



**STEAMBOAT SPRINGS PLANNING COMMISSION
MEETING AGENDA
CITIZENS' MEETING ROOM, CENTENNIAL HALL, 124 10TH STREET
THURSDAY, JANUARY 11, 2018 at 5:00PM**

Public Hearings:

AGENDA ITEM #1

Project: DP-17-09, Torian Plum Condos. Unit C-A Development Plan
Location: 1875 Ski Time Square Drive, Unit C-A
Applicant: Old House Lane Corporation, Eric McClelland
Type of Application: Development Plan
General Description: A Development Plan for a conditional use for ground-floor office use in the G-2 district.
Project Planner: Toby Stauffer AICP, Senior Planner, 970-871-8280
Email: tstauffer@steamboatsprings.net
CC Date: January 23, 2018

AGENDA ITEM #2

Project: TXT-17-04, Public Notice and Corrections Amendment
Applicant: City of Steamboat Springs
Type of Application: Text Amendment
General Description: Ordinance to Amend Public Notice Requirements for broad rezonings and to correct minor errors in the CDC.
Project Planner: Rebbeca D. Bessey, AICP, Principal Planner, 970-871-8202
Email: rbessey@steamboatsprings.net
CC Date: January 23, 2018, February 6, 2018

AGENDA ITEM #3

Approval of Minutes: Minutes from the Planning Commission PC Public Hearing on November 9th and November 16, 2017 will be reviewed for approval.

This application is available for review during regular business hours at the Department of Planning & Community Development. (124 10th Street, Centennial Hall, Steamboat Springs, CO)
Or online at: www.steamboatsprings.net/currentprojects.

Three or more City Council members may attend this event and may discuss public business, to include information of public policy. For more information please contact Julie Franklin, City Clerk 970-879-2060

AGENDA ITEM #1



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

PLANNING COMMISSION AGENDA ITEM # 1	
Project Name:	Torian Plum Condos, Unit C-A; #DP-17-09, 1875 Ski Time Square Dr.
Prepared By:	Toby Stauffer, AICP, Senior Planner
Through:	Tyler Gibbs, AIA, Planning & Community Development Director
Date:	January 3, 2018
Planning Commission (PC):	January 11, 2018
City Council (CC):	January 23, 2018
Zoning:	Gondola - Two (G-2)
Applicant:	Old House Lane Corporation Eric McClelland
Request:	A request for a Conditional Use approval through a Development Plan to allow an office use to be located at the pedestrian level in the Gondola Two (G-2) zone district.

1875 Ski Time Square Dr.

Public Notice Requirements	
Notice Type	Date Accomplished
Newspaper	12/24/2017
Mailing	12/21/2017
Posting	12/21/2017
Website	12/22/2017
Mineral	12/26/2017

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I. COMMUNITY DEVELOPMENT CODE (CDC) – STAFF ANALYSIS SUMMARY

CDC - SECTION 26-65 (D): NO DEVELOPMENT PLAN SHALL BE APPROVED UNLESS THE PLANNING COMMISSION AND CITY COUNCIL FIND THAT THE PLAN MEETS ALL OF THE FOLLOWING CRITERIA:

Subsection	Consistent			Notes
	Yes	No	NA	
1) Conformity with Community Plan	<input checked="" type="checkbox"/>			
2) Consistency with Surrounding Uses	<input checked="" type="checkbox"/>			
3) Minimize Adverse Impacts	<input checked="" type="checkbox"/>			
4) Access	<input checked="" type="checkbox"/>			
5) Minimize Environmental Impacts	<input checked="" type="checkbox"/>			
6) Phasing			<input checked="" type="checkbox"/>	No phasing proposed
7) Compliance With Other Standards			<input checked="" type="checkbox"/>	No development proposed conditional use only.
8) Variance Criteria			<input checked="" type="checkbox"/>	No Variance requested

Staff Finding: Staff finds that DP-17-09, a Development Plan for Office as a Conditional Use at 1875 Ski Time Sq., Torian Plum Condos, Unit C-A, in the G-2 zone district, is CONSISTENT with the Criteria for Approval for a Development Plan.



II. BACKGROUND

The property is zoned Gondola Two (G-2). The intent of G-2 is to provide areas for resort-oriented, high-intensity commercial uses and high-density residential and lodging uses that are complementary to and supportive of the Base Area. This zone district allows for design flexibility and creativity and emphasizes pedestrian-oriented, interconnected development that creates active public spaces with density and intensity increasing closer to the Base Area.

An office use in the G-2 zone district is a Use with Criteria in the CDC. “Office” is defined as: “A building or part of a building, designed, intended or used for the practice of a profession, a business, or the conduct of public administration, or the administration of an industry that is conducted on another site including the rental, lease or sale of real estate.

(1) Use criteria.

a. Review shall be prior to development or building permit, as applicable.

b. Offices shall not be located along a pedestrian level street or other public access frontage in the CO or G-2 zoning districts.”

Uses that don’t meet the criteria are reviewed as a Conditional Use. Conditional uses can be consistent with the purpose and intent of a zone district, yet they may have more impacts to surrounding properties and the community than uses by right or uses with criteria. Conditions may be placed upon these uses in order to avoid or mitigate potential impacts.

In 2013, the applicant requested approval for an office use at this property. At that time, the Director made an interpretation that this unit is on a pedestrian level and a conditional use request is required to have an office use in the unit, see Attachment 3.

For the previous project, DP-13-01 a Conditional Use request approved in 2013, Staff recommended denial and Planning Commission discussed an approval with a 5-year term and approval with a 3-year term but eventually decided on a denial with a vote of 4-3 (see previous staff report and minutes in Attachment 4). City Council had a similar discussion but eventually approved the conditional use with a 5-year term; see meeting minutes and approval letter in Attachment 5. The property is currently vacant, though it was used for an office after the approval; the term of the conditional use expires May 2018.

There are approximately 29 commercial units along the pedestrian level at the Torian Plum. It appears that there are four vacancies among those units, including Unit C-A. Existing uses include four retail shops, eight offices, and seven restaurants, some uses occupy more than one space. Some of the office uses in the Torian Plum have been determined to be legal nonconforming uses, others have been approved through the conditional use process. In the base area, there are other conditional uses operating and most have been evaluated through the conditional use process.

III. PROJECT DESCRIPTION

The applicant is requesting Conditional Use approval to allow an office use in Unit C-A, 1875 Ski Time Sq. Dr. in the G-2 zone district. The applicant’s narrative does not indicate a specific tenant, but anticipates “purchase and occupation by a client driven office tenant who is active year round.” The applicant also requests an “extension” of the approval, which indicates an interest in a limited term conditional use, similar to the previous approval.

Please see Attachment 1, the applicant’s narrative, for additional information about the request.

IV. PROJECT ANALYSIS

The following section provides staff analysis of the application as it relates to sections of the CDC. It is intended to highlight those areas that may be of interest or concern to planning commission, city council, or members of the public. For a list of standards and requirements applicable to this proposal please refer to the CDC or contact the staff planner.

CRITERIA FOR APPROVAL

CDC - Section 26-65 (d): No development plan shall be approved unless the planning commission and city council find that the plan meets all of the following criteria:

1. Compatible with Community Plan.

The development plan is compatible with the preferred direction and policies outlined in the community plan or approved master plans. This criterion shall only be applicable to proposed conditional uses and/or variances within a development plan.

Staff Analysis: **Consistent.** The future land use for the area is Resort Commercial which includes ground level commercial uses and a variety of uses, including office, above the first floor. While the proposed conditional office use is on the first floor and adjacent to a pedestrian level, the area could be improved with an active space rather than a vacant one, and a variety of uses are anticipated in the district.

Staff can support the conditional use for the following reasons: The area has suffered from an extended lack of redevelopment; there are no plans to develop in that area and there are no plans to amend our direction for the area. Over the last 5 years City Council and community direction has shifted, allowing offices at the pedestrian level in the base area and in downtown, finding that they can be beneficial uses, compatible with future plans and other existing or potential uses. Conditional use approvals with a distinct time frame can support an area by providing an active space while the area is redeveloping. A time restriction can allow flexibility for the use to be replaced or be reevaluated after the term is up to see if conditions have changed.

Office uses are supported by direction and policies of Steamboat Springs Area Community Plan and the Mountain Town Sub-Area Plan including:

- Goal LU-1: Our community will promote a functional, compact, and mixed-use pattern that integrates and balances residential and non-residential land uses.
- Goal LU-2: Our community supports infill and redevelopment of core areas, (the ski base area is a core area).
- Goal LU-3: The Steamboat Springs community will continue to support and plan for cohesive and mixed use neighborhoods that serve year round residents and visitors.
- Goal ED-1: Steamboat Springs will have a vital, sustainable, and diverse year-round economy.
- Policy SPA-2.2: Create a lively, year-round mixed-use commercial core for the Mountain area.
- Commercial Development in the Mountain Town Sub-Area: The sub area plan outlines areas for “primary restaurant/retail” uses and suggests that other commercial uses could support the area outside of the primary areas. The location of this unit is not included in the areas suggested for “primary restaurant/retail” uses.

2. Consistency with Surrounding Uses:

The proposed development shall be consistent with the character of the immediate vicinity of the parcel proposed for development, or shall enhance or compliment the mixture of uses, structures and activities present in the immediate vicinity.

Staff Analysis: **Consistent.** The proposed office use is consistent with the character of the surrounding area including other office and commercial uses.

Please see Attachment 2, public comment regarding potential impacts and concerns with this conditional use request.

3. Minimize Adverse Impacts:

The design and operating characteristics of the proposed development shall minimize any adverse impacts on surrounding uses and shall not cause a nuisance, considering factors such as proposed setbacks, planned hours of operation, and the potential for odors, noise, smoke, dust, glare, vibrations, shadows, and visual impacts from the proposed development.

Staff Analysis: **Consistent.** In the past five years while an office use has been in the space, there have been no complaints or concerns about the use. Retail and restaurant uses have remained consistent and we have not seen that the office use has had a negative impact on the area.

4. Access:

Access to the site shall be adequate for the proposed development, considering the width, grades, and capacities of adjacent streets and intersections and the entrance to the site. The adequacy of the facilities provided for any necessary service delivery, parking and loading, and trash removal shall also be considered. When appropriate, public transportation or other public or private transportation services and appropriate pedestrian facilities shall be made available to serve the use.

Staff Analysis: **Consistent.** Access to the proposed office is from the pedestrian walkway adjacent to the front door of the unit and is adequate to serve the proposed use.

5. Minimize Environmental Impacts:

The proposed development shall minimize its adverse impacts on the natural environment, including water quality, air quality, wildlife habitat, vegetation, wetlands, and natural landforms.

Staff Analysis: **Consistent.** The proposed use should not create any adverse impacts on the natural environment.

6. Phasing

Staff Analysis: **NA;** No phasing proposed.

7. Compliance with other Standards

Staff Analysis: **NA;** No development proposed.

8. Variance criteria

Staff Analysis: **NA;** No variance requested.

V. STAFF FINDING

Staff finds that DP-17-09, a Development Plan for Conditional Use at 1875 Ski Time Sq., Torian Plum Condos, Unit C-A, for Office use in the G-2 zone district, is CONSISTENT with the Criteria for Approval for a Development Plan subject to the following condition of approval:

1. The conditional use for office is limited to a term of five years from the date of the approval. Any future request shall be subject to the requirements and processes listed in the CDC current at the time of any future request.

Recommended Motion

The Planning Commission recommends approval of DP-17-09 with conditions and findings as listed in the staff report dated January 3, 2017.

VI. ATTACHMENTS

Attachment 1 – Applicant’s Narrative, 11/30/2017

Attachment 2 – Public Comment

Attachment 3 – 2013 Director interpretation that subject unit is on a pedestrian level

Attachment 4 – 2013 Staff Report and Planning Commission minutes

Attachment 5 – 2013 City Council minutes and approval letter

ATTACHMENT #1

NARRATIVE

Conditional Use - Unit C-A Torian Plum Condominiums, Phase II

This application is for approval of a conditional use for office space in Unit C-A, Torian Plum Condominiums, Phase II, within the G-2 zone district. Unit C-A was most recently used as offices for Deer Park Road Corporation, and has been vacant since their relocation to new space.

The applicant still owns the property and listed it for sale in October of 2016. It operates under an existing conditional use (DP-13-01) granted May 22, 2013 and having a term of five years and a requirement that the owner reapply at that time to extend the Conditional Use.

Within the G-2 zone district, office use is a Use with Criteria. The criteria for office use provided in Section 26-402 of the City of Steamboat Springs Community Development Code ("CDC") states: "Offices shall not be located along a pedestrian level street or other public access frontage in the CO or G-2 zoning districts." If a use does not meet the criteria for a Use with Criteria, then it is deemed a Conditional Use and must be approved through a Development Plan.

The applicant requests approval of Unit C-A for office use and believes that this office use within Torian is logical and supported by the Steamboat Springs Area Community Plan. First and foremost, it is questionable whether Unit C-A is actually located along a "pedestrian level street or other public access frontage". The street level is Ski Time Square Drive and this unit is located a level down from Ski Time Square Drive. Moreover, the walkway past the office dead ends at the Torian swimming pool (which is not open to the general public) and therefore the applicant does not believe that this area is truly what is intended by the term "public access frontage". In the time since the original application, little has changed in Torian Plum. Ski Time Square remains undeveloped and several nearby retail condos are unoccupied and/or listed for sale. The Tugboat, which drove traffic by the site, is closed, as is the Christie's formerly occupying the largely vacant Clocktower Building. In short, there is less traffic and visibility than there was five years ago.

Going back further, the history of this approximately 600 square foot unit and Torian Plum Condominiums in general support the use of this Unit as an office. It is our understanding that this Unit originally served as office space and then was used by Ambiente for retail sales for a period of time before Ambiente went out of business. This Unit has been dark a number of times already. Our understanding is that the space was empty for a significant period of time both before and after Ambiente was in there. The Unit does not have a floor drain or plumbing, which severely limits the type of use that can take place in the space. Given its physical constraints, size and location, this Unit is not ideal for retail use and best serves as office space.

Office space is consistent with the surrounding uses, including shops, restaurants and other offices. Offices can and do contribute to the vibrancy and success of a resort area such as Torian plaza. First, the employees of the business regularly dine and shop in the neighboring businesses and provide for a year-round, stable customer base. With an extension of the

conditional use, we anticipate an immediate purchase and occupation by a client driven office tenant who is active year-round. Getting the office open will bring people to the plaza in all seasons, people who will enjoy the amenities, shop and dine, as will the office staff as mentioned above. Absent the extension, the space is likely to remain vacant and dark pending future development that changes the overall retail climate of the area.

Most importantly, this use will have no adverse impacts on surrounding uses. This space would likely be empty if not occupied as office space and is therefore not usurping an opportunity for other retail or restaurant uses to come into Torian. Moreover, given its size and location, this space is unlikely to be a major component of any retail or restaurant plan that may be developed for Torian plaza.

As the attached photos illustrate, the immediate neighbor is also an office. Opening the doors at C-A will be an immediate improvement.

Office use within Unit C-A is logical and creates a balanced mix of uses within Torian plaza and therefore should be approved as a Conditional Use within the G-2 zone district.

Current Photos:



At grade view. Subject space behind bush. Office next door.



Entrance View (from path to pool). Adjacent office entrance.

ATTACHMENT #2

Toby Stauffer

From: tsl@zirkel.us
Sent: Friday, December 29, 2017 11:29 AM
To: Toby Stauffer
Subject: DP-17-09 Torian Plum Application and Hearing

Follow Up Flag: Follow up
Flag Status: Flagged

Toby,
Please review the emails below in regards to the application DP-17-09. Your acknowledgement will be greatly appreciated. Thank you. Have a great day.

Larry L. Stroman
The Silver Lining
tsl@zirkel.us
970-879-7474
970-846-7474

Begin forwarded message:

From: "tsl@zirkel.us" <tsl@zirkel.us>
Date: December 29, 2017 at 11:26:09 AM MST
To: tgibbs@steamboatsprings.net,
Cc: tstauffer@steamboatsprings.net
Subject: Re: DP-17-09 Torian Plum Application and Hearing

Tyler, Toby, City Council Members,
I have been a property and business owner in Steamboat Springs for 28 years and in Torian Plum G-2 zoning district for almost 2 decades. My property has been on the market for years now with no offers. Why?? Because of the G-2 zoning restrictions limit our leasing and selling options. There is now an application for a "continuation" of a sunset variance on property 1875 Ski Time Square Unit C-A, Application DP-17-09 for conditional use for ground floor office. Why? Because of the same restrictions that apply to ALL of the commercial units in the G-2 zoning district.
If the City of Steamboat Springs grants and "carves out" a section of the G-2 district because a property owner is having difficulty leasing or selling their zoning restricted property, this will set a precedence. Any future applications must be granted the same consideration that may be granted to the above referenced application.

