

# Planning & Zoning Minutes

August 19, 2010

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CITY OF  
**REXBURG**  
America's Family Community

## Commissioners Attending:

Winston Dyer – Chairman  
Thaine Robinson      Ted Hill  
Dan Hanna              Cory Sorensen  
Gil Shirley

## City Staff and Others:

Rex Erickson – City Council Liaison  
Val Christensen – Community Development Director  
Stephen Zollinger – City Attorney  
Jake Rasmussen – I.T. Intern  
Elaine McFerrin – P&Z Coordinator

**Chairman Dyer** opened the meeting at 7:47 pm.

## **Roll Call of Planning and Zoning Commissioners:**

Cory Sorensen, Gil Shirley, Winston Dyer, Thaine Robinson, Dan Hanna, Ted Hill

Nephi Allen, Scott Ferguson, Richie Webb, and Jedd Walker were excused.

## **Public Hearings:**

7:05 pm – Rezone – David and Lana Chang – 208 East 3<sup>rd</sup> South – Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2)

**Chairman Dyer** explained the procedure that is followed for public hearings. The applicant or a representative will come forward and give a presentation to educate the Commission and the public about the proposal. The Commission may then ask clarifying questions. Based on the number of people who are here tonight because of this proposal, the audience will also be given the opportunity to ask questions. Staff may give any clarifying information. Public testimony will be taken. During public input, if audience members agree with a comment that has already been made by another person, it is requested to please be courteous and say they agree with the comment rather than reiterating it. Staff will then give their evaluation, which will be followed by thorough deliberation in order to come to a decision on the proposal. The Commission is committed to hear from all who would like to address them.

Lana Chang, 17907 Mariposa Ave., Yorba Linda, CA, owner and applicant of the subject property. She grew up in the Teton Valley and graduated from Ricks College. They have owned Kensington Manor, just south and adjacent to the subject property, since 2003. They purchased the subject property and after doing so became aware of the history of the property. They did not intend to ruffle feathers or upset people by asking for a zone change. They apologize for that. They were not aware that it was a controversial issue. They did not have any intent to upset the neighborhood. They have talked extensively with City staff and have tried to address all of the neighborhood's concerns that they were aware of. She hopes that they have come up with a proposal that they will find acceptable.

A presentation was shown on the overhead screen, starting with the prospective site plan showing the current property and what they have planned. They originally wanted a driveway off of East 3<sup>rd</sup> South. They have changed that by putting the driveway on South 2<sup>nd</sup> East, to make the best use of

property, and to be considerate of the neighbors' concerns. They have planned the prospective building to look like a nice 2-story home to best fit into the family neighborhood. They feel the property will look very nice with what is planned – a concept photo was shown, just to give the idea of size. Parking would be sufficient because in the past they have only used 60 to 70 percent of the parking for Kensington Manor. Current parking would accommodate the addition. They would give incentives for a resident not bringing a car; they will be paying for snow removal. They do want to maintain enough parking so that their students would have no reason to park anywhere else. They feel there would not be an increase of traffic on 3<sup>rd</sup> South. Students would walk across South 2<sup>nd</sup> East to campus, so there would be a slight increase in pedestrian traffic, but not vehicle traffic. The building would be attractive and would be planned by a local architect.

The Changs realize the neighborhood concern of this property being the gateway to the neighborhood. It is important to them to make it look nicer and have it blend into the family neighborhood. She clarified that the zoning would only be changing on the subject property. She understands the neighbors' concerns. Over the past 7 years that they have owned Kensington, the subject property has changed hands several times – the look of it has declined. They feel that new construction would improve the property value, the appearance of the property, and would hopefully contribute positively to the neighborhood overall.

Mrs. Chang said as BYU-Idaho enrollment grows, there is the need for more student housing. They hope to provide additional student housing right across the street from campus with as little impact as possible on the surrounding neighborhood. They are not developers. Her husband is a business owner, and she is a mom. They would use all local people to do the work that will be necessary for construction, providing employment for the community. She realizes she is not someone who lives in the neighborhood, but they own property in the neighborhood. She grew up in the area and loves it. They want to contribute to the neighborhood and the community.

**Dan Hanna** asked how long it would be until construction began if the rezone were approved.

Lana Chang was not sure. They would have the architect draw up plans and would move forward.

**Dan Hanna** asked if the home would be torn down.

Mrs. Chang said it would either be moved if it can be used somewhere else, or it would be taken down.

**Thaine Robinson** asked if the original landscaping would be staying on the streetscape.

Lana Chang said some of it would remain. It is now overgrown. They would leave what would look nice.

**Chairman Dyer** asked if she was aware that many people are concerned about this proposal.

Lana Chang said she has been made aware.

**Chairman Dyer** asked if they have met with neighborhood representatives regarding the proposal.

Mrs. Chang has talked with some of the neighbors.

The **Chairman** asked the outcome and what they have learned from those discussions between themselves as potential developers and citizens of the neighborhood.

Mrs. Chang said she listened. They have planned their proposal with the concerns of the neighborhood in mind. She does not know how they will like it.

**Chairman Dyer** asked if neighborhood members saw the proposal in these meetings.

Mrs. Chang said the plans were not done at that time.

**Chairman Dyer** said one of the concerns is the appearance on 3<sup>rd</sup> South. It was mentioned tonight that the home shown is not exact. He asked if there has been architectural planning.

Lana Chang said it is expensive to have an architect do drawings. Tonight's presentation was somewhat expensive. They do not want to spend money on plans that may not go anywhere. What they have shown was to show scale. The City has in place requirements in its ordinances about exterior buildings, which she thinks is great. Kensington, as it looks now, would probably not be approved. She does not know what kind of look the neighborhood would like it to have, but she feels it is possible to have the building look like a nice home.

The **Chairman** stated that the site plan does not show buffering, or protection of adjacent properties; they realize tonight's presentation is preliminary and conceptual. He asked if that was to come later on.

Mrs. Chang said buffering will be addressed if the proposal is approved.

