

**GRAND JUNCTION PLANNING COMMISSION
NOVEMBER 28, 2000
7:02 P.M. TO 9:50 P.M.**

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

In attendance, representing the Planning Commission, were John Elmer (Chairman), Dr. Paul Dibble, Terri Binder, and William Putnam. Nick Prinster, Jim Nall and Vicki Boutilier were absent.

In attendance, representing the Community Development Department, were Lori Bowers (Associate Planner) and Kathy Portner (Planning Manager/Acting Community Development Director). Also present was Stephanie Rubinstein, Staff Attorney.

Donna Nowlin, Quick Temp Services, was present to record and transcribe the minutes.

There were approximately 12 interested citizens present during the course of the hearing.

I. APPROVAL OF MINUTES

There were no minutes of the November 14, 2000 Planning Commission Meeting for consideration.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. CONSENT AGENDA

Offered for placement on the Consent Agenda were items RZ-2000-209 (Rezone-Mesa State College) and FP-2000-198 (Final Plat-Redlands Mesa, Filing 2).

QUESTIONS:

No questions were asked.

PUBLIC COMMENTS:

There were no responses for or against.

MOTION: (Commissioner Binder) "Mr. Chairman, I move that we approve the Consent Agenda including Mesa State College Rezone and the Final Plat for Redlands Mesa Filing #2."

Commissioner Dibble seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0.

DISCUSSION

Chairman Elmer stated that the Commission has been requested to address the text amendment for group homes first on the agenda. The request is for approval of amendment to Section 4-12 of the Zoning and Development Code regarding group homes. He explained that staff had received a request from the State of Colorado to continue the item so that the State could offer further

testimony from their professional and legal staff. Chairman Elmer asked if there was someone present from the State of Colorado to address this?

Christian Mueller, Community Services Coordinator for Grand Junction Regional Center, State of Colorado stated that they were not aware of the current zoning code nor the proposed revisions until they read the article in the Daily Sentinel. Mr. Mueller said that he has questions relating to the wording, whether it would align properly with Colorado Rules and Statute and perhaps even federal laws. Mr. Mueller presented to Ms. Rubinstein and to the Commissioners a letter from Director Bob Rossi indicating Mr. Rossi's concerns about the proposed revisions. He added that he would like to allow other people in the State Department of Health and Department of Human Services to review and provide comments, which include Mark Warrenstein, Department Attorney and Wade Livingston, Assistant Attorney General for the Department of Human Services.

Kathy Portner pointed out that Planning Commission will be making a recommendation to City Council, so there is the opportunity to present this information to City Council as well.

Christian Mueller said he realizes that they are late and are trying to rally as fast as they can to get the information together.

Chairman Elmer stated that he believed it would be beneficial to hear the testimony tonight. He added that this way the State could respond to any recommendations made by staff or the Commissioners. Mr. Mueller agreed.

Commissioner Dibble asked Mr. Mueller is he was prepared to discuss issues regarding the proposed amendment?

Christian Mueller replied affirmatively. He stated that he could give general information on what the concerns are.

Chairman Elmer stated that this item is closed and will be heard in its proper sequence.

IV. FULL PUBLIC HEARING

CUP-2000-120 CONDITIONAL USE PERMIT – APPLETON KENNELS

A request for a Conditional Use Permit for a animal grooming and boarding kennel with future plans to include a veterinary clinic in a C-2 zone district.

Petitioner: Charles Doss

Location: 2378 Leland Avenue

Representative: Balaz Associates, Inc.

PETITIONERS PRESENTATION

Charles Doss, owner and operator of Appleton Kennels, requested to move his business to this location in order to improve and expand. He stated that the new and more modern facility that is being proposed would reduce barking noises.

QUESTIONS

Commissioner Dibble expressed concerns over the building style, referring to the 24 Road Corridor plan. Mr. Doss replied that the building would be compatible.

Commissioner Dibble complimented Mr. Doss on the landscape design. Commissioner Dibble asked if Mr. Doss would address the mitigation of noise, landscaping and fencing? Mr. Doss responded that he considered a solid fence in some areas and chain link fence in others. Mr. Doss also stated that the area would be secure. Landscaping will most likely be more than what is noted on the draft plan.