Larry L. Stroman
The Silver Lining
tsl@zirkel.us
970-879-7474
970-846-7474

On Feb 23, 2017, at 11:00 AM, Tyler Gibbs <tgibbs@steamboatsprings.net> wrote:

Hello Larry,

My apologies for the delayed response. I would be happy to come by and meet with you to discuss this on site. We are certainly well aware of the impact that the demolition of Ski Time Square and Thunderhead Lodge had on business in Torian Plum. I am also aware of the negative impacts the Mr. Terry's lack of investment and non-compete restrictions in the Torian Plum covenants have on the ability of Torian Plum to present a more attractive business environment.

You are probably aware that the proposed project site referenced in the Pilot is accessed off Burgess Creek Road with no direct pedestrian connection to Ski Time Square, Torian or the base area. The G2 zoning on that site is premised on the Mountain Base Area Plan that envisioned a new road that would have given the site improved frontage and connections to the base area. The site was also shown to be linked with the primary pedestrian circulation system for the revitalized base area. Predicated on that plan the land up to Burgess Creek Road was up-zoned from RR1 to G2.

The ambitious pre-recession plans now appear extremely unlikely to be realized any time in the near future. Therefore the high parcels along Burgess Creek Road will likely remain largely disconnected from the former Ski Time Square property below even though any development approval will require provision of pedestrian connections when neighboring properties do redevelop. That is why the Planning Department supports the elimination of the retail requirement for that specific site. Given that business is challenging in Torian Plum you can imagine the difficulty of attracting shoppers to drive up Burgess Creek to that location.

That said, the same case cannot be made for plaza level frontage in Torian Plum. The zoning requirements in this area, like those downtown, are intended to assure that a critical mass of pedestrian oriented, retail businesses are accessible to area visitors. The erosion of retail business in the base area may ultimately pose a threat to the viability of remaining businesses as the attractiveness of the area as a destination is diminished.

That said, we do believe the requirements for ground floor retail may be over-extended in some areas given the demand for and viability of retail in our market. This issue may be the topic of further discussion later this year as we complete an organizational update of the development code.

As I stated in my opening, I would be happy to meet with you at your business to discuss this further.

Respectfully,

Tyler

Tyler Gibbs, AIA
Director, Planning and Community Development
City of Steamboat Springs

-----Original Message-----

From: tsl@zirkel.us [mailto:tsl@zirkel.us]

Sent: Wednesday, February 15, 2017 9:38 PM

To: Tyler Gibbs <tgibbs@steamboatsprings.net>

Cc: Heather Sloop <hsloop@steamboatsprings.net>; Kathi Meyer <kmeyer@steamboatsprings.net>; Robin Crossan <rcrossan@steamboatsprings.net>; Scott Ford <sford@steamboatsprings.net>; Lisel Petis <lpetis@steamboatsprings.net>; Jason Lacy <jlacy@steamboatsprings.net>; Walter Magill <wmagill@steamboatsprings.net>

Subject: G-2 Zoning Area-Burgess Creek Road

Mr. Gibbs,

My name is Larry Stroman and have been a business owner/operator in Steamboat Springs for the past 27 years. During this time we have seen many changes to the business landscape with both good and not so good results. We all are familiar with the demise of Ski Time Square and Thunderhead Lodge which devastated the surrounding area's business. My business is located in the Torian Plum Commercial Center which is zoned under the restrictions of the City of Steamboat Springs G-2 zoning as is the proposed Burgess Creek project that is on the table. As a base area business owner for going on 2 decades, I believe that I have a good idea on the current business climate. It is tough to say the least.

After reading the article in the Steamboat Today dated Feb. 7, 2017 with the comment that "the Burgess Creek project is 30-40 feet above Ski Time Square, and therefore, should be granted an exemption from G-2 requirements" does not seem correct to me, because the same could be said of similar commercial spaces in the Torian Plum plaza. Both properties are only accessed via a has a connecting stairway coming up from the base area. So why exempt one, but not the other?

If the City is going to begin carving out pieces of the G-2 district for re-zoning, then every property owner in the G-2 district must have the same consideration, opportunity, and freedom to have their business property granted the same exemption as others in the same restricted area. If this passes for the Burgess Creek project, then a precedence will have been set for all G-2 properties to be granted the same exemption. Correct?

In fact, this non-retail precedence was already established in Torian Plum when the Deer Park Road Corp. was granted a 5 years sunset on their commercial unit in Torian Plum for office use instead of retail use.

Here is my point: The G-2 restriction should be applied equally, or not at all. Maintaining a "retail only" status for locations in the Torian would be putting an unfair restriction on this property.

Retail traffic in Torian has been getting progressively limited over the past decade, and having the option to lease or sell a Torian commercial unit to an

entity other than a retail business, for purposes such as office use, would certainly open up and provide a fresh energy in the base area. We do not need another store front with a multi-year "For Sale or Lease sign". Many mountain businesses have already closed and sit empty because of restrictions that make it near impossible to lease or sell them. What we do need is fully occupied spaces that will contribute to the overall vibrancy of the surrounding mountain base area.

My hope is that you, city council, the City Steamboat Springs, and the powers that be, will do the right thing that will take into account what is best for any and all parties involved and their individual personal situations.

Larry L. Stroman

The Silver Lining

tsl@zirkel.us

970-879-7474

970-846-7474

ATTACHMENT #3

February 23, 2013

Jill Brabec
PO Box 881374
721 Oak Street, Suite 202
Steamboat Springs, CO 80488

RE: Request for Written Interpretation- Location of Office within G-2 zoning district

Dear Ms. Brabec,

Planning and Community development has reviewed your request for written interpretation of Steamboat Springs Community Development Code, Section 26-402, definition of "Office Use". In addition, further on-site evaluation was conducted as documented in the attached photographs.

We must uphold the finding that the unit in question is located on a "public access frontage" within the G-2 district in violation of zoning standards for the district. The unit is prominently situated on the primary pedestrian connection between Ski Time Square and the ski area base. The windows and door to this unit are quite visible and direct access from the pedestrian route is no more than a dozen steps from the stairs connecting the street and base area plaza levels. Visibility is only partially obscured currently due to lack of snow removal.

As stated in 26-143 (d)(5)b: *For developments located along pedestrian corridors and in areas such as Ski Time Square, Gondola Square and the areas surrounding public gathering spaces as described in the Mountain Sub-Area Master Plan.*

1. *Ground Floor. At the pedestrian (ground floor or street) level the development shall include active pedestrian-oriented uses including, but not limited to: retail, restaurant, amusement, lobby, and check-in.*

The Torian Plum development terraces down the hill from Ski Time Square providing an intermediate ground floor level between flights of stairs.

Accepted industry standards for retail depths must be accommodated by providing not less than 25 feet to 45 feet of depth behind the storefront for small retailers or cafes and greater depths for more typical retail and full service restaurants that require more substantial back of house space.

These standards will apply to the review of any proposed modifications to the current Saketumi space.

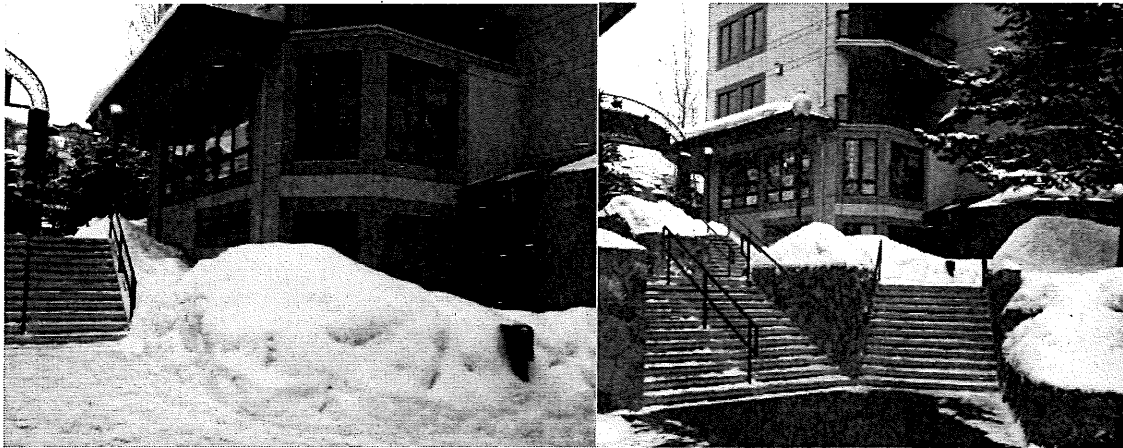
Please let us know if you have further questions regarding this issue.

Respectfully,

Tyler Gibbs, AIA

Director, Planning and Community Development

Cc Barb Wheeler, City of Steamboat Springs



ATTACHMENT #4



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

PLANNING COMMISSION AGENDA ITEM # 4	
Project Name:	Torian Plum Condos, Unit C-A; #DP-13-01, 1875 Ski Time Sq.
Prepared By:	Toby Stauffer, Planner (Ext. 280)
Through:	Tyler Gibbs, AIA, Planning & Community Development Director (Ext. 244)
Date:	May 9, 2013
Planning Commission (PC):	May 9, 2013
City Council (CC):	May 21, 2013
Zoning:	Gondola - Two (G-2)
Applicant:	Old House Lane Corporation c/o Jill Brabec, PO Box 881374 email: Jill@brabeclaw.com
Request:	A request for a Conditional Use approval through a Development Plan to allow for office space to be located at the pedestrian level in the Gondola Two (G-2) zone district.

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I. COMMUNITY DEVELOPMENT CODE (CDC) – STAFF ANALYSIS SUMMARY

CDC - SECTION 26-65 (D): NO DEVELOPMENT PLAN SHALL BE APPROVED UNLESS THE PLANNING COMMISSION AND CITY COUNCIL FIND THAT THE PLAN MEETS ALL OF THE FOLLOWING CRITERIA:

Subsection	Consistent			Notes
	Yes	No	NA	
1) Conformity with Community Plan		<input checked="" type="checkbox"/>		
2) Consistency with Surrounding Uses		<input checked="" type="checkbox"/>		
3) Minimize Adverse Impacts		<input checked="" type="checkbox"/>		
4) Access	<input checked="" type="checkbox"/>			
5) Minimize Environmental Impacts	<input checked="" type="checkbox"/>			
6) Phasing			<input checked="" type="checkbox"/>	
7) Compliance With Other Standards			<input checked="" type="checkbox"/>	No development proposed, only conditional use requested.
8) Variance Criteria			<input checked="" type="checkbox"/>	No Variance Requested

Staff Finding: Staff finds that the Development Plan for 1875 Ski Time Sq., Torian Plum Condos, Unit C-A, a Conditional Use for an Office in the G-2 zone district, is NOT CONSISTENT with the Criteria for Approval for a Development Plan.



II. BACKGROUND

Zoning

The subject office use is located within the Gondola Two (G-2) zone district. The G-2 zone district is described in the CDC as follows:

“Purpose and intent. The purpose of the Gondola two zone district is for properties nearest to the Gondola base facility to have the densest development in the city. Because of the special characteristics and importance of this area to the general welfare of the city, this zone district is intended to allow for flexibility and creativity in the development of land in order to provide a quality pedestrian-oriented environment that furthers the goals of the master plans for the area. Special emphasis shall be placed on the location of uses within structures, the massing and design of structures, the provision of public spaces and gathering areas, pedestrian corridors and how those elements relate with the pedestrian environment. Multi-use buildings, with pedestrian-oriented ground-level retail and other active uses, are strongly encouraged in the G-2 zone district. All development in the G-2 zone district shall require approval of a PUD and shall be subject to the provisions in section 26-86.”

Use

An office use in the G-2 zone district is a Use With Criteria in the CDC. “Office” is defined as :

“A building or part of a building, designed, intended or used for the practice of a profession, a business, or the conduct of public administration, or the administration of an industry that is conducted on another site including the rental, lease or sale of real estate. This shall not include a commercial use, any industrial use, medical or dental clinic, financial institution, place of amusement, or place of assembly.

(1)Use criteria.

- a. Review shall be prior to development or building permit, as applicable.
- b. Offices shall not be located along a pedestrian level street or other public access frontage in the CO or G-2 zoning districts.”

Uses that don’t meet the criteria must be reviewed as a Conditional Use. *“Conditional uses are those uses that are generally in keeping with the purpose and intent of that zone district, yet may have more impacts to surrounding properties and the community than uses by right or uses with criteria. Such uses require approval pursuant to section 26-65, and conditions may be placed upon these uses as deemed appropriate by the approval body, in order to avoid or mitigate potential impacts. The listing of a conditional use in a particular zone district does not ensure approval of that use or any associated development plan.”*

The purpose and intent of limiting office uses within the G-2 zone district is to restrict uses that may limit or decrease the effectiveness or vibrancy of a pedestrian district and therefore may have a detrimental effect on surrounding conforming uses.

Existing Uses

There are approximately twenty six commercial units along the pedestrian level at the Torian Plum. It appears that there are vacancies among those units. Existing businesses include a candy shop, t-shirt shop, retail clothing stores, gift shops, real estate brokers, and several restaurants. Other “office” uses, including Steamboat Village Brokers, have been determined to be legal

nonconforming uses, those that existed prior to the current requirements in the CDC. Though the uses have been allowed, guidance from the code indicates that nonconforming uses should eventually go away and be replaced by a conforming and/or desirable use for the district. Other nearby conditional uses that have been allowed have been evaluated through the development plan process and have met specific conditions and/or specific site characteristics were considered in the approval.

III. PROJECT DESCRIPTION

The applicant is requesting Conditional Use approval through a Development Plan to allow for an office to remain in the G-2 zone district. It is important to note that the current tenant, the Deer Park Road Corporation, an investment management firm targeted at high net worth individuals and institutional investors, is currently not allowed. The use is not legal nonconforming. An approval of this request would allow Deer Park or any other “office” use that complies with the Community Development Code and any conditions of approval.

Please see the attached applicant’s narrative for additional information about the request.

IV. PRINCIPAL DISCUSSION ITEMS

1. Is it appropriate to locate an office use in the G-2 zone district at this location?

Staff finds that it is not appropriate to locate an office at this location for the following reasons:

- Retail and restaurant uses in a pedestrian setting thrive when there is a “critical mass” of like uses. Pedestrians are drawn to an area for its vibrancy and activity and all uses benefit from having other similar uses around, consider downtown as an example. Allowing uses that do not contribute to the vibrancy and pedestrian activity in the area is a detriment to the area as a whole.
- While some uses are existing and considered legally nonconforming, this use does not have similar history and may not benefit the pedestrian activities of the area. With recent completion of and changes to the base area promenade, the area is growing and changing while pedestrians orient themselves to the new layouts and services. This use may have been less detrimental in the previous pedestrian environment, but it will not be desirable in the future as the area is better utilized by pedestrians after patterns adjust to the improvements.

2. Will an office use in this location be detrimental to the other adjacent commercial uses?

Staff finds that an office use in this location can be detrimental to adjacent commercial uses. The office use provides no visual interest and very little pedestrian activity to the area, which decreases the overall activity that could take place in the area.

V. PROJECT ANALYSIS

The following section provides staff analysis of the application as it relates to key sections of the CDC. It is intended to highlight those areas that may be of interest or concern to planning commission, city council, or members of the public. For a comprehensive list of standards and requirements applicable to this proposal please refer to the CDC or contact the staff planner.

A) CRITERIA FOR APPROVAL

CDC - Section 26-65 (d): No development plan shall be approved unless the planning commission and city council find that the plan meets all of the following criteria:

1. Conformity with Community Plan:

The development plan significantly furthers the preferred direction and policies outlined in the community plan or approved master plans.

