

GRAND JUNCTION PLANNING COMMISSION
June 27, 2017 MINUTES
6:00 p.m. to 7:09 p.m.

The meeting of the Planning Commission was called to order at 6:00 p.m. by Chairman Christian Reece. The hearing was held in the City Hall Auditorium located at 250 N. 5th Street, Grand Junction, Colorado.

Also in attendance representing the City Planning Commission were Jon Buschhorn, Kathy Deppe, Keith Ehlers, Ebe Eslami, George Gatseos, Steve Tolle and Bill Wade.

In attendance, representing the Community Development Department – Tamra Allen, (Community Development Director), Kathy Portner, (Community Services Manager), and Dave Thornton (Principal Planner).

Also present was Jamie Beard (Assistant City Attorney).

Lydia Reynolds was present to record the minutes.

There were 61 citizens in attendance during the hearing.

*****CONSENT CALENDAR*****

1. Minutes of Previous Meetings

Action: Approve the minutes from the May 23, 2017 meetings.

2. Hill Zone of Annexation

[File #ANX-2017-189]

Request to zone 1.09 acres from a County C-2 (General Commercial District) to a City C-2 (General Commercial) zone district.

Action: Recommendation to City Council

Applicant: Hill Business Complex LLC c/o Sean Brumelle
Location: 2905 Hill Avenue
Staff Presentation: Lori Bowers, Sr. Planner

Chairman Reece briefly explained the Consent Agenda and invited the public, Planning Commissioners and staff to speak if they wanted the item pulled for a full hearing.

With no amendments to the Consent Agenda, Chairman Christian Reece called for a motion to approve the Consent Agenda.

MOTION: (Commissioner Wade) “Madam Chair, I move we accept the consent agenda as proposed.”

Commissioner Deppe seconded the motion. A vote was called and the motion passed unanimously by a vote of 7-0.

*****APPEAL*** (Continued)**

3. The Lofts Appeal of the Administrative Decision

[File# APL-2017-176]

Appeal of Final Action on Administrative Development Permit regarding approval of an Administrative Permit for 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces in an R-O (Residential -Office) zone district.

This is a discussion among the Planning Commission, no additional public testimony will be accepted.

Action: Approval or Denial of the Appeal

Appellant: Lee Joramo/Joe Carter
Location: 1020 Grand Ave
Staff Presentation: Kathy Portner, Community Services Manager

Chairman Reece briefly explained the appeal and noted that this meeting was a discussion among the Planning Commission and the Commission will not be taking any additional testimony.

Chairman Reece noted that a letter was received from Frederica Howie who has concerns about some perceived ex parte communication between Commissioner Wade and the Lofts’ developers. Chairman Reece stated that the Planning Commissioners will have some discussion regarding the content of the discussion between Commissioner Wade and the developer and then make a decision on whether the content should require that Commissioner Wade recuse himself from further discussion and making a decision on the item. Chairman Reece then asked Commissioner Wade to describe the conversation.

Commissioner Wade stated that after a continuance for the appeal was made at the last Planning Commission meeting, a short break was taken before the next item. At that time, Commissioner Wade stepped down from the dais and introduced himself to the applicant/developers and thanked them for coming and understanding the process that they needed to go through. Commissioner Wade stated the conversation lasted about a minute and a half. Commissioner Wade stated that Ms. Howe then came down the aisle and stopped next to them. Commissioner Wade explained that he thought Ms. Howe wanted to speak with the developer and since he was finished thanking the applicant/developer, he turned around and walked back to his chair.

Chairman Reece asked Commissioner Wade if he discussed any of the content of the appeal. Commissioner Wade replied “absolutely not”.

Commissioner Ehlers asked legal staff if, based on what she has heard, is there any legal necessity for Commissioner Wade to recuse himself from the appeal discussion.

Jamie Beard, Assistant City Attorney, stated that the letter that was received indicated an appearance of impropriety. Based on Commissioner Wade’s remarks, Ms. Beard stated that there does not appear to be a conflict of interest that would rise to the level that would indicate that he must be removed from the panel.

Ms. Beard noted that there is a resolution that City Council has approved as far as what the policy is for the City, particularly when you are an authoritative board rather than an advisory board. If the Commissioners feel that those actions rose to the level of an appearance of impropriety, such that they don’t think it is appropriate that he make a decision in regards to this matter, then that would be up to the Commissioners. Ms. Beard added if someone wanted to make a motion to that effect, then that would be up to the Commission as the decision maker to vote on the matter.

