

**GRAND JUNCTION BOARD OF APPEALS
OCTOBER 10, 2001 MINUTES
12:05 P.M. to 1:50 P.M.**

The regularly scheduled Planning Commission hearing was called to order at 12:05 P.M. by Chairman John Elmer. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were John Elmer (Chairman), Richard Blosser, Clay Tufly and John Evans. Mark Williams was absent.

In attendance, representing the Community Development Department, were Bob Blanchard (Director), Pat Cecil (Development Services Supervisor), Lisa Gerstenberger (Sr. Planner), Dave Thornton (Principle Planner), Kristen Ashbeck (Sr. Planner), and Ronnie Edwards (Assoc. Planner).

John Shaver (Asst. City Attorney) was also present

The minutes were recorded by Bobbie Paulson and transcribed by Terri Troutner.

There were approximately 40 interested citizens present during the course of the hearing.

I. APPROVAL OF MINUTES

Available for consideration were the minutes from the September 12 public hearing.

MOTION: (Commissioner Blosser) “Mr. Chairman, I move that we approve the September 12, 2001 minutes as written.”

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

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

COU-2001-04.05 CHANGE OF USE—KNIGHTS OF COLUMBUS HALL TO HOMELESS SHELTER

An appeal of final action on Administrative Development Permit approving a change of use from a recreation hall to a homeless shelter for an existing building in a Light Commercial (C-1) zone district.

Petitioner: Grand Junction Housing Authority

Location: 2853 North Avenue

STAFF’S PRESENTATION

Kristen Ashbeck read into the record the Code’s definition of a homeless shelter. She noted that because shelter resident use would be for less than six months, the proposed shelter qualified as “lodging” which is an allowed use within a C-1 zone district. Parking, screening and landscaping requirements had been met with the existing building. There were no major concerns expressed by review agencies.

QUESTIONS

At Chairman Elmer's request and for the public's benefit, Ms. Ashbeck explained that no public notice or hearing had been required for the change of use because the use had been proposed within a zone that allowed it by right. She summarized the difference between this type of request and other land use requests such as subdivision.

At Mr. Shaver's request and for the public's benefit, Ms. Ashbeck further explained a "use by right" and how uses are categorized within the Code's Use/Zone Matrix. Ms. Ashbeck said that because the use was "allowed" as defined by the Code's Use/Zone Matrix, the only questions remaining regarded site specifics (*e.g.*, was the building sufficiently sized to accommodate the use, did the building meet fire/building codes for the use, etc.) Ms. Ashbeck said that these questions had all been addressed.

Mr. Tuffy said that the materials he'd received suggested that no change of use application had been required. He wondered whether the request not met the three criteria for requiring a change of use? Ms. Ashbeck said that staff had approached the matter very conservatively. The process followed was similar to that which had been undertaken for another downtown homeless shelter.

Chairman Elmer said that if the change of use had been substantial enough to warrant a different classification (*e.g.*, Group Home) or resulted in substantial impacts (*e.g.*, increased traffic), a different level of review would have been required. Because neither had occurred, the level of review undertaken was appropriate. He clarified that the appeal should not focus on whether or not the land use was appropriate, because the Code already established that it was; rather, public testimony should focus on the Code's appeal criteria.

APPELLANT'S TESTIMONY

Stephen J. Fitzgerald (682 Moonridge Court, Grand Junction) said that he had just undertaken major remodeling of his building at 28 ½ Road/North Avenue. The basis of the appeal, he said, is that originally the use had been presented as a 'hotel.' Mr. Fitzgerald said that a homeless shelter was not a hotel nor was this use even remotely similar. The lack of notification to surrounding property owners seemed to suggest the City's lack of regard for those property owners. A homeless shelter placed at this location would not serve its residents well. A shelter should be placed closer to available services (*e.g.*, Catholic Outreach Soup Kitchen, law enforcement facilities, *etc.*). A homeless shelter at the proposed site, he and others felt, would constitute an attractive nuisance.