**Chairman Dyer** said the Commission has some tools available that allow them to put conditions on a rezone if it is granted, such as buffering details, time limit to start the building process or it reverts back to its earlier zoning, etc. Would they be alright with that?

The Changs said that would be fine.

There are currently 108 residents. With the new additions, there would be about another 80 residents, with a student lounge also included.

**Chairman Dyer** said the plans show some new construction going adjacent to the existing Kensington Manor, along with the new building on the subject property corner. He asked how many people would be in the building on the corner.

Val Christensen said it is planned to be an 8-plex, which is 48 people.

**Chairman Dyer** clarified that the in/out access would be to the south on South 2<sup>nd</sup> East and not on East 3<sup>rd</sup> South. He said it was mentioned that they wanted to take advantage of the Pedestrian Emphasis Zone's (PEZ) parking reduction. Some pedestrian amenities would go along with that, to be addressed at the time of a conditional use permit application.

**Cory Sorensen**, in regard to Kensington being built at a time that design standards were not in place, if when they add the new adjacent building how that will be handled – will the design standards that are now in place need to be addressed?

Val Christensen said they would need to leave space between the old and the new building, because of building length regulations. The new building would need to address the current design standards.

Mrs. Chang said a stairwell will remain between the buildings. The new building needs to look like it blends with the existing building. Their architect will make the building look like it fits.

**Chairman Dyer** asked the audience if they had questions about the proposal to help them understand what is being requested. Comments or opinions should be saved until the public input portion of this hearing.

JannaLee Ward said her concern is that the entrance shown on South 2<sup>nd</sup> East is very close to the 4-way stop. Is this something that could be moved if the rezone were approved?

**Chairman Dyer** said there are certain standards on how close a driveway can be to the corner. The access would be reviewed by engineering staff.

An audience member asked if this rezone were not approved, what would be the applicants' plan for the existing residence.

Mrs. Chang said they are not sure. They could possibly use it as a manager's apartment and move the driveway, without a zone change. She does not think this would be the most attractive thing to do.

The audience member asked if they would sell the subject property.

Mrs. Chang answered not necessarily.

Doug Hancey, 378 Yale, said he was impressed at first by what was presented, but he is concerned that what is being shown is not what will actually be done – the pictured building looks like stucco and brick, but it is just a rendering.

Lana Chang said hopefully it will be like what they are showing, or better. She thought the neighborhood would like to have some input on how the building will look.

**Chairman Dyer** clarified that the issue before them tonight is a land use question – what is the appropriate use for the property? Later, if this were to move forward, there would be a development proposal that would include a specific and detailed site plan. The people of the neighborhood are concerned about impacts to the rest of the neighborhood. The Commission realizes the concerns people have of both the land use and what will be developed.

An audience member wondered if they could shift the planned new adjacent building further south. Val Christensen said if that were to be done it would block the southernmost access completely.

An audience member wondered what types of conditions can be put on a rezone. Could one condition be that they work with the neighborhood in terms of design?

**Chairman Dyer** said the Commission always walks the fine line of revering the owners' property rights and looking after the greater good of the community. Yes- there are a number of things that could be looked at. They need to be reasonable and prudent. There could possibly be a condition that the developers meet with the neighborhood associations for discussion. They would like a win-win situation for everyone.

This audience member asked, if this rezone were approved, could they just go ahead and build, or would they be required to have a site plan that was reviewed?

**Chairman Dyer** said a site plan is always required for development in Rexburg. The site plan would be reviewed by staff. There are different levels of complexity. A site plan for someone building a garage goes directly to staff. With a site plan for a larger development, the site plan is reviewed by staff, and it goes before the Commission and before City Council.

Val Christensen said that on top of any rezone conditions, the applicants would like to take advantage of the PEZ Ordinance, which requires them to come before the Commission with a conditional use permit application, which would require another public hearing. If conditions are put on this rezone, the conditions should be specific so that the neighbors and the developers know what the expectations are.

An audience member said seeing the presentation did not clarify anything for her.

An audience member asked if the subject corner property could be parking if this rezone were approved.

Val Christensen said if this zone change were approved without any conditions, it is possible that it could be all parking. As presently zoned, it could not be all parking. When the applicant first came to

staff, their idea was to bring the building further south and run the access aisle from East 3<sup>rd</sup> South, without having to have a zone change.

What has been presented appears less intrusive for the neighborhood.

Per an audience member's request, Mr. Christensen addressed the PEZ (Pedestrian Emphasis Zone) Zone ordinance – the PEZ zone areas (PEZ1 and PEZ2) were pointed out on the overhead screen map for clarification.

**Chairman Dyer** said the PEZ ordinance was created for increasing density close to and around the University, to emphasize pedestrian use. It allows the developer to have reduced parking, and density with more units per acre, in exchange for providing pedestrian amenities such as 10-foot sidewalks and bicycle racks.

Val Christensen clarified for the audience that the existing Kensington Manor Apartments are in the PEZ Zone. The subject property is just outside the PEZ Zone, but because it is adjacent and within 200 feet of the Kensington parking lot, the PEZ requirements would extend to it.

Val Christensen pointed out where the new corner building for this proposed rezone was planned, as an audience member said it seemed more intrusive because the site plan showed the planned 8-unit building as being about where the garage presently is. The audience member felt the building should be moved back so it would not be so intrusive and offensive.

Mr. Christensen said the existing garage is closer to the property line than the planned building would be.

It was clarified that both the new and the existing accesses on South 2<sup>nd</sup> East would be used to go in and out of the property.

An audience member asked where doors on the student apartments were located.

Mrs. Chang said the doorways are on the inside (south side) facing the courtyard. The housing is for girls.

The footprint of the new building would be about the same size as shown in the concept photo.

An audience member asked how students would be able to get to grocery stores, shopping, etc. on the other side of town if they do not have cars.

**Chairman Dyer** said the University is in the process of constructing some long-term parking on the south side of campus, so that cars can be used at times when students need them to shop. Possible shuttles are in concept stage.

An audience member asked the applicant if this is the end of what they are planning to do.

Mrs. Chang thought it was all they would be doing.

