), president of The Bank of Grand Junction, said that a street's "collector" status was determined by its usage. He recounted the number of times he'd attempted to get his project approved at the 27 ½ and Patterson Roads location. With so many of the neighbors expressing support for the project, he couldn't understand why the City remained opposed.

Don Pettygrove (2764 Compass Drive, Grand Junction) was unsure who'd initially proposed the text amendment. The type of uses allowed should be proportional to the size of the site. He opposed limiting access to B-1 businesses to collectors and warned that if options weren't left open, it could result in landlocking a parcel. He felt that more flexibility in text amendment language was warranted.

A letter had been submitted by Jana Bingham Gerow of DCS (619 Main Street, Suite 100, Grand Junction), who expressed opposition to the text amendment as written. While not present at the public hearing, she asked that her comments be included in the record. She felt that the restrictions were too broad, specifically with regard to spacing, multiple storefront requirements, drive-through facilities, site design, and various other architectural elements. She felt that insufficient review time had been given to those who would be impacted the most.

She felt that currently proposed restrictions would prevent the uniqueness of neighborhoods to develop. Restricting drive-through facilities would impact the elderly and handicapped as well.

DISCUSSION

Bob Blanchard noted that not only had legal public notice been given, draft copies of the text amendment language had been provided to those persons expressing interest. He said that photos referenced by staff were representative of certain aspects of neighborhood businesses; the Nickel Want Ad building, for example, may not necessarily show proposed B-1 standards but instead evidences building form. He clarified that street classifications were designated by the Functional Classification Map and street standards, not strictly by vehicular usage. Access points onto arterials are limited wherever and whenever possible. With regard to the requirement for multiple tenants and storefronts, he cited "trip-chaining" as a justification for this criterion.

QUESTIONS

Chairman Dibble asked if gas stations would be allowed within B-1 zones, to which Ms. Ashbeck replied affirmatively. Clarification was given on the difference between a “drive-through” and a “drive-up” business. Gas stations were viewed as a drive-up business because the driver was typically required to exit the vehicle upon arrival.

Commissioner Cole wondered if a variance to spacing requirements could be given in certain circumstances. Mr. Blanchard said that variance criteria were difficult to meet; the hardship could not be self-imposed. It was unlikely that this could be a viable option to any business seeking waiver of zone district criteria. Ms. Ashbeck remarked that the 8/10 mile spacing figure currently denoted in the Code was arbitrary; in other areas, ¾ mile spacing was typical. When Commissioner Cole stated that some elements of the zone’s standards should be subject to waiver, Mr. Shaver cautioned against that approach. Mr. Shaver said that waiving established zone district standards through a variance could effectively result in a rezone.

Mr. Shaver noted the word “shall” as stated in the Spacing paragraph and suggested that planning commissioners determine whether the paragraph should be advisory or mandatory. Commissioner Pitts felt that substituting the word “should” for “shall” would be more appropriate.

Planning commissioners reviewed each paragraph of the text amendment; however, the greatest attention was given to the paragraphs on spacing and tenant mix/storefronts. Changes to the proposed text amendment included: 1) in the paragraph regarding Spacing, change the word “shall” to “should” in the second sentence; 2) in the Hours of Business paragraph, change the hours of business to 6:00 A.M. to 10:00 P.M. While there was some discussion over whether or not to disallow the use of neon in signage, it was felt that the maintenance costs of neon signage would discourage developers from using it.

MOTION: (Commissioner Cole) “Mr. Chairman, I would move for a recommendation of [approval of] the [text] amendment for the B-1 district as presented by staff with the following changes: 1) under Spacing on 3.a., approximately the middle of the paragraph, ‘New B-1 districts should be located at least ¾ mile from another business...’; the only other change that I recall is the Hours of Business, and change those hours from 6:00 A.M. to 10:00 P.M., and I move for a recommendation of approval with those changes.”

Commissioner Pitts seconded the motion. A vote was called and the motion passed unanimously by a vote of 5-0.

A recess was called at 9:03 P.M. The public hearing reconvened at 9:10 P.M.

Due to the potential for conflict of interest, Commissioner Paulson recused himself from participation in the next item.

VAR-2002-128 VARIANCE—THE ESTATES SUBDIVISION VARIANCE

A request for a variance from Section 6.3.B, Open Space Requirements, of the Zoning and Development Code, to credit the required \$65,000 open space fee for property located at 2570 G Road known as The Estates.

**Petitioner: IAMA, LLC—Keith Mendenhall
Location: 2570 G Road
Representative: Development Concepts, Inc.—Mike Joyce**

PETITIONER’S PRESENTATION

Mike Joyce, representing the petitioner, gave a PowerPoint presentation outlining the request, a copy of which was submitted for the record. Slides included a synopsis of the open space fee calculation, a recap of dedicated open space, an outline of variance criteria and photos of the site. Mr. Joyce maintained that the land, upon which trails were being constructed, represented a linear public park and not an easement. Hardship, he felt, was demonstrated by the unusual number of on-street and off-street bicycle/pedestrian trails which crossed the petitioner’s property and the higher level of trails improvements and dedication of the property in fee simple to the City. He said that granting the variance request would not give the petitioner any special privilege. The petitioner, he said, could not derive a reasonable use of the property without the variance. The variance would not be injurious to, nor reduce the value of, adjacent properties. Mr. Joyce felt that granting the variance would not conflict with Code requirements nor with Growth Plan recommendations. He maintained that the open space fee had already been “paid” by virtue of land dedication to the City and by the provision of trails improvements beyond those required in the TEDS manual.

