



City of
Evans, Colorado

MINUTES
EVANS PLANNING AND ZONING
Regular Meeting
October 10, 2013 – 7:00 p.m.

CALL TO ORDER

Vice Chairman Brothe called the meeting to order at 7:00 p.m.

ROLL CALL:

Present: Commissioners: Brothe; Grigson and Numoto.

(*Secretary note: Commissioner Phillips arrived at 7:08 p.m.)

AUDIENCE PARTICIPATION:

There was no audience participation.

APPROVAL OF MINUTES:

Commissioner Grigson made motion to approve the minutes, upon a second by Commissioner Numoto the motion was unanimously adopted.

AGENDA ITEMS:

- A. Public Hearing – Resolution No xx-2013 - Use by Special Review for Outdoor Storage on Property Zoned I-1 – 4650 Industrial Parkway in Evans Colorado – (Gary DeJohn Storage)**

PRESENTED BY: Sheryl Trent, Community and Economic Development Director

ACTION: Recommendation to City Council

CITY COUNCIL DATE: Tuesday, November 19, 2013

BACKGROUND INFORMATION		
Location:	4650 Industrial Parkway	
Applicants:	Gary DeJohn, Owner	
Existing Land Use:	Vacant Land, Illegal Storage	
Proposed Land Use:	Short Term Outdoor Storage	
Surrounding Land Use:	North	Industrial Building
	South	Brantner Road, Vacant Land, South Platte River
	East	Industrial
	West	Industrial
Existing Zoning:	Light Industrial (I-1)	
Proposed Zoning:	Same	
Surrounding Zoning:	North	I-1
	South	I-1
	East	I-1
	West	I-1
Future Land Use Designation:	Industrial Business Park, River Habitat	

PROJECT DESCRIPTION: This is a request from the landowner (Gary DeJohn), for a Use by Special Review (USR) for outdoor storage to exceed the allowed 10% in the City of Evans Municipal Code. The owner would like to be approved for 30% of the land as outdoor storage. The owner is under a court agreement, as he has been notified and cited for illegal outdoor storage on the site (in excess of 10% and no primary use on the site). The executed agreement is attached as a part of this packet, and this USR is a requirement of the court in order to satisfy the agreement.

RECOMMENDATION: Recommend **approval** to City Council as the criteria for the approval of the special use can be met with conditions.

ANALYSIS:

1. **Background:** Mr. DeJohn owns several parcels of land in this area, some of which has structures on the land, most of which do not. He was recently notified of the illegal storage on the site and summonsed into court. As a part of that court action, the attached agreement was signed and this approval is a part of that agreement. The recent flood significantly affected the property in question,

but outdoor storage would not violate any of the flood plain standards that would apply to this land.

2. Section 19.04, 19.32 19.44 and 19.48 of the Evans Municipal Code:

Section 19.48 of the Municipal Code addresses accessory uses and in particular outdoor storage. The proposed outdoor storage is over 10% of the property and therefore requires a USR approval in accordance with Section 19.44.

19.48.055 Outdoor storage.

Except by approval of a Use by Special Review, granted in accordance with Chapter 19.44 of the Municipal Code, outdoor storage shall only be allowed as an accessory use in the I – Industrial – zoning districts and only in accordance with the following limitations:

A. No more than 10 percent of the area of any lot or parcel in the I-1 – Light Industrial – zoning district may be used for outdoor storage.

B. No more than 20 percent of the area of any lot or parcel in the I-2 – Medium Industrial – zoning district may be used for outdoor storage.

C. No more than 30 percent of the area of any lot or parcel in the I-3 – Heavy Industrial – zoning district may be used for outdoor storage. (Ord. 350-05: Ord. 272-04)

Below are the Criteria for approval of a USR per Section 19.44.020.

Chapter 19.44

Approval of Special Uses

19.44.020 Criteria for Use by Special Review.

A. All special uses are listed within each zoning district. If a use is proposed that is not defined within the Evans Municipal Code and does not reasonably fall within the definition of any defined use in the Municipal Code, the property owner may apply for use by special review approval in accordance with this chapter.