Corinne Barker, 231 East 3<sup>rd</sup> South, asked if this property is rezoned, where is it going to stop?

**Chairman Dyer** said there is no answer to that question. Rexburg is a living, changing, dynamic place. Proposals come and go all the time. They would hope that reason will prevail. The P&Z Commission and the City Council are here to protect the interests of the community. There has to be trust and respect.

An audience member asked if certain conditions are put on a rezone and the project is built according to those conditions, do those conditions remain attached to the property or at some future date if there is a new owner, could they build additional things on the property?

**Chairman Dyer** said they would be restricted by the conditions that are put in place. Those conditions are closely monitored.

Val Christensen reiterated that conditions need to be specific. If in the future someone wanted to add a unit to the property, they could apply to do so but it would have to meet the terms and requirements of the zoning.

**Chairman Dyer** thanked the audience for their questions and asked if staff had any information that would help to clarify the proposal for the Commission.

Val Christensen said a consideration is that the applicant could potentially have made this project work without a zone change if they put a drive on 3<sup>rd</sup> South.

**Dan Hanna** asked if tonight's proposal was the best option for this property.

Mr. Christensen said this proposal is definitely a better proposal, according to staff evaluation, than if they had a 3-story 12-plex and the drive on 3<sup>rd</sup> East.

There is no threat here. The Changs want to work with the community.

**Chairman Dyer** opened the public input portion of the hearing. He clarified that everyone can say whatever they want. If someone has submitted a written input letter but wants to give spoken public input, they will have to decide if they are represented by the letter or speaking, but not both.

**In Favor:**

Evan Nef, 208 East 3<sup>rd</sup> South. He had some thoughts he wanted to share having gone through this process. At his time of rezone application for this property about a year ago, they felt like they were trying to work with the community as well, but there was no win-win solution. He stated he would like to advise the neighborhood to work with these applicants. What they are offering is nice and better than what exists right now. They take care of their properties, as the Kensington Apartments show. He feels they will maintain the property and keep it nice. This parcel is unique. The best case scenario at this time is renters. He is in favor of the rezone. It is better than the alternative of a driveway on 3<sup>rd</sup> South.

Chad Alldredge, 243 South 1<sup>st</sup> East, the potential architect for the project. He agrees with what Evan Nef said. He likes the fact that it is University housing that is continuing what is coming down 2<sup>nd</sup> East, which is a main arterial. No one wants to live in a single family home facing it. This proposal is a sensible solution. Continued growth is vital to the community. He believes the applicant would hire local people to do the work. The proposal puts traffic on 2<sup>nd</sup> East and not on 3<sup>rd</sup> South. This home is not what it once was as a single family home. At present, it seems to be hiding behind a lot of foliage and is not in the condition that it once was. He has a master's degree in architecture and feels that different kinds of developments (homes, apartments, community grocery stores) can work together well. He appreciates that the new proposed building is actually pulled back and not encroaching on 3<sup>rd</sup> South.

**Neutral:**

Phil Packer, representing BYU-Idaho. He appreciates the Commissioners allowing the public the opportunity to ask questions; he has not seen that done before. The University has instructed him to speak in a neutral way. The applicants have been long-time, cooperating, very good property owners of University housing, and he thinks that will continue. It is not that the University does not care about what happens –the University has faith in the process. They would, however, note, that the need for student housing will continue. A lot of housing is going in or under construction to the South and to the West. This subject property, however, is a prime location for student housing.

Without endorsing this project, the University wanted to express that there is a continuing need for single student housing.

Dale Hillier, 335 Harvard Ave. He has been waffling back and forth in his opinion about this rezone. There are certain aspects that concern him. There is always the concern of encroachment that comes with high density numbers of people. Is the location an appropriate place for a private home? He feels that something has to be done. If the house stays as it is, he does not see any improvement happening on it; it will simply degrade, as houses do. It has always been a problematic property, in terms of the value of the property itself. It could only exist as a family dwelling if a family wanted to live there. Mr. Hillier is not for or against the rezone, but he senses the present owners, the Changs, are really attempting to come up with a feasible idea. He feels that everyone should step back from deep-seated feelings, and consider and look at the options. If something is not done now that is approvable, with the right kind of conditions, then what could it be like 10 years down the road? Probably there will be another owner, fighting the same battle. The house will just be older and more beat up and less desirable. He recommends that they all ought to take some time and consideration to think about this proposal.

**Opposed:**

David Pulsifer, 334 South 3<sup>rd</sup> East, president of 3<sup>rd</sup> East Neighborhood Association, in representation of the Association. He asked if he could show a brief PowerPoint presentation. The Commission declined the request as it was felt this would be an unfair advantage. They asked Mr. Pulsifer to summarize verbally. Mr. Pulsifer said he appreciates seeing the process at work. He appreciates the Changs for what they are trying to do and for their willingness to work with the neighborhood and the accommodations that they are trying to make. However, he represents the 3<sup>rd</sup> East Neighborhood Association, and the position of that association as determined at a meeting and through polling of individual members, is to oppose the zone change for reasons already articulated and because the property is a gateway property to the entire neighborhood. This association is a couple of streets over from the subject property and not immediately adjacent - that is the Harvard Neighborhood Association, of which David Ward is president. The association members come into the neighborhood passing by this property. The last decade has seen a gradual increase of up-zoning or more restrictive zoning in this particular area. Their neighborhood association was the first to request a zone change from LDR2 to LDR1. Two other neighborhoods have followed. This subject property increasingly wants less restriction and more expansive zoning. Historically, the University acquired the property from the Porter family about a decade ago. The University wanted the property changed to University zone, and was considering it as a possible alumni house but then could not use it because of ADA restrictions, cost prohibitiveness, etc. It was then sold to a Mrs. Hinck, who wanted do a bed and breakfast on the property. There was no allowable condition for her to do that; the zoning laws would have had to have been changed; it was also opposed by the neighborhood. The request was denied. Next, the Nef rezone request was for MDR1, for dormitory style housing. Each time the City Council did not let it go forward. Now the request is for MDR2. He agreed with Mr. Hillier that this has been a very expensive property. As it gets sold, each time the only ways to make it viable are either to change the property significantly to allow more people on it and recoup investment, or to allow the property value to drop to where a single family would be willing to buy the house again. He thinks the idea of it not being viable as a single family home is simply not true. There are many single family homes on very busy streets in Rexburg. By allowing a zone change, problems are solved for investors. By not allowing it, it would hold to property value, and a single family could again find it a viable place to live. If they did approve this down zone, he feels there should be conditions on it - buffering, number of units on the property, working with the neighborhood to make the building as residential in appearance and

as pleasing to the neighborhood as possible - but the official neighborhood association position is that the rezone request be denied, so that the property remains LDR2.