STAFF’S PRESENTATION

Lisa Gerstenberger gave a PowerPoint presentation which included slides depicting the following: 1) site location map (pedestrian path locations noted); 2) variance request outline; 3) Urban Trails Master Plan; and 4) variance criteria outline.

Ms. Gerstenberger stated that The Estates subdivision was annexed into the City as a part of a larger enclave. The applicant subsequently requested a Growth Plan Amendment and rezone request to reduce the density and total number of lots for the property.

The Urban Trails Master Plan, adopted by the City on April 8, 1997, shows on and off-site bicycle and pedestrian paths on the property known as The Estates subdivision. A pedestrian path with a 10’ concrete sidewalk (to be constructed) along Leach Creek and over to the Highline Canal and an unimproved pedestrian path along the Highline Canal had been dedicated to the City in accordance with the Urban Trails Master Plan. The bike lane proposed for G Road would be constructed with the City’s G Road improvements in the future.

In addition to the public facilities shown on the Urban Trails Master Plan, Section 6.3.B, Open Space Requirements of the Zoning and Development Code, requires the provision of 10% of the value of the property or 10% of the gross acreage be paid or dedicated to the City, as determined by the City. The developer of The Estates was requested to provide the City with 10% of the value of the property in the amount of \$65,000.

Ms. Gerstenberger stated that in giving consideration to a variance request, the criteria of Sec. 2.16.C.4, of the Zoning Code must be satisfied. The first criterion addresses the issue of whether or not the need for a variance is the result of a self-imposed hardship and whether there are any exceptional conditions pertaining to the property.

Ms. Gerstenberger stated that there were no exceptional conditions that pertained to this property that did not also apply to other properties in the same zone district. Requirements for trails as shown on the Urban Trails Master Plan had been evident and present since April 8, 1997 when the Urban Trails Master Plan was adopted by the City of Grand Junction. All properties developing within the City of Grand Junction were required to develop in accordance with the Urban Trails Master Plan, irrespective of the zone district.

The small number of lots in The Estates subdivision was a direct result of the owner's request for a Growth Plan Amendment and rezone request to reduce the density of the development, and therefore could be used as justification for a variance, as was noted by the applicant in their General Project

Report. If the small number of lots and low density of the development was justification or the basis for the variance, then the hardship had indeed been self-inflicted and the applicant could not satisfy this criterion.

Ms. Gerstenberger stated that the next criterion concerned the granting of a special privilege. Staff determined that the granting of a variance from the Open Space fee would confer a special privilege to the developer in that all subdivisions with ten or more dwellings developed under the Zoning and Development Code since its adoption on March 3, 2000 had all been required to provide pedestrian paths and bicycle lanes where indicated by the Urban Trails Master Plan *in addition* to providing the Open Space fee or land dedication.

Ms. Gerstenberger stated that the literal interpretation of Section 6.3.B would in no way diminish or deprive the applicant of any of the rights commonly enjoyed by other properties in the same zoning district. Section 6.3.A.2, Public Parks and Open Space Fee Required, stated that “The dedication of land and/or the payment of the cash equivalent will enable the City to provide parks in the proper location and of the proper size to serve the citizens of the City. This regulation is also adopted to help discourage the proliferation of small parcels, tracts and outlots that are ostensibly created as open space and/or parks but are not sized, maintained or otherwise functional sites.”

Ms. Gerstenberger stated that the variance request would be in conflict with Section 6.3.B of the Zoning Code which made provision for the City to provide neighborhood parks and open space. If granted, the variance would undermine the City’s ability to fulfill its objective to provide parks in the proper location and of the proper size to serve citizens. The Open Space fee, required by Sec. 6.3.B of the Code, provides for a completely different recreational need of citizens than the pedestrian and bicycle paths as required by the Urban Trails Master Plan.

Ms. Gerstenberger stated that upon analysis of the applicant’s request for a variance and the applicant’s responses to the variance criteria; and having considered the intent and purpose of the Section 6.3.B, Open Space Requirements, of the Zoning and Development Code, and the goals and the policies of the Growth Plan, staff recommended denial of the variance request for the following reasons:

1. Citing the small number of lots and low density of The Estates subdivision (which is a result of the applicant’s request for a Growth Plan Amendment and rezone request to lower density for the subject property), the applicant has created their own hardship and cannot satisfy the first variance criterion and are therefore ineligible for a variance.
2. The variance request is in conflict with several provisions of the Zoning and Development Code and several goals and policies of the Growth Plan as noted in staff’s report.
3. The applicant has failed to provide evidence as to why they should be relieved from complying with all provisions of the Zoning and Development Code. The recreational needs of the community which are addressed by the Urban Trails Master Plan facilities address pedestrian and bicycle paths and interconnectivity. The purpose of the Open Space fee or land dedication is to defray the cost of and to provide for parks and open space land acquisition and development. The applicant has not stated why they should be exempt from complying with all requirements for addressing community recreational needs.
4. A hardship cannot be justified because all requirements pertaining to the Urban Trails Master Plan and Section 6.3.B of the Code existed prior to development. Prior to requesting a Growth Plan Amendment and rezone request to lower density for the subject property, the developer’s due diligence would have revealed Code requirements.