Chairman Elmer asked for clarification on how the noise of the barking dogs would be mitigated? Mr. Doss responded that he would lock the dog(s) inside. The design of this new facility will dramatically assist in mitigating the noise.

STAFF PRESENTATION

Lori Bowers presented a map of the proposed site and dwelling. This application was originally submitted when the old Code was in effect. During the process surrounding property owners were notified of this proposal. Staff received six letters that were opposing this project. The proposal met Code requirement, but the surrounding neighbors were against it. Staff spoke with Mr. Doss and his representative and concluded that a CUP would be required under the new Code. A CUP would require a public hearing to settle any issues in the forum. Ms. Bowers also stated that if this building was totally enclosed it would be an Allowed Use but because of providing the outside ability for the dogs to exercise a Conditional Use Permit is required. Ms. Bowers stated in reviewing Section 2.13 of the Zoning and Development Code, compatibility with adjoining properties needs to be addressed. Ms. Bowers read from the Code, “shall provide reasonable visual and auditory privacy for all dwellings located within and adjacent to the site, fences, walls, barriers and or vegetation shall be used to protect and enhance the property and to enhance the privacy of on site and neighboring occupants.” The applicant is proposing a solid opaque fence that will adequately screen the outdoor exercise area. This proposal is in a C-2 zone district and existing residential uses are considered non-conforming. She continued to read, “In protection, use and enjoyment all elements of the proposed plan shall be designed and arranged so the minimum negative impact on the use and enjoyment of adjoining property.” The proposed project is designed to avoid stimulation of the animals and has the ability to lock up noisy dogs during daytime hours. Ms. Bowers added that the petitioner has agreed to lock up all the dogs at night. Ms. Bowers continued to read from the Code, “Compatible design and integration, all elements of a plan shall coexist in a harmonious manner with nearby existing and anticipated development. Elements to consider include buildings, outdoor storage areas and equipment, utility structure, building and planting coverage, landscaping, light, glare, dust, frontage, view, noise and odors. The plan must ensure that noxious omissions and omissions not typical of land uses in the same zoning district will be effectively confined so as not to be an injurious or detrimental to nearby property.” This property is in the newly adopted 24 Road Corridor area; however, the application was submitted prior to the adoption of these standards. Staff recommends to the Planning Commission approval of the Conditional Use Permit for Appleton Kennels finding that the project is consistent with the Growth Plan and Section 2.13 of the Zoning and Development Code subject to the conditions attached to staff report. The conditions are:

- (1) An 8” concrete block material wall with guillotine doors to provide limited access to exterior dog runs during the day must be provided. When needed and at night the guillotine doors will be closed to eliminate possible noise. In addition, the outdoor graveled exercise yard will have a solid privacy fence to reduce visual disturbances.
- (2) The approval of the CUP is for a phased project, to add in the future an addition to the kennels and the veterinary clinic.

QUESTIONS

Commissioner Binder asked if the wall between the dog pens will be chain link fence or a solid wall? Mr. Doss responded that it would be made with cinderblock.

Chairman Elmer asked if the solid fence enclosed the exercise area. Staff responded affirmatively. Ms. Bowers was asked if staff had a recommendation for material. Ms. Bowers replied that the Building Department said the cinder block would be adequate building material. Staff prefers a solid wood.

Chairman Elmer asked staff if the 24 Rd Corridor study guideline does not apply because the proposal was submitted prior to the plan's approval. Ms. Bowers applied affirmatively.

Chairman Elmer asked staff how the city enforced noise complaints?

Stephanie Rubinstein replied that there is no requirement for decibel levels. Unreasonable noise is not allowed between 8:00 P.M. and 6:00 A.M. She added that there is a barking dog ordinance, for which unreasonable noises can be reported. Two separate complaints must be filed before the City can act.

Commissioner Binder asked if a time was set up for dogs to be locked up? Staff responded no, not at this time.

PUBLIC COMMENTS

For: No response.

