



**PLANNING COMMISSION AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

TUESDAY, OCTOBER 27, 2009, 6:00 P.M.

Call to Order

Welcome. Items listed on this agenda will be given consideration by the City of Grand Junction Planning Commission. Please turn off all cell phones during the meeting.

In an effort to give everyone who would like to speak an opportunity to provide their testimony, we ask that you try to limit your comments to 3-5 minutes. If someone else has already stated your comments, you may simply state that you agree with the previous statements made. Please do not repeat testimony that has already been provided. Inappropriate behavior, such as booing, cheering, personal attacks, applause, verbal outbursts or other inappropriate behavior, will not be permitted.

Copies of the agenda and staff reports are available on the table located at the back of the Auditorium.

Announcements, Presentations and/or Prescheduled Visitors

Consent Agenda

Items on the consent agenda are items perceived to be non-controversial in nature and meet all requirements of the Codes and regulations and /or the applicant has acknowledged complete agreement with the recommended conditions.

The consent agenda will be acted upon in one motion, unless the applicant, a member of the public, a Planning Commissioner or staff requests that the item be removed from the consent agenda. Items removed from the consent agenda will be reviewed as a part of the regular agenda. Consent agenda items must be removed from the consent agenda for a full hearing to be eligible for appeal or rehearing.

1. Minutes of Previous Meetings

There was no meeting on September 22, 2009.

2. **Reman Subdivision Rezone – Rezone** [Attach 2](#)

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

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

3. **E & P Wireline Service Storage – Conditional Use Permit** [Attach 3](#)

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

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

***** END OF CONSENT CALENDAR *****

***** ITEMS NEEDING INDIVIDUAL CONSIDERATION *****

Public Hearing Items

On the following items the Grand Junction Planning Commission will make the final decision or a recommendation to City Council. If you have an interest in one of these items or wish to appeal an action taken by the Planning Commission, please call the Public Works and Planning Department (244-1430) after this hearing to inquire about City Council scheduling.

4. **DeRose Bed & Breakfast – Site Plan Review** [Attach 4](#)

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

FILE #: MSP-2009-129
PETITIONER: Ronald DeRose
LOCATION: 604 North 7th Street
STAFF: Scott Peterson

General Discussion/Other Business

Nonscheduled Citizens and/or Visitors

Adjournment

Attach 2
Reman Subdivision Rezone

CITY OF GRAND JUNCTION
 PLANNING COMMISSION

MEETING DATE: October 13, 2009
 STAFF PRESENTATION: Michelle Hoshide

AGENDA TOPIC: Reman Rezone - RZ-2009-163

ACTION REQUESTED: A recommendation to City Council to rezone property located at 555 West Gunnison Avenue and two adjacent lots from C-1 (Light Commercial) to C-2 (General Commercial).

BACKGROUND INFORMATION					
Location:		555 West Gunnison Avenue and adjacent property			
Applicants:		Owner: 725 Scarlett LLC. Representative: TPI Industrial Inc.			
Existing Land Use:		Spring Works and Vacant			
Proposed Land Use:		General Commercial			
Surrounding Land Use:	North	Office/Warehouse with Outdoor Storage and Manufacturing			
	South	Single Family Residential			
	East	Indoor General Retail Sales			
	West	Self-Service Storage			
Existing Zoning:		C-1 (Light Commercial)			
Proposed Zoning:		C-2 (General Commercial)			
Surrounding Zoning:	North	C-1 (Light Commercial)			
	South	R-8 (Residential 8 du/ac)			
	East	C-1 (Light Commercial)			
	West	C-1 (Light Commercial)			
Growth Plan Designation:		Commercial			
Zoning within density range?		X	Yes		No

PROJECT DESCRIPTION: Request to rezone 1.76 acres, from C-1(Light Commercial) to C-2 (General Commercial).

RECOMMENDATION: Forward a recommendation of approval to City Council.

ANALYSIS:

1. Background:

In 1978 the Six and Fifty West Subdivision, Filing No. Two was platted. The vacant parcels (known as Lots 4 and 5 of the Six and Fifty Subdivision West Filing No. Two), as well as, 555 West Gunnison Avenue were originally platted in this subdivision. In 2004, 555 West Gunnison Avenue (Spring Works) Lots 6, 7 and 8, from the Six and Fifty Subdivision West, Filing No. Two, were consolidated into one lot.

In recent months Spring Works has reached their storage capacity. They are proposing to use the adjacent property for extra overflow storage.

3. Rezone Criteria of the Zoning and Development Code:

In order to maintain internal consistency between the Code and the Zoning Maps, map amendments and rezones must demonstrate conformance with criteria one or all criteria two through six for approval:

1. *The existing zoning was in error at the time of adoption*

The existing zoning was not in error at the time of adoption.

2. *There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth trends, deterioration, development transition, etc*

Growth trends in this area have stimulated the development of C-2 (General Commercial) uses within the area surrounding the site. The properties (555 West Gunnison Avenue and the adjacent property) are directly surrounded on the north, east, and west side by commercial businesses zoned C-1 (Light Commercial). However, the character of the neighborhood consists of businesses that house indoor manufacturing, office/warehouse, and outdoor storage, as well as self-storage units.

3. *The proposed rezone is compatible with the neighborhood and furthers the goals and policies of the Growth Plan, other adopted plans, and the requirements of this Code and other City regulations and guidelines*

The proposed rezone is compatible with the surrounding commercial uses and zoning in the area and the Future Land Use designation of Commercial. Eleven C-2 (General Commercial) zoned properties exist less than 300 feet northwest of 555 West Gunnison Avenue and the adjacent property. The properties (555

West Gunnison Avenue and adjacent property) are surrounded by C-1 (Light Commercial) zoned properties to the north, east and west, with R-8 (Residential 8 du/ac) across a street to the south. Any use on the properties would need to be screened from the residential zone district by a landscape strip and wall.

4. *Adequate public facilities and services are available or will be made available concurrent with the projected impacts of the proposed development*

There is an existing 8 inch City water line that runs along West Gunnison Avenue and an existing 8 inch sewer line that also runs along West Gunnison Avenue. These services are adequate and available for development of the property.

5. *There is not an adequate supply of land available in the neighborhood and surrounding area to accommodate the zoning and community needs.*

There is an inadequate supply of C-2 (General Commercial) zoned land available in the neighborhood directly surrounding Spring Works and the adjacent property.

6. *The community or neighborhood will benefit from the proposed zone*

The community and surrounding area will benefit from the proposed rezone because it will allow the business on 555 West Gunnison Avenue (Spring Works) to potentially expand their business in their current location.

FINDINGS OF FACT/CONCLUSIONS:

After reviewing the Reman Subdivision Rezone, RZ-2009-163, a request to rezone property from C-1 (Light Commercial) to C-2 (General Commercial), I make the following findings of fact and conclusions:

1. The requested rezone is consistent with the Growth Plan.
2. The review criteria in Section 2.6.A of the Zoning and Development Code have all been met.

STAFF RECOMMENDATION:

I recommend that the Planning Commission forward a recommendation of approval of the requested rezone to City Council with the findings and conclusions listed above.

RECOMMENDED PLANNING COMMISSION MOTION:

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

Attachments:

Figure 1: Site Location Map

Figure 2: Aerial Photo Map

Figure 3: Future Land Use Map

Figure 4: Existing City Zoning Map

Ordinance

Site Location Map

Figure 1



Aerial Photo Map

Figure 2



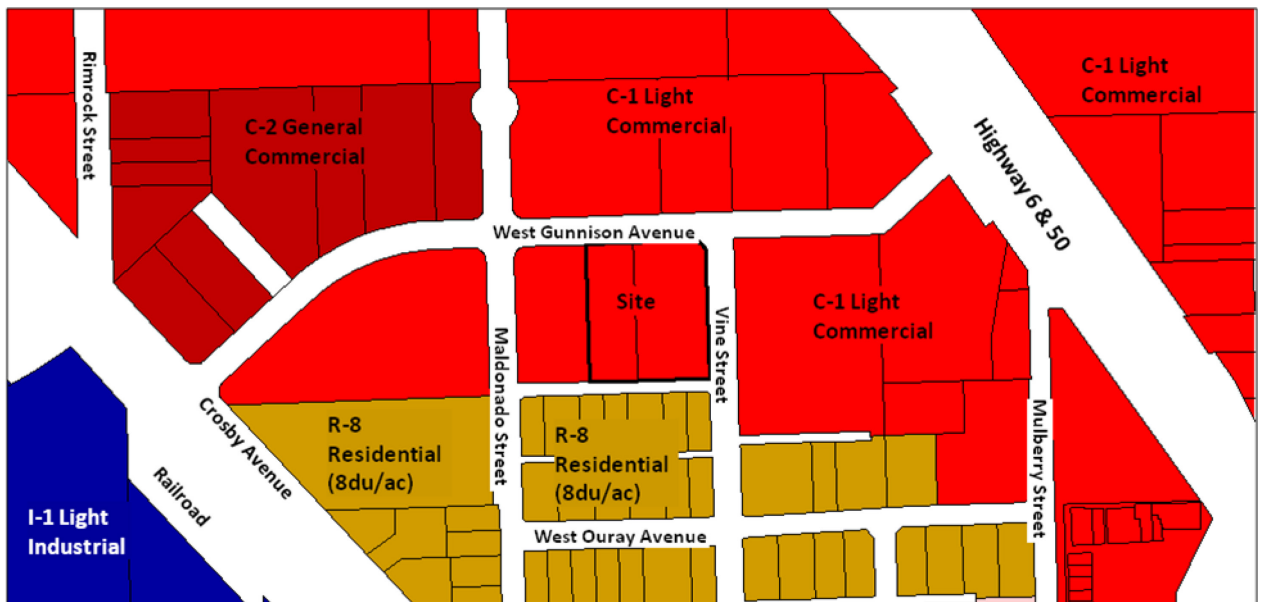
Future Land Use Map

Figure 3



Existing City Zoning Map

Figure 4



CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

AN ORDINANCE REZONING TWO PARCELS OF LAND FROM

C-1 (LIGHT COMMERCIAL) TO C-2 (GENERAL COMMERCIAL)

LOCATED AT 555 AND 565 WEST GUNNISON AVENUE

Recitals.

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of the rezone request from C-1 (Light Commercial) C-2 (General Commercial).

After public notice and public hearing before the Grand Junction City Council, City Council finds the rezone request meets the goals and policies and future land use as set forth by the Growth Plan, Commercial Industrial. City Council also finds that the requirements for a rezone as set forth in Section 2.6 of the Zoning and Development Code have been satisfied.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT THE PARCEL DESCRIBED BELOW IS HEREBY ZONED TO THE C-2 (GENERAL COMMERCIAL) ZONE DISTRICT:

Lot 1 Reman Simple Subdivision SEC 15 1S 1W-1.00AC and Lots 4 and 5 BLK 7 Six and Fifty West Subdivision Filing No. Two SEC 15 1S 1W – 0.66 AC

Introduced on first reading on the _____ day of _____, 2009

PASSES and ADOPTED on second reading this _____ day of _____, 2009.

Attest:

City Clerk

President of the Council

Attach 3
E & P Wireline Service Storage

CITY OF GRAND JUNCTION
 PLANNING COMMISSION

MEETING DATE: October 27, 2009
 STAFF PRESENTATION: Michelle Hoshide

AGENDA TOPIC: E&P Wireline Service – CUP-2009-189

ACTION REQUESTED: Approval of a Conditional Use Permit

BACKGROUND INFORMATION				
Location:		2311 Logos Drive		
Applicants:		Owners: Geary and Carolyn Hall Representatives: Pat Edwards and Ray Richard		
Existing Land Use:		Vacant Building		
Proposed Land Use:		Office/Warehouse and Storage for Explosive and Hazardous Material		
Surrounding Land Use:	North	Industrial		
	South	Industrial		
	East	Industrial		
	West	Industrial		
Existing Zoning:		I-2 (General Industrial)		
Proposed Zoning:		N/A		
Surrounding Zoning:	North	I-2 (General Industrial)		
	South	I-2 (General Industrial)		
	East	I-2 (General Industrial)		
	West	I-2 (General Industrial)		
Growth Plan Designation:		Industrial		
Zoning within density range?		N/A	Yes	No

PROJECT DESCRIPTION: Request approval for a Conditional Use Permit to allow the storage of explosive and hazardous material in an I-2 (General Industrial) zone.

RECOMMENDATION: Recommend approval of the Conditional Use Permit.

ANALYSIS

1. Background

The property, 2311 Logos Drive, was first platted in 2001 in the Interstate Commercial Park Two Subdivision. In 2007 the property was approved, through a major site plan review, to build a 7,500 square foot office/warehouse with 20 parking stalls and full site upgrades. In August 2008, the property was issued a Certificate of Occupancy and in early 2009, the building became vacant.

The office/warehouse will be used to operate the business of E&P Wireline Service, an operating unit of Smith International Inc. This business will be storing up to 50lbs of explosives in conjunction with operating a wireline service facility used by gas well service companies. The building will be sprinkled as required by the Fire Code.

Table 3.5 – Use/Zone Matrix of the Zoning and Development Code states that all Other Industrial Services, including the storage of hazardous materials and explosives, must obtain a Conditional Use Permit in an I-2 (General Industrial) zone district to be in conformance with City regulations. All infrastructure currently meets the Zoning and Development Code regulations.

2. Section 2.13.C of the Zoning and Development Code

Requests for a Conditional Use Permit must demonstrate that the proposed development will comply with all of the following:

- a. All applicable site plan review criteria in Section 2.2.D.4 of the Zoning and Development Code and with the SIDD, TEDS and SWIM Manuals.

Section 2.2.D.4

- 1) Adopted plans and policies such as the Growth Plan, applicable corridor or neighborhood plans, the major street plan, trails plan and the parks plan

This particular site is in a subdivision developed for office/warehouse and storage for industrial uses. The property is surrounded by other commercial and industrial uses. The proposed use is consistent with the Growth Plan designation of Industrial. There are no applicable corridor or neighborhood plans.

- 2) Conditions of any prior approvals

There are no previous conditions of approval for this particular site.