He had met with Mr. Hancock and Mr. Mok-Lamme, representatives of the Housing Authority and the Homeless Shelter, respectively. Mr. Fitzgerald said that comments made by them lent support to the claim that the City's approval was "arbitrary, capricious and done with blatant disregard with the neighbors." It had been explained to him that approximately a third of the clientele served were alcoholics, approximately 30-40 percent suffered from mental health conditions and no criminal background checks were ever performed. He said that approximately a third of all transients stayed in the Grand Junction area longer than three months. It's one thing to help those suffering from unforeseen calamity, he said; it's another to create a lifestyle which encouraged transients to stay for longer periods of time. Options presented to him by Housing Authority/Homeless Shelter (HA/HS) representatives included "handing the transient a blanket and some food and sending them on their way." Mr. Fitzgerald wondered what level of impact would this option have on residents and businesses in this area? He said that he had been told that there were some transients who'd learned to "work the system" and seek services beyond the established 45-day period. It had been suggested by HA/HS representatives that residents themselves hire a security service to patrol the area to keep transients away from their doorsteps and from loitering on their properties. Mr. Fitzgerald wondered why should neighborhood residents be forced to do this? What about the safety concerns for children and others in the area? HA/HS representatives had told him that they expected increased awareness and presence of law enforcement officials at the site.

Citing his mother's situation in Sacramento, California, he said that she had lived in a good and peaceful neighborhood until a homeless shelter was opened nearby. Since that time, she'd been robbed three times and had her property vandalized several other times. She and neighboring residents had been forced to install bars on their windows and employ security patrols for their neighborhoods. His mother's property value was reduced from \$138K to \$89K. Mr. Fitzgerald said that she ultimately moved because she was too afraid to live there any longer.

Mr. Fitzgerald said that businesses who were trying to improve their properties needed support from the City in keeping those areas nice; the City received valuable tax dollars from those businesses. The homeless shelter existed only on grants; thus, its funding and very existence was unstable. If a homeless shelter was needed, Mr. Fitzgerald suggested that a better and more suitable site should be selected. The currently proposed site is inappropriate. Had homeowners not heard about it through a "fluke," he and others believed the City would have pushed the item through without due process or without the benefit of any public comment.

PETITIONER'S PRESENTATION

Rich Krohn, legal counsel for the petitioner, said that the Grand Junction Homeless Shelter was actually comprised of five non-profit service providers (St. Matthew's Episcopal Church, Grand Valley Catholic Outreach, Grand Junction Housing Authority, Mesa County Dept. of Human Services, and the Salvation Army). Mr. Krohn noted that most of the comments made by Mr. Fitzgerald were a matter of policy and not relevant to the issue at hand. Mr. Krohn asserted that the pertinent issues included: 1) that no change of use application had been required; 2) if it had been required, the criteria still would have been met; and 3) there was no basis for granting the appeal.

As outlined in Code section 2.2.D.3.a, no change of use had occurred because none of the criteria which would have triggered the application had been met. He read the definition of a homeless shelter as defined in Code section 4.3.Q.3.k. The only differentiation between the two types of shelters defined by the Code was in the length of time that accommodations were provided. The proposed shelter would not provide accommodations to any one person longer than 6 months in any given year. In Code section 3.5, there were only two types of lodging outlined, bed & breakfast and motel/hotel. Since the shelter could not be considered a B&B, the only characterization left was motel/hotel. With regard to the appeal and whether the appeal was sustainable, he did not feel that the appellants satisfied appeal criteria. Addressing the criteria, Mr. Krohn maintained that the Code had been properly followed; that no error in fact occurred to invalidate staff's original approval decision; that the third appeal criterion did not apply; and that no arbitrary or capricious action occurred to support the appeal. He said that no notice had been given because none had been required for this allowed use. And while not required by law, he and the applicant had intended to meet with surrounding residents to discuss the request; however, approval had been granted before that could be undertaken. He apologized to the public for not including them in the discussions.

Referencing a letter requesting the appeal, Mr. Krohn said that the City had not taken into account any of the mitigating measures suggested by residents; however, the only mitigating measures which must be considered are those considered by the applicant. Mr. Krohn reiterated that he/his client preferred not discussing policy issues in the context of the appeal hearing.