Staff Analysis: **Inconsistent;** the proposed Conditional Use does not conform to the Steamboat Springs Area Community Plan (SSACP) or the Mountain Town Sub-Area Plan Update (MTSAPU). The proposed use is in conflict with the following statements:

- Resort Residential

Land Uses: *The Resort Residential classification emphasizes a range of development types intended to accommodate guests on a nightly or long-term basis, ranging from second-family homes to condominiums. Limited resort commercial uses, such as restaurants and retail uses are also appropriate within this classification.*

- (SSACP) Goal SPA-2: *Our community will continue to promote the Mountain Area as the focal point for tourism activity.*

Rationale

The Mountain area serves as the primary base facility for the Steamboat Ski Area and houses the majority of the resort accommodations in the community. It is the center for commercial resort activities and it provides the mainstay for the tourism economy. Resort and recreation commercial activity is concentrated around Ski Time Square.

The Mountain Town Sub-Area Plan identifies the following improvements:

- *Improve public spaces;*
 - *Improve pedestrian connections between destinations in the core, especially between the base village and the ski mountain*
 - *Diversify the mix of retail to make it less seasonal and more vigorous on a year-round basis;*
- (SSACP) Policy SPA-2.2: *Create a lively, year-round mixed-use commercial core for the Mountain area.*

To the extent possible, improvements to the commercial core area at the ski base should focus on diversifying the mix of retail to make it less seasonal and more vigorous on a year-round basis.

- (MTSAPU) Preferred Alternative Summary: *The plan supports increased density with a mix of uses, from high intensity commercial to neighborhood level retail within a series of small neighborhoods, as part of a greater Base Area village.*

- (MTSAPU) *Chapter 6- Summary and Conclusion, C. Commercial Development: Analysis suggests that the Base Area does not suffer from an excess of commercial development. Rather, to the extent that there are storefront vacancies and underutilization, these are the result of issues with lack of density in the Base Area, and inadequate access, continuity, and connectivity of the commercial fabric. Some new development areas can and should include ground floor commercial facilities, and the continuity of restaurant and retail facilities should be enhanced.*

2. Consistency with Surrounding Uses:

The proposed development shall be consistent with the character of the immediate vicinity of the parcel proposed for development, or shall enhance or compliment the mixture of uses, structures and activities present in the immediate vicinity.

Staff Analysis: **Inconsistent;** The proposed office use is not consistent with the retail and restaurant character of the surrounding area and does not enhance or compliment the mixture of uses and activities present in the immediate vicinity. Adjacent commercial uses may decline due to lack of “critical mass” of restaurants and retail space that make a pedestrian area more viable and active.

3. Minimize Adverse Impacts:

The design and operating characteristics of the proposed development shall minimize any adverse impacts on surrounding uses and shall not cause a nuisance, considering factors such as proposed setbacks, planned hours of operation, and the potential for odors, noise, smoke, dust, glare, vibrations, shadows, and visual impacts from the proposed development.

Staff Analysis: **Inconsistent;** the operating characteristics of the proposed office use adversely impact surrounding uses due to lack of pedestrian and visitor oriented activity and dark storefronts during key business hours.

4. Access:

Access to the site shall be adequate for the proposed development, considering the width, grades, and capacities of adjacent streets and intersections and the entrance to the site. The adequacy of the facilities provided for any necessary service delivery, parking and loading, and trash removal shall also be considered. When appropriate, public transportation or other public or private transportation services and appropriate pedestrian facilities shall be made available to serve the use.

Staff Analysis: **Consistent;** Access to the proposed office is from the pedestrian walkway adjacent to the store front and is adequate to serve the proposed use.

5. Minimize Environmental Impacts:

The proposed development shall minimize its adverse impacts on the natural environment, including water quality, air quality, wildlife habitat, vegetation, wetlands, and natural landforms.

Staff Analysis: **Consistent;** The proposed use should not create any adverse impacts on the natural environment.

6. Phasing

Staff Analysis: **NA**; No phasing proposed

7. Compliance with other Standards

The proposed development shall comply with all other applicable requirements of this CDC, including article V, development standards.

Staff Analysis: **NA**; No development proposed, only conditional use requested.

8. Variance criteria

Staff Analysis: **NA**; No variance requested

VI. STAFF FINDING

Staff finds that the Development Plan for 1875 Ski Time Sq., Torian Plum Condos, Unit C-A, a Conditional Use for an Office in the G-2 zone district, is NOT CONSISTENT with the Criteria for Approval for a Development Plan.

Recommended Motion

The Planning Commission recommends denial of DP-13-01, a Development Plan for a Conditional Use of office in Unit C-A, Torian Plum Condos at 1875 Ski Time Sq.

VII. ATTACHMENTS

Attachment 1 - Applicant's Narrative

Attachment 2 – Complaint forms and letters

Attachment 3 – Site Visit Photos by Staff, April 25, 2013

Attachment 4 – Agency comments

#DP-13-01

Commissioner Meyer- I have a disclosure to make. I serve on a Board with the applicants presenter not the applicant. I feel like I can be fair and impartial.

Chairman Lacy- Anybody have any problems with that?

Commissioner Burns- I also save on the same Board and I will not be voting on this one.

Chairman Lacy- You won't be voting on this one. Alright, Toby?

Stauffer- This is a conditional use request for Unit CA of the Torian Plum Condos to allow an office space to be located at the pedestrian level in the G-2 Zone District. Currently staff finds that this request is inconsistent with the criteria for conditional use in the G-2 Zone District. A couple of points of information. An office is determined as a use with criteria in the G-2, there was one comment and one of the letter that indicated or questioned if the City had the authority to take this action and I just wanted to draw your attention to section 2692 of the code which indicated that if the criteria are not met then we can go through this process to approve it as a conditional use. Additionally the G-2 Zone District talks about the quality of a pedestrian oriented environment and there is one statement in that G-2 purpose and intent that speaks to the PUD and I just wanted to clarify that language was recently removed in ordinance 24-50, it was approved with the new PUD revisions. That language is struck but it is not codified yet. Other than that, the information is in your packet and again staff is recommending that this is inconsistent with the conditional use criteria and I can answer any questions that you may have. We did receive some public comment that came into our office after the packet was created last week. That has been emailed and provided in paper copies to the Commissioners and Applicant.

Chairman Lacy- Alright, thank you. Does the applicant have a presentation?

Brad Craig, Principal with Deerpark Road Corporation- Deerpark was founded in 2003. The owner Michael Craig-Sheckman, a 100% owner, it is a financial investment company. He moved here to be with his family and enjoy Steamboat. He was able to work from his New York office. In 2008, he wound down his New York ties and started the hedge fund here which is a single investor with 16 million dollars. Since 2003, we have over 250 investors and we are managing just shy of a billion dollars. We have grown a fair amount in the last 4-5 years and we have needed space. We are located Unit DS-2C and we bought Unit CA about two summers ago for additional space. With our growth and the space needed. We've also been able to employ a staff of 16. We started with a staff of 3-4. They are all professional high-paying jobs. We have hired all locally except for two traders from New York and Denver. With the 250 clients, we definitely have a constant visits from our prospects and our clients. We do have two separate offices. We attained a third. It is not an ideal situation to have three different offices. But it is definitely value added to have offices slope-side. Clients appreciate it when they travel into town. It definitely impresses them and helps us out. The ideal situation is to have one office, and realistically that is a five year process to find that slope-side and get us all under one roof. I will let Jill, our attorney take it over from here.

Jill Brabec, Attorney- Deerpark Road Corporation and Old House Lane Corporation are essentially sister corporations. Old House Lane owns the land. Deerpark Road that Brad explained is the tenant in essence. Deerpark Road is a location neutral business that we've had a lot of discussion about throughout the years. It is also supported by the Community Development Plan. I'm not going to belabor that point but ED 1.6 notes promote a sustainable year-round economy. ED 2, notes Steamboat will aid the expansion of local businesses. Those are the relevant Community Plan pieces that really address this kind of company and where they are. As Brad mentioned Deerpark Road established their base operations in 2004. Great news, they succeeded and are expanding and they need some space. They have been up at Torian and they like Ski Time Square. It is a good space for them and when they started looking around. Naturally they found some vacant space in Torian that seemed like a good fit. And acquired the units that we are talking about right now. And moved in and started to operate offices there. Here we are. We have a office space at the pedestrian level in the G-2 ZOne District. And as Toby pointed out, office us is a use with criteria. The criteria says G-2 is not supposed to have office space on the pedestrian level. Which turns it into a conditional use and puts it in front of you to evaluate. The code actually says those uses need to be keeping with the purpose and intent of the G-2 zone district. I would point out in that discussion of the G-2 zone district, some of the key terms are creativity and flexibility. That is what we are looking at here. You all have looked at this in the past in regards to office space. In certain situations, while the policy makes sense that you do want your retail in that pedestrian function. I think there are going to be specific situations like we have seen over the years. Where office space is going to make for a certain period of time or for certain situations. For this specific case, those facts support office space over in that Unit CA. I don't know if anybody has had a chance to take a look at it, but it has been vacant for a while. Retail in Torian has been challenged. Part of that reason is the result is the Doug Terry restricted covenants. Essentially those create restrictions for any other competing businesses to sell ski related items. If you are retailer and you are looking at retail space, Torian is going to be a difficult choice as a result of...pretty much you are opening yourself up to a lawsuit if you want to start down that road. It is what it is and it has been in place for a long time. They have been actively enforced and subject of a number of lawsuits. So, our client comes along and this space is empty and they turn it into office space. The other key thing to look at there, is that it doesn't have a floor drain, so it is unlikely to be a restaurant. We have challenges from a retail and restaurant perspective. The main argument that I have heard is critical mass and you have to look around and say, is this use

for fairly small amount of space in Torian really going to impact the critical mass for retail and restaurant in torian. We don't think it is. We think it is likely to be a short term use. When the time comes when the highest and best use is retail or some other use that fits there, it will naturally convert to that. With that, we are going to ask for your approval for conditional use for office space for Unit CA. Thank you.

Chairman Lacy- Thank you. Questions from Commissioners for staff or the applicant.

Commissioner Hanlen- Should we hear the application for DS-2C? And then open it up to discuss retail in general?

Chairman Lacy- I think we can go in this order. To the extent that any analysis for the next application that applies to this one, we can do that now.

Commissioner MacArthur- Jill, you mentioned that this space has been vacant for a while. Do you have some historical data on that?

Jill Brabec- I thought that information would be easier to find but it was not. I have an oral history that I've gotten from various people. What I was told that initially that space really wasn't selling and so it started out as sort of an odd office space and there might have been a stone mason or masonry business in it, that was related to the developer for a number of years. And then I'm not aware of any other use other than Ambiente. I don't know their exact years of operation. I think it was somewhere between 3-5 years. Other to that to my knowledge, it has been vacant.

Chairman Lacy- Other questions?

Commissioner Levy- Jill brought up the exclusive use contract that Torian Plum has. Is that similar to an HOA. Something that doesn't affect our decision making process.

Gibbs- Correct.

Commissioner Levy- Jill you had mentioned that there is a certain period of time, short-term that you think this need that you have, are you proposing a certain time period?

Brabec- We have not proposed a sunset, but we would consider a sunset if that was a critical piece of approval.

Chairman Lacy- I think that is something that might be important just because, you mention that once retail becomes the highest and best use then it would naturally happen. I'm not sure that necessarily applies to that applicant. Especially with their financial wherewithal. We might feel more comfortable if there is a time limit.

Commissioner Meyer- There has been one or more precedents in the Torian. Where we give them a certain amount of time for offices.

Chairman Lacy- Other questions? Let's open it up to public comment on this agenda item.

Ron Smith, Attorney, Torian Plum Condo Owner Association- There are approximately 98 residential and 23 commercial units. Torian Plum Condo Owner Association opposes this conversion of retail space in units CA to office space for two primary reasons. One it is clearly not allowed in G-2 zoning and would create bad precedence in our opinion for the vitality of the ski area base and two because office space in the Torian Plum Plaza hurts existing retail shops and restaurants and the general vitality of the Torian Plum Plaza and the residential condominiums. The staff report details how the proposed office use is inconsistent with the planning documents that the City of Steamboat Springs uses to guide itself. It is inconsistent with the Steamboat Springs Community Plan and sub area plan update. We support that staff analysis. Torian Plum support a staff analysis that the proposed office uses are not consistent with retail and restaurant character of the Torian Plum Plaza and we support the staff analysis that the proposed office uses adversely impacts the surrounding the pedestrian and visitor oriented activity. And because they take away from the critical mass that make up this area. To make the plaza a vibrant center. Torian Plum supports the community plan and development code which states in part that offices should not be located in the pedestrian or street access level in the G-2 zoning district. I'm not aware of any precedent that you might have created by sunsetting some other offices. I don't where their location is and I don't know if they are in the same zoning. I am aware of one office maybe allowed in G-2 zone, but I think G-2 has stricter condition. I want to comment on the CA which was the Ambiente space. Because there is some question about this in the applicants discussion. Clearly it is a pedestrian level unit. There are beautiful paver in front there. Ballards with lights. That path contrary to the applicants narrative. That path doesn't dead end into the swimming pool. You can see the space here and the brown part is where you see the pavers. They connect up with the promenade and this is pedestrian access. The CDC provide for review of conditional uses which are supposed to be before the development actually occurs. This office use has been in existence for a number of time and it is not consistent with the CDC or the building code. Offices add difficult for retail space.

There is dead office space that deters retail. Whether or not there are covenants in there does not effect G-2 zoning. Ambiente was retail space in there before the current conversion to retail. I don't think it was vacant for very long. Thank you.

Chairman Lacy- Additional public comment?

Ron Pearl- I own two commercial spaces in Torian Plum where Cafe Diva exists today. I was the original leasee when Torian Plum was being built which was about 30 years ago. It is a retail plaza not an office plaza. I'd like to see it stay a retail plaza. What is happening now, that retail is dying in Torian Plum, because there is not enough there. The City has let Ski Town Square be torn down and Torian is the end of the retail space. I would like to see it that way and not as office space. Thank you.

Chairman Lacy- Thank you.

Shannon Dillard- I own a residential unit in the plaza. i am here for the Board. I bought this unit about 11 years ago. We purchased this unit, the plaza was a very vibrant commercial retail space. Since then, the retail space in the plaza has not had as much retail traffic as before. We want to see it have as much retail and restaurant space in there. When you've got lots of retail space and activity, they are milling around and they are spending time and money and they are having their apres ski, they are enjoying the space they are in. The less you have of that, the fewer people you have milling around and spending time in there. After 5pm, offices shut down and they are not doing what we want the plaza to do. I would request that you deny this application and encourage more retail and restaurant space in that area.

Chairman Lacy- Thank you. Seeing none, we will come back to commissioners for additional questions. I have some. Jill, you wrote the narrative, is that right?

Jill Brabec- Yes I did.

Commissioner Burns- You mention early on that there were a number of different owners that received notices of violation. How many of those were sent and how many violations are going on up there right now?

Jill Brabec- I believe there were three other notifies in that enforcement letter and if you want I can grab the file and look at it. And it is all office space.

Chairman Lacy- I guess the point that I am making here is that this is one application that we have. If we see more and more of these applications come in and we say yes now, where do we draw the line? How do we do that?

Jill Brabec- Are you asking me?

Chairman Lacy- Yes.

Jill Brabec- I don't want to misspeak, but i believe the rest of the code enforcement are legal non-conforming uses. One was Steamboat Village Brokers and David Baldinger can speak to that. I believe that most of those were otherwise resolved. I am not aware of anybody coming in and looking for a conditional use application.

Chairman Lacy- You also mention this unit was purchase about two years ago? And then it was immediately and is still use as office space now/ Was there any investigation before or after the purchase of these restrictions if office use?

Jill Brabec- I don't have much of an answer. I wan't involved at the time. There were some questions asked about office use and I think the applicant believed that because there were a number of office uses and didn't seem to hear any complaints or issues with it, that that was not a problem. But I will acknowledge that the time they should have sought an approval through the planning process of these.

Chairman Lacy- Does anybody have an idea, how many current vacancies there are in the Torian Plum commercial area?

Ron Pearl- There are two vacant space that I am aware of. One is in the front of the building, that I believe these people have just bought and one that Doug Terry owns that is a very small space and that the extent of the vacancies that I am aware of and I am on the board.

Commissioner Meyer- Can I ask you Mr. Pearl because you are on the board and you are familiar with the commercial application. Don't you have one or more tenants that do not operate year round so you may have restaurant or retail but they don't have hours.

