



AGENDA  
CITY OF GLENWOOD SPRINGS  
Planning and Zoning Commission  
Special Meeting  
SEPTEMBER 15, 2020  
Council Chambers, First Floor  
101 W. 8<sup>TH</sup> STREET  
6:00 PM

1 Meeting Attendance Instructions

- A. Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83314197327>

Or iPhone one-tap :

US: +12532158782,,83314197327# or +13462487799,,83314197327#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099

Webinar ID: 833 1419 7327

International numbers available: <https://us02web.zoom.us/j/83314197327>

2 Roll Call

3 Comments from citizens appearing for items not on the agenda

4 Planning Workshop

- A. Discussion: Amending regulations related to Medical Marijuana Business, Retail Marijuana Business, and Marijuana Cultivation.  
B. Discussion: Adding design variance criteria to Title 070, Article 070.060.070 Flexibility and Relief Procedures.

5 Commissioner Comments

6 Director Comments

7 Adjournment





## Planning and Zoning Commission Report

Date: September 15, 2020  
To: Planning and Zoning Commission  
From: Trent Hyatt, Senior Planner, Gretchen Ricehill, Assistant Director of Economic and Community Development  
Subject: Discussion: Amending regulations related to Medical Marijuana Business, Retail Marijuana Business, and Marijuana Cultivation.

<b>REQUEST</b>	
<b>APPLICANT</b>	
<b>OWNER</b>	
<b>LOCATION</b>	
<b>ZONE</b>	
<b>SURROUNDING LAND USES</b>	
<b>LOT SIZE</b>	

### **ACTION ITEMS**

None.

### **BACKGROUND**

This is a continued discussion from the July and August regular Planning & Zoning Commission meeting regarding new regulations for marijuana related businesses.

During the August 25 workshop the Commission considered regulations from other communities across the state and specifically regulations that had buffers from parks, child care facilities, and from halfway houses/mental health facilities/treatment centers.

The Commission also discussed adding colleges to existing school buffers, adding a numerical cap, and raising the existing buffer distances.

The Commission requested that staff provide maps showing 500 and 1000 buffers from parks; and adding colleges to existing school buffers. Attached are the two maps. The first shows a 500 foot buffer around all parks and schools, including colleges, as well as a 900 foot buffer between existing marijuana establishments. The second depicts a 1000 foot buffer between all parks, schools and between all existing marijuana establishments.

### **PROJECT SUMMARY**

### **REVIEW CRITERIA AND STAFF ANALYSIS**

None.

### **REVIEWING AGENCY COMMENTS**

None.