Brent Barker, 231 East 3<sup>rd</sup> South. He lives kitty-corner from the subject property. They are very opposed to this rezone because it impacts them and their neighbors, the Bonds, directly. There are about fifty people who live on the block. Now, this request would take their block and put it in numbers on that property. That is an entire block right across the street from some very nice homes. The Comprehensive Plan states the significance of maintaining and preserving existing family neighborhoods. This request is completely at variance to the Comprehensive Plan. The other option mentioned if the rezone was not approved, of having it remain as zoned and having a roadway on 3<sup>rd</sup> South, is not acceptable to them. They are trying to preserve their neighborhood. The request is too close an encroachment to 3<sup>rd</sup> South. They are opposed. Please look at their view. The college is representing the college. It seems to him the college is representing anybody that wants to build more apartments, in all respect to the college, and they understand that; but, they live there, too. They have lived there for 25 years. They and their neighbors feel much the same way.

JannaLee Ward, 249 Harvard Ave. She was asked by area resident Lila Moore, who is 91 years old and unable to attend, to read a letter written by her that the Commission does not have before them. Mrs. Moore has lived in her home for 50 years; she opposes this rezone. The area was always intended to be exclusively residential and supporting the college. They do not and will not support large apartment complex housing. Her greatest desire is to maintain this beautiful residential area of Rexburg as it is.

Robert Jimison, 255 Harvard Ave. He wanted to emphasize the fact that to change the zoning from the current Low Density Residential 2 (LDR2) is an impact on their neighborhood. It does not alleviate any concerns for any other incremental changes that would affect the neighborhood in the future. He is stoutly against this change. He does not think investment is a justifiable reason to change this property.

Gwendolyn Butler, 225 Harvard Ave. What would a change such as this do to the value of their property and to the neighborhood? They live a block and a half away. It was interesting to see that the PEZ zone did not include South 2<sup>nd</sup> East, from 3<sup>rd</sup> East to 2<sup>nd</sup> South. The real question is what do they want the community to look like? How much of the residential areas do they want to preserve? What is best for the community? She really does not know. A lot of the houses close to the college are being purchased and used as rentals – often the property deteriorates. She wonders if that is the future for her street. Mrs. Butler is concerned about parking, especially in winter. She likes the access of the rezone proposal being located on 2<sup>nd</sup> East. The proposal looks really good if the density is maintained, along with having proper setbacks and observing covenants. Mrs. Butler thought she might be neutral to the proposal, because she does not really approve of it, but she does not think the other options are very good either.

Corinne Barker, 231 East 3<sup>rd</sup> South. She agrees with her husband, Brent Barker, who spoke earlier. She is adamantly opposed to this rezone request. She has spoken with Mrs. Chang and told her that she was very much against this proposal. Mrs. Barker is more concerned with the number of people moving in whether they have cars or not, than she is with the appearance of the property, although she is concerned about the appearance, too. She will be having about 84 more people living next to her. When one rents to girls, plan on having double the number of residents because boyfriends come over. There will be traffic. A young family has moved in around the corner from them, and the mother expressed concern, in regard to her children, about the traffic that will be going on there. The property owners are there to improve their investment, but she has made an investment of 25 years to improve her property. If this housing goes in, what is it going to do to the cost of her property? If there is a foot in the door and the gate is opened just a little bit, how much more open is that gate going to swing as time continues?

David Ward, 249 Harvard Ave., president of Harvard Homeowners Association. He read a letter from Carla Jimison, of 255 Harvard Ave., who was not able to attend this meeting. She is against the zone change and wants the Commission to consider a few points : 1) the zone change is proposing higher density than family low density - their neighborhood values its residents and wishes to maintain its zoning to help preserve their quality of life and the desirability of their properties – it is not an issue of aesthetics or how easy it will be to live with - regardless of how beautiful the proposed building might be, there would be a sizable increase of students to the neighborhood, bringing high density student living right next door - even if there were no parking or no driveways on 3<sup>rd</sup> South, there would still be a profound impact to the people living close by –once the zoning has changed, there is no assurance as to how the property will be managed, especially when it changes hands again; 2) it has been said that this is a problem property that is not a viable for families because of its location on a busy street – many families with children live along 2<sup>nd</sup> East; 3) the viability of this property does not require a zoning change – this property has never been allowed to adjust to its true market value - it is not reasonable to change the zoning to correct a poor investment; 4) this is a vibrant neighborhood, not a dying one - since the last hearing on this property several months ago, there have been two homes for sale on her block, both of which sold to families with children – when older residents sell their properties, new families move in – zoning is vitally important to protect their neighborhood and is the very reason for zoning laws; and 5) she would like City Council’s decision on the Nef rezone request, which was denied, to be upheld.

David Ward then gave his comments. His remarks are a composite of the rationale of the neighbors who have made it known that they are against this particular proposal. He wanted to affirm his belief that Mr. and Mrs. Chang are not malicious in their proposal - that was shown in Mrs. Chang’s presentation – nor are they trying to be hurtful to anyone whose life they have disturbed through their action. They simply lack the judgment those who live in this neighborhood and in the greater Rexburg community have, based on experience. It is the issue of community versus investor, with the investors promoting the position that their investment has the community’s best interest in mind. Mr. and Mrs. Chang have proposed an attractive plan in order to realize the kind of change that will serve their investment vision. In order to accomplish this, they are proposing to shape the community’s vision so that it aligns with their personal vision. This approach is not community-centered at heart; it is personal and primarily serves a private interest. The question is not that the proposed building looks like family housing – the question is rather is it going to be family housing, with a family living there. A family is necessary in a family neighborhood. This neighborhood is family centered residences and a neighborhood community. Change is going to occur in this community. Change is inevitable. If they do not want change to shape them unwillingly or unwittingly, people have to act to shape the changes that will be most conducive to this community’s values. He would insist that such should be the case in this neighborhood. Saying no is not necessarily anti-progressive. The Harvard Homeowners Association feels that saying no to the proposed rezone is the best way to shape the change occurring in their community and to preserve their family neighborhood.