Ron Pearl- We've been trying to control this. Doug Terry closes down in the summer time.

Commissioner Meyer- What about the new restaurant, the wine bar?

Ron Pearl- That belongs to Doug Terry. That is not open in the summer time. We have been fighting to get people to stay open during the summer time, because it also kills business and along with putting in office space along with everything that is going on. We are losing a lot of tax dollars that should be going to the City of Steamboat Springs.

?- The Base Club is only open in the summer as well.

Joe Beer, 1905 Cimmaron Circle- My wife and I own units DN-1C and DN-2C in Torian Plum and they are occupied currently by the Steamboat Base Club. They have their normal winter operation that goes on and then they also have a good number of summer events planned as oppose to being dark at night year round. It is not situation where there is staying closed without opening. They are accumulating reservations for special events. That brought people into the plaza during the summer time. Which is of course great to see. It;s great to see the vibrance that that type of activity creates that you certainly do not get in an office that shuts down at 5pm. There is no comparison. I would certainly appreciate if you take that into consideration as well.

Chairman Lacy- Thank you.

Commissioner Hanlen- There are offices that are being overlooked for years and it was only because complaints have come in and a torrent of complaints have come in over the last two week, is that why we have a problem?

Gibbs- I guess let me speak to if it was overlooked? We don't have an inspector going out an checking these things. It was brought to our attention to with a complaint. And it has been for months. When we received the initial complaint was when we did a full inspection and inquiry of all of the spaces there to confirm what their status was. That is when some of these other spaces who could not immediately conform their legal non-conforming status, there was further investigation into that and that has all been resolved at this point.

Commissioner Hanlen- That was not just for the City but for the HOA. It just seems funny that it went two years without being a problem.

Gibbs- I am not aware of it being brought to our attention, but there could be something that I am not aware of.

Chairman Lacy- Other questions? Nothing? Anything else from staff on this one? Anything else from the application? O.K. Lets close the public hearing and come back to commissioners for discussion and a motion?

Commissioner Meyer- The CDC is very clear about use criteria. Offices should not be on a pedestrian level in G-2 Zone District. I know that there are some properties that have been grandfathered in. I don't find any leeway that allows us to grant a blanket request to just allow an office use. I am going to be supporting staff's recommendation.

Commissioner Hanlen- The examples that I can think of is that we have allowed office uses as long as they contained a sunset in different areas around town. The Grand is RR-1 or G-1 and then downtown. And I guess the philosophical discussion that I was anticipation tonight is that we take a defined stance that retail at all cost and then we end up with a bunch of dark space like we have seen at the Grand where we would not allow anything but retail space and we have a bunch of dark space. And it seems like if we've allowed other office uses as long as it contains a fairly strict sunset with this. enough to put pressure on the applicant to actually move out. Is there someway that we can allow this now if the alternatives are just dark windows and then with the sunset provision be able to get them out in the hopes retail and economy does come back.

Chairman Lacy- That is kind of a philosophical discussion that I've had trouble with getting my hands around. I think a lot of the problems that we are seeing up there has to do with the demolition of Ski Town Square and if or when, that will finally be developed and I think at that time it seem to make sense to me, that that is when we would obviously develop a mc more critical mass of restaurant and retail and have much more foot traffic up there. For me, I agree with Kathi, the doe is very clear. We don't want to encourage office use in the G-2 level. I also recognize there is a little economic reality going on right that success for retail and restaurant is challenged in that area. I'd be willing to at least to grant a conditional use for a limited time and I open to discussion on what that would be. Three years, five years...

Commissioner Meyer- My concern is that that is something that we might consider and again the space that i am thinking of in the Torian, when One Steamboat Place was allowed office and retail space. A time until such such time they could move into One Steamboat Place. There is a precedence there and it did have a date certain. But that is not what the applicant is proposing. So perhaps it could be better to table this if the applicant is willing to do that. I am really torn while I canst to protect the vibrancy of the retail concept, the Torian area has retail that is not even open 12-months out of the year. Ron Pearl said, the HOA can't control the months or operating hours of the business are. It is kind of a, we would hope that it is a highly functioning space, but it is not there right now. I could b persuaded if the applicant came back with a limited office use as far as a duration.

Commissioner Brookshire- i am troubled with where you are headed because if you want to put your finger in the dyke in this unit an then in 3 years or whatever. It seems like if you want to go there then that should be a larger project. You should gather up the 23 retail owners in this project and get them all together and say you ought to change your rules. I think that this is going to plugging the dyke until something else becomes vibrant. And I agree with the god awful number of letters that we have from the neighbors and the neighborhood and the owners. That us what they bight into and that is what they want. If you are going change the sues up there, that may be fine, it has got to be on a bigger scale for me to support. I am not going to sit here and continually hear this. It is not eh City's obligation in my view to sit here and pigeon hole all of these different uses come in just because the economy sucks or because the property owner doesn't want a retail space. We can't make them have a retail unit. This does not work for me.

Commissioner Hanlen- One of the other adds to the philosophical part of the discussion, is regarding the retail requirement in G-1, G-2 and downtown. One of the things that w talked about was how is that right now it is a blanket statement and it drags a lot of property that should and shouldn't be included in that requirement. One of the things that we discussed, but the idea of creating an overlay map or something that is steering us to where that usage is best suited, you know the Grand to me is one of the better examples where we dug our heels in the sand and it just looks like this ghetto storefront for a decade. Is this, to me it seems like we are going to be seeing over and over agin. this business, is not going to be booted out when the economy can support retail. We can't be so naive to think that just because we demand retail that we are going to get it. A lot of the businesses are only viable 3-4 months out of the year, because it doesn't make sense to turn the light on longer than that. And that is just a reality of being at our base area.

Chairman Lacy- I agree, but I do think at some point there will be some development that would create additional foot traffic with more people living there and staying there. I'd be open to considering this for all of the reasons that I've discussed. But Kathi is probably right that it doesn't make sense for us to craft this tonight on the fly without getting input from the applicant.

Commissioner Hanlen- The idea of having a sunset on an office use, this office, I have fare less worry about then the Saketumi space. I'd be more open to the idea in this location versus what I consider true beachfront.

Commissioner Levy- Every case that the property was vacant for a while and the applicant made a case that they tried to get retail in there and it didn't work. There was a fair amount of vacancies at the time. That is some of the reasons that we approved that. You bring up the Grand and I don't remember us ever turning down uses. I don't see the same in this application. There are only a couple of vacancies and I don't think that there have been good faith efforts made and I think the code as possible.

Commissioner MacArthur- I see it differently. I am glad that these two units are brought in separately and we are not looking at new construction. We have some historical information and from what I can glean. I have not heard of any successful retail use other than 3-5 years of Ambiente in the best economy Steamboat has had in years. I would be in support of this with a sunset. If you go and walk around that area, it is dying. It is in bad shape. I can't see any way that having offices up there at this point in this location is going to hurt the critical mass piece.

Chairman Lacy- Other discussion or are we ready for a motion?

Jill Brabec- I don't want to interrupt. I did want to offer that we would request an amendment to it if you would be willing to accept a five-year sunset. We feel confident that our motivations are to go elsewhere and get all of the staff together. We have obviously some issues given that we are in there and within five year, I feel very confident hat they applicant would e able to purchase or move or built what they need to meet their needs.

Chairman Lacy- Are we ready for a motion?

MOTION

Commissioner Hanlen moved to approve #DP-13-01 with a sunset of five years with a restriction that this cannot be renewed in five years. Commissioner MacArthur seconded the motion.

DISCUSSION ON MOTION

Chairman Lacy- Usually I wouldn't support a restriction like that but with the strong language in the G-2 zone district, then I would.

Commissioner Brookshire- I don't think you can do that. You can issue the permit for a timeline, but I don't think you can prohibit a property owner for petitioning to extend it. That is their right, is it not?

Chairman Lacy- This is a conditional use.

Commissioner Brookshire- The conditional use will terminate in five years. I don't think you can do that,

Commissioner Hanlen- They can submit an application but if we can place language that just says that the City is not interested in renewing this in five years. We can't prevent anybody from applying for something.

Commissioner Levy- I guess the question of critical mass is whether we are going to invest some energy to keep a retail viable in this area and the pedestrian nature of it or if we are going to give up on it? When Thunderhead comes around, you said we would meet critical mass. I think it is the other way around. When Thunderhead came in they argues that every pedestrian space was to be filled. Because there wasn't enough retail to fill that space. There is so little frontage available that we need to maintain the effort to support it.

Commissioner Hanlen- There were two or three commercial spaces, but they weren't all. And that goes back to my comment about developing an overlay map to define where is appropriate and where it doesn't make sense. That overlay may be best suited by having fuzzy edges as opposed to crisp edges as we see with the Buyer's Resource approval that we made downtown. It seems like we are having the same conversation over and over again and we haven't addressed it with the CDC or with the area plans.

Chairman Lacy- To me, with what you just said, that would make the case a bit more. There is going to be limited competition and a lot more people up there. At Ski Time Square. There would be more people on a full time basis that would come to these commercial units more often and spend more money. That was my logic.

Commissioner Levy- X number of people can only support X amount of retail. We need to have that discussion and until someone shows that we have more than enough retail at Ski Time Square, then, I haven't heard anything to change my mind.

Commissioner MacArthur- I think it is important to focus in on this particular unit if you have a two decade time period where only 25% of the time successful retail has been there. And it has no feasibility for a restaurant, we've got well intentioned code that for this particular unit, time has proven cannot be applied well.

Commissioner Levy- Out of the last seven years, it has been occupied five years by retail; learn how you want to spin it.

Chairman Lacy- Other discussion on the motion?

Commissioner Meyer- What is the square footage of the CA unit?

Stauffer- Approximately 600.

Commissioner Meyer- And that is on two levels?

Brabec- That CA level is 600 in one level.

Chairman Lacy- Other discussion on the motion?

Buckley- I don't like that these guys come in and buy this unit knowing that it is not for office space and then come to use and try to get this thing approved. If this was located in a different location. I wouldn't be giving it any consideration at all.

Chairman Lacy- O.K. I will call to question.

VOTE

Vote: 3; 4

Voting for motion of approval: Lacy, MacArthur and Hanlen

Voting for denial of motion: Levy, Brookshire, Meyer, and Buckley

MOTION

Commissioner Levy moved to deny #DP-13-10. Commissioner Brookshire seconded the motion.

DISCUSSION ON MOTION

Commissioner Meyer- I would have supported a shorter time period, I understand the need in five years to get your offices and maybe build something. Five years is an awful long time frame. I understand that the applicant has certain needs. I'm going to be supporting the denial.

Chairman Lacy- Other discussion on the motion?

Commissioner Hanlen- Should that have been an amendment where we change it to three years?

Commissioner Meyer- The proposal from the applicant was five years. That was a proposal for tonight and staff didn't have a chance to analyze that tonight. I think we have to go with what was proposed. I wanted it in the record that I would have supported something for a shorter time frame and that is not what is being proposed. That is about what we supported for One Steamboat Place. It was three. I would have liked an opportunity to research and find out what we did do for other places.

Chairman Lacy- O.K. Anything further? I will call to question?

VOTE

Vote: 4; 3

Voting for motion of denial: Brookshire, Buckley, Meyer, and Levy

Voting against motion of denial: Hanlen, Lacy and MacArthur

15. APPEAL: Torian Plum Condos, Unit C-A; 1875 Ski Time Sq. (#DP-13-01).

Council Member Macys stepped down.

Council Member Kaminski disclosed that he was contacted by a neighboring business owners and only discussed the information in the letter that all of Council received.

Ms. Stauffer stated that this is an appeal of the Planning Commission's decision to deny a Conditional Use approval to allow office space to be located at the pedestrian level in the Gondola 2 (G-2) zone district. She spoke to the intent of this district and stated that there was discussion about vacant space and the time limit for the conditional use. However the Planning Commission did recommend denial.

Council Member Reisman asked if after three years they could apply for a new conditional use permit. Ms. Stauffer stated no; the use by right would be a conditional use, and the condition is that it expires in three years. Council Member Hermacinski asked if the City has done five years in the past. Ms. Stauffer stated that it has been three years in some cases and five in others.

Mr. Michael Craig Scheckman, applicant, stated that his company Deer Park Corporation, runs a hedge fund. He employs local people with good jobs and they sell the "ski in/ski out" investment manager to their clients. They bring about 250 clients here a year who spend money. They also support the businesses in the area. Additionally, the Deer Park Corp. supports the Scheckman Family Foundation that puts about \$450,000 into charitable donations in Routt county. He stated that he wants to have all his employees under one roof.

Ms. Jill Brabec, representing the Deer Park Corp., stated that this is the type of business that Council wants in town. As the company grew, Scheckman had to find additional space. He found unit C-A, bought it and put offices in there. He did not think the office restriction would apply to them because the unit is in between (not on Ski Time Square Drive and not on the ski slopes). Also, from the intent of the code this does not fit in the office use language and the application meets the criteria in the code to allow office use. It is consistent, on broader scale, with the rest of Torian Plum. They would like a 5 year term to allow time to design and develop something that betters suit them. She also spoke to the "Doug Terry covenants" which are a challenge because they restrict anyone from selling ski retail. It is really an awkward space to fill; it can't

be restaurant space and is really not suitable for anything but office use. The alternatives are for it to be vacant or occupied by office use.

Council Member Kaminski asked why Scheckman bought such a small space when they are growing. He stated that they have grown so fast that he "grabbed space" where he could.

PUBLIC COMMENT:

Mr. Ron Smith, attorney for the Torian Plum, stated that they oppose this use because it violates zoning regulation, the Community Plan and the Mountain-Town Sub Area Plan. He noted that John Maas from the ski area was here but had to leave. The ski area leased the Mountain Club space with the belief that the area would be retail and not offices. Smith said that the base area is zoned G-2 because they need retail at the pedestrian level and offices on this level harms other businesses in the area. He also stated that the covenants provide diversity.

Mr. Jon Quinn stated that the space in question has been overlooked for years and has very little retail history. It located on an "intermediate level" where there is no other retail. The size and location of the unit provides very little retail opportunity and does not bring vitality to the base area. The Deer Park employees do represent vitality at the base area; they encourage a year round vitality. We want to encourage location neutral businesses and encourage success, not shut the door on them. He supports giving them five years. He stated that sometimes the code falls short and this better serves the community.

Mr. Lee Demusis, owner of the Paramount restaurant in Torian Plum, stated that Deer Park brings in an enormous amount of business for his restaurant. If that space were filled with retail, it would be closed four months of the year and would not do anyone any good. Deep Park is year round and that helps the area.

Mr. Eric Delaney, Saketumi, agrees with Demusis. He looked at the site and the unit is not feasible for retail.

Mr. Paul Sachs, representing the Torian Plum, stated that this use is prohibited in the G-2 zone district. In order to get a conditional use they need to meet eight requirements and they do not meet three of them; the Planning Commission denied the application for that reason.

Mr. Chris Paoli stated that he also looked at the space for an office and noted that the whole area is in "total disarray". One of the benefits of a process is that sometimes codes don't align with reality and Ski Time Square needs vitality. This unit can't support anything other than office, no retail can survive there.

Council Member Hermacinski noted the importance of the code but stated that no law addresses every situation and Council is the "last stop" when there are situations that the code does not address.

MOTION: Council Member Hermacinski moved and Council Member Magill seconded to approve the conditional use for five years.

Discussion during the motion:

Council Member Reisman stated that the Planning Commission and staff are bound by different thought processes than Council and Council is the last line of defense against the lack of common sense. He stated that this is a "lemon of a space". He struggles with five years, but is willing to support the motion.

Council Member Kaminski stated that common sense is why Council was elected. His biggest fear is the slippery slope of setting a precedent, but this is a unique piece of property and it is not a retail space.



City Council President Pro-Tem Myller supports the motion but noted the need for buyers to do their due diligence in knowing zoning and uses. He also noted the need to address the portion of the code requiring retail everywhere because there is not enough office space in the town.

City Council President Kounovsky supports the motion.

The motion carried 6/0. Council Member Macys stepped down.

Council Member Macys returned to the meeting.



Department of Planning & Community Development

May 31, 2013

Old House Lane Corporation
c/o Jill Brabec
PO Box 881374
Steamboat Springs, CO 80488

RE: Conditional Use, Unit C-A, Torian Plum Condominiums – #DP-13-01

Jill;

This letter is to confirm that on May 22, 2013 City Council approved the application for an office as a conditional use in Unit C-A of the Torian Plum Condominiums. The approval included one condition:

1. The use shall be limited to a term of five years from the date of this approval, at which time the applicant/owner shall have to apply for and receive approval of a new conditional use permit in order to continue the use.