**ACTION ITEMS & STAFF RECOMMENDATIONS**

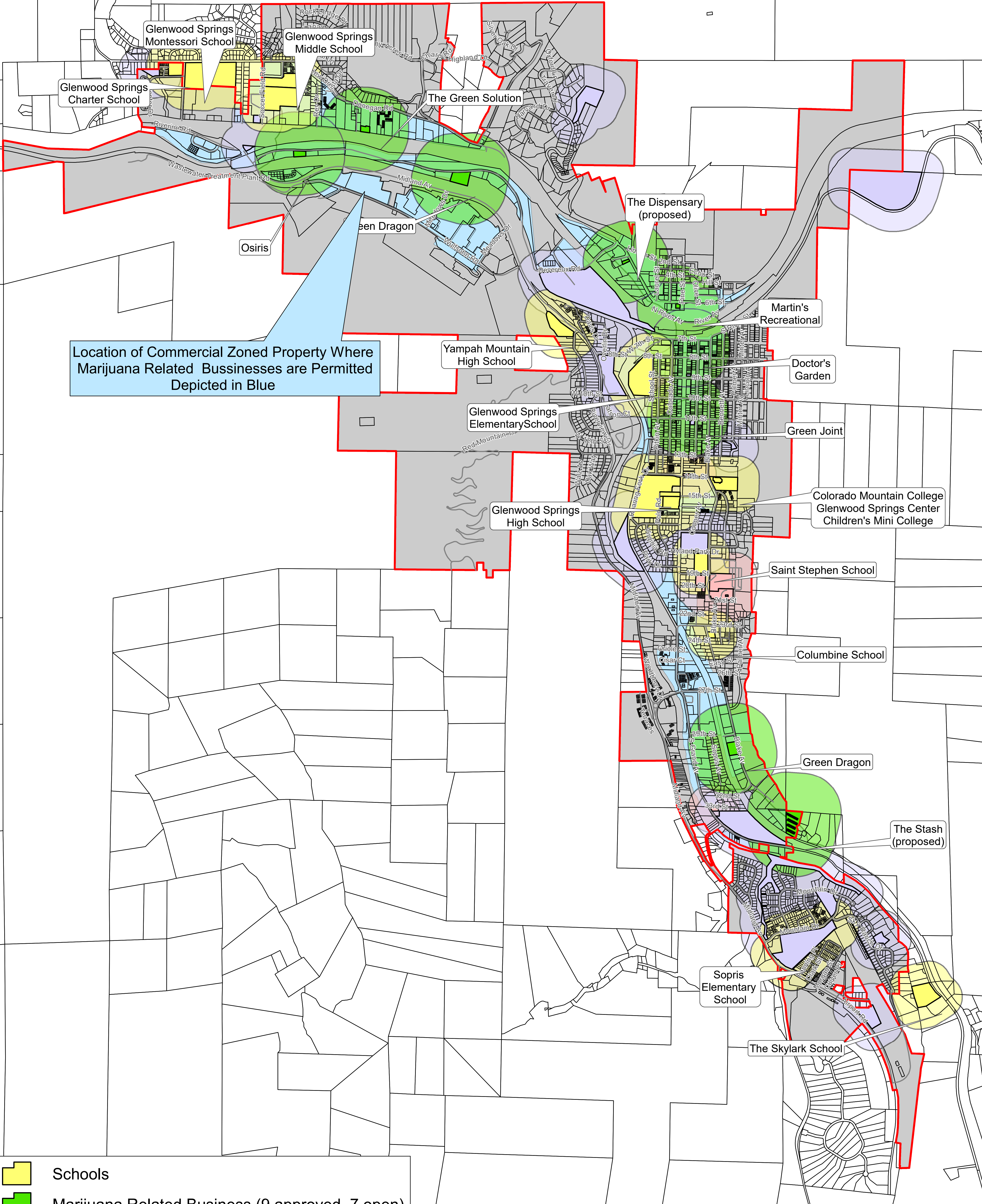
None.

Suggested Findings:

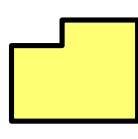
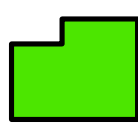
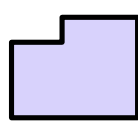
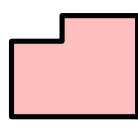
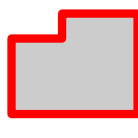
None.

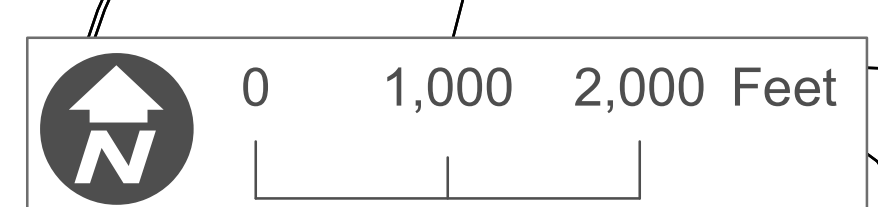


# Marijuana Related Businesses and Potential 500 Foot Buffers



Location of Commercial Zoned Property Where Marijuana Related Businesses are Permitted Depicted in Blue