Against: Robert Stott, owner of Winter Storms, Inc., whose property is northeast of the proposed Appleton Kennels, Lot 7 of Johnson Subdivision, spoke on behalf of himself and majority of surrounding land owners to express deep concern regarding application of Conditional Use Permit for Appleton Kennels. Mr. Stott read some excerpts from letters Community Development has on file. Mr. Stott stated that Western States Recloser Repair objects to the noise and is greatly concerned with the impact of the value of their land if the noise is not controlled. R&B trucking is concerned over noise and also feels that the kennel would lower land value. Harold Potter states he has listened to these dogs for 20 years and would like the kennel to be sound and odor proofed at new location. Webb Crane Service is concerned about the noise and land value. Mr. Stott said the he is concerned over the land value and the extreme noise. He added that the city plans to improve the 24 Road Corridor and make the area a show case entrance into the City of Grand Junction. Hotels, restaurants, upscale businesses plan to move into this area over the next few years. Unless the Appleton Kennel is completely sound proofed, excess noise will cause people to think twice about moving into the area which will lead to lower land values and make it harder for current land owners to resell their property. And finally, Mr. Stott said, Harold Wooland, who owns the property directly south of the proposed kennel, is in the process of selling his property and the buyer received a CUP two weeks ago to operate an entertainment business which is planning outdoor entertainment facilities. He is concerned that the kennel would be detrimental to his selling his property. Mr. Stott requested the Commission protect his and adjoining neighbors auditory privacy, land values and sanity by ruling in favor of the design that is completely sound proof. He added that the plans that are presented tonight are a big improvement from the original design.

PETITIONERS REBUTTAL

Chairman Elmer asked Mr. Doss to address the hours of operation and architecture. Mr. Doss responded that the dogs would be locked in between the hours of 6:00 P.M. and 8:00 A.M. Mr.

Doss explained the differences between the two facilities. At the current location, he has no control over the dogs going to their outside pen. At the new facility, only one or two dogs are allowed outside at a time, greatly reducing noise.

Chairman Elmer will the facility be cinder block and wood? Mr. Doss responded there will be a solid wood fence around the exercise area with additional landscaping to absorb sound. As far as the building, he stated, he was not aware of anything better than cinder block to keep sound down. Mr. Doss stated that his kennel is inspected by the Colorado Department of Agriculture every two years and has never had a violation.

Chairman Elmer asked Mr. Doss if he had a plan if he was cited for nuisance? Mr. Doss replied that he may need to put a wall around the entire facility.

Commissioner Binder commented that one of the letters received regarding the kennel commented on the odor and asked Mr. Doss to address it. Mr. Doss responded that he has never had a complaint about odor.

PLANNING COMMISSION DISCUSSION

Commissioner Binder asked since this application came in under the old Code, can the Commission enforce the 24 Road Corridor designs standards and guidelines?

Stephanie Rubinstein explained that this application was submitted before the 24 Road standards and guidelines were adopted. However, since this is a CUP the Commission can add any of those standards as a condition.

Chairman Elmer stated that he felt the Petitioner should look into better sound proofing materials for the fence and exercise yards.

Commissioner Binder added that she would like the hours addressed when the dogs would be inside.

Chairman Elmer replied that Provision # 3 states that the dogs are to be inside between the hours of 6:00 P.M. and 8:00 A.M.

MOTION: (Commissioner Binder) “Mr. Chairman, on the CUP for Appleton Kennels located at 2378 Leland Avenue I move that we find the project consistent with the growth plan Section 2.13 of the Zoning and Development Code and that we approve the Appleton Kennel CUP subject to recommended conditions of Provision 3 that the dogs will be inside the building from 6:00 P.M. to 8:00 A.M.”

Commissioner Dibble seconded the motion. A vote was called and the motion passed unanimously 4-0.

V. FULL PUBLIC HEARING

TAC-2000-001.2 TEXT AMENDMENT CODE – GROUP HOMES

A request for approval of an amendment to Section 4.3Q of the Zoning and Development Code regarding Group Homes.

