

**CLEARFIELD PLANNING COMMISSION MEETING**

August 7, 2013

7:00 P.M. – Special Session

PRESIDING: Randy Butcher Vice-Chair

PRESENT: Becky Brooks Commissioner  
Joel Gaerte Commissioner  
Ron Jones Commissioner  
Norah Baron Commissioner  
Keri Benson Commissioner  
Timothy Roper Alternate Commissioner

ABSENT: Nike Peterson Chair

STAFF PRESENT: Brian Brower City Attorney  
JJ Allen Assistant City Manager  
Scott Hodge Public Works Director  
Christine Horrocks Building Permits Specialist

VISITORS: Kathryn Murray, Mike LeBaron, Matthew Jones, Joe O’Keefe, Beverly Bradley

Pledge of Allegiance was led by Commissioner Butcher

APPROVAL OF AGENDA

**Commissioner Gaerte moved to approve the agenda as written. Seconded by Commissioner Benson. The motion carried on the following vote: Voting AYE: Commissioners Brooks, Gaerte, Jones, Baron, Benson and Roper. Voting NO: None.**

PUBLIC HEARING FOR VAR 1307-0005 A REQUEST FROM ROCKET FUEL COFFEE COMPANY, LLC, FOR A VARIANCE FROM THE CITY’S STORM WATER DISCHARGE REGULATIONS FOR PROPERTY LOCATED AT 329 NORTH MAIN STREET

JJ Allen, Assistant City Manager, said the site in question, 329 North Main, had been abandoned for many years. He said any new use would require site plan and engineering approval. Mr. Allen said part of the engineering approval would be a requirement for on-site storm water detention. He said the site was problematic because of deed restrictions that made excavation very difficult. Mr. Allen said staff was unable to make an administrative exemption; therefore, the correct process was a variance. He said the applicant would present justification to support the variance.

Commissioner Butcher declared the public hearing open at 7:06 p.m.

PUBLIC COMMENT:

None

**Commissioner Jones moved to close the public hearing at 7:07 p.m. Seconded by Commissioner Roper. The motion carried on the following vote: Voting AYE: Commissioners Brooks, Gaerte, Jones, Baron, Benson and Roper. Voting No: None.**

Brian Brower explained to the Planning Commission its capacity as the appeal authority. He said the applicants had requested a variance from the City's storm water drainage regulations. If the City or the applicant was dissatisfied with the decision, the appeal would be to the district court. Mr. Brower said the Planning Commission was acting in a quasi-judicial capacity; the proceeding was somewhat less formal than an actual court proceeding, but similar in its process. He said the applicant had the burden of proof to demonstrate why the variance was warranted. Mr. Brower told the Commissioners to ask questions. If there were facts in dispute, determine which evidence was more credible. After the facts were presented there would be deliberation and a determination made by the Commission.

Matt Jones and Joseph O'Keefe represented Rocket Fuel Coffee Company. Mr. Jones said part of the variance request was due to a quit claim deed BP (British Petroleum) placed on the property. Mr. Jones said when the fuel tanks were removed from the site, contaminated soil remained. He read from a letter dated December 18, 2012 from Utah Department of Environmental Quality (DEQ). Mr. Jones said he spoke to John Menatti with DEQ who told him it would be okay to have a coffee shop on that site as long as there was no subsurface excavation. He said the plan was to dig down a couple of inches in order to repave the parking lot where the asphalt had been removed, which would still require approval from BP. Mr. Jones said if further excavation beyond what was necessary for repaving was done, it created a greater risk of releasing contaminated soil into the waterways. He said it would be more harmful to the surrounding area and citizens if the contaminated soil was disturbed by digging. Mr. Jones said the intent was to hard cap the area so the contaminated soil was kept undisturbed and they also wanted to plant appropriate landscaping that would help remediate the soil over the years.