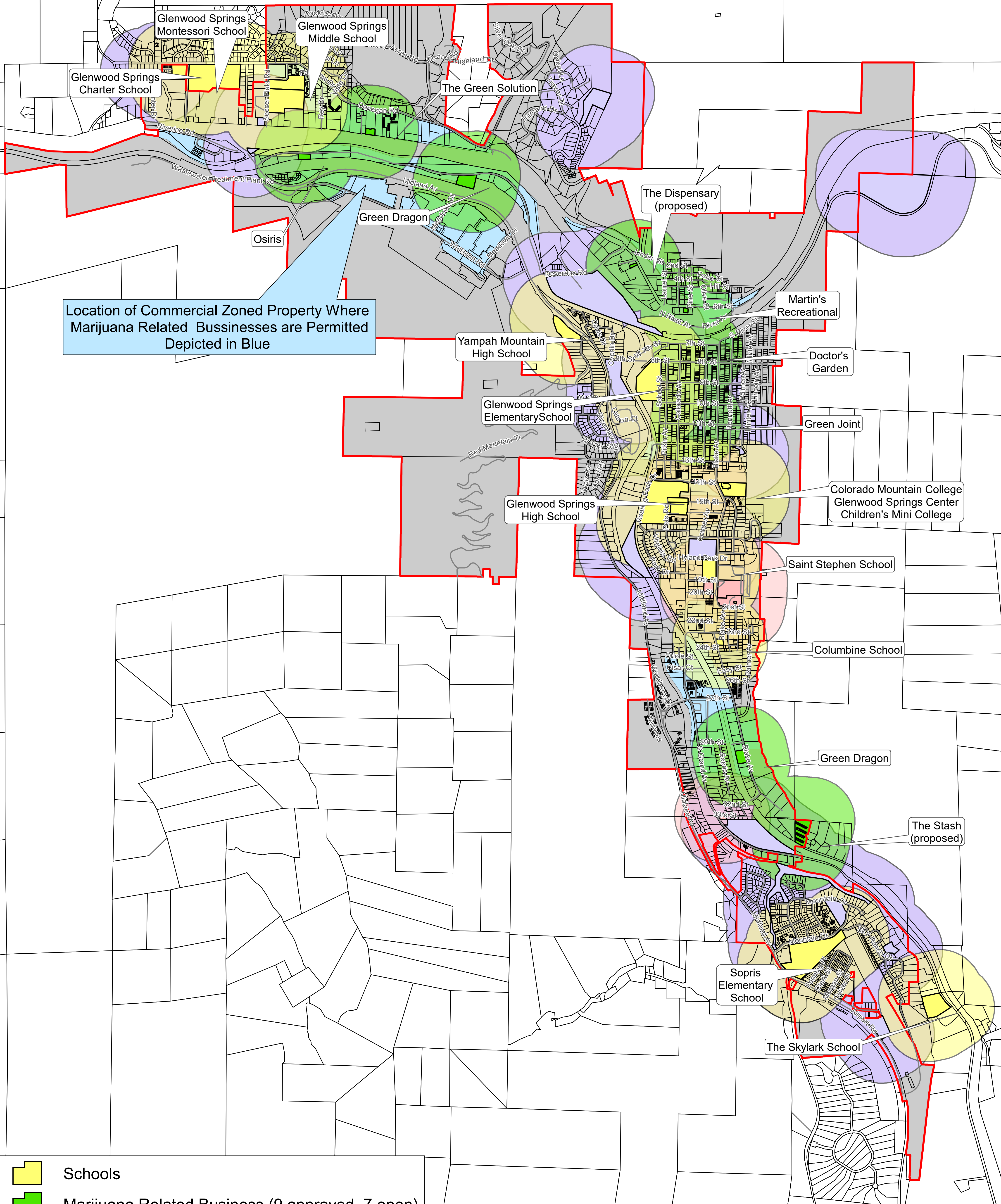
-  Schools
-  Marijuana Related Business (9 approved, 7 open)
-  Parks
-  Mental Health and Drug Treatment Facilities
-  City Boundary





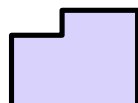
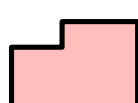

This map was produced by the Community Development Department. Use of this map should be for general purposes only. The City of Glenwood Springs does not warrant the accuracy of the data contained herein. Map is based on best available data as of September 2020.  
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 Phone - 970.384.6427 <http://www.cogs.us/> Layout: THyatt

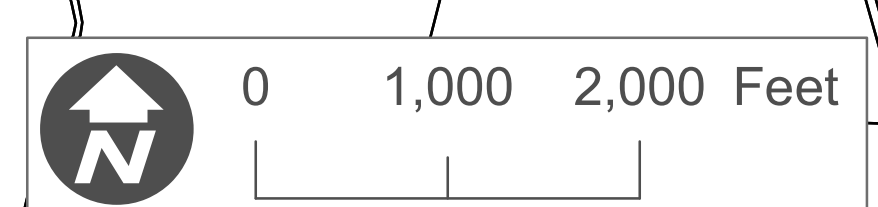


# Marijuana Related Businesses and Potential 1000 Foot Buffers



Location of Commercial Zoned Property Where Marijuana Related Businesses are Permitted Depicted in Blue

-  Schools
-  Marijuana Related Business (9 approved, 7 open)
-  Parks
-  Mental Health and Drug Treatment Facilities
-  City Boundary



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# Planning Commission Report

Date August 25, 2020  
 To: Planning and Zoning Commission  
 From: Gretchen Ricehill, Asst. Director  
 Subject: **Workshop:** Discussion of amending retail & medical marijuana business and marijuana cultivation regulations.