- 3) Other Code requirements including rules of the zoning district, applicable use specific standards of Chapter Three of the Zoning and Development Code and the design and improvement standards of Chapter Six of the Code.

The proposal meets the specific bulk standards of Chapter Three and the improvement requirements of Chapter Six of the Zoning and Development Code.

4) Quality site design practices

The site is developed and landscaping, screening, signage and parking requirements that are in compliance with current design standards.

SSID Manual

Applicant has provided documents and drawings that meet the standards and requirements of the SSID (Submittal Standards for Improvements and Development) Manual.

TEDS Manual

Requirements of the TEDS (Transportation Engineering Design) Manual have been met. Existing accesses are in place and no TEDS Exceptions were required or submitted.

SWMM Manual

The proposal meets the standards set forth in the SWMM (Stormwater Management) Manual. Appropriate State and City permits will be provided prior to occupancy.

b. The underlying zoning district's standards established in Chapter Three of the Zoning and Development Code

The property meets the standards of Table 3.5 Use/Zone Matrix upon approval of the Conditional Use Permit and the project complies with the I-2 (General Industrial) zone district standards.

c. The use-specific standards established in Chapters Three and Four of the Zoning and Development Code

The proposal complies with the requirements of the applicable sections of Chapters Three and Four that relate to office/warehouse and bulk storage of hazardous material in an I-2 (General Industrial) zone district.

d. Other uses complementary to, and supportive of, the proposed project shall be available including, but not limited to, schools, parks, hospitals, business and commercial facilities, and transportation facilities.

Complementary and supportive uses are available, such as, office/warehouse, outdoor storage and warehouse facilities are in close

proximity to this site. The site is served mainly by Logos Road via 23 Road.

- e. Compatibility with and protection of neighboring properties through measures such as:

- 1) Protection of privacy

A 14 foot landscape strip has been installed adjacent to the right-of-way as required by Section 6.5 of the Zoning and Development Code.

- 2) Protection of use and enjoyment

The site layout provides efficient access, adequate internal traffic circulation and appropriate screening as required by City regulations protecting the use of adjoining properties. The building will also be sprinkled to ensure fire safety.

- 3) Compatible design and integration

The building has been designed to be integrated in with the surrounding Industrial uses.

FINDINGS OF FACT/CONCLUSIONS

After reviewing the Conditional Use Permit application, CUP-2009-189, the following findings of fact and conclusions have been made:

1. The requested Conditional Use Permit is consistent with the goals and policies of the Growth Plan.
2. The review criteria in Section 2.13.C of the Zoning and Development Code have been met.

STAFF RECOMMENDATION:

I recommend approval of the requested Conditional Use Permit, with the findings and conclusions listed above.

RECOMMENDED PLANNING COMMISSION MOTION:

Mr. Chairman, on Conditional Use Permit, CUP-2009-189, I move that we approve the Conditional Use Permit, with the findings and conclusions listed in the staff report.

Attachments:

Figure 1: Site Location Map

Figure 2: Aerial Photo Map

Figure 3: Future Land Use Map

Figure 4: Existing City Zoning Map

Figure 5: Site Plan

Site Location Map

Figure 1



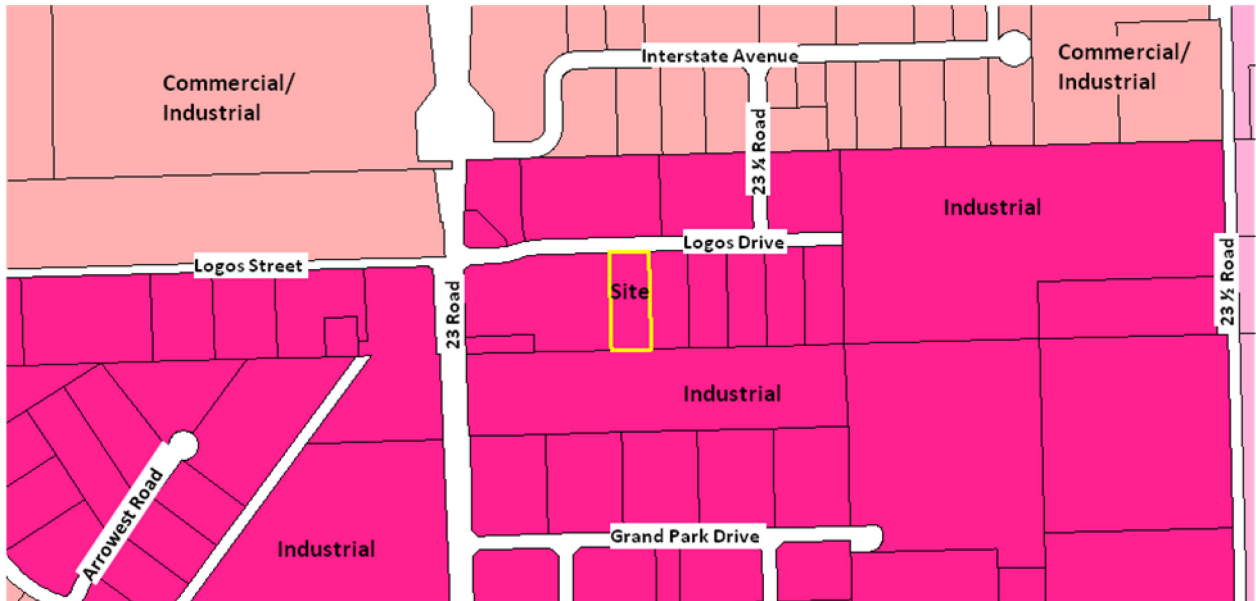
Aerial Photo Map

Figure 2



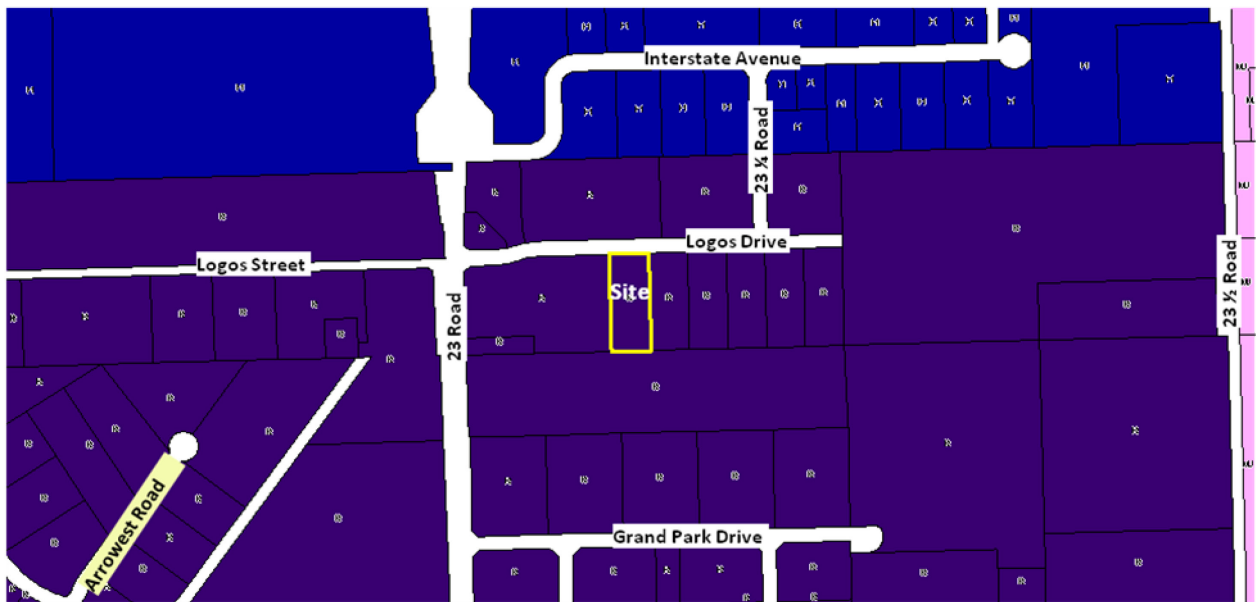
Future Land Use Map

Figure 3



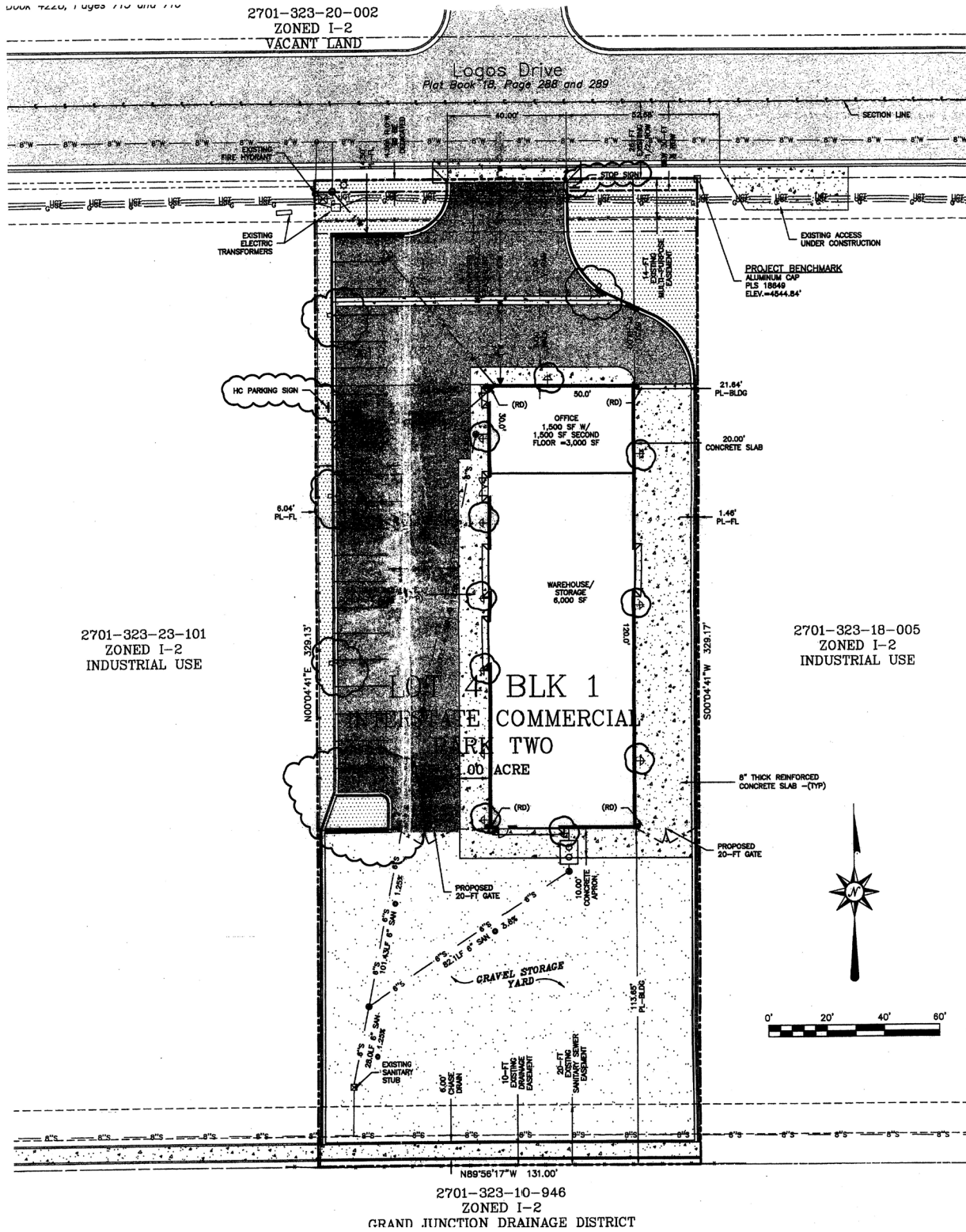
Existing City Zoning Map

Figure 4



Site Plan

Figure 5



**Attach 4
DeRose Bed & Breakfast**

**CITY OF GRAND JUNCTION
PLANNING COMMISSION**

MEETING DATE: October 27, 2009
STAFF PRESENTATION: Scott Peterson

AGENDA TOPIC: An appeal of the administrative approval for a three (3) bedroom Bed and Breakfast – MSP-2009-129

ACTION REQUESTED: Review and decide on the appeal.

BACKGROUND INFORMATION				
Location:		604 N. 7 th Street		
Owner:		Ron and Sherri DeRose		
Existing Land Use:		Single-family residence		
Proposed Land Use:		Single-family residence and three (3) bedroom Bed and Breakfast		
Surrounding Land Use:	North	Single-family residence		
	South	Single-family residence		
	East	Single-family residence		
	West	Single-family residence		
Existing Zoning:		PD (Planned Development)		
Proposed Zoning:		N/A		
Surrounding Zoning:	North	PD (Planned Development)		
	South	PD (Planned Development)		
	East	R-8,(Residential – 8 du/ac)		
	West	PD (Planned Development)		
Growth Plan Designation:		Residential Medium (4 – 8 du/ac)		
Zoning within density range?		X	Yes	No

PROJECT DESCRIPTION: Conduct a hearing on an appeal of the Director’s Final Action on an Administrative Development Permit approving a three (3) bedroom Bed and Breakfast.

BACKGROUND INFORMATION

Zoning and Default Zone

On May 26, 2009 Ron and Sherri DeRose (“Applicants”) submitted a Minor Site Plan to establish a maximum three (3) bedroom Bed and Breakfast within their home located at 604 N. 7th Street. The property is currently zoned Planned Development (PD). The City has reviewed the application based on an underlying default zone of R-8 (Residential – 8 du/ac). Although no default zone was specified in the applicable zoning ordinance, applying a default zone is the City’s current practice. Notwithstanding that fact, a default zone is needed in order to process the application. We believe it is most reasonable to apply an R-8 default zone, because the record of the 1984 rezone proceedings indicates that R-8 was the preferred zone at the time of the rezone. This decision was based upon a detailed review and in-depth consideration of the 1984 rezone planning file (City file #11-84), which is by this reference incorporated herein as if fully set forth. The 1984 rezone applicant, who is also an appellant in this case, requested a re-zone from RMF-32 to RSF-8 in 1984 (now known as R-8). The request was heard and remanded for consideration of the concerns of several neighbors about existing uses that might be rendered non-conforming by a rezone to R-8 (a day care/preschool, churches, and boarding/rooming house, for example). The PR-8 zone appears to have been the chosen compromise to protect the existing uses while still accomplishing the wishes of the applicant for R-8 zoning characteristics for the neighborhood. Appellants state that the decision to apply an R-8 default zone was “arbitrary;” however, on the contrary, the decision was well-reasoned and undertaken with careful reflection and thorough consideration of all relevant factors.