B. Criteria. The following criteria shall be used to evaluate use by special review requests:

1. The proposed use is found to be unlikely to harm the health, safety, or welfare of the City or its residents. **The use could certainly harm the welfare of the City and our residents by eliminating the compatibility with the commercially zoned properties to the north. With heavy industrial use (50% outdoor storage) commercial uses to the north would be limited, which affects the long term financial sustainability of the City.**
2. The proposed use would benefit the City in terms of employment, tax revenue, or other similar effects, as compared to the absence of the proposed use. **This type of heavy industrial use is best located in areas of I-3 zoning that are well removed from the public right of way and away from commercial uses. Even in the I-3 zone the code states 30% is the maximum for outdoor storage. In urban areas such as the City of Evans, uses such as outdoor storage should be limited (as the code intended) in**

order to fulfill the goals of the 2010 Comprehensive Plan and long range planning and sustainability issues.

3. The proposed use shall be consistent with the Evans Comprehensive Plan and shall be compatible with the surrounding area. The use is NOT consistent with the Evans Comprehensive Plan nor is it compatible with the surrounding area. Much of the I-1 zoning in the area is built out and meets the 10% standard. The City is in the process of issuing notices of violation to the remaining land owners in violation of the outdoor storage code.
4. The location, size, design, and operating characteristics of the proposed use shall be compatible with the existing and proposed future land uses within the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on uses by special review to protect the public health, safety, and welfare by mitigating impacts. As the pictures of the current site show, outdoor storage comprises around 50% + of the land at this time. The photos are indicative of what that land will look like in perpetuity if the USR is approved. The current and future land uses in that site are not compatible with outdoor storage of this intensity on this size of property. It will create a situation/condition that will negatively affect other property owners in the area, especially the commercial properties to the north. There is no way to mitigate the impact of the lack of compatibility – no fence can be constructed that is high enough, no landscaping can be installed on site that would screen the outdoor storage from the public right of way.
5. The site shall be physically suitable for the type and intensity of the proposed land use. The site is physically suitable for outdoor storage, except for the zoning and proximity to the public right of way, the other land uses in the area, and Highway 85.
6. The proposed land use shall not adversely affect traffic flow and parking in the neighborhood. The outdoor storage use would not adversely affect traffic flow and parking in the area.
7. The location of other approved uses by special review in the neighborhood shall be determined, in order to avoid an over-concentration of such uses. As mentioned prior in the report, staff is currently issuing letters of violation in the area to other land owners that may not be aware of the code related to outdoor storage. Currently the approval on 1470 42nd Street is for up to 50%, and that was allowed as it could be screened from 42nd Street and was a much smaller piece of land, and hence a much smaller impact on the neighborhood. That approval, which will stay for that legal description on that site, will remain in place and anything other would be an over concentration of the outdoor storage use in the area.

3. Issues:

The main concern with the application is the compliance with City Code and compatibility with adjacent light industrial zoning. 42nd Street is a major thoroughfare for the City of Evans and therefore compatibility with existing industrial uses and future commercial uses is critical to the future development and sustainability of the City. With 30% of the lot being used for outdoor storage the issue becomes even more important to the long term compatibility issues in the neighborhood. Many of the surrounding light industrial properties are developed with office structures and outdoor storage, and a negative effect on their property values should be taken into consideration when working with this request.

The precedent set by allowing a Use by Special Review for additional outdoor storage in this I-1 zone at this location could lead to other land owners requesting the same USR for the same reasons (business oriented). That would essentially mean the land in this area would exceed even the highest use allowed in the I-3 zone (currently 30%).

The land sits away from 42nd Street but on Industrial Parkway and Brantner Road, both of them arterial streets that lead to 49th Avenue. The surrounding properties are coming into compliance with the code with screening, replacement fencing, and other agreements.

Additionally, this land is zoned I-1 for a reason. The premise behind appropriate zoning includes the issues of land use. Zoning permits certain uses on land and usually move from the least intense uses to the most intense uses, protecting land and the public from more intense uses by placing that zoning away from areas of commercial, residential, or lower uses land zoning. The land uses should move from least significant impact to higher impact, especially along major arterials and areas of importance to the City.

Other land in the area is zoned I-1 (the lowest industrial zoning in our code). This land is visually adjacent to Highway 85, and also adjacent to other I-1 sites that are coming into compliance with the code.

Notice of this public hearing was provided in accordance with Chapter 19.64 and 18.28.125 of the Municipal Code.