<b>REQUEST</b>	<b>Workshop:</b> Discussion of amending retail and medical marijuana business and marijuana cultivation regulations– continuing discussion from July 28, 2020
<b>APPLICANT</b>	City of Glenwood Springs
<b>LOCATION</b>	City wide
<b>ZONE</b>	All commercial and industrial zoning districts

## REQUIRED ACTION

None: This is a workshop to discuss and receive Planning Commission direction regarding design variance criteria.

## SUMMARY

This is a continued discussion from the July 28, 2020 meeting.

Based on a recommendation or request from City Council, the Commission discussed ideas for amending the city’s existing retail and medical marijuana regulations. Ideas included:

- Requiring that special use permits for marijuana establishments expire with transfer of ownership. Commissioners questioned what triggered an ownership change since the marijuana establishments are owned by limited liability companies. In other words, would a change in LLC members trigger a re-review.
- Requiring a re-review of special use permits if schools move into the buffer zone.
- Establishing a cap on the number of establishments.

To continue the discussion, the Commission requested the following information:

### **A comparison of Glenwood Springs’ regulations and those of other Colorado communities:**

The attached chart compares distancing or buffering requirements of 16 jurisdictions across the state. Here are highlights -

- 2 of the communities, New Castle and Avon do not allow marijuana uses;
- 3 have a buffer from parks or playgrounds;
- 4 have a buffer from residential uses or abutting residential zoning districts;
- 7 limited the number of establishments;
- 8 have a buffer from drug/alcohol treatment/mental health facilities, hospitals or halfway houses;
- 9 require a 1000-foot buffer from schools; and
- 9 require a buffer from childcare uses.

**The approximate number of new establishments that could be approved in Glenwood Springs with the existing buffering requirements:**

With the existing buffers, staff estimates that approximately 10 additional establishments could be approved in Glenwood Springs, bringing the total to 19. Note: this estimate includes marijuana uses in Glenwood Meadows. Attached are maps showing possible locations. Also attached for reference is a copy of the city's current map showing the buffers between existing, approved marijuana uses and schools.

**The taxes generated from the existing facilities and the increase realized when new establishments come on-line.**

Financial reports/summaries are available through 2018. Following are sales tax collections for marijuana uses since 2013.

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Sales Tax Revenue	\$1.4	\$4.8	\$6.3	\$6.7	\$6.7	\$6.2
# Marijuana establishments approved	**	**	2	2*	2	1*

\* establishments were approved but have never been constructed.

\*\* prior to 2015, marijuana uses were not required to obtain a special use permit. The total number of establishments approved in 2013 and 2014 is unknown.

**Have other communities rolled back their marijuana regulations since original approval.**

This is very difficult to determine without a detailed search of past and current ordinances from each jurisdiction.

**COMPARISON - MARIJUANA REGULATIONS**

Jurisdiction	Population (2019 est)	Marijuana Uses Allowed	Distance / Separation / Buffering Requirements	Other Restrictions
Frazier	1219	Retail Medical	1000 educational institutions, public or private 500 any existing medical marijuana business 200 licensed child care facility	Not allowed in any building containing a residential dwelling or lodging use
Crested Butte	1487		500 educational institutions or schools, public and private 500 licensed child care 175 public park or playground	not allowed adjacent to a residential dwelling separated by a vertical wall
New Castle	4518	NO MARIJUANA USES ALLOWED		
Gunnison	5054	Retail Medica Manufacturing Testing Cultivation	1000 schools 1000 day care 1000 mental health facility	not allowed adjacent to residential zoning district
Carbondale	6427	Retail Medical Manufacturing	500 school or day care 500 alcohol or drug treatment 400 retail and/or medical marijuana	no more than 5 retail or medical no more than 5 product manufacturing no more than 5 testing no more than 3 cultivation
Eagle	6454	Retail  Medical Manufacturing Cultivation		1 of each type of facility allowed / 5000 people restricted to one location/area - east of Nogal Gulch