Furthermore, although the common practice now is to adopt a specific plan with all PD ordinances, that historically did not always occur. For purposes of the 1984 rezone no plan was expressly adopted by Ordinance 2211 which established the planned zone designation.

The property is located within the 7th Street Historical District. The 7th Street Historical District was rezoned in 1984 from Residential Multi-Family – 32 du/ac (RMF 32) to Planned Residential – 8 du/ac (PR-8) by City Ordinance 2211. In 2000, when the City adopted the new Zoning and Development Code and modified all zoning designations within the City to match the new Code, all PR designations were changed to Planned Developments (PD). No plan was adopted at the time of that change in designation¹ or prior thereto. The Appellants contend that a document titled “Seventh Street Planned Development District (PR-8)” (herein referred to as “Rezone File Document” or “Document”) should have been adopted with the PR-8 zoning ordinance. Be that as it may, the Rezone File Document is not referenced in or by or attached to Ordinance 2211. Therefore, the document is not enforceable and cannot be held to restrict or limit our review of this application. It is axiomatic that it would be inappropriate to subject the Applicants to zoning restrictions that were never adopted by City Council and have never been expressly made part of the body of City ordinances.

¹ This is not anomalous to the 7th Street Historic District; in general, there ended up being several planned developments in the City “without a plan” due either to the blanket change in 2000 and/or the difference in prior and subsequent City planning practices).

Appellants claim that the City has applied the Rezone File Document to other applications in the past, and is therefore estopped from not applying it now. It appears that until this application this matter was simply not questioned, so more detailed research was not heretofore undertaken. The fact that the existence of a plan for this Planned Development was in the past assumed does not mean that we can maintain such an assumption when it proves to have been false. In general, furthermore, a governmental entity is not estopped by the actions of its employees in other words the prior position City employees have taken with respect to the document does not control the present review.

Decision to review the application administratively

The Appellants claim that the Rezone File Document requires an application for a 3-room bed and breakfast to undergo City Council review and approval in a public hearing. The City determined, however, that even if the Document had been adopted with Ordinance 2211, the Applicants' proposal for a three bedroom bed and breakfast constitutes a minor, rather than a major, change under the terms of that Document, and is therefore subject to administrative review by planning staff with an appeal to Planning Commission. While the Document does not speak directly to bed and breakfasts, it provides that certain applications shall be processed administratively. For the following reasons, we conclude that a three bedroom bed and breakfast is among those types of applications intended to be processed administratively by the terms of the Rezone File Document:

- (1) Under the current Zoning and Development code, a Bed and Breakfast of three or fewer rooms is allowed in all residential zones in the City, such that three bedroom bed and breakfasts are considered an accessory use to a dwelling (dwelling being considered the primary use). Therefore, there is no change of the primary use proposed by the Applicants.
- (2) The Rezone File Document states: "The intent of forming this Planned Residential district is to preserve the historical character of the Seventh Street Corridor, preserve property values for the residents and property owners, and reduce impacts on existing uses which may be caused by the future conversion of single family structures to other uses." The three bedroom bed and breakfast serves all these intents, as follows:
 - a. It will preserve the historical character, because no changes to the character of the structure are proposed by the Applicants, and because the value of a bed and breakfast depends largely upon the high standards of upkeep and maintenance of the place as well as its historical appeal.
 - b. It preserves property values for residents and property owners, because it allows the continuing use to be primarily residential while providing a source of income for the occupants of the home, allowing them to better maintain the residence.
 - c. City staff has determined that the impacts of this bed and breakfast on existing uses will be minimal, given that the essential character and primary use of the structure remains residential.

- (3) Major changes under the Rezone File Document include only the following: “Any change of use such as the addition of dwelling units to an existing structure, or the conversion of any structure to any use allowed by the RSF or RMF zones in the Zone/Use matrix [and] any demolition or removal of any principal structure.” The three bedroom bed and breakfast does not qualify as a major change because none of these changes / conversions are proposed (no additional dwelling units, no change of use to those allowed in the RSF or RMF zones in the 1984 Zone /Use matrix², and no demolition or removal of a principal structure). In fact, no change of use is proposed at all. The primary use remains residential; **the three B&B rooms are ancillary to the primary residential use.**
- (4) Minor changes according to the Document include: “The addition or alteration of any major site features such as parking areas, accesses and screening or buffer areas.” Parking and site access are the only changes proposed and the only changes required by the Code for this application.
- (5) The Document provides that “if the Planning Department determines that a change may have a significant impact on adjoining properties or the area in general a full hearing may be required.” I determined that no significant impact would result from the three bedroom bed and breakfast proposed by the Applicants.

Therefore, the Applicant’s proposal constitutes a “minor change” by the terms of the Document and would be process administratively even if the Document had been adopted by City Council or otherwise incorporated by or in Ordinance 2211.

The application was reviewed by various review agencies and City Staff for compliance with all applicable review criteria. On August 25, 2009, I approved the three bedroom bed and breakfast, finding that all the requirements of the Zoning and Development Code had all been met. Appellants provided a letter of appeal on September 4, 2009 through their attorney, Jodie L. Behrmann, which letter is attached. The Applicants responded by letter on September 18, 2009, which response is also attached. The Appellants have standing to appeal and have timely filed their appeal. The Applicant’s response was also timely filed. The matter is ripe for Planning Commission review.

² The closest category to a bed and breakfast in the 1984 Code was “residential hotels/hostels/tourist homes,” and these were not allowed in either RSF or RMF zones. There are no RSF or RMF zone designations under the current Zoning and Development code.

Standard of Review

This appeal hearing is in accordance with Section 2.18 C. 3. e. of the Zoning and Development Code, which states that the appellate body shall hold a hearing to determine whether the administrative action is in accordance with the criteria provided in Section 2.18 C. 1.³ The Planning Commission may limit testimony and other evidence to that contained in the record at the time the Director took final action, or place other limits on testimony and evidence as it deems appropriate.

In deciding this appeal, the Planning Commission must consider whether the Director:

- (1) Acted in a manner inconsistent with the provisions of this Code or other applicable local, state or federal law; or
- (2) Made erroneous findings of fact based on the evidence and testimony on the record; or
- (3) Failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or
- (4) Acted arbitrarily, acted capriciously, and/or abused his discretion.

The Planning Commission has received copies of the appeal letter. The non-privileged contents of the project file (Planning File No. MSP-2009-129) have been made available for Planning Commission and public review and are incorporated into this staff report by this reference as if fully set forth.

The applicable legal standard for this appeal requires the Planning Commission to consider whether the Director, in reviewing and approving the Applicants' site plan based on the criteria set forth in Section 2.2 D. 5. c. and 4.3 H., (1) acted inconsistently with the Zoning and Development Code of the City of Grand Junction or other applicable law, or (2) made erroneous findings of fact based on the evidence in the record, or (3) failed to consider mitigating measures, or (4) acted arbitrarily, capriciously or abused his discretion.

The Appellants bear the burden to show that one of these four has occurred. *Colorado State Board of Medical Examiners v. Johnson*, 68 P.3d 500 (Colo. App. 2002). If you find the Director did any one of these four things, or more than one of them, you can overrule the Director or remand the application to the Director for further findings. Otherwise, the Director's decision must be upheld.

The standard of review under the rule providing for review of the decision of a governmental body or officer claimed to have exceeded its jurisdiction or abused its discretion is whether, on the basis of the whole record, the finding of the agency are supported by any competent evidence. "No competent evidence" means the record is completely devoid of evidentiary support for the decision. *Puckett v City of County of Denver*, 12 P.3d 313 (Colo. App. 200).

³ Administrative review is by the Director of Public Works and Planning (formerly the Community Development Director), through the Project Manager as his designee. All references to the "Director" herein include this understanding.

Administrative decisions are accorded a presumption of validity and regularity and all reasonable doubts as to the correctness of administrative rulings must be resolved in favor of the agency. Therefore, the Director's decision, including findings of fact and legal conclusions, must be affirmed if supported by any reasonable basis. *Lieb v. Trimble*, 183 P.3d 702, 704 (Colo. App. 2008).

The criteria applied by the Director in making the decision of approval of the minor site plan are set forth in Section 2.2 D. 5. c. of the Zoning and Development Code. The Code **requires** approval of minor site plans where compliance with those criteria is demonstrated. Finding the criteria satisfied, the Director approved the site plan. All the Director's findings are amply supported by evidence in the record. Mitigating measures were considered and several have been implemented on the site, including the following: three (3) required parking spaces accessed from the alley, rather than from the street, required parking spaces setback a minimum 20' from the front property line and the continued maintenance of existing on-site landscaping.

"Arbitrary" means the Director's decision is unsupported by any reasonable basis. See *Lieb v. Trimble*, supra. In other words, arbitrary and capricious action has occurred only when a reasonable person would be compelled, fairly and honestly, by the evidence in the record to reach a different conclusion; if not, the administrative decision must be upheld. *Colorado State Board of Medical Examiners v. Johnson*, 68 P.3d 500 (Colo. App. 2002).

As detailed below, each review criterion was considered by the Director, and the record contains ample evidence supporting the Director's decision to approve the Applicant's site plan. There is no basis to conclude that the Director acted arbitrarily. Although the Appellants state as much through mere argument, they have failed to show that the Director acted arbitrarily. A great deal of thought and reasoning went into the decision to process the application administratively (see the discussion in the "Background" section above); it was not a decision made arbitrarily or capriciously at all. Likewise, the administrative review itself was thorough, thoughtful and in line with all applicable Code and applicable plan requirements. Therefore the Director's decision must be upheld.

BED AND BREAKFAST REVIEW CRITERIA

In my review of the review criteria for a Bed and Breakfast as found in Section 4.3 H. of the Zoning and Development Code, all Bed and Breakfast uses shall be subject to the following standards:

1. Structures shall not be altered in a way that changes the general residential appearance;

There are no structural changes proposed by the applicant in their Bed and Breakfast application that changes the general residential appearance of the structure.

2. A minimum of one (1) parking space shall be provided for each guest bedroom and two (2) spaces for the owner;

The Applicants propose three (3) off-street parking spaces for guests and two (2) spaces within the existing detached garage structure for the owners, which meets the requirements for parking setbacks, etc., per the Zoning and Development Code for a Bed and Breakfast establishment (see approved Site Plan drawing). Also in residential zones, parking is not allowed in the front yard setback (Section 6.6 A. 5. of the Zoning and Development Code). The R-8 setback is 20'. All required parking spaces for the Bed and Breakfast are setback a minimum of 20' from the front property line (see approved Site Plan drawing). Access to three (3) of the five (5) required parking spaces are provided from the existing alley which meets the requirements of Section 3.2.1 of the TEDS (Transportation Engineering Design Standards) Manual.

I as the Project Manager and the City Development Engineer made several visits to the site to verify all dimensions as indicated on the approved site plan regarding building and parking setbacks.

3. One (1) sign shall be allowed, with a size limit of two (2) square feet on roads with a speed limit of 30 miles per hour or less. Internally illuminated signs are not allowed. Externally illuminated signs must meet the standards of Section 4.2;

The Applicants propose only one 1' by 2' unilluminated sign located in the front yard planter for the bed and breakfast's name (see approved Site Plan drawing). The proposed sign meets or exceeds all requirements of Section 4.2 of the Zoning and Development Code.

4. No receptions, private parties or similar activities for which the owner receives a fee shall be permitted unless expressly approved through the review and approval of a Conditional Use Permit;

The Applicants do not propose to conduct any receptions, private parties or similar activities at this location.

5. The maximum length of stay shall be thirty (30) days;

The applicant has stated that no one will be allowed to stay more than 30 days.

6. All guestrooms shall be located within the principal structure;

All guestrooms are located within the principal structure.

7. Other than registered guests, no meals shall be served to the general public unless expressly approved. No cooking facilities shall be allowed in the guest rooms;

The applicant has stated that no meals will be served to the general public and that no cooking facilities will be allowed in the guest rooms.

8. All Bed and Breakfast establishments must comply with Mesa County Health Department Regulations. Written approval by the Mesa County Health Department is required prior to approval by the City;

See attached letter from Robin Carns, Environmental Health Specialist II from the Mesa County Health Department stating that the proposed Bed and Breakfast is exempt from the "Colorado Retail Food Establishment Rules and Regulations" and does not require a review, permit or other approval from that Department.

9. All Bed and Breakfast establishments shall comply with fire code and building code requirements. Written approval by the governing fire district and building department is required prior to approval by the City;

Written approval by both the Fire Department and Mesa County Building Department were submitted to the City via Review Agency comments in Rounds 1 and 2 of the project review of the application.

MINOR SITE PLAN REVIEW CRITERIA

In my review of the review criteria for a Bed and Breakfast as found in Section 2.2 D. 5. c. of the Zoning and Development Code, all Minor Site Plan Reviews shall be subject to the following standards:

1. Complies with the Growth Plan; and any other applicable corridor, special area and neighborhood plans;

The application for a Bed and Breakfast complies with the Growth Plan and other applicable corridor, special area and neighborhood plans. No special area, corridor or neighborhood plans are in effect at the time the bed and breakfast application was accepted. Appellants claim that the Rezone File Document governs, but cannot show that this Document was ever adopted by City Council. **Therefore, it would be inappropriate to subject the Applicants to zoning restrictions that were never adopted by City Council and have never been expressly made part of the body of City ordinances.**

2. Complies with the adopted Grand Valley Circulation Plan, trails plan and parks plan;

The proposal for a bed and breakfast to be located at 604 N. 7th Street does not impact the Grand Valley Circulation Plan, trails plan or parks plan.