5. Because the Urban Trails Master Plan and the Open Space fee or land dedication provisions of the Code address different recreational needs of the community, and because these requirements could potentially pertain to all developments with ten dwelling units or more, irrespective of the zone district in which property develops, it would be a detrimental precedent to set by granting a variance to Section 6.3.B of the Code.

QUESTIONS

Commissioner Pitts wondered where the petitioner’s reference to an 8-foot-wide trail came from as denoted in his report. Ms. Gerstenberger said that while the Code required trail segments ranging from 8 feet to 10 feet wide, staff generally required 10-foot widths, unless there were physical constraints to the property where only an 8-foot trail could be accommodated.

Shawn Cooper (1340 Gunnison Avenue, Grand Junction), Parks Planner for the City of Grand Junction, stated that most trail segments are being constructed at 10 to 12-foot widths. Eight-foot-wide sections are used for connecting cul-de-sacs, but not for much else. Ten-foot-wide sections were considered the norm. He acknowledged that the TEDS manual still denoted eight-foot-wide sections as a minimum but shows a 10 foot width as “typical.” Concerning the applicant’s description of the trail as a linear park, Mr. Cooper stated that in order for the dedicated open space to be considered a linear park, the open space would have to include the entire drainage way. He would be hard-pressed to consider a 15-foot-wide easement a linear park.

Mr. Shaver asked Mr. Cooper to state his credentials and experience as a park planner, which he did.

PUBLIC COMMENTS

FOR:

Keith Mendenhall (no address given), petitioner and owner of the property, said that Tract A was effectively cut off from the rest of the property, so he was denied reasonable use of it. He noted the existence and proximity of Wilson Ranch Subdivision and other nearby developments which could also utilize the trails system once completed. He pointed out the beauty of the trail and the extra time and care being taken to preserve existing trees and vegetation. When completed, he believed the trail would represent one of the finest in Grand Junction. He was not asking for a waiver of the open space fee requirement; rather, just credit for the land already dedicated and the extra costs incurred in making this trail system special.

Don Pettygrove (2764 Compass Drive, Grand Junction) felt that the petitioner had gone “above and beyond” in making the referenced trail system something the City as a whole could be proud of. He felt that the City kept asking more and more of developers in terms of fees and requirements.

Mike Kramer (no address given), co-owner of the project, said that when the plan had been submitted to the City for review, staff had remarked on what a good plan it had been. The reduction in overall density was done with the best interest of the community in mind. It appeared that he was now being penalized for making that decision.

AGAINST:

There were no comments against the request.

PETITIONER’S REBUTTAL

Mr. Joyce said that he found it interesting that the City could deny the merits of this trail system as a linear park and view it more as a means of transportation rather than a recreational asset. He reiterated that the petitioners deserved credit for this being the park he maintained it was. Mr. Joyce noted the trails being constructed by the petitioners in addition to the dedication of the 1.49 acres in tracts. The

over \$200K cost for development of this trail system seemed excessive, but the result would be an enjoyable, relaxing amenity that people would want to use.

DISCUSSION

Commissioner Cole wondered if there was any way to grant the variance given the criteria outlined in the Code. Mr. Shaver advised the planning commissioners that if they found the variance criteria were satisfied, they could approve the request. He also advised that the planning commission provide findings to substantiate their recommendation. He noted that the Urban Trails Master Plan had designated the subject trail as a link.

Commissioner Pitts commented that he could not see where all eight variance criteria had been satisfied. Development of the trail system would be a definite benefit to the development.

Commissioner Evans concurred and agreed with staff's analysis. He could see no way of granting the variance without all of the criteria being satisfied.

Commissioner Cole also agreed. While the trails system would be a benefit to the development and City alike, still, not all of the variance criteria had been satisfied.

Chairman Dibble found it difficult to perceive the trail system as a park. Usage of the trail by others living nearby wasn't a compelling argument for the variance. To knowingly reduce the property's density was evidence that the hardship was self-imposed. Further, the developer would still derive reasonable use of the property without approval of the variance request.

MOTION: (Commissioner Evans) "Mr. Chairman, on item VAR-2002-128, request for a variance from section 6.3.B., Open Space Requirements of the Zoning & Development Code, to credit the required \$65,000 open space fee for property located at 2570 G Road, known as The Estates Subdivision, I move that we approve the variance request."

Commissioner Pitts seconded the motion. A vote was called and the motion failed by a vote of 0-4, with all those in attendance opposing.

With no further business to discuss, the public hearing was adjourned at 10:14 P.M.