Mr. Jones addressed the five criteria to be met for granting a variance:

- 1) Literal enforcement would cause an unreasonable hardship which is not necessary to carry out the general purpose of the land use ordinances.
- 2) There are special circumstances attached to the property which do not generally apply to other properties in the same zone. He referred to the quit claim deed that had been filed by BP.
- 3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. He said if the contaminated soil was exposed it had potential to affect the neighbors.
- 4) The variance will not substantially affect the General Plan and will not be contrary to public interest. He said the site had been there for some time and the use would not increase the load on the storm water system. He said the site had been in its present condition for 30 years and had not been a problem.
- 5) The spirit of the land use ordinance is observed and substantial justice done. He said the spirit of the law was that work was environmentally safe for the neighbors by remediating the soil by landscaping and keeping the property hard capped.

Mr. Jones said the next step was to petition BP for approval to hard cap exposed portions of the parking lot and landscape the site. He said they were not able to do any work until approval had been received from BP.

Mr. Allen said in the function of taking an application for a variance, an application would not be brought forward that wasn't close to meeting the criteria. He said staff determined there was a reasonable argument for granting the variance. The City's position on the variance was neutral to supportive. Mr. Allen said included in the staff report were comments from the City Engineer and Public Works Department. He said without the variance it was doubtful that anything would happen on that site for a long time and the City would like to see something thrive on that corner.

Commissioner Benson asked if digging was the only way the contaminated soil would be exposed. Joe O'Keefe stated that excavation was the only thing addressed in the quit claim deed. He said if any contaminants were to arise naturally or through the water system it would be the responsibility of BP. Mr. O'Keefe said BP was responsible for the cleanup of that property until the expiration of the quit claim deed. He said the only way the property owner or tenant would be responsible was for violating the conditions of the quit claim deed.

Brian Brower said all of the contamination could be removed but the process would likely be very costly. Staff's opinion was that if the City wanted to see something go on the site and be successful, the current requirement for storm water detention may not be economically feasible. BP had placed restrictions on the site which required its permission for any excavation work. DEQ indicated their opinion was that most of contamination was below the first four feet of soil. Mr. Brower said there was in fact another potential solution – excavation and removal of all contaminated soil, however it likely was not economically feasible now.

Commissioner Brooks asked if she understood correctly that no significant change would be made to the existing structure. Mr. O'Keefe said the car wash would be remodeled to be used as a roaster. He said a second drive-thru would be added to the gas station on the south side. Commissioner Brooks stated there had been no storm water issues to date and the City Engineer had no issues based on the letter in the staff report and the neighbors didn't have a problem when they were informed of the request. Mr. Allen said the meeting was noticed as a public hearing and notice was sent to the surrounding neighbors. He said three neighbors had asked for more information on the project, but they had no objections when they understood the situation.

Mr. Brower said the State recently amended the code on variances. Staff decided to hold a public hearing whether or not it was required by law; the thought behind that was to allow neighbors to voice any concerns on the matter. Commissioner Brooks said based on the evidence presented in the report and discussion during the meeting, she did not find a reason to deny the variance. Mr. Brower said the conclusions of the Planning Commission must be on the record stating whether or not the legal requirements were met for granting the variance. Commissioner Butcher asked if the applicant would need to go deeper than a few inches to run lines for wiring or water to the car wash. Mr. Jones stated that power, gas, and water were already in place. He said if the carwash were demolished it would cause more problems. Commissioner Butcher was concerned that if utilities needed to be dug, it could be a problem.

Commissioner Butcher read the five criteria for granting a variance. Commissioner Benson asked where the closest water drainage system was located. Scott Hodge, Public Works Director, said a storm water drainage system could be a pipe in the ground, but it could also be the curb and gutter. He said the closest storm water drainage pipe in this case was a considerable distance from the property. Mr. Hodge said when the site was vacant as well as when it was an operating business, there were not any issues with the storm water drainage from the site. He said the impervious surface hadn't changed to adversely affect the storm water system. Brian Brower asked Mr. Hodge to explain the storm water detention requirement. Mr. Brower said City regulations indicated any property had to detain the storm water flow such that it only added to the City's system at the rate of .2 cubic feet per second. In order to get that restricted level of flow some type of detention system would be required in order to hold the water such that it would be released at the permissible rate. Mr. Hodge said there were numerous ways to retain/detain water on property. He said the most common was to have a subsurface or low point where the water would be stored. He said in other cases, a tank was placed underground, but that would also require excavation. Commissioner Butcher asked if the flow of storm water would need to go to the curb and gutter and not on the neighboring properties. Mr. Hodge said that was correct.