The application was processed in accordance with the provisions of Section 26-65 of the Community Development Code. Please reference the project file for all correspondence and comment on this application.

If you have any questions about this approval, please contact me at 970-871-8280 or tstauffer@steamboatsprings.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Toby Stauffer".

Toby Stauffer, AICP
City Planner

cc: File copy #DP-13-01
Old House Lane Corporation, PO Box 776429, Steamboat Springs, CO 80477

AGENDA ITEM #2

PLANNING COMMISSION COMMUNICATION FORM

FROM: Rebecca D. Bessey, AICP, Principal Planner

THROUGH: Tyler Gibbs, AIA, Director of Planning & Community Development

DATE: January 11, 2018

ITEM: TXT-17-04: Public Notice and Corrections Amendment

PETITION: A text amendment to:

- 1) Correct errors in the following Sections:
 - 702.E, Development Review Application Types and Procedures
 - 231.B, T4-NC Dimensional Standards
 - 232.B, T4-TC Dimensional Standards
 - 233.B, SD Dimensional Standards
 - 600, General Provisions
 - 306.C.2, Use standards for the keeping of chickens/ducks

- 2) Amend Section 703.A.2, Public Notice by Application Type to revise the property posting requirement for certain types of Zone Map Amendments.

APPLICANT: City of Steamboat Springs
 Department of Planning and Community Development

I. COMMUNITY DEVELOPMENT CODE (CDC) – STAFF ANALYSIS SUMMARY

CDC - Section 723.B: Criteria for approval. Text amendments to the CDC shall be evaluated and may be approved if one of the following criteria exist:					
		CONSISTENT			NOTES
		Yes	N o	NA	
1	Compatible with the community plan.	<input checked="" type="checkbox"/>			
2	Error or goal/objective.	<input checked="" type="checkbox"/>			
3	Public health, safety, & welfare	<input checked="" type="checkbox"/>			
Staff Finding: Staff finds that TXT-17-04: Public notice and corrections amendment is consistent with the criteria for approval per CDC Section 723.B.					

II. BACKGROUND

The updated Community Development Code was adopted in November 2017 and became effective January 1, 2018. As expected, Staff has discovered several minor errors in the new CDC. These errors are summarized below. Proposed language corrections are highlighted in Attachment 1.

- 1) Section 702.E, Table 702-1 Development Review Application Types and Procedures. The Conditional Use and Appeal of Decision processes incorrectly list a Letter as the final Form of Decision; however, these processes go to City Council and are decided by Resolution.
- 2) Sections 231.B, 232.B, and 233.B, Dimensional Standards for the T4-NC, T5-TC, and SD transect zones include incorrect section references within the footnotes related to TND building type and TND frontage type standards.
- 3) Section 600 is incorrectly titled General Provisions instead of Organization of Standards.
- 4) Section 306.C.2, use standards for the keeping of chickens/ducks misspells the word "coop" several times.

In addition to the errors noted above, we have re-evaluated the public notice requirements for large-scale, broad rezonings. The CDC requires property posting for Zone Map Amendments. As Staff is preparing for the proposed adoption of the Entry Corridor (EC) Overlay Zone, it is apparent that posting a sign on every affected property would be onerous. In addition, the current posting requirement would require the City (as the applicant for a City-initiated rezoning of this type) to place public notice signs on private property. The proposed amendment is highlighted in Attachment 1.

III. CRITERIA FOR REVIEW AND APPROVAL

CDC Section 723. CDC Text Amendments

B. Criteria for approval. Text amendments to the CDC shall be evaluated and may be approved if one of the following criteria exist:

1. The proposed amendment is compatible with the preferred direction and policies outlined in the Community Plan and other applicable adopted plans.

Staff Analysis: Consistent: The proposed text amendment will improve the efficacy and clarity of the CDC which, as the implementation tool of the Community Plan, supports and is compatible with the Steamboat Springs Area Community Plan.

2. The proposed amendment will correct an error or will further a public goal or objective.

Staff Analysis: Consistent: The text amendment will correct several errors in the CDC.

3. The proposed amendment is necessary to ensure public health, safety and welfare.

Staff Analysis: Consistent: The proposed amendment will improve the efficacy and clarity of the CDC, leading to better customer service and improved health, safety, and welfare through a clear interpretation of the CDC.

IV. STAFF FINDINGS

Staff finds that TXT-17-04: Public notice and corrections amendment is consistent with the criteria for approval per CDC Section 723.B.

V. ATTACHMENTS

1. Proposed amendments

ATTACHMENT #1

1) Amend Section 703.A.2, Table 703-1 Public Notice by Application Type, to include a new Footnote 2 as follows:

Table 703-1. Public Notice by Application Type

Application Type	Newspaper Publication	Surrounding Property Owner Mailing	Property Posting	Mineral Rights Notification
Land Use				
Vacation Home Rental Permit	■	■	■	
Conditional Use	■	■	■	■
Site Development				
Conceptual Development Plan	■	■	■	■
Development Plan-Administrative	■	■	■	
Development Plan-Public Hearing	■	■	■	■
Subdivision				
Preliminary Plat	■	■	■	■
Final Plat-Major Subdivision		■	■	
Final Plat-Easement Vacation	■	■	■	
Extraterritorial Subdivision	■	■	■	■
Variance				
Minor Adjustment	■	■	■	
Major Adjustment	■	■	■	
Minor Variance	■	■	■	
Major Variance	■	■	■	■
Zoning				
Zone Map Amendment	■	■	■ ²	■
Planned Unit Development	■	■	■	■
TND Regulating Plan	■	■	■	■
CDC Text Amendment	■			
Other				
Community Plan Amendment	■	□	□	
Annexation	■	■	■	
Substantial Conformance ¹	■	■	■	

Legend

■=Required

□=Required when the application is regarding one or more specific properties

¹ Public notice shall only be required for minor amendments to Planned Unit Developments and TND Regulating Plans reviewed through the Substantial Conformance process.

² [Property posting may be waived by the Planning Director for City-initiated Zone Map Amendments that include multiple lots or property owners.](#)

2) Amend Section 702.E, Table 702-1 Development Review Application Types and Procedures, as follows:

Table 702-1. Development Review Application Types and Procedures

Application Type ¹	Public Notice ²	Administrative Review		Public Hearing				Form of Decision
		TAC	Director	HPC	BOA	PC	CC	
Land Use								
Limited Use Permit			DM					Permit
Vacation Home Rental Permit	■		DM					Permit
Conditional Use	■	□				■	DM	Letter Resolution
Site Development								
Conceptual Development Plan	■	■		□		■	DM	Resolution
Development Plan								
Minor Modification		□	DM	□		CU	CU	Letter
Development Plan-Administrative	■	■	DM	□		CU	CU	Letter
Development Plan-Public Hearing	■	■		□		■	DM	Resolution
Floodplain Development Permit		□	DM					Letter
Master Sign Plan		□	DM					Letter
Sign Permit		□	DM					Permit
Subdivision								
Preliminary Plat	■	■				■	DM	Resolution
Final Plat								
Major Subdivision		■	DM			CU	CU	Plat
Minor Subdivision	■	■	DM			CU	CU	Plat
Replat		■	DM					Plat
Condominium/Townhome Plat		■	DM					Plat
Easement Vacation	■	■				□	DM	Ordinance and Plat
Waiver of Replat		■	DM					Waiver
Extraterritorial Subdivision	■	■				□	DM	Letter
Variance								
Adjustment								
Minor Adjustment	■	□	DM					Letter
Major Adjustment	■	□			DM			Resolution
Variance								
Minor Variance	■	■	DM					Letter
Major Variance	■	■				■	DM	Resolution
Zoning								
Zone Map Amendment	■	■				■	DM	Ordinance
Planned Unit Development	■	■				■	DM	Ordinance
TND Regulating Plan	■	■				■	DM	Ordinance
CDC Text Amendment	■	□		□	□	■	DM	Ordinance
Other								
Community Plan Amendment	■	□				■	DM	Resolution
Annexation	■	■				■	DM	Ordinance

Pre-Application Review		■					Letter
Written Interpretation		□	DM				Letter
Substantial Conformance	□ ³	□	DM				Letter
Appeal of Decision		□			□	DM	Letter Resolution

Legend

TAC=Technical Advisory Committee Director=Planning Director HPC=Historic Preservation Commission
BOA=Board of Adjustment PC=Planning Commission CC=City Council
■=Required □=May be required by the Planning Director or as specified elsewhere in this CDC
DM=Decision Maker CU=May call up the final decision for review

¹ Refer to Section 705 through Section 729 for applicability of each application type.
² Refer to Section 703 for specific public notice requirements.
³ Minor amendments to PUDs and TND Regulating Plans reviewed through Substantial Conformance shall require public notice.

3) Amend Section 231.B, T4-NC Dimensional Standards, Footnotes 6 and 9 as follows:

⁶ Refer to Section ~~423~~ [424](#) for TND building type standards. [Additional building types for specialized uses may be approved by the Planning Director upon a finding that they are compatible with the transect zone.](#)

~~⁹ Refer to Section [424](#) [423](#) for TND [building frontage](#) type standards. [Additional building types for specialized uses may be approved by the Planning Director upon a finding that they are compatible with the transect zone.](#)~~

4) Amend Section 232.B, T5-TC Dimensional Standards, Footnotes 4 and 7 as follows:

⁴ Refer to Section ~~423~~ [424](#) for TND building type standards. [Additional building types for specialized uses may be approved by the Planning Director upon a finding that they are compatible with the transect zone.](#)

~~⁷ Refer to Section [424](#) [423](#) for TND [building frontage](#) type standards. [Additional building types for specialized uses may be approved by the Planning Director upon a finding that they are compatible with the transect zone.](#)~~

5) Amend Section 233.B, SD Dimensional Standards, Footnotes 4 and 6 as follows:

⁴ Refer to Section ~~423~~ [424](#) for TND building type standards. [Additional building types for specialized uses may be approved by the Planning Director upon a finding that they are compatible with the transect zone.](#)

~~⁶ Refer to Section [424](#) [423](#) for TND [building frontage](#) type standards. [Additional building types for specialized uses may be approved by the Planning Director upon a finding that they are compatible with the transect zone.](#)~~

6) Amend the title of Section 600 as follows:

600 ~~GENERAL PROVISIONS~~ [ORGANIZATION OF STANDARDS](#)

7) Amend Section 306.C.2, use standards for the keeping of chickens/ducks, as follows:

2. Keeping of Chickens/Ducks

The keeping of chickens or ducks for non-commercial purposes.

Use Standards:

- a. A maximum of five hens are permitted per lot or contiguous lots under common ownership. Roosters and drakes are prohibited. Additional hens may be permitted by the Planning Director upon a finding that the applicant has demonstrated the need for additional hens, and that the additional hens will not result in any adverse impacts.
- b. Chickens and ducks shall be kept in a secure ~~coop~~ coop at all times, except when under direct supervision.
- c. ~~Coups~~ coops shall comply with minimum principal structure setbacks.
- d. ~~Coups~~ coops shall be kept in a neat and sanitary condition at all times, and they must be cleaned on a regular basis to prevent offensive odors and attraction of pests.
- e. Feed shall be stored in a bear-proof container if located outdoors.
- f. In RR, MH, MF, CK, CN, CC, and CS zone districts and T4-NC, T5-TC, and SD transect zones, proof of consent is required from any applicable owners' or neighborhood associations.

AGENDA ITEM #3

STEAMBOAT SPRINGS PLANNING COMMISSION FINAL PUBLIC HEARING MINUTES November 9, 2017

The regularly scheduled public hearing of the Steamboat Springs Planning Commission was called to order at approximately 5:00p.m. on Thursday, November 9, 2017, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were:

Vice-Chair Rich Levy, George Eck, Lee Calihan, Martyn Kingston, Michael Buccino, Brian Adams and alternate Tom Ptach.

Staff members present were Staff Planner Toby Stauffer and Planning Director Tyler Gibbs.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

Elect Chair/Vice Chair

Martyn Kingston nominated Rich Levy as chair.

The nomination was confirmed unanimously.

Rich Levy nominated Brian Adams as vice-chair.

The nomination was confirmed unanimously.

#1. DP-17-08, Old West Building, Original Town of SS, B12, L15-18

STAFF PRESENTATION

Toby Stauffer:

This is a development plan for conditional use for ground-floor office space with a variance to parking standards. We are finding that it is consistent with our criteria for approval for a development plan.

The site is on the north side of 11th Street; two units in the northeast corner along the alley. There is a door opening for office on the 11th Street side and also on the alley side. We are regarding this site and units as on the pedestrian level. There is a step down and a step up from the 11th Street elevation.

Additionally, we have previous uses on the property that were retail and restaurant, so when we're talking about parking, retail on that site required two spaces and restaurant required four spaces; so six spaces were required. Office requires eight spaces in our code. There is also some parking on site – about 25 spaces. The building and the parking is currently nonconforming with regard to existing uses, though when we look at parking for this use we only need to be looking at the change, which is two spaces.

AGENDA ITEM #3

The items to talk about are if the office is appropriate on the pedestrian level based on what else is on the street, character of the neighborhood/area; the variance request to the parking requirements is to not provide additional spaces or pay the fee en lieu.

We found this compatible with the Community Plan; our Old Town Commercial classification calls for a mix of uses (business, office, residential) all in that area. We find that this location and its use is consistent with that criteria and consistent with other uses; there are similar office uses in the area.

For the variance, we are finding that it is consistent with the criteria: The intent of the code standard would not be achieved by strict application in this particular circumstance. That's based on some recent policy direction that we have proposed in the update to the CDC. The parking standard proposed for office in the downtown in the CDC update is 1 per 900, which is the same parking requirement for restaurant and retail. So if that is approved, then this use would be in conformance with the parking standard and would not require a variance. So based on that direction, we've found that this would be compatible; we don't think a fee en lieu is appropriate for the same reason. If approved, this variance would also be relatively temporary if the CDC is approved.

I do have some additional information you requested about parking variances in the downtown. I think maybe 25 variances total have been approved for parking in the downtown. Most recently, a use by right in a building with no parking was approved for no spaces and no fee en lieu. Just prior to that, a conditional use for office on the street level with a parking variance; two spaces were needed; that variance was approved for a short-term period. In recent years from 2001-2015, 23 variances approved; 15 were approved without a fee en lieu; most were approved for two spaces or less; of those approved with a fee en lieu, two of them we don't know what the fee was, but five of those were less than \$25,000 and one was approved at the \$25,000 rate, which is the fee en lieu.

APPLICANT PRESENTATION

Marsh Gooding, Applicant:

This is a portion of the space that was the Old West Steakhouse. Parts of it have been carved off for another restaurant, a residential unit and for existing office. We are looking at trying to make this space office. We've tried to lease it as retail for the existing retail space facing 11th Street, and we didn't know what to do with the rest of the vacant space, which is behind there and currently only has access off of the alley. What we're proposing to do is create three suites and try to rent all three of them to one tenant. He wants to put a tech company in there. It's a difficult space; it's got a double-barrel roof, so as you enter from the 11th Street side, in the upstairs space, the space in question is actually separated by the chase that runs down the middle of that roof where the two barrels come together. So we're trying to make that space accessible and find a use for this ground-floor space. 27 feet of frontage on 11th Street. The total square footage of this space is 3700, so it's not a lot of visibility. It is on the pedestrian level; it's only about three feet below grade to get down to this space. We're requesting the conditional use because of the lack of pedestrian traffic, the poor visibility, limited frontage and the subgrade floor level.

On the parking side and the requirement for two additional spaces, our main argument is that the intent of the code standard is not achieved by the strict application of the standard, because we've been trying

AGENDA ITEM #3

to rent it as retail. If we try and get a restaurant use in there, we'll be competing with the other restaurants in the area in terms of peak parking hours. So our argument is that office is primarily used during regular business hours and not at peak restaurant times and on weekends. By using office use, we might actually achieve the code standard of having more adequate parking on site.