3. Will be located on property that is authorized for development by this Code;

Bed and Breakfast establishments for up to three (3) rooms are allowed in all residential zoning districts within the city of Grand Junction, provided that the review criteria identified in Section 4.3 H. of the Zoning and Development is complied with. This application has complied with those requirements.

4. Is consistent with the zoning and use provisions;

The existing property is currently zoned PD, (Planned Development) with R-8, (Residential – 8 du/ac) implied as the underlying default zone. The application meets all requirements for the PD and R-8 zoning districts in regards to setbacks, parking, density, etc. Bed and Breakfast establishments for up to three (3) rooms are allowed in all City residential zoning districts.

5. Meets parking, access and drainage requirements;

As stated in the Bed and Breakfast review criteria (Section 4.3 H. 2. of the Zoning and Development Code), the applicants propose three (3) off-street parking spaces for guests and two (2) spaces within the existing detached garage structure for the owners, which meets the requirements for parking setbacks, etc., per the Zoning and Development Code for a Bed and Breakfast establishment. Also in residential zones, parking is not allowed in the front yard setback (Section 6.6 A. 5. of the Zoning and Development Code). The R-8 setback is 20'. All required parking spaces for the Bed and Breakfast are setback a minimum of 20' from the front property line (see approved Site Plan drawing). Access to three (3) of the five (5) required parking spaces are provided from the existing alley which meets the requirements of Section 3.2.1 of the TEDS (Transportation Engineering Design Standards) Manual. Drainage for the new concrete parking spaces would flow toward the alley, which meets City requirements.

6. Is served by public facilities; and

The existing single-family residence is served by City water and sewer services. Xcel Energy provides electrical and gas utilities.

7. Has or is eligible to receive all applicable local, state and federal permits;

As stated previously, the applicants received approval from the City on August 25, 2009 to establish a three (3) bedroom Bed and Breakfast within their residence at 604 N. 7th Street, meeting all the requirements of Section 2.2 D. 5. c. and 4.3 H. of the Zoning and Development Code. No state or federal permits were required for this application.

CONCLUSION:

The bed and breakfast application was administratively approved according to the City's reasonable interpretation of the applicable law and plans. The application was reviewed in accordance with all the applicable criteria. Ample evidence in the record supports the Director's approval of the application.

Attachments:

Site Location Map / Aerial Photo Map

Future Land Use Map / Existing City Zoning

Approved Site Plan

Mesa County Health Department letter

Appeal Letter from Jodie L. Behrmann and associated attachments

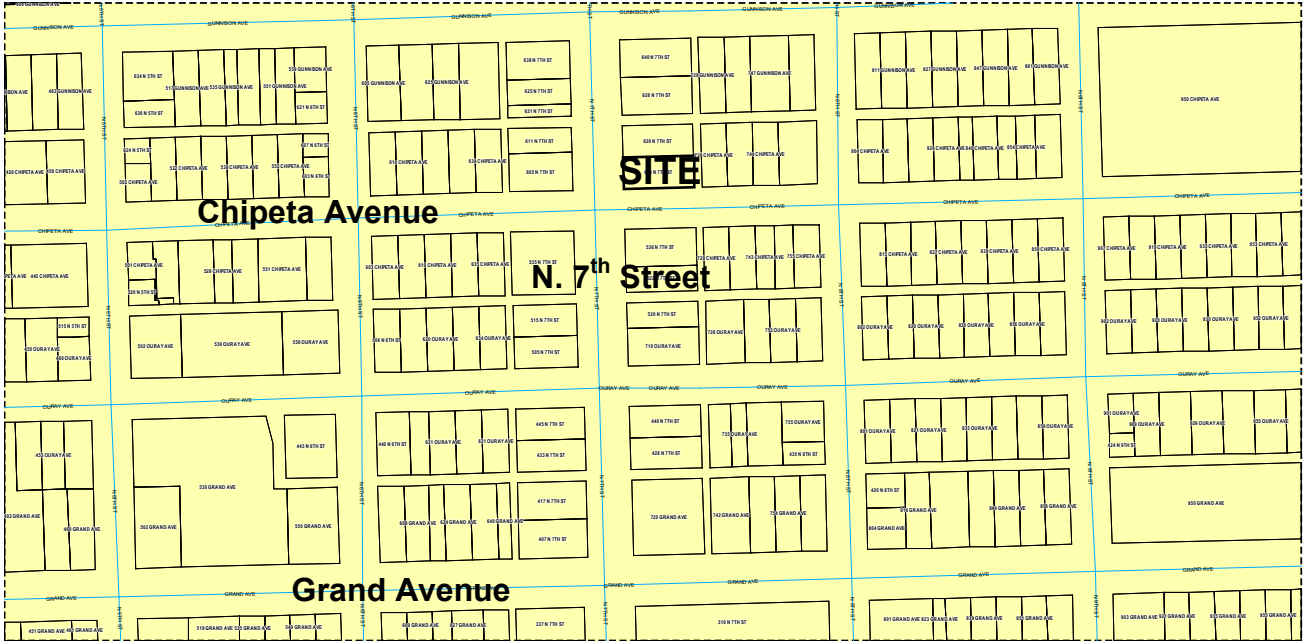
Response Letter from Sherri and Ron DeRose

Seventh Street Planned Development District (PR-8) document

Approval Letter

Site Location Map

Figure 1



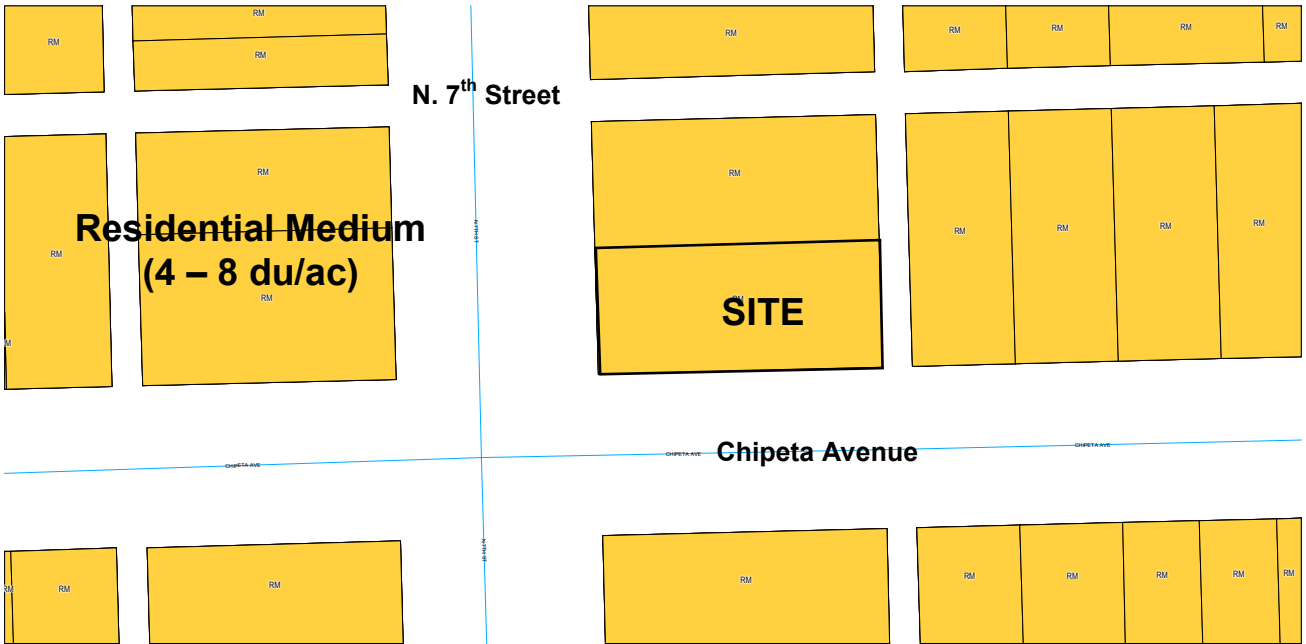
Aerial Photo Map

Figure 2



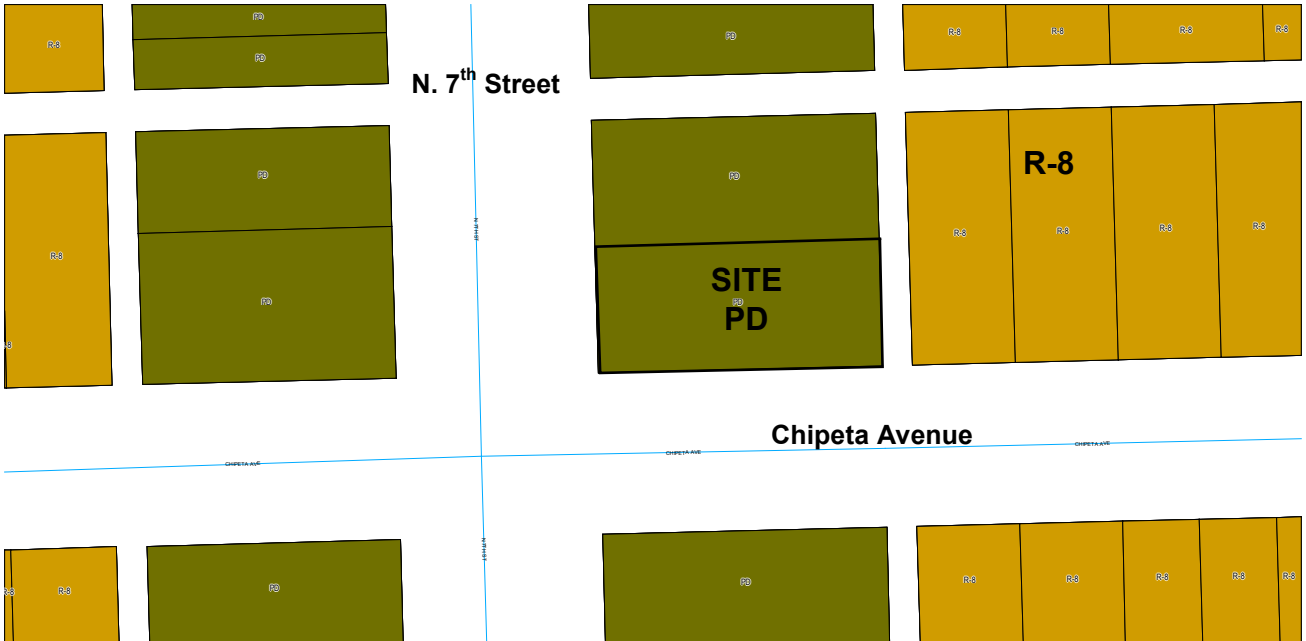
Future Land Use Map

Figure 3



Existing City Zoning

Figure 4





Environmental Health Division

P. O. Box 20000-5033, 510 29-1/2 Road
Grand Junction, CO 81502-5033

Telephone: (970) 248-6960
Fax: (970) 248-6923

June 30, 2009

Ms. Sherri DeRose
604 North 7th Street
Grand Junction, CO 81501

Dear Ms. DeRose

I have received your proposal for a bed and breakfast stating that it will be located in your place of residence at 604 N. 7th Street in Grand Junction, Colorado. You have indicated that it will have 3 bedrooms and serve only breakfast to the occupants. Based on your information and the interpretation from the Colorado Department of Public Health and Environment (1993) your facility is exempt from the Colorado Retail Food Establishment Rules and Regulations (2004) and does not require regulation from this Department.

It should be noted that any change from your proposal will require you to contact this Department. If you have any questions regarding this correspondence, please feel free to contact me at (970) 248-6961.

Respectfully,

Robin Carns
Environmental Health Specialist II
Consumer Protection Division
Mesa County Health Department

248-6961

cc: Scott Peterson, City Planning Department

Jodie L. Behrmann

Attorney-at-Law

107 Park Drive
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Cell: (720) 272-8210
email: jodie@jbehrmann.org

September 4, 2009

Via Email (timmm@gjcity.org)

Tim Moore, Director
Grand Junction Public Works and Planning
250 North 5th Street
Grand Junction, CO 81501

Re: *Appeal of Director's Decision to Approve a Bed and Breakfast at 604 N. 7th Street. File # MSP-2009-129*

Tim:

As aggrieved parties within the meaning of § 2.18.C of the Zoning and Development Code, my clients submit this written request for an appeal of the decision by City Planning Staff to approve an administrative development permit for a Bed and Breakfast (B&B) at 604 N. 7th Street. Notice of the decision was mailed on August 26, 2009, and this appeal is timely.

As an initial matter, I note that the Zoning and Development Code specifies that the "Director" must make the decision whether to approve or deny an administrative development permit. Under the Code, the "Director" is defined as the Director of the Community Planning Department who serves at the direction of the City Manager. The City's reorganization of its administrative departments appears to have rendered that title obsolete, but as the Director of Public Works and Planning, it is clear that you now hold the authority vested in the "Director."

However, the B&B approval, dated August 25, 2009, is signed by Senior Planner, Scott Peterson. There is no indication that you either reviewed or approved the development application. While we would hope that the Planning Department would amend its internal procedures to adhere to its own Code, for purposes of this appeal, we assume that you have adopted the August 25th approval decision, and that it will be given effect. Please advise immediately if that is not the case.

Pursuant to §2.18.C, the rationale for this appeal is as follows:

a. [the Director] Acted in a manner inconsistent with the provisions of this Code or other applicable local, state or federal law

1. As discussed in greater detail in attached Exhibits A and B, the North 7th Street Historic Residential District was zoned PR-8 by Ordinance #2211. The Plan for the District's planned zoning requires that any change in land use from those that existed in 1984 must be subjected to a full public hearing process and approval by City Council, either as a rezoning application or as a major amendment to the Plan. That process has not been followed. The failure to hold a public hearing to consider the proposed B&B violates the due process rights of property owners within the District under both the State and Federal Constitutions.

3. The arbitrary substitution of R-8 zoning for the District's planned zoning is likewise a constitutional due process violation and it contravenes both the City Charter and State statute.

b. [the Director] Made erroneous findings of fact based on the evidence and testimony on the record

The Director erroneously found that the application complies with all applicable sections of the Zoning and Development Code.