Robert Wood, 258 Harvard Ave. He moved to this address in December 2009. In the past, each time he has come back to Rexburg over some 12 years, it has changed a lot. He loves Rexburg. He moved his family here to their current home because it is a residential neighborhood. He does not want to see it change. He realizes they moved close to the college, but it does not feel that close because a good job has been done in maintaining the neighborhood as residential. Others that have spoken have invested their past. He has invested his future there. While he is very encouraged that whatever decision is made by the P&Z Commission and the City Council the neighborhood will be able to work with the decision either way, he does fear the creep as BYU-Idaho expands. People

purchase property speculatively and change the nature of the property. For that reason, he feels the best land use decision for that property is to keep it residential. He opposes the rezone.

Luc Comeau, 231 Harvard Ave. He moved to his home about a year ago. If this proposed complex was there at that time, they probably would not have moved there. He grew up in a university town. Twenty years ago it was beautiful. Over the years, there were small changes. Now the elementary school there is only half-full, because families are not moving in. The town is really gone. He would not want small changes here over time.

**Written Input:** Four letters (included below), read aloud by Chairman Dyer

Letter from David Peck, opposed to the proposal

Letter from Steve and Rosa Wasden, opposed to the proposal

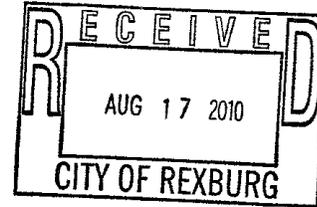
Letter from the Gerald Griffin family, opposed to the proposal

Letter from Dawn Anderson (handed to Chairman Dyer just before he read it), opposed to the proposal.

David D. Peck, J.D., Ph.D.  
323 South Third East  
Rexburg, Idaho 83440  
(208)656-0489

August 17, 2010

Rexburg City Planning and Zoning Commission



Re: Proposal to change zoning on real property located on the southeast corner of Second East and Third South in the City of Rexburg, Madison County, Idaho, to wit, 208 South 3<sup>rd</sup> East.

Dear Commission Members:

I write in strongest opposition to the application for zoning change referenced above. I have detailed some of my reasons on this letter. In summary, I argue that the proposed zoning change is made in light of a very recent rejection of a similar application by the former owners of the property, Mr. and Mrs. Neff, that the application proposes a dramatic addition of over eighty students at a time when thousands of new student apartment units are currently under construction elsewhere in the city, that the history of zoning in this area has been to "up zone," not to down zone, and that the owners in the area have repeatedly and convincingly demonstrated that they are opposed to this particular zoning change. The proposed change is not justified, is not in the interests of preserving the family-residential feel of the neighborhood, and is contrary to the fundamental values of the Rexburg City Comprehensive Plan.

The current application to change from LDR2 to MDR is the second application to be made within the past year. The last application was overwhelmingly rejected by the Rexburg City Council. The changes proposed by Mr. and Mrs. Neff in the last application were unacceptable to the residents of the area and to the City Council, and the changes proposed in the current application are even more drastic, and consequently, even more unacceptable.

This application should be rejected for those reasons alone. However, the commission should consider the repeated applications that the citizens of this area have been subjected to, a form of harassment. When will we be allowed the peaceable enjoyment of our residences free from these measures?

The current application proposes the addition of about eighty more students. This is a major change in the character of our neighborhood. This very sort of change violates the first value stated in the Rexburg City Comprehensive Plan, namely, the preservation of existing neighborhoods, the sort of violent change that I and my neighbors have continuously and successfully opposed for years.

Additionally, this change comes at a time when new student housing is being built in large quantity to the west and south of the BYU-Idaho campus. My understanding is that the units on Third West now under construction will house about nine hundred students, the Kartchner project on seventh south will house a significant number, as will the Summers units located near Les Schwab Tires. No doubt more than one thousand new units have already been approved, more than satisfying student demand. There is no need for more student housing, particularly when the requested change so directly impacts an established neighborhood.

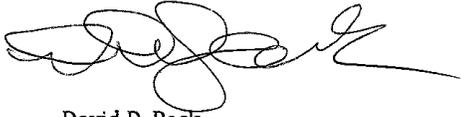
Prior applications for a zoning change to this property from LDR2 to MDR have been supported by the argument that the Kensington Apartments to the south make conversion of the property into student housing the only viable option for its use. That claim is not accurate. Furthermore, although the new owners of the property now making application have not, to my knowledge, relied upon this line of reasoning. However, should such an argument be made in any degree I want the Planning and Zoning Commission to know that I would consider it not only flawed by unethical for the owner of Kensington Apartments to advance such an argument. Again no such argument has been made to my knowledge, and it is hoped that no such argument will be made.

Over the past few years, at least three areas within a short distance from the property in question have "up zoned" from LDR2 to LDR1, indicating a very strong show of community interests in maintaining the family-residential feel of the area. Allowing this application to move forward and be approved or recommended for approval would be a complete denial of the clear desires of nearby residents, and a blow to the concept that the interests of nearby residents are valued and supported by their local government.

In conclusion, I very strongly oppose this application, and request that the Commission vote to not recommend approval of the proposed zoning change.

Thank you for your time, and thank you for serving the citizens of Rexburg as members of the Commission.

Sincerely,

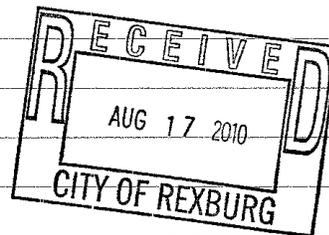
A handwritten signature in black ink, appearing to read "David D. Peck", written in a cursive style.