The new code is hopefully going to be adopted on the 14th; then our parking variance would not be required. So we would have the option to wait until that goes into effect on January 1 and to have our project tabled until then. The reason why we're hoping to get an approval with this parking variance ahead of time is because we're trying to keep this tenant here in town. He has indicated to us that if we don't get this done sooner than later, he's going to leave town. I'm not sure why he's only considering our space, but apparently it's between us and Denver. So you can place as much or as little weight on that as you like, but that's what we've been told as the landlord.

QUESTIONS FROM COMMISSIONERS

Commissioner Buccino confirmed that the applicant is the owner of the building.

Buccino: So this is your space you've been trying to find a tenant for, for quite a while.

Gooding: We bought this in January. We work with Commercial Property Group; they actually manage it for us. So they've been marketing it. We had a tenant in the front half in the existing retail space. They went out of business, and we kept trying to rent the space for a while and have been trying to come up with plans to make – basically, entering from the 11th Street side there was a small retail space and then behind that a bunch of empty space that's kind of orphaned from the previous Old West Steakhouse where they kind of made each side of the building into its own unit and then left a bunch of empty space off the alley. So we're trying to deal with it all at once.

Buccino confirmed that there would be three separate entrances to each office.

Commissioner Adams:

Toby, can you expand on the fee en lieu portion and when that does apply and more specifically how that's not applying here?

Stauffer: : When there's a change in use, that causes us to consider additional impacts. One of those impacts is parking. The change between those parking standards is two spaces, so if they were not able to provide the spaces on site, which is required of all development in most zone districts, then the fee en lieu is \$25,000 per space. Our analysis when we were looking at this is we've considered parking variances and uses in downtown and we view it as a larger community concern and question. So applying that particular standard to this space didn't seem like it would solve the policy question or necessarily contribute right now at this particular moment. We've evaluated the uses in the downtown so far, and we've got some proposed policy direction to make them equivalent in the downtown. Additionally, this property does have parking, so that would be a contribution to the downtown parking concern. If we put all of the allowed uses by right, which would be restaurant and retail, and filled up that building, it still would be nonconforming. So our opinion on the fee is that it wouldn't solve an immediate problem for the downtown or in this area, and parking spaces wouldn't necessarily solve that

AGENDA ITEM #3

problem either because the building and the parking are all nonconforming. That brings us back around to the main point that it's sort of a downtown concern and not as applicable on a space-by-space basis or a case-by-case basis. We also in our community have recommended quite a few variances to parking downtown. So we understand that there's a need to have parking; the building does provide it. Also, this use does have really good access to transit. There's some surface parking nearby; it's highly walkable; so there are some alternative modes. Another policy shift in our CDC that's proposed is a multi-use parking space credit requirement, which we have in our code now though the language is not very clear, that would support Marsh's argument and the mixed uses that we're looking for in the downtown. So all of that combined and the update just around the corner led us to support this variance.

Levy: Where does the fee en lieu money go?

Stauffer: It does go into a specific fee that's for parking. I don't know exactly how it's written, but what I understand is that could maybe go towards actual spaces, a garage, a study, or something to support parking. It is a separate line item.

Levy: Have we ever used that money?

Stauffer: I don't know. Since 2001 I haven't found a parking variance that's paid \$25,000. One said that they would, and that hasn't been built yet. I think they actually changed their approval so now they don't need a variance. So we've never actually collected \$25,000 for a space; we've collected less money.

Commissioner Kingston asked whether staff feels that Criteria 3, the application of other code standards and/or intents will be improved by varying the standard, is just as applicable or more so than Criteria #2, the intent of the code standard would not be achieved by strict application of the standard, to this variance.

Stauffer: I think that #2 still does apply. I think if I was using #3 I would need to find a specific code standard that was better applied in their proposal. What I think their proposal meets is the intent of the plan and the direction for downtown – so more policy standards, not necessarily code standards. But for the variance, I don't think the application of the standard, which is to reduce or prevent traffic congestion and shortage of off-street parking areas, meets the intent of the standard. There is off-street parking provided for this building. The site is basically built out; if anything were to change they would probably just add more building. So I don't think we're achieving anything by applying the parking standard in this case.

Adams: You talk in the analysis about how the development is deficient by about 14 spaces, so when we talk about the fact that theoretically this part of that building is deficient by two spaces, it raises the high-level question of we say that there is no variance required and that this can use 8 of the 25 that are there, and one of the other parts of the building is deficient, what is the catalyst for saying that this specific part of the building has to be the root of the variance problem?

Stauffer: I think we have to talk about this specific part of the building; that's where our development proposal is for. So all the other uses in that building are there by approval or by right, so they're considered to be conforming. So the analysis there is just to demonstrate that the existing building and

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parking is nonconforming; there's physically not enough space for all by-right uses to locate on there. I think that's why our parking standard says that you only have to measure the change, because otherwise it would be an impossible measurement. If you were constantly trying to put parking on a nonconforming building that never had parking, no new use could ever come in there; no change of use could ever be approved. So I think the reason we're talking about these spaces is because that's what the proposal is for. We can't necessarily take parking away from any of the other uses that are existing.

Adams: Even though they're deficient, you could never really measure it that way or else you'd be able to keep being deficient but changing different parts of the building and never having to own up to an overall development. So that's why you specifically focus on that square footage that is in question.

Stauffer: And that's because it's a conditional use, so we need to measure the different impacts of that. Those can be parking impacts; it can be the impact of office in the downtown when our preferred direction is retail and restaurant, but that just adds to the parking variance. If you put retail and restaurant in this space, use by right, no change of use, no parking approval needed, no spaces provided, it's still deficient. That's more context for why we are supportive of this variance.

Commissioner Ptach:

Would there be grounds for not needing a variance if the applicant were willing to specifically designate eight spaces in the parking lot that they have for use solely by this occupant during the hours of say 6 to 6?

Stauffer: We have approved uses like that in the past. Usually, it's operational. I feel like it might still be a variance approval, but I can't quite answer that off the top of my head.

Gooding: We let the neighboring properties use our parking spaces. We don't currently police it; it's first-come, first-serve. If we started policing that, we'd be also not allowing Creekside and Laundry patrons to use the lot.

Levy: Toby, at some point Planning Commission had recommended a lower parking standard for office, and that just has not yet been approved?

Stauffer: Correct. I think the proposed standard in the updated CDC is 1 per 900, which is equivalent to retail and restaurant.

Kingston: Am I right in thinking that because the previous Commission has suggested lower parking standards that would be captured under "other intents" in Criteria #3?

Stauffer: Perhaps. I think the standard we're still looking at is parking, so typically the intent refers to the standard that we're looking at, so I think the intent of parking is the same regardless of the parking requirement for a particular use.

Kingston: It does seem to suggest from a common-sense perspective that given that the intent is to change the standard soon, the Commission might vote and say this is in keeping with that intent.

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Levy: Part of the applicant's request mentions "special circumstances of the property make application of the standard an unnecessary hardship." Can staff tell me if they've evaluated that request and how that relates to their recommendation for approval?

Stauffer: We did evaluate that request. We felt that the justification that the intent of the standard is not achieved is a stronger request for variance in this circumstance, primarily because all tenants in that particular space would have the same hardship so it would probably be hard to determine a hardship specific to these units. Potentially, it could be the access or the elevation levels in the building or the units, but most of the units in that building have that same access concern either stepping up or stepping down; the tenants in the building have the same mix of uses surrounding. So we couldn't find a hardship for those particular units that was very different from others in that area.

Levy: So you did not give any weight to that request.

Stauffer: Correct. The variance stands on its own with that justification.

PUBLIC COMMENT

None.

COMMISSIONER DELIBERATION/MOTION

Commissioner Eck:

So recently we approved a similar parking variance for a downtown property that provided zero parking spots. This property doesn't meet the existing code because it's old, but at least they're providing – as to the variance, I don't think the intent of the code would be met by requiring these folks to knock down part of the building to get two new spots so they can have an office in there, particularly in lieu of potential changes to the code. Council is going to have a better idea on that when this gets to them. I think also with the justification that this is a complementary use to some of the other uses in the building with the restaurants you can kind of mix and match. So I don't think the intent of the code would be met by requiring them to have two new spaces. I think the conditional use approval this is a suitable spot for an office; I think all those criteria are met.

Commissioner Eck moved to approve DP-17-08.

Commissioner Buccino seconded the motion.

DISCUSSION ON MOTION

Adams: I would call more into question whether or not if we didn't have an upcoming code change if this is not maybe the exact reason why we have a fee en lieu so that when existing buildings that can't require parking clearly have a parking need, at least we have some kind of a fee fund to try and make that up as a downtown all together. It does seem more appropriate than approving the variance on those grounds. That being said, City Council will have a much clearer direction on what they're doing with the new CDC update and whether or not this intent would have been moot just weeks from now I think is a lot of weight to put on that. Looking at that part of the intent and the fact that the parking may not even

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be changing if this were looked at in a few weeks is really strong. For those reasons I support the motion.

Eck: I do want to say for the record: The intent right now is what it is. So I just noted that for City Council. I still think regardless of if there was any change proposed, the intent is not to – downtown parking is a mess everywhere. It's almost a benefit to have no parking at all in your spot because then it's an undue hardship to require any parking. So I don't think the intent is that for a change of use for something that is not a use by right but a conditional use is to knock down a building.

Ptach: I would concur with what was said here and differ on what you said Brian. My consideration doesn't have anything to do with the upcoming code update. I firmly believe that the fee en lieu is really something that a ground-up redevelopment or development of a vacant site right now where that comes into play. I don't think there's any justification for penalizing an existing building in place just because the use is changing and forcing them to pay into a parking fund. I don't think that's just or the intention of the code. I think the intention of a fee en lieu is a Howelsen Place. It was the Harbor Hotel. It was rebuilt, and at that time they could redo everything in accordance with the parking standards at the time. At that point in time, the developer can make the choice to either pay a fee en lieu or build the spaces.

Buccino: That's a very good point. For me, when I look at this, there's always going to be a problem with this downtown district. Even with the code change, we're going to continue to have issues that come up with parking. That one project that I remember didn't even have a place to put a parking spot. In light of this, I think it's a good use of a mixed building downtown. Part of the argument for me is that they're trying to balance a little bit making it attractive to an unusable retail space to an office space. And to penalize them because they don't have two extra parking spaces in this instance when there is parking around the building and there's a lot of uses in the building – it's kind of a tricky situation because you have to consider the time of day that the other ones are being used. So if we forced another steak restaurant in there, you would really have no parking whatever. I think this is a creative use of a very bad corner of a building. Even if this guy walks, that's not an issue to me. The fact you broke it up into three spaces gives it to bringing some vitality downtown to others and not withholding that just because of these parking spots. The third thing was that if we don't even update this and it stayed at the 1 per 500 square foot parking requirements, it's still a viable variance request and I would approve it again because we're going to have this on a case-by-case basis even after the CDC is updated. I still see it's going to be brought up as the reuses of these buildings continue. That's why we have this process, and that's why I think it works.

Adams: And you don't want to create a situation where you're trying to encourage people to get rid of historic structures just for the sake of parking.

Calihan: I agree. I think it's a creative use and really is flexible use of a space that has been difficult to rent and that the two parking spaces that are needed are logically not needed at the same time that they're currently being used; so I support the variance.

VOTE

The motion carried unanimously.

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#2: Approval of Minutes: October 12 PC Public Hearing

Commissioner Eck moved to approve the October 12 meeting minutes; Commissioner Buccino seconded the motion.

The motion carried unanimously with commissioners Calihan and Kingston abstaining.

#3: Approval of Minutes: October 19 PC Public Hearing

Commissioner Eck moved to approve the October 19 meeting minutes; Commissioner Ptach seconded the motion.

The motion carried unanimously with commissioners Calihan and Adams abstaining.

Director's Report

Gibbs: We'll be advertising to get the Commission vacancy filled as soon as possible; I just need to coordinate with the clerk.

Adjournment

Commissioner Ptach moved to adjourn the meeting at approximately 5:37 p.m.; Commissioner Adams seconded the motion.

The motion carried unanimously.

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STEAMBOAT SPRINGS PLANNING COMMISSION

PUBLIC HEARING MINUTES

November 16, 2017

The regularly scheduled public hearing of the Steamboat Springs Planning Commission was called to order at approximately 5:00p.m. on Thursday, November 16, 2017, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were:

Chair Rich Levy, Martyn Kingston, Lee Calihan, Michael Buccino, Vice-Chair Brian Adams and George Eck.

Absent: Ptach

Staff members present were Staff Planners Toby Stauffer and Bob Keenan, and Rebecca Bessey.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

#1: PP-17-08, Norvell Add, Blk 2, Lots 11-14

STAFF PRESENTATION

Bob Keenan:

This is a request for a two-lot subdivision with some variances to lot size, corner lot size and side setback. We did receive a public comment via email from a Mr. Steve Caragol. The applicant has provided a variance narrative.

The request is to create two lots. The existing subdivision was platted in 1909; it was a plat of 25x110-foot lots. The home on the lot I think was built pretty soon thereafter; the assessor has it at 1910, which was long before we had zoning requirements. The house was placed on the lot as it sits today, and it's a little bit askew to the side lot lines and the front setback. As part of the request, the applicant is requesting a side setback to the existing home to place the proposed lot line 7.5 feet as opposed to the required 10 feet. This is something that we worked with the applicant on. They had originally proposed to have that at 10 feet and have the proposed interior lot meet the 6,000 square feet. Staff recommended that they change that request to go to 7.5 feet to make the corner lot bigger to help satisfy the intent of the code that corner lots are supposed to be 50% larger than the minimum lot size for the zone district. Neither lot meets that minimum size. That's the reason for that particular variance. But we thought it would be better to at least not make that even smaller by honoring the 10-foot setback.

None of these Old Town subdivisions have this 50% greater lot size on the corner lots. We would apply this to new subdivisions. Staff agrees with the applicant that it doesn't seem appropriate and that there's

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special circumstances of the property dealing with the original subdivision that create the hardship to do so; same with minimum lot size and the side setback, given where the home was placed on the lot originally. I do also want to note that the city applied the zoning to the Old Town area; they didn't apply the RO zoning. It was kind of a one-size-fits-all approach. Generally speaking, most of the Old Town lots – if you combine two of the old subdivided lots, they would equal 6,000 square feet. But in this particular subdivision, they were only 110 feet deep as opposed to about 120-130 for the rest of the Old Town subdivisions. So when you take those two lots together, they equal or exceed 6,000. But if you put these two lots together, you only get to 5,500 square feet versus the required 6,000. I think that's another important consideration with this variance.

Planning staff does find that it meets the criteria for approval of a preliminary plat and meets the variance criteria. We are recommending approval with two conditions.

There was a question about one of the lots that was shown in the lot analysis that compared the lot sizes and acreage. There was a 0.06 lot, and that appears to have been subdivided prior to zoning standards, so that's why it exists as it does.

APPLICANT PRESENTATION

Bear Ackerman, Applicant Representative:

Ray has lived here since 1938. That was his brother's house. The packet pretty much says it all. One thing I wanted to point out: I've been working in this city since 1979, and I remember that two lots in Old Town make up a building lot. I talked to Bill Martin and Pat Gleason, former City Council members, myself, Steve Ivancie from the county, we all remember that two lots is a building.

QUESTIONS FROM COMMISSIONERS

Commissioner Eck:

For the side setback variance, is that going to run with the land, or if they get a new house they have to...

Keenan: It will be noted on the plat as such. That was the intent that it would run with the land.

Eck: There was public comment via email that referenced it; something to do with secondary units. Can you clarify that?

Keenan: It appears that the public comment states that they're supportive of the subdivision with the condition that the requirement for minimum land size of 6,000 square feet for secondary residences is upheld. I think he's trying to say that if approved, he would like a condition to prohibit secondary units from these lots. He states: Parking is tight in the area, and the alley is very narrow.

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Staff took this under consideration, but we are not recommending that we prohibit secondary units on these lots. While parking may be limited in the alley, parking is supposed to be on site and not in the alley. So if a future property owner comes in with a proposal for a secondary unit, they're required to have an additional parking space in addition to the two for the single family. If they can't meet that standard, we can't issue the permit. So I think we're covered in that regard.

Eck: When he brought up the 6,000 square feet, I wasn't sure if this was already accounted for.

Keenan: We are creating a legal lot through this variance. It would be eligible for a single family and a secondary unit.

Commissioner Adams:

Is the setback you were talking about just one setback specific to the four new side setbacks being created, or are all four going to be 7.5 feet and kind of widening those buildable lots?