Commissioner Ehlers asked Commissioner Wade if he feels any part of that conversation would bias him one way or the other or impact his decision. Commissioner Wade stated that he feels it would not bias him but given there is a full Commission and an Alternate present, he felt it would be better for appearances that he recuses himself even though he feels it is an unfair situation. Commissioner Wade then left the room and Commissioner Gatseos took his seat at the dais.

Staff Presentation

Kathy Portner, Community Services Manager, stated that this item is an appeal of an Administrative decision on a site plan review approval issued for the Lofts development that was continued from the May 23rd meeting.

Since the continuance a letter was submitted by the appellants dated June 7, 2017 as an addition to their appeal, and a response was submitted by the applicant dated June 8th, both of which are part of the record and part of the Commissioners packet.

As outlined in the memo from staff, dated June 14th (also in the packet) nothing in the appellant’s addition to the appeal changes staff’s original assertion that the proposal clearly falls within the definition of multi-family.

Ms. Portner displayed a slide with the site plan of the project and explained the property located at the NE corner of 10th Street and Grand Avenue is zoned RO (Residential Office) and is within the Transitional District of the Greater Downtown Overlay.

The Lofts development was originally proposed as a 32 unit, three and four-bedroom multifamily development. Ms. Portner stated that through the review process, the

applicant reduced the number of units to 27, with a total of 102 bedrooms and 61 parking spaces.

Ms. Portner stated that the Director issued a conditional letter of approval on April 3, 2017, finding that the application was in compliance with the Comprehensive Plan and the pertinent sections of the Zoning and Development Code.

An appeal of the administrative approval was filed on April 13, 2017, with an addition to the appeal filed on June 7th.

Ms. Portner explained that the Appellants basis of their appeal is that Staff inaccurately categorized the proposed use as multifamily resulting in the assignment of an inadequate parking requirement of 2 spaces per residential unit. As such, the Appellants argue that the Director made erroneous findings of fact and that the Director's decision was arbitrary and capricious.

Ms. Portner displayed a slide that illustrated the "Use" categories and explained that the appellants argue that the use as student housing is not multifamily, and better fits the definition of boarding house. Through the project review process, it was clarified that the applicant intended to lease each apartment as a whole, rather than individual leases for each room.

Ms. Portner explained that the Code defines multifamily as a building arranged, designed, and intended to be used for occupancy by three or more families living independently of each other and containing 3 or more dwelling units on the same or separate lots. Further, family is defined as any number of related persons living together within a single dwelling unit as a single housekeeping unit, but not more than four persons who are unrelated by blood, marriage, guardianship or adoption.

Ms. Portner clarified that boarding and rooming house is defined as a building containing a single dwelling unit and 3 or more rooms where lodging is provided, with or without meals, for compensation.

Based on all of the available use definitions in the code, Ms. Portner stated that the Director determined that the development best fits the multifamily residential category under the Code in existence at the time of both the application and approval.

The next slide Ms. Portner displayed contained related parking requirements in the code. In accordance with section 21.06.050(c) of the Code, Multifamily uses require 2 parking spaces per unit for units with 3 or more bedrooms.

Ms. Portner noted that for this project and because it was anticipated that unrelated persons may be attracted to the units given the multiple master suites and proximity to the University, hospital and downtown areas, which could have a higher parking demand, the Director required as a condition of approval the applicant increase the on-site parking from 2 spaces per unit to .6 spaces per bedroom.

Ms. Portner explained that the applicant agreed to the increased parking ratio and in order to meet the Director's condition eliminated one building, thereby reducing the total number of apartments from 32 to 27, for a total of 102 bedrooms. The parking standard as applied from the Code would require only 54 spaces but 61 parking spaces are proposed exceeding the parking required by the Code.

Ms. Portner summarized that pursuant to Section 21.02.210 of the Zoning and Development Code, the applicable legal standard for this appeal requires the Planning Commission to consider, based on evidence in the record, whether the Director's conditional approval of the Lofts project:

1. was inconsistent with the Zoning and Development Code of the City of Grand Junction or other applicable law, or
2. was based on erroneous findings of fact, or
3. failed to consider mitigating measures, or
4. acted arbitrarily, capriciously or abused her discretion.

The Appellants bear the burden to show that one of these four has occurred. All reasonable doubts as to the correctness of administrative rulings must be resolved in favor of the agency. In short, the Director's decision, including findings of fact and legal conclusions, must be affirmed if supported by a reasonable basis.