David D. Peck

8.17.10 2:00 p.m.  
Rezone change

Steve & Rosa Wasden not in favor  
of the zone change of 208 East 3rd South.

Steve & Rosa Wasden  
342 S. 3rd E (356-3730)  
Rexburg, ID  
83440



**Elaine McFerrin**

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**From:** Blair Kay  
**Sent:** Wednesday, August 18, 2010 10:30 AM  
**To:** Elaine McFerrin  
**Subject:** FW: Email from City Hall Website

*Written input #3  
Rezone #10 00276  
David & Lana Cheng*



fyi

Stephen L. Christenson  
Information Technology Director  
City of Rexburg | America's Family Community  
P: (208) 359-3020 x2339  
W: <http://www.rexburg.org>  
F: <http://bit.ly/cityofrexburg>  
T: <http://www.twitter.com/cityofrexburg>

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

**From:** Marilyn Griffin [mailto:[marilyng876@gmail.com](mailto:marilyng876@gmail.com)]  
**Sent:** Tuesday, August 17, 2010 9:10 PM  
**To:** Steve Christenson  
**Subject:** Email from City Hall Website

This is in regard to the property on the corner of 2nd East and Third South. (Formerly the Neff residence.). We are out of town, but would like to voice our concerns. We do not want the zoning to be changed. Thank you. The Gerald Griffin Family

352 S. 3rd East

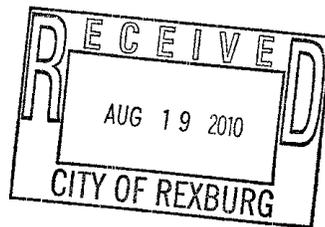
I oppose any zoning changes  
that would put the character of  
the existing ~~the~~ single family (LDR)  
neighborhood at risk for future  
medium or high density development.

Dawn Anderson

324 S. 3rd East

Rexburg 83400

313-6512



**Rebuttal:**

Lana Chang said she wanted to respond to a couple of the points that were made. As far as allowing the property value to drop down so that someone could buy the home, that could affect the entire area whenever someone else in the neighborhood wanted to sell their home. As far as them wanting just to make a profit and not caring about the community, it would be much less expensive for them to not apply for the zone change and just to build on their parking lot and put in a driveway. That would be the least expensive and most profitable thing for them to do. The way that they could get the most value out of that property would be just the driveway. The reality is that the University is expanding a lot, and there is a demand for housing that is close to campus. She and her husband are not coming here with the intent to shape a vision for the community or make choices for anyone else in the community. That is not their intent. Their intent is to put forth their proposal. It is up to the community and to this Commission to make the decision as to what is in the best interest considering the demands of the University and the neighborhood. Mrs. Chang agrees with David Peck that being in proximity to Kensington Apartments does not make the property, any property, not viable as a family residence. So, whether Kensington extends to the end of the corner or stops where it is, she does not think that its being there makes anybody around it not viable as a family residence. They have tried, in the seven years that they have owned the Kensington Apartments property, to keep it well maintained. They will do their best with what the Commission decides.

**Chairman Dyer** closed the public input portion of the hearing.

A brief break was called.

**Chairman Dyer** resumed the meeting and asked for staff evaluation.

Val Christensen went over his staff report. The subject property's size is .37 acres, so the 8 units is the maximum allowed. Regarding the north access (on S. 2<sup>nd</sup> E.) to the complex, the City Engineer felt the parking lot would work - it would have a complete circle access with the other south access. Staff does not feel the change would have negative effects, based on what other situations could occur mainly based on zoning right. He has spoken with the City Attorney, who had clarified that legally no rezone would be needed for an access aisle on 3<sup>rd</sup> South. The issue of creep is a valid concern, and an entirely separate issue.

He read the final staff recommendation from his report: "Staff finds no reason to deny this application if the Planning and Zoning Commission and the City Council can determine that the character and integrity of the existing residential neighborhood to the east is not negatively impacted."

Val Christensen addressed an issue mentioned in David Peck's letter, both for the public as well as the Commission. In that letter, it was asked when people will be free of the "harassment" that repeated applications bring. Mr. Christensen clarified that City staff cannot tell someone they cannot come forward with a zone change request. It is part of their system. Unfortunately, concerning this parcel, these good neighbors have been brought to these meetings more than any other neighborhood group in the City. He understands their frustration. When staff receives such application requests, staff has been instructed to do the best they can and to also look at alternative possibilities. It comes down to the P&Z Commission and the City Council to make the determination on whether a proposal may open a door for other things to happen that may not be in harmony with the neighborhood.

Staff feels it would be right at some time to take a closer look at 2<sup>nd</sup> East and have the neighborhoods give input about the area.

Mr. Christensen said there is the University that is growing. There is an existing neighborhood and a Comprehensive Plan that instructs him to protect those neighborhoods. He has to try to look for the best land use that will accommodate both, along with many other criteria. For example, the Pedestrian Emphasis Zone (PEZ) was a win-win situation for the community as well as the University. This is a growing community. As the University expands, where are the students going to go? The community, the Commission, City Council, and staff need to examine this concern. With this rezone proposal, Mr. Christensen said a positive for the neighborhood is that it sets a precedent of not allowing direct access to the street that goes back into the neighborhood. It sets the standard of showing that they are trying to protect the neighborhoods. This request was a tough request for staff to process. He deals with the same issues and concerns himself, basically being in the same area. It was still necessary to present a rational, professional opinion, which he feels has been done. The P&Z Commission has a very tough decision before them.

**Chairman Dyer** asked if the Commissioners had questions for staff.

**Cory Sorensen** said that earlier it was said that from a legal standpoint a 26-foot access would be allowed to be put on the subject property without going through the public hearing/rezone process. Val Christensen said that according to City Attorney Stephen Zollinger, an access easement could be put on the subject property without a zone change or a conditional use permit.

**Cory Sorensen** thought the Changes have shown a lot of integrity with what they are choosing to propose; it has the least affect on the neighbors.