Petitioner: City of Grand Junction

City Staff Stephanie Rubinstein

Ms. Rubinstein presented a rewrite of Section 4.3Q of the Zoning and Development Code. She stated that many people had an integral part in the rewriting of Section 4.3Q including Peggy Gore, CWMH, Mike Stahl, Hilltop and Joan Levy from MDS, Community Corrections and other organizations. Staff is requesting the Commission to repeal the existing Section 4.Q and recommend the adoption of the rewritten section to City Council.

Ms. Rubinstein stated that the only change of text between what was in the Planning Commission's packets and the new draft distributed this evening is to Section 9. Staff wants to make sure that group living facilities are integrated into neighborhoods and that the City has information regarding where they exist. The City is subject to the Fair Housing Act and building restrictions are frequently issues under lawsuits of FHA. Courts have been split about zoning and the Fair Housing Act. Generally there are standards that should be considered. First there cannot be any discriminatory intent. City staff has worked very closely with persons who are representatives of the group living facilities. These requirements apply to all groups living facilities. Staff has also tried to use as much non-discriminatory language as possible. For example on page 6, # 12, there are definitions of adverse impact. There has to be an actual impact on the neighborhood rather than an impact that is based on a perceived stereotype. In addition to there being no discriminatory intent there also must not be an actual discriminatory affect. Staff believes that what is written will not have the effect of keeping people with disabilities out of any certain neighborhood or out of the residential group living facilities. The Fair Housing Act then requires that there be reasonable accommodations made, as does Federal Law. The definition of group living facility is broken into three categories of unlimited, large and small. This is the same as the old draft. The only difference is under small group living facility – which has been changed to “4 to 8 persons”.

Commissioner Dibble asked what was meant by the wording more than 4 and fewer than 8. Commissioner Dibble added that it literally means 5, 6 or 7. Ms. Rubinstein responded affirmatively. Dibble continued to question the next size is more than 8 and fewer than 12, which actually excludes 8 people altogether. He asked can a facility have 8 people? Ms. Rubinstein replied that the wording can be fixed; the intention was for it to be 4 to 8, and 9 to 12 and then 12 and above.

Ms. Rubinstein proceeded. On page 1, Section b 1 & 2, the definition of facility and use is added. On the next page subsection 3, there is a list of “a” through “x” listing different types of group living facilities. This was meant to be a list of examples not an inclusive list of the types of group living facilities. Item # 7 was added referring to allowing group living facilities, which will be located in a commercial zone district not to be subject to some of the requirements that refer to integration into a neighborhood. The feeling was that in a commercial zone it is not going to have the same integration problems and issues so therefore it doesn't need to subject to the same requirements. On page 5, #9 a bigger issue throughout this process is what to do with existing facilities and after much discussion it was decided by staff to grandfather in all existing facilities which is what this section does. Staff revised #9 and removed #10 completely. What this does is any group living facility that existed as of the effective date of this ordinance will be allowed to remain in existence with the exception of the registration requirements which will be required. The facility will have to register but won't have to become compatible the same way that a new facility will have to. The exception to this is that it will continue unless there is an expansion or a change of use that would be more incompatible with the neighborhood.

Commissioner Binder asked, referring to #9, if there is a change in structure, such as rebuilding, would that trigger being reviewed under the new Code? Ms. Rubinstein replied, it would be subject to the non-conforming provisions.

Ms. Rubinstein stated that the process for existing group living facilities and new ones after they become registered would be an annual re-registration process. Registration would consist of gathering information such as the name, address, manager name, uses and size. The Community Development Director can choose to have Planning Commissioners review if there are any issues such as a major change or if there has been problems in the past year. The definition of adverse impact includes serious safety concerns or serious problems with the public utilities in that area. The group home would be reviewed by the Director and then may or may not be re-registered.