Ms. Portner explained that Section 21.02.210(c)(2) of the Zoning and Development Code states: "The appellate body shall affirm, reverse or remand the decision. In reversing or remanding a decision, the appellate body shall state the rationale for its decision. An affirmative vote of four members of the appellate body shall be required to reverse the Director's action."

Ms. Portner noted that should the Planning Commission vote to reverse or remand the Director's decision, please state the rationale and findings for making that decision.

Planning Commission Discussion

Regarding the review criteria, Commissioner Ehlers stated that he would like to go over the standard of review criteria. He added that the reason there is no public input is because they are not re-hearing what is being proposed, but considering the record.

Regarding the 4th item on the "Standard of Review" slide, Commissioner Ehlers stated that after reviewing information given, the staff reports, and final comments, he does not believe the Director acted arbitrarily, capriciously or abused her discretion.

Commissioner Ehlers pointed out that the 3rd item addresses failure to consider mitigating measures. Commissioner Ehlers stated that since the rooms were not being rented room by room, but rather as a complete unit, a determination was made that it fits a multifamily definition by code. Commissioner Ehlers pointed out that the applicant

agreed to provide more parking than required by code, therefore in his opinion, mitigating measures were considered and implemented.

The 2nd item addressed whether the Directors decision was “based on erroneous finding of fact”. Commissioner Ehlers stated that considering the evolution of the project, the final decision was not based on erroneous finding of fact.

The last review standard addressed whether the decision was “inconsistent with the Zoning and Development Code or other applicable laws”. Commissioner Ehlers stated that based on the evolution of the project and where it stood at the time of the decision making, this project does fit in with Zoning and Development Code and other applicable laws in being considered multi-family development.

Commissioner Ehlers referred to the desired density that the Comprehensive Plan calls for in this area and emphasized that the density in the downtown area is a way to prevent urban sprawl. Commissioner Ehlers noted that the Comprehensive Plan was a Community wide effort and fully vetted.

Commissioner Ehlers referenced the code definition of multifamily and stated that the parameters have been set by code, no more than 4 unrelated persons per unit. Addressing the neighbor’s concerns that the units will be leased by rooms and not units, Commissioner Ehlers stated that they cannot speculate that this, or any developer may not be telling the truth.

After several outbursts of protest by a few citizens, Chairman Reese reminded the audience that there is no public comment at this meeting and if it happened again, they would be asked to leave. One member of the audience continued to speak out and Chairman Reese asked him to leave. The gentleman said no. Chairman Reese restated that there is no opportunity for public comment at this meeting.

Commissioner Eslami stated that in his opinion, this project should have gone to public hearing from the beginning. Commissioner Eslami felt that this is a good project, but not at this location. He stated that he has visited the site several times and the 27 units is not his concern, but he has concerns regarding the use of the buildings.

Commissioner Eslami stated that he feels the floor plan is not for family living. Commissioner Eslami noted that he is a designer, developer, builder and engineer and in his opinion this is designed as a dormitory. Commissioner Eslami noted that there are 4 bedrooms and four bathrooms in each unit. He felt that a standard four-bedroom home would have 2 bathrooms and possibly a guest bathroom. Commissioner Eslami speculated that the additional bathrooms would add \$100,000 to \$150,000 to the project. He felt to recapture the cost, the rents would have to be about \$1,200 a month and a family would not pay that type of rent to live in a 1,200 square foot home with no garage.

Commissioner Eslami stated that he has spoken with many people including

subcontractors, contractors, realtors, plumbers, electricians and other people since this project came about. He has shown the plans to all of them and they all agree that this is a dormitory and not family living. Commissioner Eslami acknowledged that the code has been followed, however, there is an element of discretion that a project is not to "aggravate". Commissioner Eslami stated that this project aggravates the neighbors who enjoy a clean, manicured neighborhood. Commissioner Eslami speculated that the rooms will be rented to students (four per unit) and there will be noise, partying, parking problems etc. He did not feel the neighbors deserve that. Commissioner Eslami stated that he believes the floor plan should be changed to a three or four-bedroom home with two bathrooms which would be conducive to family living.

Commissioner Eslami noted that when the project was originally proposed, there were over 100 rooms for dormitory style living. When the parking became an issue, they changed the proposal to family living. Commissioner Eslami stated this project will not benefit the community and should be located around a more commercial area. Commissioner Eslami feels the Director made an error, however he was not certain which of the criteria it would fall under.

Commissioner Deppe stated that in looking at the floor design, it appears to lend itself to dormitory style living and parking will be an issue. Commissioner Deppe felt the staff had their hands tied because there is nowhere to fit this type of living in the code. It is not single family and it is not a rooming/boarding house. Commissioner Deppe added that she did not believe this was a proper location for the project.