QUESTIONS

Chairman Elmer confirmed with staff that for a change of use, neighborhood meetings were not a legal requirement. The change of use process also did not trigger any of the other formal or complimentary notifications required by the Code.

PUBLIC COMMENTS

FOR THE APPEAL:

Darlene Wissel (2859 Belford Avenue, Grand Junction) objected to Mr. Krohn's refusal to address "quality of life" issues and instead stick to just the legal points that supported his argument. She said that it seemed to her that the applicant had been able to bypass public review, suggesting that the applicant had more rights than did the public. The public, she felt, had a right to be notified on issues that would directly affect them.

Mrs. Louise Phillips (2959 Belford Avenue, Grand Junction) said that a liquor store was located within 70 yards of the proposed shelter. She commented that this would present an unsafe situation for residents in the area. She also strongly objected to the lack of notification given to residents. Many of the shelter's residents would pose a security risk. Law enforcement response to the area was minimal to begin with. In the event of trouble, residents would be forced to wait for needed help. Placing a shelter at this location, she felt, was inappropriate.

Jim Timmerwilke (497 – 28 ½ Road, Grand Junction) said that while the applicant, his representative and the City were busy arguing legal technicalities, the people who lived and worked in this area were more concerned about how the shelter would be run and how its presence would affect their lives and businesses. This request represented a radical change of use to existing residents and businesses. The building, he noted, was not ready to house residents—there were no showers, no kitchen facilities, no onsite security, *etc.* He asked, "how could the City not view this as a change of use?" He agreed that the Housing Authority needed to find these people a place to stay, but asserted that this location was inappropriate. He stated that when the shelter residents were put out for the day, they would likely hang out in the neighborhood until they could go back inside. This would create a number of problems for existing residents and business owners.

Susan Hauser (2860 Belford Avenue, Grand Junction) said that her home would be directly behind the new shelter. She feared greatly for the safety of her children, who were often left alone while she worked long and late hours. She had a brother who was schizophrenic and understood about mental illness. She wondered what would happen to the homeless for the 10 hours they were put out of the shelter? If they wanted to eat at the soup kitchen, they would have to walk all the way across town for those services. It was doubtful they would have the money for bus fare. She fully expected that her property value would diminish as a result.

Patrick Baron (2090 T-50, Cedaredge, CO) noted the lack of a barrier between the shelter and the adjacent apartment building parking lot.

John Stewart (no address given), shareholder in the Dollar Store, said that he had a meeting with HA/HS representatives. He felt that the original decision had been in error. Even without the shelter, he'd already noticed an increase in the number of transient-type people who frequented the store. He expected that with the influx of new transients to the area, shoplifting would only increase. Shelter residents would, in all likelihood, go right from the shelter to the liquor store. It was unfair to subject existing residents and business owners to a life living in fear.

John O'Donnell (491 Harris, Grand Junction) mirrored previously stated concerns regarding safety.

Sheryl Fitzgerald (682 Moonridge, Grand Junction) said that business owners in the complex to the west were already being impacted. She objected to the lack of notice given and felt that the original approval had been both arbitrary and capricious. If turned out during the day, she said, the homeless would be likely to loiter around existing businesses, driving away customers.

Curtis Phillips (483 Dodge Court, Grand Junction) said that a daycare was located about a block away. He felt that consideration should be given to the safety of these children and daycare staff. The shelter

would no doubt impact that business in that parents would no longer want to take their children to a daycare located so close to a homeless shelter.

AGAINST THE APPEAL:

Jody Kole (no address given), Director of the Grand Junction Housing Authority, urged board members to consider only the merits of the appeal and not be diverted by other issues and concerns. She felt that it was possible for a homeless shelter and other uses to peacefully coexist and the shelter would meet a community need.

Sister Karen Bland (no address given), Grand Valley Catholic Outreach, again suggested that board members stick to the legalities of the appeal and not the policies of the operation. Her concern was over the safety and well-being of the homeless. She felt that people who feared the unknown could benefit from visiting the Day Center. The homeless were just like everyone else, and their numbers were increasing. It was essential to provide a safe and warm place for them to stay, especially during inclement weather. She felt that the homeless were being misjudged.