**Dan Hanna** asked Val Christensen to explain traffic patterns (traffic flow and accesses) in the area; he is trying to understand how this property is a gateway to the community. Val Christensen said, according to the proposal, he does not see any additional traffic being generated back into the neighborhood. He thought the people who live back into the neighborhood view that entrance (South 2<sup>nd</sup> East/ E. 3<sup>rd</sup> S.) as their primary one to get into town or go places.

The traffic patterns that the neighborhood might use when leaving their homes was examined. If 2<sup>nd</sup> East is busy, and according to the time of day, people may use other streets.

**Chairman Dyer** asked Mr. Christensen to address how the proposal ties to the projected Comprehensive Plan map, which is a vision of where/how Rexburg will go as they look to the future. The written part of the Comprehensive Plan addresses having the goal of preservation of neighborhoods. There has been testimony on both sides of the issue tonight Val Christensen said the map shown is the one that existed at the time this rezone request was made, so it is the only one he can address (a new map was adopted last night at City Council meeting). The subject property is designated as Medium Density Residential on the Comprehensive Plan map, so the request for a rezone to Medium Density Residential 2 is in conformance with the Comprehensive Plan, in that the MDR2 Zone can be requested where the underlying preferred land use designation is Medium Density Residential. The neighbors feel that their neighborhood is a good, strong one, but at the same time the Comprehensive Plan has to be adhered to. When the written Comprehensive Plan addresses neighborhoods, Mr. Christensen understands it as single family neighborhoods; he also understands that some single family neighborhoods transition – parts, pieces, and wholes. The protection of good solid neighborhoods is an ideal that Rexburg citizens, the P&Z Commission, City Council, and City staff want to uphold. With the land use designation of this subject property as Medium Density

Residential, it could not be described as fitting this Comprehensive Plan focus. The rest of the neighborhood does fit.

**Chairman Dyer** stated the question before the Commission is, shall a zone change to Medium Density Residential 2 (MDR2) from Low Density Residential 2 (LDR2) be granted for this property, or denied, or granted with conditions?

**Thaine Robinson** said the issue is a tough one. The house is problematic because of the way it faces - it either belongs to both streets or it does not belong to either one. He feels the Changs' proposal is a good one, as it takes all the traffic, the access, the apartments, everything that the neighborhood might be worried about, and faces it to the south - and puts everything on 2<sup>nd</sup> East with nothing going to 3<sup>rd</sup> South. This proposal is a better compromise for protecting the neighborhood than not having something there at all. He feels he would support the rezone with conditions that would protect the neighborhood, such as buffering, landscaping, and keeping it off of 3<sup>rd</sup> South completely.

**Ted Hill** said he could support this proposal. It is a much different way of using the property than the last rezone proposal for this property.

**Gil Shirley** has known this neighborhood his whole life. He is trying to stay neutral. It is a hard decision. Since the Porter family moved out of the house, things have changed a lot. The Changs are good people. He is not saying he agrees with everything that they presented tonight, but he is not saying that he agrees with everything that the neighborhood has presented tonight. Timing is important here. Both the Changs and the neighborhood have good points. He feels that whether this rezone is approved or not, there needs to be some really good dialogue between the homeowners and the owners of this property. He thinks right now they may have the best people that own this property, who could do the best thing with it.

**Thaine Robinson** agrees with **Mr. Shirley** - the Changs are honorable people. The risk is if they sell to somebody else, which is the risk that everyone has if their next door neighbors sell.

**Gil Shirley** said he does not know if this is the right time to make the change or not.

**Cory Sorensen** said this proposal eliminates all reverse/backing out driveways; he likes that. It is very beneficial. It also makes 2<sup>nd</sup> East a safer roadway.

**Chairman Dyer** said this is a tough issue. It keeps coming up before them. He is troubled – his position on this proposal has changed two or three times tonight as he has listened to public testimony. Someday they are going to have to address this corner in some way. He is troubled that the property has not sold for single family occupancy. Its value has appreciated and continues to do so. An easy solution would be a single family in a single family residence, keeping the neighborhood going. On the other hand, if there is going to be something on this corner with a little higher density, then they would want to look at a proposal that would be conducive to that, done in such a fashion that it would blend in with the neighborhood and protect it. If that were to occur, there would have to be some strong conditions in terms of presentation to 3<sup>rd</sup> South, the look and architectural feel of the building to blend residentially into the neighborhood, meeting with the neighborhood organizations about their concerns, strong buffering to separate the development, no parking on the

subject property, etc. There appears to be a consensus of the Commission for consideration of this proposal.

**Dan Hanna** went through some possible conditions for discussion: site plan and elevations should be kept in the spirit of the developers' presentation; limit density to the 8 units; have sufficient landscape buffering shown on the site plan, to enhance and protect the neighborhood; if approval is granted, give 1 year to apply for a building permit.

**Thaine Robinson** thought input through meeting with the neighborhood could be a condition. Val Christensen said if the rezone is approved, there would then be a conditional use permit application which would have a public hearing. The owners want to take advantage of the PEZ Zone, in order to use parking spaces on the property to the south to make it work.

**Ted Hill** asked if the rezone were to go forward, could the Commission tie it to the current owners. If it is approved and they decide to sell tomorrow, could it revert back to its current zoning?

**Chairman Dyer** said they could tie the rezone to the property but not to the owners. However, there could be a time limit (sunset clause) to move forward or it would revert back.

Last night at the City Council meeting, as part of the Comprehensive Plan changes that were adopted, this subject property changed to a land use designation of Low to Moderate, which allows the zones of Low Density Residential 2 (LD2), Low Density Residential 3 (LDR3), and Medium Density Residential 1 (MDR1).

The possibility of changing the rezone to MDR1 instead of MDR2 was mentioned. The City Attorney said that was permissible.

**Chairman Dyer** said that if the Commission recommends approval of this rezone request to City Council, the Council would look at the proposal, the public input, and at the Commission's recommendations and would make the final decision. They would not be having another public hearing at that time.