FINDINGS OF FACT AND CONCLUSIONS

After reviewing the Gary DeJohn USR for outdoor storage that exceeds the 10% on property located at 4650 Industrial Parkway the following findings of fact and conclusions have been determined:

The review criteria in Sections 19.44 of the Evans Municipal Code CAN be appropriately and sufficiently met with conditions. Additionally, approval of this special use may be consistent with the 2010 Comprehensive Plan and with the surrounding land uses. The conditions are as follows:

- 1) The property owner will comply with the City of Evans Municipal Code and all lawful regulations related to the property; and
- 2) Outdoor storage shall be limited to an area no more than 30% of the property; and
- 3) Hazardous materials shall not be stored on the property; and
- 4) On or before November 18, 2013 the entire 30% outdoor storage area shall be properly fenced per the Evans Municipal Code with prior approval of the fencing and screening from City staff; and
- 5) If the property is ever subdivided, this approval for outdoor storage shall be limited to one parcel and shall not exceed the 30%.

STAFF RECOMMENDATION:

Sheryl Trent, Community and Economic Development Director presented the staff report and recommended that the Planning Commission forward a recommendation of **approval with conditions** of the requested USR with the findings and conclusions listed above.

Chairman Brothe opened the Public Hearing and asked if there was anyone in the audience who would like to speak to the item, seeing none the public hearing portion of the meeting was closed.

Ms. Trent reported the flooding did not impact the property and that approval of the special review would run with the land. She emphasized that there is no primary use on the site and that and is requesting that 30% be approved for use as outdoor storage.

Ms. Trent stated that the applicant was required by the court to appear before the Planning Commission and City Council for this request. She spoke of the need for screening the property and commented that using slates on a chain link fence would be an acceptable buffer for the property and that the fencing be in place by November 18 – the date that was agreed on during the court proceedings. She stated that staff is asking that the storage be allowed for a 5 year period and the applicant provide adequate access to the property, as none currently exists.

Gary DeJohn, 1860 23rd Avenue, Greeley Colorado, stated that since the flood he may be changing what he will be doing with the property and spoke of water management issues and stated he was not aware that the levy, which was private, would not be repaired. Mr. DeJohn commented that he had questions about the road repairs and whether they will be repaired or replaced. He said he was not considering any development at this time. He said using the property as an outdoor storage would not be cost effective because he would have to access water and sewer which is not economically feasible at this time.

He stated he would like to move the southern lot line 100 feet to allow the neighboring owner to move their fence.

Ms. Trent reminded the Commission the only issue for discussion was the use of outdoor storage.

Mr. DeJohn stated he has not been moving homes from original sites to his storage, but he sells them and delivers them to their new locations. The storage is considered revolving, and will be buildings that are moved on and off the site.

STAFF RESPONSE

Ms. Trent reported there is no existing site plan and if the applicant wishes to subdivide the property he would have to come back to the Commission for its approval. She spoke of the existing structures on the site and commented that the owner has done a good job cleaning up the property.

She responded to Commissioner questions stating the code does allow for chain link fencing and slates and the property would remain I1.

COMMISSIONER QUESTIONS

Commissioner Phillips stated that he did not believe there was adequate information to approve the request – and it should be thought out a little more. He commented that Mr. DeJohn doesn't know what he wants to do and due to the flood he felt that Mr. DeJohn should request an extension of the court.

Ms. Trent reminded the Commission that the only issue was outdoor storage.

Commissioner Phillips asked the applicant what type of fencing was he considering.

Mr. DeJohn commented that if he had chain link fencing with slates it would have been destroyed by the flood.

Commissioner Phillips made motion, seconded by Commissioner Grigson to recommend denial. The vote was as follows: Yeas: Phillips and Grigson; Nays: Numoto. Chairman Brothe abstained. The motion failed.

ELECTION OF OFFICERS

It was discussed and voted on that Chairman Brothe remain the Chair, and that Commissioner Phillips become the Vice Chair.

STAFF UPDATES

Mr. Ratkai reminded the Commission of the joint study session on October 15 and that staff is busy working on flood related issues including revisions to the floodplain map.

ADJOURNMENT:

The meeting adjourned at 7:47 p.m.

Vicki Mesa, Administrative Assistant

NOT YET APPROVED