John Mok-Lamme (no address given), Director of the Grand Junction Homeless Shelter, also declined to discuss what he felt were policy issues. He understood resident concerns over safety and said that the shelter had a counselor specially-trained in conflict resolution. He said that the shelter had an outstanding record with regard to safety. When shelter residents were asked to describe the shelter in their own words, they used adjectives such as "safe, caring, nurturing and warm." Last year the shelter offered to escort the female staff of an adjacent business to their vehicles if they in any way felt threatened or fearful. Not a single request had been received. When he'd asked that business owner if there had been any impact to his business, the response was that there had been none. His own children spent time at the shelter helping out.

Patricia Broom (2157 Monument Village, Grand Junction) had volunteered at the Day Center for the last year. She said that she felt very safe around residents. The shelter helped residents find jobs and provide support and assistance to help many get back on their feet.

Emily Hartman (541 ½ - 23 Road, Grand Junction) also volunteered at the Day Center and felt very safe as well. She had not encountered any unruly alcoholic behavior. This shelter would not accommodate every homeless person who came to Grand Junction; however, this shelter would help provide a safe environment to those in need. She called many of the shelter's residents, friends.

Michael Gagne (111 West Avenue, Grand Junction) said that he was now homeless because of a fire that recently took his home. He had benefited greatly from the kindness of shelter staff. He said that he was in no way representative of the stereotype that the opposition seemed to portray.

Molly Stucker (636 Horizon Drive, Grand Junction) expressed great pride in Grand Junction and felt it essential that "we all work together to help each other."

Trinidad Silva (Fruita, CO), member of the Knights of Columbus, provided a brief history of the building. He said that the homeless must have a place to go where they can retain their dignity.

Orrin Hibschie (425 N. 26th Street, Grand Junction), member of the Knights of Columbus, said that an adjacent neighbor had thrown dog feces and weeds over their fence into the Knights' parking lot. There were just as many, if not more, problems with non-homeless people, he observed.

Milton Long (302 Pitkin Avenue, Grand Junction) agreed that the homeless needed to have some place to stay, some place with a warm bed and a good meal.

PETITIONER’S REBUTTAL

No rebuttal testimony was offered.

QUESTIONS

Mr. Tufly asked Mr. Mok-Lamme what determined how long a person could stay at the shelter. Mr. Mok-Lamme said that shelter policy limited stays to 45 days unless, on the 46th day, there was an open bed. No one would stay at the proposed shelter longer than 6 months, which was consistent with shelter policy. Shelter staff tracked each individual to know how long each stayed. Stays longer than 6 months just wouldn’t happen.

DISCUSSION

Chairman Elmer said that changes in the Code made the definition of homeless shelter clear. The shelter did meet the lodging criterion as defined by the Code. The original decision, while it may not be popular, was consistent with Code criteria and not arbitrary. While unfortunate that the petitioner had not met beforehand with the public, such notification had not been a legal requirement.

Mr. Tufly agreed that the decision was neither arbitrary nor capricious, nor had there been any error in presented findings. He did feel that perhaps a Change of Use Permit should not have been required.

Mr. Shaver said that the change of use question was more jurisdictional and jurisdiction should not be at issue for the Board. He said that typically for a decision to be arbitrary or capricious, there would be a lack of review. In this case, there was evidence of an extensive review.

Mr. Blosser understood the emotional nature of this issue but agreed that there was no evidence to support the appeal.

Mr. Evans acknowledged that while the building had not been constructed to house the homeless, the request did meet all the criteria; thus, he found no basis to uphold the appeal.

Chairman Elmer agreed that while some detriment could occur as a result of the shelter’s presence, it was unclear just how that might be manifest. He noted that while perception may be a large part of real estate valuation, it couldn’t be considered in any decision by the Board. He felt it incumbent upon the petitioner, shelter staff and its sponsors to ensure that the shelter was a good neighbor.

MOTION: (BLOSSER) “Mr. Chairman, on item COU-2001-04.05, I move that we uphold staff’s decision on the application and deny the appeal.”

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

With no further business to discuss, the meeting was adjourned at 1:50 P.M.