Commissioner Gatseos stated that he has fully reviewed the record and he is in agreement with Commissioner Ehlers that regarding the review of the appeal, the criteria for the basis of the appeal have not been met. Commissioner Gatseos noted he feels the director was consistent with the zoning code, the decision was based on finding and fact that were not erroneous, the director did not act arbitrarily or capriciously or abused discretion. Regarding the mitigating measures, criteria, Commissioner Gatseos indicated he has concern about the dormitory style floor plan.

Chairman Reese reminded the Commissioners that there are three options available; 1) affirm the decision, 2) remand it back, or 3) deny.

Commissioner Gatseos added that the applicant has a right to develop according to code in the City and it is also important to consider their concerns. Commissioner Gatseos noted that the applicant has put a lot of time, effort and money into the project.

Commissioner Buschhorn reminded the audience that the Commissioners are volunteers who care about the community which is why they volunteered to be Commissioners. Commissioner Buschhorn stated that he agrees with all the Commissioners which puts him in a difficult position. Commissioner Buschhorn explained that they are bound by the code and there is no public comment at this appeal hearing.

In his review of the reports and considering the four criteria, Commissioner Buschhorn does not see a reason to affirm the appeal and overturn the Director's decision. Under the strict reading of the code, Commissioner Buschhorn finds this current development application as a legitimate, legal, allowable and an accepted use, although he has a problem with the parking situation. Commissioner Buschhorn speculated that 102 units may need a minimum of 20 more parking spaces than has been provided. Commissioner Buschhorn stated that he does not believe the Director considered additional mitigation for the parking issue for 102 units. Commissioner Buschhorn explained his position would be to remand, for further consideration, with potential mitigation issues...or look at it again. Where it goes from there, is determined by the Code, the Director, and the parties...it is not determined by the Commission, although it may come back to them.

Commissioner Tolle stated that there is no good position on this matter. Referring to the turnout in the audience, Commissioner Tolle commented that this type of act of participation by the citizens of this City, is to be advertised, supported, and listened to. Commissioner Tolle explained that there is not a lot of latitude when they are restricted by the Code. Commissioner Tolle questioned the car/ratio calculation for parking. Commissioner Tolle felt that a better job can be done, and stated he would like the item to be remanded back to the staff.

Commissioner Ehlers expressed a concern that the comments being made by the Commissioners is in response to a review of the site plan and not to the review criteria for the basis of appeal. The process and the code has been adopted over years of consideration. Commissioner Ehlers cautioned that the code was not intended to address a site by site "not in my backyard" scenario but consider a bigger scale...a Community-wide scale which is why it is so important to stick to the Code and these criteria. Commissioner Ehlers acknowledged that these neighbors are impacted by this particular project, however, by reviewing it otherwise, the community is also impacted. Commissioner Ehlers added that as an authoritative body he assumes there is a legal requirement not to deviate from the criteria in the Code.

Commissioner Eslami stated that he is not looking at this as a site plan, but rather what is the intent of the project. Commissioner Eslami indicated that the site plan is a tool to help understand what the right decision would be. Commissioner Eslami stated the he feels the Director has followed the criteria but not enough, considering there are issues related to parking, noise etc.

Commissioner Ehlers indicated that it appears there are Commissioners that are defining "family", and in turn "multi-family", in a manner that is inconsistent with how the code specifically defines "family". Commissioner Ehlers stated that the "family" part of "a multi-family dwelling" is not defined as a Mom, Dad, kids etc. It is defined as "*any number of related persons living together within a single dwelling unit as a single housekeeping unit, but not more than four persons who are unrelated by blood, marriage, guardianship or adoption*". Those are considerations in the master planning of the Community fabric that allow for anything ranging from nurses, foster parents and

those who can cohabitate but are unrelated. Commissioner Ehlers expressed concern that some of the other Commissioners are going by their personal definition of family and not by the code's definition.

After several outbursts from the audience regarding a lack of public comment, Commissioner Deppe asked Ms. Portner to explain why there is no public comment at this hearing. Ms. Portner explained that this is a "use by right" under the code. In this case the property is zoned Residential Office (R-O) where all types of household living are an allowed use. Within the code, the only public notice required for anything that is an allowed use is a sign on the property and a mailed notice of the application.

(Original) MOTION: (Commissioner Buschhorn) "Madam Chair, I move to remand the conditional approval of the Lofts, located 1020 Grand Ave. for the reasons of considering additional mitigating measures".