Stephen Zollinger reiterated that there would be another public hearing at the time of a Conditional Use Permit (CUP) proposal. If a Design Review Committee meeting was a condition, a representative of the neighborhood could be invited to participate in that meeting.

A conditional zone change would be simply this project and this project only, as presented. That way if the Changs sold it, what they would be selling is a finished product, not the zone change.

**Dan Hanna** motioned to recommend approval to City Council of a zone change from Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2) for the property located at 208 East 3<sup>rd</sup> South, including the conditions that: **1)** the site plan and elevations be consistent with what was presented tonight and that there not be any access onto 3<sup>rd</sup> South; **2)** the proposal be limited in density to no more than 8 units (48 beds); **3)** the site plan includes sufficient landscape buffering to enhance the residential neighborhood; **4)** the application for a building permit be initiated within 12 months following rezone approval by City Council (or the property would revert back to the current zone); and **5)** at the time of the Conditional Use Permit proposal/public hearing, any concerns of the neighborhood are addressed through conditions. **Ted Hill** seconded the motion.

**Chairman Dyer** asked the Changs for a yes or no response to this question: if the rezone proposal is approved by the City Council, would having to apply for a building permit within 12 months of approval create a hardship for them?

Mrs. Chang said no.

There was further discussion.

**Chairman Dyer** said that tonight there was testimony from 12 individuals who live in proximity of this property, who oppose this rezone proposal.

Regarding preservation of the neighborhood and cohesiveness, **Chairman Dyer** asked if the Commissioners felt there might be negative impact from this rezone.

**Thaine Robinson** thought there would be a negative impact if the access was on 3<sup>rd</sup> South. By turning it around, this negative impact is avoided.

**Cory Sorensen** said because the property is so close to BYU-I, which is directly across the street, that issue plays a role as well. The building will be turned, so no one would be walking behind it to go to campus.

**Dan Hanna** said in their presentation the developers said the proposed building could look like a nice 2-story house. That protects the integrity of the neighborhood. The entrance to the building would be on the south. It appears that there would be little impact with traffic and density.

**Chairman Dyer** asked for the Commission's input on whether this rezone represents creep that could affect the neighborhood.

**Thaine Robinson** thought this has to be creep, because a house is being taken away. However, the way the site plan is, and the way it is facing, puts everything on, and is part of 2nd East, and not 3<sup>rd</sup> South.

**Cory Sorensen** said they are in a community where there is always going to be that creeping effect. He feels this proposal is a good thing because it sets a precedent: where there is an entrance into a community, putting in a building facing the way this one will be facing keeps it separate.

**Dan Hanna** said instead of trying to put a bandaid on an existing structure, this rezone proposal would increase property values and help neighborhood appearance, by what the applicants are proposing and willing to do.

**Ted Hill** thought the issue of creep would have to be looked at for each individual proposal that comes before the Commission.

**Those in Favor**

Cory Sorensen  
Thaine Robinson  
Winston Dyer  
Ted Hill  
Dan Hanna

**Those Opposed**

Gil Shirley

**Motion carried.**

**Chairman Dyer** thanked everyone for their input and patience.

**Minutes:**

Planning and Zoning meeting - August 5, 2010

**Thaine Robinson** motioned to approve the Planning & Zoning minutes of August 5, 2010. **Dan Hanna** seconded the motion.

**Gil Shirley** and **Cory Sorensen** abstained for having not been present.  
None opposed. **Motion carried.**

**Unfinished/Old Business:** None

**New Business:** None

**Compliance:** None

**Non controversial Items Added to the Agenda:**

1. Canal issues – Discussion

Stephen Zollinger said the City's position remains the same: they do not ever want to include their right-of-way as part of a development.

**Dan Hanna** said his position stays the same: to do something about beautifying and cleaning up areas adjacent to the canal.

Stephen Zollinger said the City is discussing with the canal company their maintenance. They have retracted their prohibition regarding the canal embankments being cared for by neighbors, if the banks can be maintained in a way that does not add clippings into the water. Right-of -ways belong to the City. It is not the canal company's canal banks; it is the City's canal banks. The only thing the canal company can prohibit is anything that adversely affects the canal.

There is only one canal company in the City, the Rexburg Canal Company.

There may come a time when the canal company could possibly re-route to bypass the City.

**Dan Hanna** said, regarding 4<sup>th</sup> West and 4<sup>th</sup> South, that the whole intent was that it looked like there was an excellent opportunity to beautify the canal area as two developments came in.

Stephen Zollinger said he understands **Mr. Hanna's** desire to address this issue, but legally his position is the City does not want to require it. He would allow it, if individual property owners want to take it upon themselves to maintain, for aesthetic reasons, a canal bank across from their home. The City would not stop them. However, the City cannot in any way direct them or encourage them to be out in a roadway.

**Chairman Dyer** clarified that they cannot even say "we encourage you to beautify the canal."

Stephen Zollinger said he would not encourage a property owner, as part of their development, to ever engage in that behavior. That would make the City a party to the encouragement of putting them in harm's way.

**Chairman Dyer** said the question is: is there anything they can do, as a Commission first and as a community at large, so that property owners would be willing to take on the care of the canal banks on their own.

Stephen Zollinger said other developments along 4<sup>th</sup> West are currently doing so on their own.

**Gil Shirley** clarified they cannot encourage, but they can allow the canal banks' care.

Stephen Zollinger said that was correct. Liability comes with the City being the driving force.

It was felt that maintenance of railroad areas also needs to be addressed.

**Dan Hanna** motioned to recommend to City Council that they look into what options are available for better canal bank and railroad maintenance throughout the City. **Gil Shirley** seconded the motion.

None opposed. **Motion carried.**

**Report on Projects:** None

**Tabled Requests:** None

**Building Permit Application Report:** None

**Heads Up:**

The next P&Z Commission meeting date of September 2<sup>nd</sup> was discussed.

**Dan Hanna** motioned to cancel the September 2<sup>nd</sup> P&Z meeting. **Thaine Robinson** seconded the motion.

None opposed. **Motion carried.**

**Chairman Dyer** adjourned the meeting at 11:32 pm.