Regarding #13, the issue of persons who are no longer residents of the facility who are using the services that is provided at that site, counseling or some sort of therapy that may be used by other people, originally was not allowed. In the old version it was not allowed at all and what was discovered from the people who have group living facilities was that this is something that is useful because it is more cost effective to be able to have persons come into the facility even if they don't live there anymore, to use the services rather than try and find another area. Staff's concern is that it doesn't become a clinic. Ms. Rubinstein stated that what is written in the amendment is a compromise. In residential neighborhoods an adult day care use is permitted. That allows up to 12 persons to come into the facility for adult day care. If eight people were at the facility and it was full, an additional 4 people could use the services, because that is an allowed use already in that residential neighborhood.

Commissioner Binder asked for clarification again; would that be for any group home? Ms. Rubinstein responded "correct".

Ms. Portner added that number of persons (12) for a day care is the change in the new code. Under the new Code, State Licensing requirements for day care is used which our code defines as either children or adult. The state allows home based daycare for up to 12 children. In the new Code, it is a use by right.

Commissioner Binder asked about covenants that may exist in a residential area that exclude businesses?

Ms. Rubinstein replied that they would be subject to the subdivision covenants but it would be up to the particular neighborhood to say, "You can't be here". They would be allowed according to the City's Code .

Chairman Elmer asked for clarification; so the covenants can be more restrictive? Ms. Rubinstein replied affirmatively.

Ms. Rubinstein continued; item #15 refers to the neighborhood and neighborhood meetings for the group living facilities. The meetings should meet the requirements of other neighborhood meetings which are in the Code. The other change is transitional victim homes, which are seen as shelters for persons who may be escaping a dangerous situation. Due to the nature of their services, an address is not required on the registration. On item #20, the biggest concern were persons convicted of crimes, either juvenile or adult, being placed in a group living facility. A review by a community correction board, both juvenile and adult, will review the facilities themselves, regarding safety issues and other zoning issues and compatibility with the neighborhood. This review is only for those homes where persons have been placed as part of their sentence or adjudication. Ms. Rubinstein stated that she had spoken with Joe Higgins of the Community Corrections Board and he indicated that they will be speaking to City Council at their

December 20th hearing. This review will be done by a separate board which is already in existence and the people who are familiar with criminal sorts of issues.

Ms. Rubinstein stated that lastly on the last page a revision was made for the ordinance to be reviewed in one year. Staff would like to have the opportunity to review the effectiveness of this ordinance.

Ms. Rubinstein added that on #20 there is some language that should be removed. She explained that the copy of the proposed amendment was changed many times and some of the changes didn't get completed. She stated that it should read "every group living facility", remove "or use for adult or juvenile offenders" and remove "or Community Corrections facility."

Chairman Elmer asked if there are hours limiting visits? Ms. Rubinstein said that could be referred to the home occupation criteria. Chairman Elmer stated he would prefer to do that.

PUBLIC COMMENTS

FOR:

Joan Levy, Residential director of Mesa Developmental Services, objected stating that periodically they respite people over night that may live on their own and may need some attention overnight because they are post surgery or similar situation. If the hours are restricted it would limit the ability to provide these people with the services they need. She stated that ten group living facilities are currently operated in Mesa County, seven of which are in the city limits. It is recognized that this is a work in progress all along and at some point and time may be subject to other legal challenges but she felt that this is a workable code revision and supports its adoption.

Peggy Gore, Residential Director of Colorado West Mental Health, stated that she objects to the small group home designation. Colorado West currently has two group home facilities; both have eight or less residents. Ms. Gore stated that she felt it was important that being able to live in a residential neighborhood is essential for persons with mental illness because it is the first step in rehab recovery model. Many of the residents who have lived in group homes have gone on to less restrictive settings. She cited nine clients who own their own homes and have jobs.

Mike Stahl, Vice President of Hilltop, stated that his concern is defining adverse impact. It is somewhat vague in certain areas and people will read different things into it. The intent is to protect not only the neighborhood but also the providers and their clientele. Mr. Stahl stated that the Division of Youth Corrections contracts only with facilities that are licensed by the state and are typically licensing them as a foster home or a residential child care facility which are both encapsulated in this document. He stated that the process for reviewing the facility by the community corrections board is a big plus because the board includes individuals who are in the field that know the clientele. The grandfather clause meets the needs of the existing facilities that have considerable financial investment.