1. The redesigned parking for the property fails to meet setback requirements and alley turning radius requirements.

While the Applicant is not required to provide a scaled set of drawings, the sketches provided are misleading. The measurements that are depicted by the Applicant are demonstrably inaccurate and inconsistent with both the City's aerial GIS photos and the Applicant's own initial sketches.

Because the property consists of 2.5 platted lots, each of which is 25 feet by 141 feet, it is known that the north/south property line is 62.5 feet long. That measurement is confirmed by the City's own aerial scaled GIS photo of the property. See attached Exhibit C. The Applicant's sketches, however, reflect measurements that, if accurate, would require that the property line be in excess of 66 feet long. Using the actual total of 62.5 feet, it is apparent that the Applicant's proposed parking for the B&B cannot meet the 20 foot front yard setback requirement.

Similarly, the Applicant has designated the width of the alley to be 20 feet. However, the City's scaled aerial GIS photo shows the width to be 15 feet. The Applicant has designated the distance between the garage door and the alley to be 9 feet,

but the GIS photo reveals that it is only 6 feet. For 90 degree parking stalls, the TEDS manual requires a parking aisle of at least 24 feet in width and parking stalls of at least 18.5 feet in length for a total of 42.5 feet. That requirement cannot be met.

2. The existing 5 foot, solid, privacy fence on the property fails to comply with Code requirements for front yard fencing. Section 4.1.J.1.a provides:

- a. Except as otherwise provided in the district regulations, fences in the required front yard setback shall not exceed thirty inches (30") in height. Such fences may be increased to forty-eight inches (48") maximum height if the fencing material is at a ratio of two-thirds ($\frac{2}{3}$) open space to one-third ($\frac{1}{3}$) closed space per square foot for that part of the fence extending above the thirty inch (30") height.

An open code enforcement complaint was closed at the request of Planning Staff (See attached Exhibit D), but no explanation of how the fence meets the Code requirements has been offered, nor does such an explanation appear in the development file.

d. [the Director] Acted arbitrarily, acted capriciously and/or abused his discretion

1. There is no evidence to indicate that City Planning staff made any attempt to confirm the measurements that were submitted by the Applicant. Approval of the development application without such confirmation, particularly in light of the fact that the Applicant's prior measurements are inconsistent, and the City's own aerial scaled GIS photos are contradictory, is arbitrary, capricious and an abuse of discretion.

2. When the original application for the B&B was filed, Planning staff acknowledged that the application would be subject to the 1984 Plan for the District and that the review process would require a public hearing. See attached Exhibit E. The subsequent decision to change to an administrative process for review of a minor site plan is neither documented, nor justified.

Staff's verbal explanation is merely that the 1984 Plan was never formally adopted. That is directly contradicted by the minutes of the public hearings held in 1984 before both the Planning Commission and City Council. Those minutes clearly indicate that the 1984 Plan was the sole basis for the decision to zone the District as PR-8.

There is no evidence in the record to justify the conclusion that the 1984 Plan was never adopted. The decision is arbitrary, capricious and an abuse of discretion.

Tim Moore, Director
September 4, 2009
Page 4

3. Likewise the file is devoid of evidence supporting the decision to substitute R-8 zoning and its associated categories of "uses by right" for the District's planned zoning. By definition, planned zoning does not allow for such categories of "uses by right." There is no evidence that R-8 zoning has ever been adopted as the underlying zoning for the 7th Street District, and there is no evidence that the land uses allowed in R-8 have ever been adopted or considered acceptable for the District. The decision to substitute R-8 zoning for the District's planned zoning is arbitrary, capricious and an abuse of discretion.

Please advise as to when this appeal will be scheduled for consideration by the Planning Commission.

Sincerely,



Jodie L. Behrmann

encls

cc: Scott Peterson (via email scottp@gjcity.org)
7th Street Clients

Jodie L Behrmann

Attorney-at-Law

107 Park Drive
Grand Junction, CO 81501
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email: jodie@behrmann.org

June 3, 2009

Hand Delivery

Scott Peterson, Senior Planner
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

Re: *Development Application No. MSP-2009-129*
Proposed Bed & Breakfast at 604 N. 7th Street

Scott:

I represent several property owners whose homes are located in, or immediately adjacent to, the North 7th Street Historic Residential District (the District). I have been asked to assist in their efforts to enforce a plan overlay for the District (the Plan) which has been in place since 1984. A copy of the Plan is attached as Exhibit A for reference purposes.

It is our understanding that the DeRoses, who own a home in the District located at 604 N. 7th Street, have applied for a change of use to allow their home to be used as a Bed and Breakfast.

The purpose of this letter is to put the City on notice that my clients object to the DeRoses' development application, and intend to appeal any approval of such a change in use. It is my clients' position that the administrative review process the City has adopted in this case provides inadequate notice, and directly conflicts with the Plan for the District which requires utilization of the public hearing process for consideration of the DeRoses' change of use application.

In relevant part, the plan for the District provides:

"The district is not intended to categorically prevent any future use changes but to ensure that if they occur, they are done properly. It should be noted that since the zone is Planned Residential, changes of use that would be primarily business would not be allowed without a zone change to Planned Business."

Scott Peterson, Senior Planner
June 3, 2009
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My clients maintain that even the limited 1-3 unit Bed and Breakfast that has been proposed, by its very nature, would constitute using the property for primarily business purposes, and would, therefore, require that the property be rezoned to Planned Business. Rezoning, in turn, requires a public hearing process and approval from City Council.

Aside from rezoning to accommodate business uses, the Plan differentiates between "major" and "minor" changes in residential uses. The Plan defines a major change to include,

Any change of use, such as the addition of dwelling units to an existing structure, or the conversion of any structure to any use allowed by the RSF or RMF zones in the Zone/Use Matrix.

Thus, even if the proposed Bed and Breakfast is not considered a primarily business use, the Plan defines the proposed change in use as a "major" change requiring full processing, i.e. an amended plan for the District subject to the public hearing process and review by the Planning Commission and City Council. Accordingly, even if rezoning is not required, the process currently being afforded by the City is inadequate to meet the requirements of the Plan for the District.

We recognize that the City has taken the position that the Plan has no legal effect because the City cannot find where it was ever formally adopted by City Council as an ordinance. We note, parenthetically, that the City also cannot point to where the plan was ever rejected by City Council.

In considering whether the Plan has legal effect, we would refer you to the original development file for the rezoning of the District. Initially, the request was to downzone the District to RSF-8, and that request received the approval of the Planning Commission. However, City Council remanded that request back to the Planning Commission for reconsideration due to property owners' concerns that RSF-8 zoning would result in too many non-conforming uses. This would leave existing multi-family residential uses vulnerable, and would reduce the fair market value of the affected properties.

To address those concerns, the Planning Department recommended that PR-8 zoning be substituted for RSF-8 because it would allow existing uses to remain conforming uses while preventing any future change in use without an amendment to the plan and a public hearing process. In a memo explaining the alternative, City Planning Director, Karl G. Metzner, stated that,

Scott Peterson, Senior Planner
June 3, 2009
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We would propose rezoning the area to Planned Residential at a density equivalent to the existing density. The staff would prepare detailed information on the present status of all parcels (type of use, number of units, number of structures, etc.) **and this information would become "the plan."**

(Emphasis added). That information was compiled, and the Plan was drafted and sent to all property owners in the District in advance of the scheduled public hearing. Mr. Metzner's memo specifically noted that in addition to grand-fathering in existing uses, the benefit of the rezoning proposal would be that,

"Existing single family structures would be protected by the public hearing process if changes of use or density are proposed. . . ."

A copy of Mr. Metzner's explanatory memo was included in the rezoning development file (file no. 11-84), and is attached as exhibit B.

Mr. Metzner made detailed presentations outlining the requirements of the Plan and the alternative zoning to PR-8 in public hearings before both the Planning Commission and City Council. On that basis, the rezone request was approved by both the Planning Commission and City Council. Ordinance 2211, amending the zoning map to reflect PR-8 zoning for the District was passed for publication by City Council on September 5, 1984 and adopted on October 3, 1984.

It is difficult to understand how the City could now, 25 years later, take the position that the Plan, which formed the basis for City Council's approval of the PR-8 rezoning request, could have no legal effect. This is particularly true given the fact that, over the past 25 years, the City has consistently and repeatedly given legal effect to the Plan. It has provided the basis for City Council's rejection of other development applications filed by property owners not only within the District, but within the surrounding neighborhood.

The legal effect of the Plan was first called into question in April, 2009, in connection with a prior development application filed by a potential buyer of the DeRoses' property. The purchase of the property was contingent on the buyer's ability to use the property as a Bed and Breakfast. While that particular application has been withdrawn, the DeRoses have refiled and are seeking approval for the same change of use. The property remains listed for sale, and it is clear that the primary purpose for the change of use is to justify a higher sale price on the property.

Under very similar factual circumstances, in 1995, Dove Designs sought approval for a change in use of the property at 407 N. 7th Street. In accordance with the Plan, Dove Designs

Scott Peterson, Senior Planner
June 3, 2009
Page 4

was required to submit a request to rezone the property to Planned Business to allow even a partial business use of the property. The property was listed for sale at the time, and the sale was dependent on the potential buyer being able to operate a home-based business.

Planning Staff identified a conflict between two sets of guidelines that were applicable, but no issue was raised regarding the rezoning process required by the Plan. Nor was any issue raised regarding the applicability of the Plan to the development application. In its presentation to Council, Staff quoted directly from the Plan, stressed the intent of historical preservation and protection of existing uses, and recommended denial of the rezone based on incompatibility with, and negative impacts on, the District. Both the Planning Commission and City Council rejected the rezone request for Dove Designs.

By way of contrast, the City's development file no. MC-1995-191 reflects that Planning Staff relied on the Plan to establish what process was required to consider a "minor" change to allow construction of a garage at 433 N. 7th Street.

The Plan has also been cited and relied upon by City Code Enforcement. In 1993-94, Code Enforcement addressed a complaint regarding an illegal fence at 428 N. 7th St., and informed the property owner that under the Plan for the District, the fence "must be processed as a minor change" under the Plan, and advised the property owner of the Plan's requirements.

Perhaps it is true that the Plan, as distinct from the rezoning, was never separately addressed and formally adopted by City Council. However, to now claim that the Plan has no legal effect is to render past planning decisions by the City null and void. Many of those decisions had important economic consequences for the applicants, and the voiding those decisions could well have serious legal implications for the City.

Based on 25 years of historical reliance on the Plan, by both residents of the District and the City, my clients request that it be enforced, and that the DeRoses' development application be subjected to the rezoning required under the Plan. In the alternative, if the City deems that the B&B does not pose a primarily business use, then my clients' request notice and an explanation of the criteria used to make that decision, and the imposition of the public hearing and notice procedures required for consideration of a "major" change to the Plan.

It is our hope that this conflict may be resolved amicably, and while we are in the process of developing our own proposal for resolving this issue, we remain open to considering any suggestions that the City may have in that regard.

Without waiving the foregoing objections to the City's use of the administrative review procedure in contravention of the Plan, my clients will submit, under separate cover, specific

Scott Peterson, Senior Planner
June 3, 2009
Page 5

comments and concerns regarding the merits of the proposed development application. Because the administrative review process that the City is currently using does not provide a mechanism for notice to my clients of the City's eventual decision in this matter, to preserve our right of appeal, I am specifically requesting that we be notified when the application is either approved or denied.

Thank you for your consideration of the issues, and please don't hesitate to contact me with any questions you may have.

Sincerely,



Jodie L. Behrmann

/encls

cc: Tim Moore, Public Works and Planning Director - via hand delivery
John Shaver, City Attorney - via hand delivery
Planning Commission - via email to planning@gjcity.org for distribution to all members:
Roland Cole, Chairman
William Putnam, Vice Chair
Reginald Wall
Mark Abbott
Patrick Carlow
Ebe Eslami
Lynn Pavelka-Zarkesh
Richard Schoenrad
Rob Burnett
City Council - via email to tinad@gjcity.org for distribution to all members:
Bruce Hill, Mayor
Teresa Coons, Mayor Pro Tem
Tom Kenyon
Linda Romer Todd
Gregg Palmer
Bonnie Beckstein
Bill Pitts

ATTACHMENT No. 2

J211
Ordinance #325
Oct 1984

ADOPTED ZONING
SEVENTH STREET PLANNED
DEVELOPMENT DISTRICT
(PR 8)

Planned Residential 8 units per acre

Location: Both sides of Seventh Street (north-south alleys on each side) from Grand Avenue to Hill Avenue.

Land Use Characteristics

The area is predominately single family residential in character and appearance although several structures have been converted to multi-family dwellings. There are two churches and a daycare/preschool complex mixed in with the residential uses. The daycare/preschool complex is operated out of converted residential structures and its appearance does not detract from the residential character of the area. More specifically, the land uses are:

Single family units - 22
Multi-family units - 23
Daycare/preschool - 1 (4 structures)
Churches - 2
Boarding/rooming house - 1

Actual gross density as of August 15, 1984 is 12.26 acres at 45 total dwelling units, or 3.67 units/acre.

Applicable Policies

This area is addressed by two separate adopted policies. The Seventh Street Corridor policies (Section 3-19-7 of the Zoning and Development Code) supports maintaining the existing uses in the area. The Seventh Street Historical Corridor policy (Section 3-19-1H of the Zoning and Development Code) recommends preservation and restoration of existing structures, new construction to be consistent with the historic character of the area, and uses north of Grand Avenue to remain residential.

Intent of the Seventh Street PR 8

The intent of forming this Planned Residential district is to preserve the historical character of the Seventh Street Corridor, preserve property values for the residents and property owners, and reduce impacts on existing uses which may be caused by the future conversion of single family structures to other uses.



The Planned Residential zone is the best vehicle for accomplishing this intent since requests to change uses will be reviewed and processed through the Planning Commission and City Council. Approvals to change a use can and should be conditioned upon maintaining the appearance and character of the structure(s), providing proper parking, access, and traffic circulation, and careful consideration of the use itself should be given to avoid undue impacts on surrounding properties.