Brian Brower suggested as the Commission considered the variance, if a motion was made to grant the variance, the State Code and the City Code both allowed the appeal authority to impose additional requirements on the applicant that would mitigate any harmful effects of the variance or serve the purpose of the standard or requirement which was being waived or modified. The request was to waive the requirement for a maximum of .2 cubic feet per second of storm water discharge into the City's storm water system. Mr. Brower said staff discussed that if a variance were granted and at any future point excavation was done and the contaminated soils were removed completely from the property, then the variance would no longer be needed and the City's storm water discharge requirements should be met. Commissioner Butcher asked for a ruling from the appeal authority and for specific findings regarding how the five statutory criteria for granting a variance were met.

Commissioner Gaerte stated:

- 1) Unreasonable hardship was met with the fact that in order to do anything currently on this site, it would require a significant amount of money and work to get approval from BP.
- 2) The special circumstance to this property was the quit claim deed regarding the soil contamination. He said any other C-2 (Commercial) zone didn't normally have a such deed restriction.
- 3) The enjoyment of the property. Without approval from BP and putting a lot of money and effort into the property, the land is currently useless. It cannot be enjoyed by the owner as with other properties in the same zone.
- 4) The variance will not substantially affect the General Plan. He said the fact that in order to meet code potentially hazardous soil would be exposed, which is contrary to the public interest. The General Plan called for businesses in this area. Updating the building and the façade is what was desired.
- 5) The spirit of the land use ordinance is observed and substantial justice done. He said the City's storm water system is in place to help prevent issues with storm water discharge.

The building on this site has been there for 30 plus years without any such problems. He said the spirit of the land use code was met in that there have been no issues.

Commissioner Gaerte said he agreed with staff that if the variance was granted, when the deed expired or if subsurface work was done, then the current storm water discharge requirements should be enforced. He said in his opinion, all five criteria were met. Commissioner Baron agreed with the comments made by Commissioner Gaerte. Commissioner Jones said in his opinion the five conditions were met. Commissioner Butcher said he agreed the additional points of hardship were met.

DETERMINATION FOR VAR 1307-0005 A REQUEST FROM ROCKET FUEL COFFEE COMPANY, LLC, FOR A VARIANCE FROM THE CITY'S STORM WATER DISCHARGE REGULATIONS FOR PROPERTY LOCATED AT 329 NORTH MAIN STREET

**Commissioner Jones moved to grant a variance for the property at 329 North Main, based upon the property meeting the five statutory requirements for granting a variance as discussed, along with imposing an additional requirement that if any subsurface excavation takes place at any time in the future that the variance would become void and the proper storm water detention would be required at that time. Seconded by Commissioner Benson. The motion carried on the following vote: Voting AYE: Commissioners Baron, Roper, Benson, Gaerte, Brooks, Jones, and Butcher. Voting NO: None.**

Commissioner Butcher stated that the Commission's role as Appeal Authority was completed for the evening and that they would move on to regular Planning Commission business at that time.

STAFF REPORTS

JJ Allen, Assistant City Manager, gave an update on the recruitment for a new Development Services Manager. He said the September 4<sup>th</sup> meeting should have a substantial agenda.

Brian Brower, City Attorney, said the Commission's determination on the variance didn't become official until a written decision was issued. It would be prepared by staff and signed by the Vice-chair and sent to the applicants. Mr. Brower said the discussion on the issue was about a parcel of land and not a particular project. He told the applicants as it related to their project, all the conditions imposed previously, except the storm water discharge regulations and on-site detention requirements must still be met.

PLANNING COMMISSIONERS' MINUTE

Commissioner Jones – nothing

Commissioner Brooks – nothing

Commissioner Gaerte – nothing

Commissioner Benson – nothing

Commissioner Roper – nothing

Commissioner Baron – nothing

Commissioner Butcher – said he read, studied and made a lot of notes, then he found out Chair Peterson wouldn't be at the meeting so he reviewed the material again to make sure he knew what was going on. He said he appreciated staff and their input.

There being no further business to come before the Planning Commission, **Commissioner Gaerte moved to adjourn at 7:56 P.M.**