**COMPARISON - MARIJUANA REGULATIONS**

Jurisdiction	Population (2019 est)	Marijuana Uses Allowed	Distance / Separation / Buffering Requirements	Other Restrictions
Avon	6511	NO MARIJUANA USES ALLOWED		
Glenwood Springs	9437	Retail Medical Manufacturing Cultivation	500 k-12 grade schools 900 retail and/or medical marijuana facility	
Rifle	9706	Retail Medical Cultivation	1000 k-12th grade schools 1000 alcohol or drug treatment facilities 1000 child care facilities	3 licensed stores allowed, total 7 licensed cultivation facilities allowed, total locations restricted to south of I-70, light industrial zones, industrial PUDs if listed as an allowed use 0 allowed in central business district
Steamboat Springs	11,810	Retail Medical Manufacturing Testing Cultivation	1,000 schools, colleges, seminaries, child care (cultivation uses allow for a 500 foot buffer to child care facilities) 1,000 parks	
Gunnison County	14,474	Manufacturing Testing Cultivation		Retail & medical stores prohibited Allowed in only 3 designated zoning districts

**COMPARISON - MARIJUANA REGULATIONS**

Jurisdiction	Population (2019 est)	Marijuana Uses Allowed	Distance / Separation / Buffering Requirements	Other Restrictions	
Summit County	31,011	Retail Medical Manufacturing Testing Cultivation	50 1,000 1,000 500 500	residentially used property, or residential zone district, or residential use in a PUD licensed child care facility any school, public or private including colleges halfway house or correctional facility any marijuana business	
Longmont	97,261	Retail Medical	250 1,000	residential zoning districts K - 12th grade schools	No more than 4 licenses allowed in the city 1 license/application allowed per person or company Testing, manufacturing and cultivation are not allowed
Pueblo	102,550	Retail Medical Testing Cultivation	1,000 500 300	Schools hospital or substance abuse treatment centers residential use or residential zone district	
Thornton	137,000	Retail Medical Testing	1,000 500 500 1,500	schools, public and private licensed child care facilities alcohol or drug treatment facility any other retail marijuana store	Cultivation is not allowed Only 1 retail marijuana store allowed in each of the city's 4 quadrants

**COMPARISON - MARIJUANA REGULATIONS**

Jurisdiction	Population (2019 est)	Marijuana Uses Allowed	Distance / Separation / Buffering Requirements	Other Restrictions	
Aurora	322,522	Retail	1,000	preK - 12th grade, excluding day care	Allow up to 4 retail marijuana licenses in each Council ward, or 24 in total Cultivation, manufacturing/testing not restricted as to total number
		Medical	500	hospitals, substance abuse treatment centers	
		Cultivation	300	residential uses (applies to Cultivation-only)	
		Manufacturing & testing	300	parks and open space (applies to Cultivation-only) residential uses in adjacent jurisdictions (applies to Cultivation-only)	
Boulder County	326,196			any other marijuana establishment in the same zoning	
		Retail	500	district	
		Medical	1000	alcohol or drug treatment facility	
		Manufacturing	1000	licensed child care	
		Testing	1000	educational facilities below college level	
		Cultivation			

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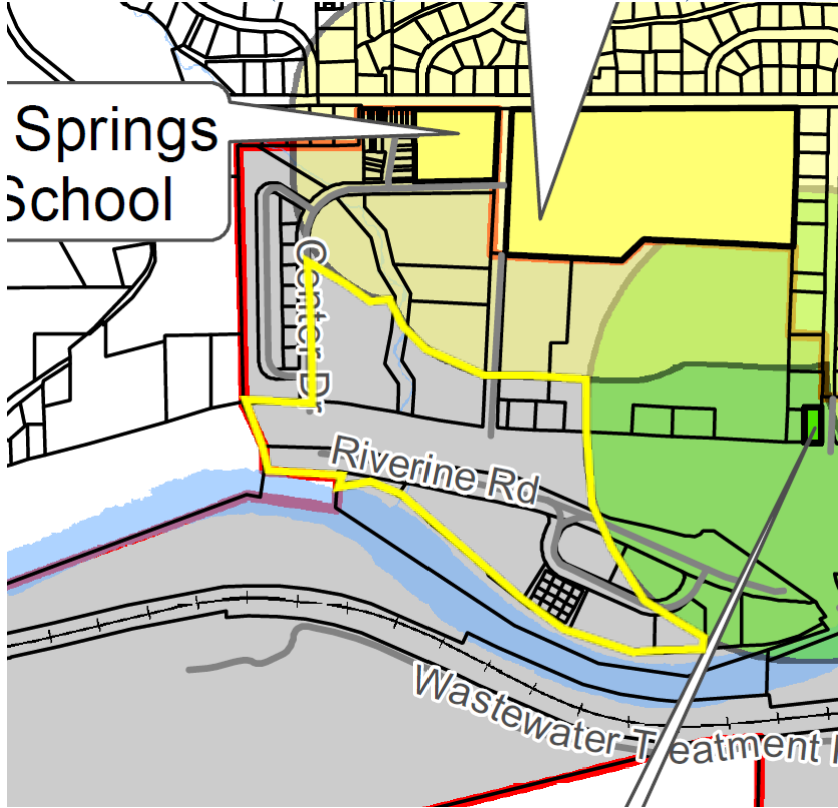
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**Potential Additional Areas for Marijuana Related Businesses**