This district is not intended to categorically prevent any future use changes but to ensure that if they occur, they are done properly. It should be noted that since the zone is Planned Residential, changes of use that would be primarily business would not be allowed without a zone change to Planned Business. This would not, however, prevent a home occupation type of business where the primary use remains residential.

Criteria and Process

Upon approval of this Planned Residential zone, the existing uses and structures would become allowed uses under the plan for this district (see attached maps). In accordance with the Planned Development Regulation (Chapter 7 of the Zoning and Development Code), changes of use would be required in order to submit an amended plan for review and consideration by the Planning Commission and City Council. Minor changes would be processed through the Planning Department. These changes are more specifically delineated as follows:

Major changes requiring full processing:

- Any change of use such as the addition of dwelling units to an existing structure, or the conversion of any structure to any use allowed by the RSF or RMP zones in the Zone/Use Matrix. In considering any change of use, the provisions and criteria of the Planned Development Regulation shall apply.
- Any demolition or removal of any principal structure.

Minor changes (processed under Section 7-5-6 of the Planned Development Regulation):

- The addition or removal of any accessory structure.
- Additions or major alterations to principal structures where there is no change of use.

- Home occupations that qualify under Section 5-1-9 of the Zoning and Development Code.
- The addition or alteration of any major site features such as parking areas, accesses and screening or buffer areas.

In accordance with the minor change provisions, if the Planning Department determines that a change may have a significant impact on adjoining properties or the area in general, one or all of the following may apply:

- 1) Notice given to adjacent property owners.
- 2) Informal review and comment by the Planning Commission.
- 3) Full hearing as required by a major change.

In considering both major or minor changes, it is the intent of the Planning Department to be as flexible as possible in accommodating the needs of the property owners while still meeting the previously stated intents of this district. Public and private cooperation can result in a stable and viable Seventh Street Corridor which will be an asset to the City at large as well as the property owners in the Corridor.



City of Grand Junction, Colorado 81501
250 North Fifth St.,

MEMORANDUM

Alternative to proposed RSF-8 zone
7th Street Historical District

The expressed purpose of the requested downzone in the 7th Street Historical District is to protect the appearance, character, and property values of the area.

Objections to the downzone have centered around properties that would be made non-conforming by the rezone. It was evidently feared that the non-conforming status would reduce the property values of the existing multi-family uses as well as the fact that if those uses are damaged over 50% of their value by fire or other causes, they cannot be replaced.

In reviewing both the intents of the petitioners and the concerns of the opponents, we feel that there may be an alternative which could accommodate both groups. We would propose rezoning the area to Planned Residential at a density equivalent to the existing density. The staff would prepare detailed information on the present status of all parcels (type of use, number of units, number of structures, etc.) and this information would become "the plan."

All existing uses would be made legal allowed uses. Change of use and increases in density would be handled as in any other planned zone by processing and approval through the Planning Commission and City Council. Other changes such as additions, which do not add units, or accessory structures could be handled by the department through the minor change process.


The benefits of this proposal are:

- 1) Existing single family structures would be protected by the public hearing process if changes of use or density are proposed.



- 2) The character of the 7th Street corridor would be protected through the provisions of the planned development zone.
- 3) No existing uses would be made non-conforming and property values would not be affected.
- 4) A property owner who desired to change the use or density could apply to do so by submitting a "revised final plan." Through the processing of such a submittal, the proper review would be done and concerned property owners would be able to have input.

We believe this proposal will meet the concerns of all parties and recommend that it be considered in place of the RSP-8 proposal.


Karl G. Metzner
Director, City Planning

Jodie L. Behrmann

Attorney-at-Law

107 Park Drive
Grand Junction, CO 81501
Telephone/Facsimile: (970) 314-2695
Cell: (720) 272-8210
email: jodie@behrmann.org

June 25, 2009

Via Email

Grand Junction City Council
c/o tinad@gjcity.org for distribution to:

Bruce Hill, Mayor
Teresa Coons, Mayor Pro Tem
Tom Kenyon
Linda Romer Todd
Gregg Palmer
Bonnie Beckstein
Bill Pitts

Re: *Development Application No. MSP-2009-129*
Proposed Bed & Breakfast at 604 N. 7th Street

Dear Council:

On June 3rd, I copied each of you with a letter alerting you to my clients' concerns regarding the use of the administrative review process to address the application to use the property at 604 N. 7th as a Bed and Breakfast (B&B).

It has become apparent over the past three weeks that some of you may not understand either the nature of my clients' complaint, or the basis for our conviction that immediate action by Council is necessary to keep the problem from escalating. Let me try to summarize it for you in one sentence: City bureaucrats are improperly using the administrative review process to rezone the entire North 7th Street Historic Residential District (District) and to prevent City Council from reviewing that decision.

The purpose of this letter is to ensure that you do all understand exactly what is at stake here. We have identified a fundamental problem with the City's procedures which leaves the City open to legal liability, and we respectfully request that City Council act to correct the problem before it mushrooms and sparks lawsuits not only from us, but from all directions.

Our complaint is larger in scope than the pending development application for the B&B that initiated the problem. While my clients do oppose the B&B, their complaint is not about

whether it should or should not be allowed. Rather, my clients' complaint is that the City has postured this application in such a way that a decision on the B&B application does not just affect zoning for the DeRoses' property, it affects the zoning for my clients' properties, and those of every other owner in the District as well.

We think that's a significant problem given the fact that only City Council has the power to decide rezoning issues. We also think we have a solution that would protect both the City and the property owners involved. Some of you agree with us, others may not, but we want to ensure that you all have an accurate understanding of the problem, because we will hold our elected representatives accountable for whatever they decide to do, or not do, about it.

The Problem

A. The Plan

There is no dispute that in 1984, City Council approved the rezoning of the District as a PR-8 planned development. (See, Ordinance No. 2211 at N7thStHRD0003, and City Council Minutes at N7thStHRD0014) The minutes reflect that there were no comments at the time of final passage.

There is no dispute that City Council's approval of the rezoning was based on the Plan for the District. My letter of June 3 explains how the planned zoning was substituted for the original rezoning request, how the Plan for the District was developed, and how the Plan was considered in public hearings and approved by both the Planning Commission and City Council. (See, 6/3/09 letter at N7thStHRD0016, the Metzner Memos at N7thStHRD0010 and 0011, the Plan for the District at N7thStHRD002, Planning Commission Minutes at N7thStHRD0012, and City Council Minutes at N7thStHRD0013).

There is also no dispute that since 1984, the Plan has been applied to every development application and code enforcement action in the District. Examples were provided and discussed in my letter of June 3. (See, 6/3/09 letter at N7thStHRD0016, City Council Minutes re Dove Design Application at N7thStHRD0007).

The Plan has also been recognized by the current Director of Public Works and Planning. In 2000, Tim Moore submitted a report to City Council recapping efforts by the City and the District residents to improve 7th Street. Included in his list of accomplishments:

1984 - The City of Grand Junction recognized the significance of the District by adopting a Planned Residential (PR) zoning for the majority of the area (Hill to Grand Avenues). **The zoning ordinance included policies to support**

maintaining the existing uses in the area, . . . and uses north of Grand Avenue to remain residential. To date, this zoning has been effective in its land use intent and the Planned Development (PD) zoning is being carried forward with the recently-adopted zoning map.

(See, N7thStHRD0008).

When the current B&B application was first proposed by potential buyers of the DeRoses' property, it was subject to the rezoning process and criteria required by the Plan. The Planning Department took the first steps in that process and sent out notice of the application and scheduled a neighborhood meeting. It was at that meeting that my clients learned that the City would, for the first time, refuse to enforce the District Plan and that the B&B application would be handled through the administrative review process. The explanation offered at the time was simply that the Plan did not exist or could not be found. The City Attorney later clarified that the Plan had never been formally adopted by City Council, and therefore, would not be given effect.

The City's abrupt refusal to acknowledge the District Plan, despite a 25 year history of taking action in reliance on the plan, is a huge violation of the public trust. The characterization by the City Attorney's office of the City's past enforcement of the Plan as "water under the bridge" sums up the cavalier and manipulative attitude that the City has repeatedly taken with respect to this issue.

B. The process

In the absence of a Plan, the City claims that "default zoning" of RSF-8 allows the B&B application to proceed under the administrative process. No "default zoning" was established or adopted when the District was zoned PR-8. The City is arbitrarily substituting RSF-8 zoning for the planned zoning previously approved by City Council.

Default zoning is used to provide a set of rules in the event that a development Plan does not address the issue or is invalidated. This is not a typical planned development where a Plan is adopted to address a wide range of issues in a yet-to-be-built subdivision. The issue here is what uses are allowed in the District. Even in the absence of a Plan, the use of default zoning is inappropriate because the planned zoning itself establishes what uses are allowed within the District.

The sole purpose of the District's Plan and PR-8 zoning was to establish the allowed uses in the District as being those uses that existing at that time, and to ensure that future changes were subject to review and approval by City Council, just like any other rezoning or Plan Amendment issue under the City's Code. City Council approved the PR-8 zoning and adopted

Ordinance 2211 on that basis. The Plan does conveniently itemize the uses, but it is not necessary to refer to the Plan to know the allowed uses in the District are limited to those that existing at the time of the rezone.

Nor is it necessary to refer to the Plan to determine the proper procedure for a change of use. Like the Plan, the City's Code requires either a rezoning or a Plan amendment for a change of use in a planned zone. The City's attempts to separate and distinguish the Plan from the zoning in order to allow the substitution of default zoning, is disingenuous.

The City cannot apply different rules to different property owners. If RSF-8 zoning applies to the B&B application for change of use, it must apply to all other development applications as well. The City's arbitrary adoption of RSF-8 zoning for the B&B application effectively rezones the entire District without approval of City Council.

In taking this position, the City ignores the fact that in 1984 City Council specifically rejected RSF-8 zoning for the District because it rendered multi-family uses "non-conforming." As noted by Council, "the main purpose in changing to PR-8 is to avoid placing the multi-family units in a non-conforming status." By negating the District's planned zoning, the City also negates the protections afforded to existing business and multi-family uses in the District. They become the very "non-conforming" uses that City Council sought to avoid when it rezoned the District.

The City's use of the administrative review process to address the B&B application effectively rezones the entire District without notice, without due process and without the approval of City Council.

C. The Appeal

The City Attorney's office has taken the position that our right to appeal the Director's administrative decision will adequately protect our interests, provide a public hearing, and provide a means of correcting any errors in the decision making process. With all due respect, that position is misleading at best and deliberately false at worst.

Under the City's Code, an appeal of the Director's administrative decision on a minor site plan is heard by the Planning Commission. The Planning Commission's decision on the appeal is final, and there is no mechanism for bringing the matter before City Council. My clients' only recourse at that point would be to file a lawsuit in the District Court. Thus, the rezoning of the District effected by the administrative review process can be accomplished wholly without City Council's involvement or approval.

Nor does the appeal to the Planning Commission provide my clients' with the public hearing process they are entitled to. The Planning Commission review is limited to the evidence and criteria used by the Director in making his decision. The criteria for reviewing a minor site plan are significantly different from the criteria for reviewing a zoning change or a major Plan Amendment. Those criteria are simply not addressed by the current administrative process and would not be heard by the Planning Commission on appeal.

Our Proposed Solution

Our proposal for resolving this problem is simple. We ask that City Council pass a resolution ratifying the District's Plan and all past actions taken in reliance on the Plan. Lawsuits are expensive and there is no good reason to force us to take that path when City Council has the ability to rectify the problem now.

The formal adoption of the Plan by Council as a ratification measure would require that the Planning Director adhere to the proper process and bring the pending B&B development application before City Council for a decision on the merits. Because no final action has yet been taken on the B&B application, the change in procedure would not negatively impact the Applicant's rights.

Timing is a critical element of our proposed solution. Once Planning issues a decision, it becomes much more difficult, time consuming and expensive to undo that decision. Instead of a matter of City Council doing the right thing, it becomes a matter of using the Courts to force City Council to do the right thing.

Our Attempts to be Heard

When we received no response from anyone to our June 3rd letter, we tried again. Via voice mails and a follow-up letter dated June 10, we requested an audience with both Councilmembers Kenyon and Coons, each of whom represents half of the District. We met with Tom Kenyon on June 19. On Tuesday, we were able to confirm that Teresa Coons will meet with us tonight. We appreciate that our Council representatives have taken this issue seriously and are willing to hear and consider our concerns.

However, the City Attorney's office has directed Planning to proceed with the administrative process and Planning could issue a decision at any time. Time is fast running out for consideration of our proposed solution, and we no longer have the luxury of waiting patiently for City officials to focus on the issue, and to correct or address their various misunderstandings.

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Accordingly, we intend to appear at the next regularly scheduled City Council meeting, on Monday, June 29, 2009, in order to present our concerns publicly on the record, and ask that Council take action on our proposed solution. We request that this matter be placed on the agenda for the meeting.

Because this presents a fundamental issue of City governance, we view it as a matter of great public concern. By copy of this letter and a separate press release, we have invited both the media, and the public, to engage on this issue.