Keenan: It's just going to be the interior lot line to the two proposed lots between the proposed building and the new lot line. Just lot 1.

Adams: With a 50-foot waterbody setback on the back of both of those lots and removing the garage the way they have it laid out, even though there's four lots there, that 50-foot waterbody setback seems like it's getting rid of half their buildable area. You would almost need four lots in order to use the buildable area that's along Hill Street. So if we split the lots and force the buildable area for garages to be on the alley, but the alley has this huge waterbody setback, are we creating a nonbuildable lot for them?

Keenan: I don't think so. I think there's areas towards Hill Street that are developable. It does limit the development potential of those lots, and the applicant is aware of that. That's something we're going to have to address at the time of any future development.

Adams: If we approve this, are we creating a hardship that has not been imposed by the owner? Or do they not have a hardship right anymore because they subdivided the lot? What ability do they have to come back and deal with a waterbody setback in the future?

Keenan: That's a good question. I don't have a great answer for you on it. But it's not like they're creating a subdivision from scratch; they're dealing with an existing subdivision, and they're basically trying to combine these four lots into two to make two developable lots. With that waterbody being across the alley, I don't know – you've got pavement separating the lot from the waterbody. What's the quality of the area we're trying to protect with a waterbody setback? That would be part of the analysis for a future application, but I don't know that we're setting them up for a case where it's a self-imposed hardship. I think self-imposed is they built the house lot line to lot line and now they can't get a garage in without getting a rear or side setback.

Commissioner Buccino:

Your argument though was that it's an environmental issue that the waterbody setback is put in place, and with the pavement and other attributes there it shouldn't be in effect, anyway.

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Keenan: That's kind of what I'm thinking, but that's an entirely separate application. But that could be an argument that's made. We can't vary it through this application because they would need a waterbody setback variance, and that's a separate process and criteria.

Adams: Their buildable area now is about equal to two lots; if they cut that in half, then you're really cutting your buildable area in half unless you get the variance. It really seems like they're working in the wrong direction without taking care of that, but...

Commissioner Kingston:

I'm looking at the variance criteria. There are three variance requests; all three are justified by staff with reference to Criteria 4: The special circumstances of the subject property make the strict application of the standard an unnecessary hardship to the property owner/applicant. The special circumstances are not the result of actions of the property owner/applicant.

I find the descriptions under Staff Analysis in all three boxes to be convincing. There's one question I have: With the side setback variance to Lot 1, there's a secondary justification in the staff's recommendation: The application of other code standards and/or intents will be improved by varying the standard.

I wonder if Bob could walk us through that specifically.

Keenan: This allows proposed Lot 2 to have greater lot area, bringing it closer to the minimum lot size, improves compliance with the minimum lot size standards. So it gets Lot 2 closer to meeting the 6,000 square foot standard than it would have if we applied the 10-foot setback.

Levy: Bob, you want to give us some guidance as to why the 15% larger square footage for a corner lot exists?

Keenan: I don't know if the intent is specific in the code, but I believe it's to accommodate lots that have two frontages, and when you have two frontages you have two front setbacks. That reduces your buildable lot area on the lot. So the 50% extra should help accommodate that requirement for two front setbacks. I think that's getting at community character where you have a consistent front setback along the street. So on a corner lot, if you have two main streets and the continuity of setbacks on both streets – in this particular situation Hill Street is the primary street that has building frontages and front setbacks; then you've got Short Street, which has a handful of lots on it; it doesn't seem like any of those homes have frontage on Short Street, so I think that's a standard that could be varied by the director when that lot comes up for development.

Levy: And the CDC allows the director to choose only one frontage to be the primary frontage to apply to. In the past we have taken that option and usually designated only one front.

Keenan: Yes, it's an administrative adjustment that the director has the authority to grant based on looking at the character and that sort of thing.

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Kingston: Does your finding of special circumstances for Variance Request 1 create a precedent? Is the emphasis on the fact that if the current owner didn't site the home, that's the critical criteria. Or is it more of the special circumstances that relate to Lot 1, or both?

Keenan: I think what staff is saying there is that it is a special circumstance that the home is sited on the lot as such prior to zoning. If it had been sited closer to the western property and parallel with the property line, there wouldn't be a need for a variance request. It wasn't a self-imposed hardship because this applicant didn't configure the home in that location to create the situation we have now.

PUBLIC COMMENT

None.

COMMISSIONER DELIBERATION/MOTION

Commissioner Eck:

As Bear noted and I think staff confirmed, back when the RO zone was overlaid over Old Town, the idea was two lots got you a buildable lot in the current zoning. A hundred years ago they platted this, and there was 10 feet difference compared to most other lots in Old Town. So I think that this meets the conditions of approval. I'd like to point out for compatibility with the surrounding area, these lots are not going to be substantially different sized than surrounding lots. It's going to be bigger than some of the other corner lots. For the variance criteria, I agree with staff's analysis; there are special circumstances here. The 1910 plat doesn't achieve what Council wanted to achieve back when the zone was approved.

Commissioner Eck moved to approve PP-17-08 with staff's recommended conditions.

Commissioner Kingston seconded the motion.

DISCUSSION ON MOTION

Kingston: The applicant and staff have done a good job laying out exactly how the applicant meets the criteria for seeking an approval on a variance. It seems like the variance criteria is appropriate in this particular case.

Adams reiterated his concern about the waterbody.

VOTE

The motion carried unanimously.

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#2: DPF-17-09, Elk River Road Business Park, F1, L7

STAFF PRESENTATION

Toby Stauffer:

This is a final development plan for two mixed-use buildings. It includes variances to Urban Design Standards and a conditional use for multi-family on the ground floor. Two buildings with associated site improvements; a total of 11 residential units and 9 warehouse commercial/industrial units, parking, snow storage, landscaping and such on the site. The conditional-use approval is for one of the residential units to be on the ground floor. In the Industrial zone district, we typically would allow multiple-family uses to be on the second floor. In this case it's provided on the ground floor to meet accessibility requirements for ADA, is subject to the Entry Corridor standards. We are supporting that variance finding that the landscaping minimizes the impact of that parking and meets the intent of the building orientation standards.

The second variance is for the landscape parking buffer. This is along the side of the property. Parking lots are supposed to have 8-foot-wide buffers surrounding them; this application proposes a 6-foot-wide buffer and some smaller plant material because that buffer is also located in a utility easement. We're supporting that variance finding that the visual impacts are mitigated by the landscaping that they're proposing and meeting Criteria 1: The intent of the code standard is equal to or better than.

In addition to the building orientation variance, there was a letter that we received from the adjacent property owner who was concerned about the location of the building if it were to meet the standards. So they are in support of the location where it currently is. That's based on the industrial use in that building. It has an exhaust area of the building that would hit the new building if it were moved closer to meet our standards. That letter is in support of the variance and the application.

We're recommending approval of this project with conditions as listed.

APPLICANT PRESENTATION

None.

QUESTIONS FROM COMMISSIONERS

Adams: To the point that you had about the neighboring property's venting and trying to orient the buildings, correct me if I'm wrong, but don't we have guidelines in place to suggest that any venting coming out of a building should be handled already?

Stauffer: We do. I was just kind of referencing those standards. The existing uses do need to meet our requirements for noise and odor and air pollution and that sort of thing. The air pollution guidelines are mandated by the state, so our code just says you need to meet those requirements. I believe that they do. I don't think we have any code enforcement or violation issues with the current uses. This allows the use

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to remain without placing a new use in the relative area where we know there might be an impact. So hopefully that use will continue to manage its impacts, but we wouldn't potentially cause any new problems by locating the building where it's proposed.

Adams said he did not believe that was something to base a variance upon but noted that this is not in fact a justification put forward by staff or the applicant for the variance.

Adams: If you're avoiding your neighbor's pollutants, they should be fixing their pollutants; you shouldn't be moving your building.

Stauffer: That's correct. The intent of the standard is to mitigate the visual impact of the parking. We find that is mitigated by the landscaping, so the location of the building is sort of ancillary but may be helpful just to consider.

Eck: So you're saying shifting the parking to the Elk River Road side is mitigated because the landscaping. Don't all properties have to do landscaping anyway? So if every property has landscaping, why are we requiring parking be off the landscaping?

Stauffer: We do have both those requirements in the Design Standards, so I think we really want to block the parking off from Elk River Road to make sure the entry corridor is nice. In this case, we found the landscaping is dense and placed, and there are also some other circumstances such as sewer lines and easements in the front part of that property which limit the location of building placement.

Adams: If the standards themselves require taller trees and a landscape buffer as well as building before you get to the parking, we've not only moved the building but we've also reduced the landscaping by getting rid of the trees; we've also reduced the width, which may have reduced the number. It seems like in two different ways we are not mitigating separation from the parking lot in this way. Neither one is helping make up the other one because they've both been reduced.

Stauffer: The width is only reduced on the side, so that's a different view of the parking lot. That's on the south side, so mitigating the view of the parking from the adjacent building and lot, not necessarily from Elk River Road. But our standards do say that perimeter landscape buffers are required at parking lots. But again, the intent of the Landscaping section is to mitigate the visual impacts to Elk River Road. So the view from parking is screened by that landscaping. I suppose it would be better if the building was in front of it. We found that the landscaping is adequate, and they have the correct amount of trees. They haven't reduced the number of trees nor the size of the buffer along the front of the building.

Kingston: As well as reducing it from 8 feet to 6 feet, the applicant's request no longer has a mix of shrubs and deciduous trees; it's dropped to just shrubs and other materials. That seems to suggest that they've significantly reduced the potential landscape buffer.

Stauffer: Our standards are a bit conflicting as well because it does say you should plant within utility easements, but you should only plant shrubs. So though it says you should also plant a mixed landscape buffer, our other sections of our Municipal Code say you can't plant trees in a utility easement. And our

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Design Standards say you should only plant shrubs. So some conflicting statements, but they are doing their best to put some landscaping to screen the parking. Maybe if you're headed north on Elk River Road you might be able to see that side of the parking as you're driving.

Levy: According to 2.27, the landscape buffer along Elk River Road is existing. Or is that to be planted or improved? It says existing landscaping towards the north end of the property. I can't tell if there's going to be more planting on the other part.

Stauffer: Existing landscaping is on the north end where the building is developed. So there's an existing sidewalk, building and landscaping on the north end of the property. There is not existing landscaping or sidewalk on the south end of the property, so they are going to be adding new landscaping. All of the tree counts are for the south end of the property. So all the tree numbers don't include the existing trees; those trees will still be there as well.

Levy: So it's the square footage of this section south of the driveway that the calculations are being made on.

Stauffer: Correct.

Levy: So the total trees required on the property is 42. They have 7, and they're planting 35 along the southern portion.

Levy confirmed that there is no additional trees or landscaping required along 129.

Eck: On the 6 feet versus 8 feet issue, the justification in staff's analysis is that the applicant's alternative achieves a result that is equal to or better than the code standard. Can you explain to me how 6 feet of landscaping is equal to our better than 8 feet of landscaping?

Stauffer: We looked at the provision. Perhaps I should have stuck with Justification 3 that other code standards were improved. But they did mention in their narrative that there's a seat wall and some drainage also in that same area. I think there's also a sewer man along that area. So the area is fairly constrained with utilities that were serving the property and limited the space that they had to put a buffer or landscaping in. So we felt that 6 feet was close to 8 feet given all the constraints they had, and the shrubs met the Utility Standards requirements that are also listed in there and still tried to manage some of the buffering of the property. The intent of the standard is to manage the visual impacts from Elk River Road. This particular section of property has less visual impact on Elk River Road; you still may be able to see it; but the standard is still in there.

Kingston: So you're saying it's equal to. You left it in there because given the location and sight lines and things it's equal to.

Stauffer: Yeah. I think the variances also allow some flexibility for site development, so trying to fit the various requirements on this site. Those areas also serve as snow storage, so that is helpful to the site as well.

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Eck: You commented that it may meet other intents. I think that might be the case when you mentioned the utility issue.

Stauffer: I mention that later in the variance, but I did feel it was equal to.

Eck: I think it's unfortunate that we didn't have a presentation on this from the applicant. I don't know if I'm not looking at the right place for the applicant's narrative on his building orientation... I can't make any sense of this.

Stauffer: 2.12 is the applicant's TAC response. I thought it included some information that would be relevant to you. But their variance narrative is on 2.18. That's where they're justifying their orientation; they thought it met those three alternatives. They describe some of the adjacent impacts from the exhaust hoods on the adjacent property, how the entrances need to be designed. They've got some constraints a little bit on the property between a hydrant on the west side towards the rear and then some water mains and sewer mains in an easement on the east side, so that kind of squishes where development can happen in general on the property. When you add the other requirements for drainage, parking, circulation, it starts to hem them in on where they can put things.

Eck: I don't think the exhaust thing can justify the building orientation. There happens to be exhaust that somebody is supposed to have under control.

Les Liman, Applicant:

ACZ Labs has a volatile organic clean room laboratory, which is doing parts per billion and parts per trillion testing. So this is not a question of whether the adjoining property emits legal or illegal emissions. This is a question of if you wear the wrong deodorant to work, you could throw off the results on the air testing and on the volatile organic testing that's going on in this adjacent laboratory. So ACZ would really like the building to be a little farther away from that corner where these extremely sensitive instruments are. They're not exhausting; they're using air intake. So it doesn't matter whether those occupants are clean or not clean; it just matters whether they're there. If somebody's running a car or cooking something or whatever, it can really interfere with the laboratory. So that's why they would like the building to be a little bit farther away from the intake.

Eck: There's going to be cars parking there.

Liman: I'm telling you as a person who is real familiar with the environmental testing business that it would be best if that building was getting a little bit farther away. Obviously, the laboratory can't control how that property is necessarily developed. But that's the objective.

Eck: I understand. I'm struggling to connect the neighboring property owner's preferences to a variance criteria. I like when the applicant tries to do something that the neighbor wants, but that doesn't mean you can ignore the other stuff.

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Liman: The history of this subdivision was that it was platted and developed in the early 1980's. There was a 50-foot setback under county approval with provisions for berming and landscaping along Elk River Road. If you look at all the rest of the properties in the subdivision, they were oriented toward Elk River Road because that's how tenants want to be oriented. That setback and the landscaping along the road was designed and allowed for to allow that kind of orientation. It's a 100-foot setback from the centerline of Elk River Road, and 50 foot of that was provided. 40 foot is a greenbelt easement, and I think the rest of it is the sewer line and utility easements that were put in there. So it's set back pretty far. The rest of the properties on Elk River Road are all well screened. You can hardly tell that they're there.

Eck: The second justification talks about this pedestrian access issue.

Stauffer: We need to base our justification for the variance on the intent. So the intent of the building orientation in the Urban Design Standards is to ensure that the primary building entrances for commercial and mixed-use development are distinguishable and accessible from streets, pathways, plazas and parking areas. So before it got to this point, the building was oriented the other way. So the entrances were facing the west instead of the east, so they were not facing Elk River Road; so that is an improvement in the building orientation. The other intent that I think is potentially more relevant is to minimize the visual impact of surface parking lots and public streets and open space corridors. The third intent is to provide a range of appropriate building orientation scenarios based on size, location and context of each development site. So the adjacent uses and buildings give you the context for the site to be able to have some variation. We looked at the justification and found that the landscaping that's provided in the context of the site – it is quite far from the road; there are some utilities and other uses; there are a couple different things. There's going to be a sidewalk out front and a drainage area. So the context of that minimizes the visual impact and meets the other intents. The entrances face out toward Elk River so it's not the garages facing the road; that's how it first came to us and they were able to switch that. It also allows this building to have a little flexibility on the site. So it is sort of an infill site; it's developed all around it. It would best be developed; it's not going to be great for open space or anything. So that's kind of where we're coming from with the intent. I mention the pedestrian access because they switched it from how it was previously.

Levy: The Copper Ridge Business Park across 129, all of those have parking between the building and 129. Was that a PUD or variance request or pre-Entry Corridor Standards?

Stauffer: I didn't realize that you were looking for Copper Ridge. I looked at the other building on this property. I would assume it was done prior to standards; I think these standards were adopted in 2008 perhaps.

Levy: I would assume that's the case. That's an undue hardship if nobody else had to create – since that was done previously to the new adopted Entry Corridor Code, we've said before that if everybody else was able to put parking between the building and the road that making a new applicant do it is an undue hardship. Is that the case when the code is changed?