Commissioner Deppe seconded the motion.

Ms. Beard asked the Commissioners to please keep in mind when they are remanding the item back to staff, they will need to give them direction as to what it is they are expecting staff to look at. Ms. Beard indicated that "mitigating measures" may be too broad and may not specify what is they are supposed to be reviewing. Ms. Beard added that it should be clear if the Commissioners feel that what staff did is an erroneous finding of fact, or what those matters were that were not considered for mitigating measures.

Commissioner Eslami commented that the most important thing for them to be looking at is the parking issues and the site plan.

Commissioner Ehlers questioned that premise because if the determination has been made that this is multifamily then the parking exceeds that of which is required by code. Commissioner Eslami stated that although the parking may satisfy the code, it is not the right decision based on the project. Commissioner Ehlers asked for clarification that the recommendation is sending the item back on appellant based on an opinion held by at least one Commissioner, not based on code. Chairman Reece affirmed that is the motion on the table.

Commissioner Buschhorn requested, since he made the motion, to clarify what he thinks mitigating measures are. Commissioner Buschhorn stated that looking at the impact of the parking on the surrounding Community. Commissioner Buschhorn felt the project is unduly impacting the neighborhood based on the amount of parking they have for the amount of housing they propose to provide. Commissioner Buschhorn would like to know how many parking spots there actually are in the area verses how many would be needed for 102 bedrooms and would like to see where the overflow is proposed to go.

Commissioner Gatseos emphasized that an appeal is a legal determination and he

must look at the facts and held to the code, however he sympathizes with the neighborhood.

Referring to the multifamily aspect and floor plan of the project, Commissioner Buschhorn asked if the site plan can be considered when discussing erroneous findings of fact. He suggested that calling this multifamily housing may be an erroneous determination by the Director.

Commissioner Ehlers asked Ms. Beard how the law defines “erroneous”. Ms. Beard replied that it is defined as an error in the findings of the facts. Ms. Beard asked that they be specific as to what that error is.

Commissioner Ehlers expressed concern that if the Commission, as an authoritative legally binding entity, finds that there is an error in the findings of facts because there is a bathroom in each bedroom it would feel like it was based on opinion. Commissioner Eslami noted that they are obligated to the public not just the City. Commissioner Ehlers added that the public includes people beyond those who are present, as well as the applicant/developers.

Commissioner Gatseos stated that when he referred to remanding the matter back, he could only do that with mitigating measures to be considered. Commissioner Gatseos disagreed that there may be erroneous findings of facts which were based on the code.

Commissioner Ehlers emphasized that the Commission’s obligation is to the Community as a whole and there are Community wide implications for the decisions. Commissioner Ehlers restated that additional parking was added above and beyond the requirements of the code.

Ms. Beard asked for clarification of the motion before it goes to vote. Chairman Reece asked Commissioner Buschhorn to restate the motion.

(Revised) MOTION: (Commissioner Buschhorn) “Madam Chair, I move to remand the conditional approval of the Lofts, located 1020 Grand Ave. with direction to the Director to reconsider mitigating measures on the parking impact in the neighboring Community”.

Commissioner Deppe seconded the motion. A roll call vote was taken by Chairman Reece.

Commissioners Buschhorn, Deppe and Eslami voted YES, and
Chairman Reece, Commissioner Ehlers, Gatseos, and Tolle voted NO.

The motion failed 4-3.

MOTION: (Commissioner Ehlers) “Madam Chair, I move we affirm the conditional approval of the Lofts, located 1020 Grand Ave.”

Chairman Reece seconded the motion. A roll call vote was taken by Chairman Reece.

Commissioners Buschhorn, Deppe and Eslami voted NO, and
Chairman Reece, Commissioner Ehlers, Gatseos, and Tolle voted YES.
The motion passed 4-3.

Chairman Reece called for a five-minute break.

4. Other Business

Election of Officers

Commissioner Wade rejoined the Commissioners and Commissioner Gatseos stepped down from the dais.

Chairman Reece asked for a nomination for the office of Vice-Chair. Commissioner Tolle nominated Commissioner Wade. Commissioner Deppe seconded the nomination. With no other nominations requested, Chairman Reece called for a vote and the motion passed unanimously by a vote of 7-0.

Chairman Reece asked for a nomination for the office of Chairman. Commissioner Wade nominated Chairman Reece. Commissioner Ehlers seconded the nomination. With no other nominations requested, Chairman Reece called for a vote and the motion passed unanimously by a vote of 7-0.

5. Adjournment

The meeting was adjourned at 7:09 pm.