Christian Mueller, Community Services Coordinator for Grand Junction Regional Center, stated that concerns that are being assessed at this point is that under federal and state legal review group homes have already been deemed or ruled as single family residents. There also have been significant Colorado Supreme Court rulings on covenants specifically, about whether or not they can be allowed not into them because many covenants say "only families can live in here and nothing else, no businesses". In Turner Vs United Cerebral Palsy Colorado Supreme Court did rule in favor of United Cerebral palsy and struck down the covenant specifically on their privacy statement and their indication that only families could work there. The reason that they are

allowed to go into residential areas is because they are residences, not businesses. Referring to Section 12, adverse impact, has already been reviewed by some Federal court cases most notably the Olmstead Case. The Olmstead Case allows for anyone with a disability to live where they choose. It also means they can also choose not to live in institutional facilities. If restrictions are made regarding noise and where they can or cannot live, a precedence is immediately set and encouraging segregation, even though it is not directly implied or stated, can be considered. For example the Olmstead Case related precisely to things like peace and quiet in the neighborhood and that is some of the language that exists in this current copy. There is concerns about some of the language being vague and providing a lot of latitude to adverse ruling, for example #15 D, in the directors review of complaints and rulings without investigation. If the City is not going to investigate that or consider that to the fullest extent then that leaves a lot of latitude for adverse ruling or considerations for us being at the mercy of neighborhood meetings trying to negotiate clauses which are very restrictive. Mr. Mueller asked that there be due consideration in the process and investigation. We have had no arrests, no indications of trouble to the environment or to the city. In a sense, the disabled are being treated differently than the rest of the population because the facilities are regulated. The facilities are overseen by two licensures, not just one. Department of Health reviews the facilities every two years and Mesa Disability Services reviews on the opposite year.

Chairman Elmer asked if the Attorney General's Office was going to provide testimony?

Mr. Mueller replied that is correct. Some of those citations were provided by Wade Livingston who is the Assistant to the Attorney General and is assigned to the Department of Human Services. The two attorneys that are reviewing this more at length are Wade Livingston and he has confirmed that he will handle the review himself, and Marge Bornstein who is the attorney for the Department of Human Services. This information has been shared with the legal center, which have offices here in Grand Junction and in Denver. They were not aware of Grand Junction's Code. They are examining the most recent amendment in Denver now. He stated that he has not heard back from them and they are not with the state but again, are an advocacy group.

Commissioner Putnam asked for clarification; is this Code amendment discriminatory?

Bruce Burroughs stated that he owns an assisted living home and is concerned with the grouping of homes in three different categories, small, large and unlimited. He stated that he owns a 25-bed facility. He continued; some of the restrictions of the unlimited group living facility take away from his ability to operate a profitable business. Another concern is with the existing facilities that are addressed in #9 on page 5. As a smaller facility, he stated, we are in an RMF4 zone which was changed from RMF8. This regulation does not leave any room for expansion and in order to meet the needs of the community and in order to compete a business must be able to expand.

Ms. Rubinstein responded to some of the issues that were brought up. She stated that the City's intent is not to keep group living facilities out of residential neighborhoods but to integrate them. What these restrictions are trying to do is to continue to allow the residential nature of these homes. The impetus for a lot of this it was frustrating; not knowing a group living facility existed in a neighborhood. City feels they need to know. Ms. Rubinstein stated that she agreed with Chris Mueller that persons living in group living facilities do have the same rights and responsibilities as normal citizens.

Mr. Burroughs stated his concern about the numbers. RMF4 has an impact on a neighborhood and expansion would have an even greater impact.

MOTION: (Commissioner Dibble) “Mr. Chairman on item TAC-2000-001.2 I move that we forward the amendment of Section 4Q of the zoning and development code to the city council regarding group living facilities with the recommendation of approval.”

Commissioner Putnam seconded motion. A vote was called and passed unanimously by a vote of 4-0.

Kathy Portner announced that the December schedule was lengthy. The standard hearing date is December 12th. She forewarned the Commission that a second hearing would probably be needed.

With no further business to discuss, the meeting was adjourned at 9:50 P.M.