A CD containing copies of the documents that are referenced herein will be provided under separate cover and hand delivered to City Hall. I am happy to provide paper copies to any who wish to see them.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Sincerely,



Jodie L. Behrmann

On behalf of:

Brad and Terri Hance
David "Bud" Hasty
Teddy and Kathy Jordan
Joe and Karen Hatfield
Gordon and Lay Chin Nicholson
Pat and Marilyn Olson
Marilyn Simons
Gary and Sharon Snyder
Kim Sutherland

cc (via email, w/o encl):

John Shaver, City Attorney
johns@ci.grandjct.co.us

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Tim Moore, Director Public Works and Planning
c/o suem@gjcity.org

Scott Peterson, Senior Planner
scottp@ci.grandjct.co.us

City of Grand Junction GIS City Map ©



COMPLAINT/INSPECTION REPORT
CODE ENFORCEMENT – City of Grand Junction

Date: 6/24/09		Call taken by: SARAH		Officer: Andy NINA	
LOCATION OF VIOLATION: 604 N 7 th ST				Case Number: 20901149	
Zone PD	Subdivision	Parcel Number 294514126008	Project Number MSP-2009-129		
<input type="checkbox"/> Junk, Trash, Cars		<input type="checkbox"/> Use/Zoning		<input type="checkbox"/> Animal	
<input type="checkbox"/> Sign		<input checked="" type="checkbox"/> Fence		<input type="checkbox"/> Graffiti	
<input type="checkbox"/> Other _____					
NATURE OF COMPLAINT: 48" TALL, SET BACKS? NO PERMIT (FENCE)					
OWNER: Derose					
Home Address:		City:	Zip:	Home Phone:	
Business Address:				Bus. Phone:	
RESIDENT:					
Mailing Address:		City:	Zip:	Home Phone:	
REPORTING PARTY: SARAH SNYDER				Home Phone: 216-8807	
Address:				Bus. Phone:	

NOTES:

7/6 There is a proj. for B+B active - may be for B+B? (K^w Planner Scott P - if a problem - Pres to Scott re: IBYS per - issued in 2007. Possible rev. to include? not in row 7/7 Scott says it's on the permit -

Notice 45° 5' Corner - Get new pic -

PM owner standing out by row strip - no pic taken - 45° and at 6' ht. I am Scott, will get back to me -

~~7/9~~ 7/9 Scott e-in 5' setback not ht - on 45° angle - from corner 5' both sides of corner - 7/10

7-14 Need another ft. each
way - em scott

7-15 C. in RP. C. out Scott

advise proc. for appl. to reg. c. of
report. Follow up 1 mo. as Scott will advise owner.
✓ 8-14.

note: owners in 7-20 with questions
re fence; ref. to Scott if any questions
re permit. I need to recheck distance.

called 8/20 ~~7/20~~ ^{Therese} McNally 256-4103

8/20 Scott approved so she closed her file
Told to Jack to meet Peterson

PRELIMINARY/FINAL

Owner's Name: **JUDITH** **SUBMITTAL CHECKLIST** Date: **9/14/2009**
PLANNED DEVELOPMENT / FINAL Expiration Date: 6 months from above date

Location: **604 N. 7th STREET** Project Name:

DESCRIPTION & SSID REFERENCE	DISTRIBUTION															
	City Planning	City Development Engineer	City Utility Engineer	City Sanitation	City Fire Dept	City Police Department	City Transportation Engineer	City Public Works	City Code Enforcement	City Health Department	City Parks & Recreation	City Public Safety	City Public Works	City Public Works	City Public Works	City Public Works
Application Fee(s) \$450 - 50 = \$400	1															
Submittal Checklist* Ill-1, #5	1															
Review Agency Comment Sheet* Ill-1, #6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Development Application Form* Ill-1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Ownership Statement* IV-3, #14	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Location Map V-12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
General Project Report VI-4	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Composite Plan V-2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Plot V-15 (if applicable)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Reduction of Plot to 14' x 17' V-16	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Surveyor Verification IV-5, #25	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Legal Description IV-4, #15	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
County Treasurer's Tax Certificate IV-1, #5	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Deeds IV-2, #6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Avigation Easement* IV-1, #3	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Right-of-way Dedication/Conveyance IV-4, #21	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Improvement Survey V-33	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Development Improvements Agreement IV-2, #10	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Appraisal of Vacant Land IV-1, #2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
CDOT Access Permit IV-5, B. 2.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Road Cross-section V-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Roadway Plan & Profile V-20	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Water, Sewer, & Storm Sewer Plan & Profile V-29	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Final Drainage Report VI-2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Grading Plan V-5 for disturbed areas	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Drainage & Irrigation Checksheet*	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Stormwater Mgmt Plan/Permit* (if > 1 ac) V-26, VI-10	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Post Construction Stormwater O & M Agreement (if > 1 ac)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Final Geotechnical Report (see \$ & form* required) VI-3	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Landscape Plan V-10 if required in 4.3.H.2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Covenants, Conditions, Restrictions	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Site Plan V-22	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Reduction of Site Plan V-22	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Fire Flow Form	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Lighting Plan (commercial or institutional) V-11 if new lights	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Name & Address Labels IV-4, #17	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

* An asterisk in the item description column indicates that a form is supplied by the City and/or available on the City website.

June 2009
 Neighborhood Mtg. Minutes
 sign Package (locate, size, design) 1/1



Planner's General Meeting Notes

Date: 3/4/2009

Applicant: Harold and Kathleen Timmens

Phone: Harold, 361-5241; Kathleen, 361-5432

Location: 604 North 7th Street

Tax Parcel #: 2945-141-26-008

Proposal: Change use from single family residential to a Bed & Breakfast in a Planned Development

Attendees: Harold and Kathleen Timmens, Hank Masterson (Fire), Judith Rice (Planner) Michelle Hoshide (Planner)

While all factors in a development proposal require careful thought, preparation and design, the following items are brought to the petitioner's attention as needing special attention or consideration. Other items of special concern may be identified during the review process. General Meeting notes and standards are valid for only six months following the meeting/conference date shown above. Incomplete submittals will not be accepted. Submittals with insufficient information identified during the review process, which have not been addressed by the applicant, will not be scheduled for a public hearing. Failure to meet any deadlines for the review process may result in the project not being scheduled for hearing or being pulled from the agenda. Any changes to the approved plan will require re-review and approval prior to those changes being accepted.

Zoning and Land Use

- a. **Zoning:** Planned Development (PD), underlying zone R-8 (.201 acres)
- b. **Growth Plan Land Use Designation:** Residential Medium
- c. **Growth Plan Goals & Policies applicability:**
- d. **Corridor Guidelines or other plan applicability:** This application will effectively create a new Ordinance for the Seventh Street Planned Development District which would add the use of Bed and Breakfast commercial enterprises as an acceptable use either for this one property (Section 2.12.F.b) or for more than one property if other property owners wish to join this application (Section 2.12.F.c). ~~In either case, should City Council approve this application for an amendment to the PD, this application and any future applications for a Bed and Breakfast must meet all the requirements in Section 4.3.H.~~
- e. **Land Use Compatibility:** Planned Development (PD) Ordinance #325, October 1984, allows for a Major Change to be made to the PD for "any change of use such as...the conversion of any structure to any use allowed by the RSF and RMF zones in the Use/Zone Matrix". B&B is allowed in an R-8 zone.

Off-Site Impacts (See Engineer's comments)

- a. Access/right-of-way required
- b. Traffic impact
- c. Street improvements
- d. Drainage/stormwater management – The Engineer has indicated that a simple, scaled Grading Plan (see submittal checklist) showing the disturbed area, sufficient grading elevation points and flow direction arrows on an 11 X17 size sheet would be sufficient.
- e. Availability of utilities

Site Development

- a. Bulk Requirements: B & B allowed in an R-8 zone per Use/Zone Matrix Table 3.5; refer to Chapter 3, Section 3.3.G and Section 4.3.H for requirements.
- b. Access and Traffic Circulation: Per Engineer's notes
- c. **Parking (Off-Street: handicap, bicycle, lighting):**
Before making the complete application submittal, the applicant may want to ensure that the off-street parking requirement can be met by designing the parking using the attached Engineer's comments and TEDS manual Chapter 4.
Bed and Breakfast off street parking requirements (4.3.H.2): one (1) space per guestroom and two (2) for the owner.



Keep in mind that in residential zones, parking is not allowed in the front setback (Section 6.6.A.5). R-8 front setback is 20 feet.

- d. **Landscaping:** Provide a simple scaled landscape plan (11X17 sheet acceptable) if 4.3.H.2 (screening) applies.
- e. **Screening and Buffering:** If 4 or more uncovered off-street parking spaces are provided, visual screening for adjacent residential uses are required (4.3.H.2)

Miscellaneous

- a. Revocable Permit:
- b. State Highway Access Permit:
- c. Floodplain and Wetlands:
- d. Proximity to airport (clear or critical zone):
- e. Geologic Hazards and Soils:
- f. Mineral Resources:

Other

- a. Related Files:
- b. **Other Concerns:**
 Address Planned Development Review Criteria in Section 2.12.C.2.a-g. in the General Project Report. Please number criteria. The section of the Code containing these criteria is in your submittal packet.
 Written approval from the (1) Grand Junction Fire Department and (2) Mesa County Health Department is required prior to approval by the City.
 Signage: Refer to Section 4.3.H.3

Fees:

a. Application Fees: Plan Amendment - Major

Application	\$ 350.00
Signs	50.00
Address Labels	50.00
Acreage	0.00
Final Inspection	0.00
Other	0.00
Subtotal	450.00
General Meeting Credit	<50.00>
Total	\$400.00

Application fees are due at the time of submittal. Make checks payable to the City of Grand Junction.

b. Additional Fees to be assessed upon project approval

1. Transportation Capacity Payment (TCP): To be determined by Engineer, if any
2. Drainage Fee: n.a.
3. Parks and Open Space Fee: n.a.
4. School Impact Fee: n.a.
5. Recording Fee: n.a.
6. Plant Investment Fee (PIF) (Sewer Impact): Contact Customer Service at 970-244-1579

Processing Requirements

- a. **Reference Documents** – Zoning and Development Code (bulk standards, landscaping, parking, lighting, etc.), SSID (submittal standards), TEDS (transportation and engineering standards). Access at www.gjcity.org
- b. **Submittal Requirements:** See attached checklist for SSID chapter and page references.



c. Review Process: Staff review, Planning Commission recommendation, City Council decision.

**Sherri & Ron DeRose
604 North 7th Street
Grand Junction, CO 81501
970-985-0177/970-433-6644**

September 18, 2009

Scott Peterson, Senior Planner
City of Grand Junction Planning Dept.
250 North 5th Street
Grand Junction, CO 81501

VIA Email: scottp@gjcity.org

Re: DeRose's response to recent 'appeal.'

Dear Scott:

First, Ron and I thank you, John Shaver and other City staff for the patience and professionalism that you all have shown to us and for the extensive research you all have done.

Please accept this as our response to appeal foiled by the few neighbors regarding our permit to operate a 3 room bed and breakfast located within our residence at 604 North 7th Street.

We understand that we should address this to you, but it is for consideration by the Planning Commissioners, when this matter is heard.

As you have diligently observed, and as your planning files reflect, our B & B satisfies all of the City Zoning code requirements for Bed and Breakfast uses, set forth in Section 4.3 (H):

1. *Structures shall not be altered in a way that changes the general residential appearance.* Clearly, our home has a residential appearance, and will remain so.
2. *A minimum of one parking space shall be provided for each guest bedroom and two spaces for the owner.* Our site plan that you approved clearly shows (to anyone who wants to 'see') that we meet, and exceed, the parking requirement. We will provide 3 guest parking spaces and 3 owner parking spaces.
3. *One sign shall be allowed, with a size limit of 2 square feet on roads with a speed limit of thirty miles per hour.* As you well know, and the neighbor's lawyer apparently cannot figure out, the location of our small sign meets all of the City's

standards, it is unlit, and it is properly located in front of the planter in our front yard.

4. *No receptions, private parties or similar activities for which the owner receives a fee shall be permitted unless expressly approved through the review and approval of a Conditional Use Permit:* We have no plans for any receptions, private parties or similar activities. If that ever changes, we know we will have to apply for a CUP.

5. *The maximum length of stay shall be thirty days.* Again, this rule is easily complied with. No one will be allowed to stay more than thirty days.

(I should mention that, in our humble opinion, the impacts on our wonderful neighborhood are a lot less with our three guest rooms and the off-street parking that we are providing -- in sharp contrast to the existing 'grandfathered' uses the neighborhood currently suffers from. One example of this is the impacts from the two 'apartments' that Ms. Jordan rents out from her property and her own cars, all of which it appears are parked on the street. Ron has recent photos showing that seven cars tied to the Jordan property use up much of the on-street parking near her property. We never complained, nor did our other neighbors, about such impacts. Instead, all of us, until now, enjoyed civility and tolerance. Oh well, such is life.)

6. *All guestrooms shall be located within the principal structure.* All guest rooms are located within the principal structure. We can only hope to approach, but never obtain, a 100 % occupancy of our rooms. In contrast, Jordan's two apartments detract from a single-family residential look, plus she rents both units full-time, and the parking impacts are thus nearly full time as well. We fully understand that her two extra residential units were 'grandfathered' from the 1980's, but the impacts remain the same, grandfathered or not.

We are trying very hard not to be strident, but we must note that Jordan's lawyer, Ms. Behrmann, seems not to feel such constraints. Their 'clarion call', as it were, is essentially that our three rooms will destroy the neighborhood, while ignoring the reality that for over 35 years now, Jordan's own rental business seems—if you listen to Ms. Behrmann—to be the perfect use in this historic district of single family homes. For us, such tactics are the height of hypocrisy. We understand from many other neighbors in our area that they are put off by such stridency as well, and who can blame them if they do not speak up before you?

We certainly hope that you Commissioners will see through the stridency, and look to the rules and the law, and deny the appeal.

7. *Other than registered guests, no meals shall be served to the general public unless expressly approved. No cooking facilities shall be allowed in the guest rooms.* There will be no cooking facilities in the guest rooms, nor will there be any meals served to anyone other than our guests. We have no intentions of asking for such approvals, and we have not. We will know if anyone ever tries to bring in a hot plate or such, because we will be in the rooms every single day.

8. *All bed and breakfast establishments must comply with Mesa County Health Department Regulations.* This too is easily complied with because Mesa County Health Department has no concerns about small B & B's such as ours: The letter proving that our B & B is exempt is in the City's file. Lest any rational person have concerns, it is, after all our home. As another of the appellants knows full well from having been in our home many times when she was still friendly, I keep a tidy and clean home. That will not change because I won't allow it.

9. *All bed and breakfast establishments shall comply with fire code and building code requirements.* Again, our compliance is readily apparent from your files, as Scott is well knows. *Written approval by the governing fire district and building department is required prior to approval by the City.* Mesa County's Chief Building Official, Bob Lee, has checked window sizes in all bedrooms and the other exits in our home. His approving letter is also in the City's files.