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Stauffer: I don't think so. I think typically we look at each site and each variance for its own merit. Across the street it will look different, but I think we're always trying to bring those into compliance with whatever standards are current at the time. So if any of those properties redeveloped, they would have to meet what's in our current code and our current standards. So I think this being developed under the current code that we have now, I think if our new code changes that, I don't think we would make them develop to a different standard until they redeveloped.

Buccino: I wanted to bring up a broader issue that I see in this much residential in an industrial zone. I know Les you have a lot of warehouses there that are used for business, and people have built second floor. These look like you're building row houses in the midst of an industrial zone. You claim it's a warehouse; it fits the code; it's more warehouse space than living space. But I do have to warn it's an industrial zone, and we're now providing a lot more residential. Where the 8-foot sidewalk is is not on his property; it's next to Elk River Road. So now we have a lot more people living here without contiguous sidewalks going from this property all the way down to 40. It was brought up a month or so ago; someone was looking at moving Aces High, and they were required to put a sidewalk that connected from Yampa Valley Electric up to that Jacob Circle development. They did not want to put that sidewalk in. The sidewalk you have on this plan is not part of the property, so he doesn't have to put that in?

Stauffer: He does have to put it in. It's required by the Entry Design Standards and by our Complete Streets. So it's location being in the right-of-way is appropriate. It needs to be a public sidewalk, and that's I think where the rest of the sidewalk will go. It will connect with future sidewalk whenever that is – maybe the capital improvement taken on by the city or done by development as it happens.

Buccino: That's good; thank you for clarifying that. I know one of the variances was an accessible unit on the bottom floor, and the reason for that makes total sense. But I still have to look at the size of these little buildings in all the projects that he's got. They're a little bit more massive square structures that look like warehouses that people are running businesses out of and may or may not have people living in there. We encourage live-work units. But I'm looking at these going wow, we're putting a couple row houses in this development. Is that never brought up because it passes the code?

Stauffer: It is allowed in our code right now. Multi-family that meets the size requirements and is on the second floor can be put in the Industrial. That's that policy question that we keep kicking around. We believe that if all of the uses in all of the zones meet the requirements in our code, they should not have too many conflicting impacts. So if the industrial uses or the business uses are there and operate the way they are supposed to; similarly if the residential uses know that they are living in an area that has industrial uses. To keep everyone aware of that situation, we have proposed a development agreement with this project, and we've done that for some of our other ones. That development agreement would be recorded against the property so that property owners know that they live in an industrial area. They can have noises or smells or other impacts from the other uses that are allowed to be there. We try to make sure that the uses will have the best chance of compatibility that they can until we decide as a community that we don't want it to be that way.

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Buccino: We need housing; there's no question in that. But the broader question is some of these, especially the smaller Building 700 in this example, I don't see anybody running a business out of any one of these.

Liman: We have 34 units existing, and I'd say half of them have some residential use. I'd have to actually do a nose count to see whether that's exactly accurate, but it's about half – maybe a little less than half. In terms of my intent, we want to permit the residential use. But how they're built out is really a function of what the tenancy turns out to be. Is it going to be 10 or 11 units that all have residential? I doubt it. I would be surprised if it was half.

Buccino: Building 700 doesn't even have a garage door; they have double doors to the warehouse.

Liman: We have some of those in the existing – we have at least two other units in the other part of this development that have double doors and neither one of them has residential in it.

Buccino: Are we encouraging residential in industrial? By the nature of your design and what you proposed, it passes; it's part of the CDC. But as Planning Commission we need to sit there and think about are we putting a residential complex in the middle of an industrial zone knowing the impacts that all this residential will do the way you presented it?

Adams: Are we discouraging industrial uses by creating individual spaces that are so small that they could barely be industrial?

Buccino: I don't know what business is going to run out of 650 square feet of warehouse space, or 700 square feet and 647 upstairs because it passes the code. I guess by putting double doors on there you can't put your car in there, so it's not a garage. So it has to be used as a business of some kind. I don't know. It's not a variance, but we have to ask the question.

Adams: When you get into these live-work units, we don't have any kind of code that says: If you're doing that, make your warehouse at least this many square feet or something like that?

Stauffer: We don't even have a minimum lot size in the Industrial zone district.

Adams: That could be an interesting policy discussion.

Kingston: I think it is a very interesting policy discussion, but it's irrelevant for the application under consideration because the code allows it.

Liman: That development has been real successful and has a lot of businesses there with some residential. They kind of figure it out.

Buccino: It's very versatile. That whole area has done exactly – when it was an enterprise zone to help encourage development out there. So it's a positive. I'm just bringing up a question.

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Liman: Inevitably, when you have a residence and somebody is doing welding next door, you're going to have bells and smells and so on. Sometimes there's some amounts of conflict. That certainly goes on, but the fact is people know what they're getting into. When you see these units and think they're all going to be residential, that's just not the reality.

Buccino: They don't always know what they're getting into. There's a project up on Captain Jack, and they were building homes right across the property line from where they have snow storage, and then they're complaining that there's snow storage in the middle of the night. Well, you should have known that you're going to be right next to it. Then they ask the city to spend thousands of dollars to try to figure it out. My only caveat with this example is you have a development agreement on that property that says you live in a high zone, you should have known that ahead of time. That gives me some confidence that you can't come back later and say this isn't right. There are some positives to that.

Levy: So we don't have any design standards for ground-floor industrial use like certain-size garage doors or anything like that? When we did TND we had first-floor elevation, ceiling heights, things like that. None of that exists for the Industrial zone.

Stauffer: Correct.

Levy: As far as what we can approve and not approve, the only variance request is because there's first-floor residential in one unit. Otherwise the other units are all by right.

Stauffer: Correct.

Adams: The fact that the other things may look like garages is only relevant if code enforcement after they're built actually finds that they're being used that way. The way they're designed allows them to be warehouse space, and there's nothing within their design that's kind of questioning that by code.

Stauffer: That's correct. Because we have a mixed-use property, we're trying to learn as we go – also trying to include in the development agreement that the space on the first floor is really supposed to be warehouse space – not necessarily parking for the residential use up above. So that's why we also make sure that there is parking spaces for the residential units so there's no need for parking in those spaces. That's two ways that we try to keep the intent of this project true moving forward. A development agreement isn't required with any of these, so I'm trying to describe what the reason is in Condition 1; specifics would be in the actual agreement.

Adams confirmed that there is a code enforcement process if those units are used improperly.

Stauffer: And the development agreement helps the lot owners as ownership transitions, tenants, those sorts of things we try to get the information to them so that they know what we talked about here.

Liman: The code doesn't allow us to count the parking spaces in front of the garage doors, which was not the case with the other buildings when they were permitted and developed. In terms of function, those parking spaces are used all the time for parking. They don't function as garages. I can't think of

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anybody who lives over there and puts their car in; they're businesses. So to not allow those parking spaces, you can do that in your code, but in terms of reality they park in front of the garage doors; that's the way it works.

Levy: Most of the snow storage on the west side is completely behind the building. What are our rules for being able to utilize that labeled snow storage?

Stauffer: I wondered about that as well. I would have you look at 2.29; that's their existing conditions plan. That space behind the building is all asphalt, so it's being used for parking and snow storage now. So that snow storage is all adjacent to asphalt. The requirement is that you need to be within 20 feet of asphalt. Looking at it, I thought it was just sort of back there and inaccessible. But because there is asphalt back there, it is accessible so they can drive down that.

Levy: Does it have to be accessible from the proposed property? It looks like it's adjacent to asphalt in Lot 6 and other properties; I don't see how they're going to get around Building 700 to push snow into that spot.

Stauffer: It doesn't have to be accessible from the adjacent property. We did indicate that they should seek an agreement or an easement if they needed to use that access or they needed to decrease the amount of snow storage if they're going to have to be driving in it. It does meet our requirements because the requirement says it needs to be within 20 feet of asphalt. This whole space is within 20 feet of asphalt.

Levy: So they're driving around the north end of the building and then pushing it all the way down behind the building?

Stauffer: I think that is one option for them. They could also seek to have access from Lot 6 to access that snow storage.

Levy confirmed that there has been one approval for ground-floor residential in the Industrial zone; Stauffer said it was located towards the back of a lot on Captain Jack and the warehouse portion of the building was located in front of it.

Levy pointed out that the proposed ground-floor residential unit is in Building 700, which is in the rear of the property.

Levy: Did we want to talk about the need for a certain number of units requiring an ADA unit? We have not bumped up against that in a presentation before.

Stauffer: I tried to get some more information on that based on your questions from Monday. I wasn't able to get a great answer from the Building Department, but the accessibility requirements from what I understand depend on the occupancies, uses, numbers and all sorts of variations. There's not a specific number that would mandate this first-floor unit. My understanding is that this configuration – whatever

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its ingredients are – mandates the first-floor unit. Or it doesn't mandate it but generally requires it to be ADA accessible.

Levy: Can the applicant shed more light on the requirement for an ADA unit in this proposal?

Steven Moore, Applicant Representative:

The initial design did not have a lower level accessible unit. In our review from the Building Department, he informed us that the 2009 IBC has a provision that refers to an urban design standard about accessibility, and that requires a ground-floor unit when you have more than either two or three. I would suppose it's three because over three you get into the Building Code.

Buccino: Toby, is there anything in the code that would keep someone from turning the lower level of some of these warehouses into a residential?

Stauffer: In the zone district it's not allowed, so it would be a code enforcement situation.

Adams: Is allowing one blanket allowing all of them in this application? Or are we allowing one that's specifically approved as one ground-floor unit.

Stauffer: I didn't specify that, but I think we only need to allow one. We're approving the plans we have in front of us; it shows one ground floor. I didn't call that out specifically in the conditions because they would be held to these approved plans. But if we needed to do that, we could.

Adams: I wasn't sure how much the plans counted as a legal document for that kind of approval or not.

Stauffer: I think they're part of the record. We try to have a final plan set for a final development plan that we can refer to if we ever have a complaint on the property or need to do a site visit.

Levy: So your feeling is if they were to ask for one more ground-floor residential unit that would be beyond substantial conformance?

Stauffer: Yes, I believe so because that's a use that has not been approved or allowed. We haven't stated that it was one on the ground floor. That might be a good clarification.

PUBLIC COMMENT

None.

COMMISSIONER DELIBERATION/MOTION

Kingston: I'm a little less convinced on the landscaping parking buffer changes, but knowing about the impacts on utilities particularly and the fact that it's almost impossible to really improve that standard based on the utility presence and the tying together of that request with the building orientation request, which I find is much more convincing, I would certainly support the variance request based on the

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criteria covered by applicant and staff. Looking at staff's analysis, particularly items Compatibility with Community Plan, Consistency With Surrounding Uses, Minimizing adverse impacts (which I think does have relevance to the ACZ request that the building be moved) and then particularly Minimizing Environmental Impacts (which seem to be neutral in this variance request...)

Commissioner Kingston moved to approve DPF-17-09 with staff's findings and recommended conditions.

There was no second for the motion.

Eck: I look at the proposal; it looks fine to me. I don't think this would be a terrible development. I don't know if it was just how it was presented to us or I'm just missing something, but I'm grasping at straws trying to justify these variances. That's what we have to do even if I don't have a particular issue with the proposal. I want these guys to be able to do what they want to do, but I can't put a motion together to justify these variances. Probably the landscaping one I could come up with something.

Adams: I'm in the same boat as you right now. The landscaping one, especially with the utility easement issues and things like that, seems a little bit more justifiable within the code. In reading through the applicant's narrative again, I don't know what the real justification is for the building orientation.

Levy: I thought when I saw the building being pushed back that I would want to see additional landscaping buffer along 129. That's not where they're asking for a landscaping variance, but I'm just saying that they're meeting the code for that. So I don't see where additional mitigation is really happening. I was just thinking if they were to do it to code and put the building towards the road, usually the point of that is to make it more pedestrian friendly and to make it more accessible to the road, but then we have this pretty dense landscaping buffer between the building and the road. So the two of them kind of conflict with each other in purpose. So I was really wondering why it's a variance to push it back from the road. But the way it is written, I would be looking for additional buffering along 129 to make the parking lot less visible since staff seems to remind us that even though others have parking between the building and the road, that was under a previous code and is not really a good justification for this variance. For me the bigger one is the first-floor residential. We did one that was in the back, but we've wrestled with how much residential is appropriate in the Industrial zone, and there is a policy discussion to be had. But with the first floor, it's a variance, and we certainly have to deal with those impacts. Those could be loss of industrial space, which is a fact in this case – not hypothetical that they may use it in a different way. It's not going to be industrial. So that's a pretty key concern for me.

Buccino: I would rather have seen them ask for a variance that we don't have first-floor residential and say it's warehouse than to say we need it for accessibility. In that whole development, there's no accessible units. I know in your letter on November 8 it talks specifically about using some statutes to make sure we have an ADA unit in there. I'm just concerned about that much residential. We need residential. We all know that. But this is not the zone for it, and I'm having a hard time getting my head wrapped around the first floor and making it that someone's not to come in – you put these things down and someone builds it out. We had Buena Vista brought up to us because these people had these duplexes and were making quads, and it was brought up later, and a lot of people were back on the street. To me they don't look like real warehouse spaces. I can't justify anything that I'm saying from a

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sense of what business could run out of there; we could have a photography studio, a bunch of little art studios – there’s a bunch of things that could happen from that. It’s more of a dialog I needed to bring up.

Calihan: I don’t think it’s our department necessarily to decide whether something needs to be ADA compliant or not. Access is a problem here for people who are differently abled, so I support the fact that there is residential in these that one be designated. But even though we have rather loose zoning regulations in this area, it’s an industrial area that allows some residential on second floors. That doesn’t seem like the intent of this is meeting the intent of the code.

Eck: I didn’t have a problem with the one unit of residential on the first floor, but like I said before, I can’t put two and two together with these variances. Maybe Council if they get this on review maybe brighter minds can figure that out, but...

Commissioner Eck moved to deny DPF-17-09.
Commissioner Buccino seconded the motion.

DISCUSSION ON MOTION

Levy: I’ll support the motion because of specifically the ground-floor residential. I was waffling on the parking buffer and the building orientation, but I’m really not too keen on losing industrial space that has been identified in the past as being an issue.

Adams: If the intent of this kind of zone district is to be industrial, they did not need to put that many residential units upstairs as to cause one to need to be downstairs. They could have decided only six of these units actually have residential upstairs and the rest could be additional warehouse upstairs or office or a bunch of different uses. It’s kind of self-imposed in the fact that they’ve caused this residential to need to be downstairs. Rich, I think your point as to if there were some kind of additional offering as to what would help buffer the parking a little bit more than just the basic code requirement is very interesting. If that had been proposed, I could have seen more discussion along that part.

Kingston: I’ll be opposing the current motion. I certainly have a great deal of deference to the majority of the Commission that seems to be voting for this motion. I understand the concerns of the ground floor ADA units. I think that policy could be changed in a future application, but ultimately Council will be looking at this discussion that we’ve had. But in supporting my initial motion, I’ll be opposing this current motion for the reasons stated before.

VOTE

The motion carried with commissioners Calihan and Kingston opposing.

#3: Approval of Minutes: October 9 Work Session

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Commissioner Adams moved to approve the October 9 meeting minutes; Commissioner Buccino seconded the motion.

The motion carried unanimously with commissioners Eck and Kingston abstaining.

#4: Approval of Minutes: October 16 Work Session

Commissioner Buccino moved to approve the October 16 meeting minutes; Commissioner Eck seconded the motion.

The motion carried unanimously with commissioner Calihan abstaining.

Director's Report

Bessey: The second reading of CDC update passed on Tuesday, so the new code will become effective January 1. Over the next month and a half or so, staff will be working on updating our website, our forms, creating a user's manual, getting everything ready to go live with that on January 1.

Buccino: How do you feel about the next policy work sessions to try to actually change the code? Is that something we're going to be aggressive on?

Bessey: That is certainly our intent. We're working on putting together a scope for each of those priorities that you identified and then trying to work with you to develop a schedule that we are all going to try to stick to to bring those policy discussions before you and get some amendments drafted next year. Certainly that depends on our development review activity, but we know that it's everyone's desire, and that's the direction we've been given from City Council as well.

Adjournment

Commissioner Buccino moved to adjourn the meeting at 6:26 p.m.

Commissioner Eck seconded the motion.

The motion carried unanimously.