The Reality of it All. The real issue here has nothing to do with the City's requirements, in our opinion. We believe that the real issue is that Behrmann's clients do not, or will not, 'see' that the essence of Grand Junction's historic district is the 'look' from the street: residential (mostly) which our home certainly is and will remain. Other than our (may I call it quaint?) sign, no one driving or walking by will see any difference at all to our home. Our home does, and will continue to, qualify for historic designation within the 7th Street historic district.

Multiple other homes, on the other hand, have been subjected to appearance changes over the decades, but the Behrmann clients seem to ignore that reality.

I only make this point because in the district, there are extra housing units in several other homes, and they have been used as such for decades. We also have to note the day care facility, clearly a commercial use. The point is that the day care, and our B & B, is just not a problem because it is the look of the neighborhood that is so special, not the reality of the other housing units, just as it apparently was in 1984. The neighborhood was perfectly alright with those 'extra' uses until now. Since 1984 at least, the neighborhood hasn't seen the effects of the horrible scenarios that Behrmann fantasizes about, as a result of renting those extra units in the district. Our B & B won't change that, no matter what Ms. Behrmann says.

If our critics would only stop to think about our guests, we think the controversy would completely go away: Our guests will pay a lot more per day than long-term renters will ever pay. Our guests, necessarily, will be travelers to Grand Junction, spending tourist dollars. We think it incredible to assume, as Behrmann would have the Planning Commissioners believe, that such persons won't have MORE income and MORE resources than many of the current renters. She suggests in her writings, and has said explicitly to several others, that 'our' tourists will be criminals and bums. Such suggestions are nothing more than pure scare tactics. We say, "Shame on her."

You will no doubt hear from Behrmann or her clients that Scott is horribly wrong and the permit is illegal. But consider the two sources: On the one hand, Behrmann offers no facts, just argument and fantastic scenarios. On the other hand, the City Attorney, John Shaver, who has worked for the City himself since 1990, with Scott's and the help of others, has searched exhaustively for the evidence that the elusive 1984 plan was ever put into place. We understand that one can make lots of assumptions about such things, but we hope you also understand that making such assumptions is dangerous business when one is searching for the truth. Ms. Behrmann argues that because there is no evidence that a plan wasn't adopted, it must have been adopted! We say, malarkey and the City staff agree with our logic.

As a result, Mr. Shaver and Scott had and has no choice: Given that there is no evidence that some 1984 plan was adopted, the law and the City's time-honored logic demands that our permit be evaluated on the law that actually was adopted: In the absence of a plan, the law that actually exists is what is applied, that is, the rules of the 'default' zone, namely the rules of the R-8 zone. Specifically, according to our highly respected and very careful City Attorney there is no '1984 Plan,' nor was there ever, although clearly one was discussed back then. Mr. Shaver has explained these facts and this legal reality to these very neighbors many times, and to Ms. Behrmann herself, but it seems that it matters not.

In effect, Ms. Behrmann would have you believe that because there is no evidence to prove that the plan was not adopted, that proves that it was. She argues that "the City" has enforced the plan ever since, but the facts really are, when one looks, that before now, no one ever checked to see if the Plan had been adopted! Now that it is clear that there never was such a plan, we must all adjust accordingly, and enforce the R-8 rules.

The R-8 zoning rules clearly allow our permit. To reject our permit, one has to follow Behrmann's 'rabbit hole' theory: History is not what the records show it is. Rather, history is what she and her clients want it to be. I believe they call that revising history.

What is worse, in our opinion, is that Behrmann, for her clients, attacks Scott Peterson's measurements of the parking! Shame on her. We all know that Scott Peterson has been very thorough, and he has visited our property on two separate occasions to physically

Scott Peterson
September 18, 2009
Page 5 of 5

verify the dimensions. Unlike others who are involved in this process, Scott is the consummate professional without an ax to grind..

Behrmann also has argued that Scott is allowing and we are violating some fencing rule. Did she not read our approved fence permit? You can bet that Scott did, before he issued it to us. Yet, Sharon Snyder, another one of the few vocal opposition, complained of a supposed fence violation on 6/24/09, declaring we had no permit and that our set backs were in question. Our perfectly proper fence permit is attached. As noted, Scott Peterson personally inspected the fence: It fully complies.

We do admit that Ms. Behrmann is right about one thing: These few neighbors (they may be vocal but they certainly do NOT reflect the true feelings of a majority of our neighbors) don't like our B & B. But, to repeat, she is absolutely wrong with her implications that City staff does not know what they are doing, and that Scott would issue our permit without making us comply with all of the rules. Shame on her for using such tactics.

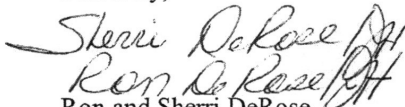
Behrmann's only hope is to confuse you somehow regarding the illusive 1984 Plan that doesn't exist. She hopes to convince someone that because she and her clients want to have a public hearing on our B & B to which they are not entitled, they should get it anyway. Because that is not the law, and because our B & B will be a benefit to the neighborhood, and because it is our right to do so, we ask that you quickly rule that they are not entitled to delay us any longer.

Summary: We have readily met every requirement set out by the Grand Junction Zoning Code. We have the right to enjoy the permit issued by Senior Planner Scott Peterson who is, as you well know, a thoughtful, careful and highly competent City planner. Scott has done his job.

We hope you do your job: Deny this appeal.

We have rights as well. Please reject this appeal.

Sincerely,


Ron and Sherri DeRose

C: John Shaver

Enclosures



Fence Permit

PERMIT # 15228

FEE \$10.00

Community Development Department
250 North 5th Street
Grand Junction, CO 81501
Phone: (970) 244-1430 FAX (970) 236-4031

Property Address: 604 N 7th Street
 Property Tax No: 2945-141-26-008
 Subdivision: Lot & Block City of G.J.
 Property Owner: Ronald DeRose
 Owner's Telephone: 243-3931
 Owner's Address: 604 N 7th Street
 Contractor's Name: _____
 Contractor's Telephone: _____
 Contractor's Address: _____
 Fence Material & Height: Steel Posts & Cedar pickets 6'

Plot plan must show property lines and property dimensions, all easements, all rights-of-way, all structures, all setbacks from property lines, and fence height(s). NOTE: Property line is likely one foot or more behind the sidewalk.

THIS SECTION TO BE COMPLETED BY COMMUNITY DEVELOPMENT DEPARTMENT STAFF	
ZONE <u>RD</u>	SETBACKS: Front _____ from property line (PL) or
SPECIAL CONDITIONS <u>5' corner 45°</u>	_____ from center of ROW, whichever is greater.
<u>6 lb. wrought iron</u> <u>(see plan)</u>	Side _____ from PL Rear _____ from PL

Fences exceeding six feet in height require a separate permit from the City/County Building Department. A fence constructed on a corner lot that extends past the rear of the house along the side yard or abuts an alley requires approval from the City Engineer (Section 4.1.J of the Grand Junction Zoning and Development Code).

The owner/applicant must correctly identify all property lines, easements, and rights-of-way and ensure the fence is located within the property's boundaries. Covenants, conditions, restrictions, easements and/or rights-of-way may restrict or prohibit the placement of fence(s). The owner/applicant is responsible for compliance with covenants, conditions, and restrictions which may apply. Fences built in easements may be subject to removal at the property owner's sole and absolute expense. Any modification of design and/or material as approved in this fence permit must be approved, in writing, by the Community Development Department Director.

I hereby acknowledge that I have read this application and the information and plot plan are correct; I agree to comply with any and all codes, ordinances, laws, regulations, or restrictions which apply. I understand that failure to comply shall result in legal action, which may include but not necessarily be limited to removal of the fence(s) at the owner's cost.

Applicant's Signature [Signature] Date _____
 Community Development's Approval [Signature] Date 5/9/09
 City Engineer's Approval (if required) _____ Date _____

VALID FOR SIX MONTHS FROM DATE OF ISSUANCE (Section 2.2.E.1.d Grand Junction Zoning & Development Code)

(White: Community Development)

(Yellow: Applicant)

(Pink: Code Enforcement)

SEVENTH STREET PLANNED
DEVELOPMENT DISTRICT
PR 8

Location: Both sides of Seventh Street (north-south alleys on each side) from Grand Avenue to Hill Avenue.

Land Use Characteristics

The area is predominately single family residential in character and appearance although several structures have been converted to multi-family dwellings. There are two churches and a daycare/preschool complex mixed in with the residential uses. The daycare/preschool complex is operated out of converted residential structures and its appearance does not detract from the residential character of the area. More specifically, the land uses are:

Single family units - 22
Multi-family units - 23
Daycare/preschool - 1 (4 structures)
Churches - 2
Boarding/rooming house - 1

Actual gross density as of August 15, 1984 is 12.26 acres at 45 total dwelling units, or 3.67 units/acre.

Applicable Policies

This area is addressed by two separate adopted policies. The Seventh Street Corridor policies (Section 3-19-7 of the Zoning and Development Code) supports maintaining the existing uses in the area. The Seventh Street Historical Corridor policy (Section 3-19-1H of the Zoning and Development Code) recommends preservation and restoration of existing structures, new construction to be consistent with the historic character of the area, and uses north of Grand Avenue to remain residential.

Intent of the Seventh Street PR 8

The intent of forming this Planned Residential district is to preserve the historical character of the Seventh Street Corridor, preserve property values for the residents and property owners, and reduce impacts on existing uses which may be caused by the future conversion of single family structures to other uses.

The Planned Residential zone is the best vehicle for accomplishing this intent since requests to change uses will be reviewed and processed through the Planning Commission and City Council. Approvals to change a use can and should be conditioned upon maintaining the appearance and character of the structure(s), providing proper parking, access, and traffic circulation, and careful consideration of the use itself should be given to avoid undue impacts on surrounding properties.

This district is not intended to categorically prevent any future use changes but to ensure that if they occur, they are done properly. It should be noted that since the zone is Planned Residential, changes of use that would be primarily business would not be allowed without a zone change to Planned Business. This would not, however, prevent a home occupation type of business where the primary use remains residential.

Criteria and Process

Upon approval of this Planned Residential zone, the existing uses and structures would become allowed uses under the plan for this district (see attached maps). In accordance with the Planned Development Regulation (Chapter 7 of the Zoning and Development Code), changes of use would be required in order to submit an amended plan for review and consideration by the Planning Commission and City Council. Minor changes would be processed through the Planning Department. These changes are more specifically delineated as follows:

Major changes requiring full processing:

- Any change of use such as the addition of dwelling units to an existing structure, or the conversion of any structure to any use allowed by the RSF or RMF zones in the Zone/Use Matrix. In considering any change of use, the provisions and criteria of the Planned Development Regulation shall apply.
- Any demolition or removal of any principal structure.

Minor changes (processed under Section 7-5-6 of the Planned Development Regulation):

- The addition or removal of any accessory structure.
- Additions or major alterations to principal structures where there is no change of use.

- Home occupations that qualify under Section 5-1-9 of the Zoning and Development Code.
- The addition or alteration of any major site features such as parking areas, accesses and screening or buffer areas.

In accordance with the minor change provisions, if the Planning Department determines that a change may have a significant impact on adjoining properties or the area in general, one or all of the following may apply:

- 1) Notice given to adjacent property owners.
- 2) Informal review and comment by the Planning Commission.
- 3) Full hearing as required by a major change.

In considering both major or minor changes, it is the intent of the Planning Department to be as flexible as possible in accommodating the needs of the property owners while still meeting the previously stated intents of this district. Public and private cooperation can result in a stable and viable Seventh Street Corridor which will be an asset to the City at large as well as the property owners in the Corridor.



PUBLIC WORKS & PLANNING

**CITY OF GRAND JUNCTION
MINOR SITE PLAN REVIEW**

FOR)
Ron and Sherri DeRose)
604 N. 7th Street)
Grand Junction, CO 81501)

**ADMINISTRATIVE DECISION
APPROVING**

File# MSP-2009-129

An application has been submitted by Ron and Sherri DeRose requesting a Minor Site Plan Review for the establishment of a maximum three (3) bedroom Bed & Breakfast to be located at 604 N. 7th Street in the City of Grand Junction, Colorado. The property is zoned PD, (Planned Development) Zoning District. The application has been considered administratively by the City of Grand Junction Public Works and Planning Department pursuant to Section 2.2 of the Grand Junction Zoning and Development Code. The Minor Site Plan Review was completed on August 25, 2009. After considering the application submitted and all pertinent data, the Director **APPROVES** the Minor Site Plan upon finding that it complies with all applicable sections of the Grand Junction Zoning and Development Code, including the applicable performance standards for a Bed and Breakfast set forth in Section 4.3 H. This approval is subject to the following conditions:

1. Applicant is responsible for contacting the City of Grand Junction and requesting a final inspection of all on - site improvements upon completion as identified on the approved Site Plan, prior to occupancy of the Bed & Breakfast. Occupancy shall not be allowed until all required improvements have been installed or guaranteed with a Development Improvements Agreement (DIA).
2. All applicable Building Permits are required to be obtained through the Mesa County Building Dept.

In accordance with Section 2.2 B. 6. of the Zoning and Development Code, the Planning Director's decision is final unless the Director receives written appeal within ten (10) days of the date of this approval. The appeal shall be acted upon by the Planning Commission in accordance with Table 2.1 of the Zoning and Development Code. Any further appeals from any aggrieved party shall be to the District Court pursuant to Rule 106, C.R.C.P.

All uses which are subject to a Minor Site Plan Review must commence construction within one (1) year of the date of approval. If a building permit is obtained within one (1) year, the approval shall be valid for as long as the building permit remains valid. Failure to develop or establish such use accordingly shall constitute sufficient basis to revoke this approval. Appeals by any aggrieved party will stay the validity of this approval until one (1) year following final decision on all appeals.

Page 2/DeRose Approval Letter



Date: August 25, 2009

Scott D. Peterson
Senior Planner

Attachment: Approved Site Plan
cc w/att: Eric Hahn, City Development Engineer
Jodie Behrmann, Attorney at Law
Dan Wilson, Attorney at Law