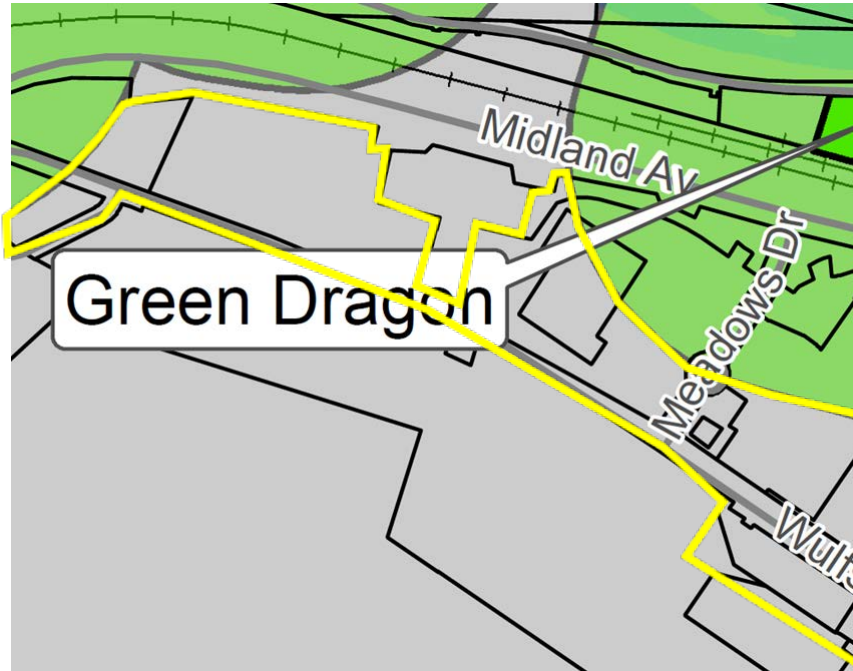
1. Far west Glenwood (including mall if PUD amended)



2. Highway 6 and 24 and Donegan Road



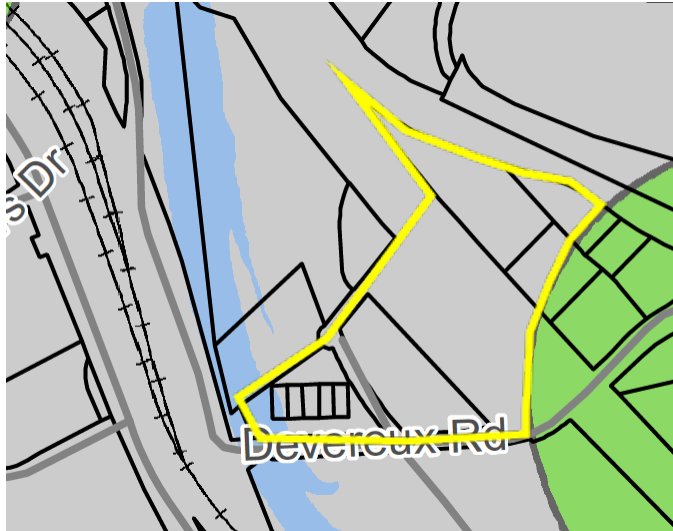
3. West Glenwood Meadows



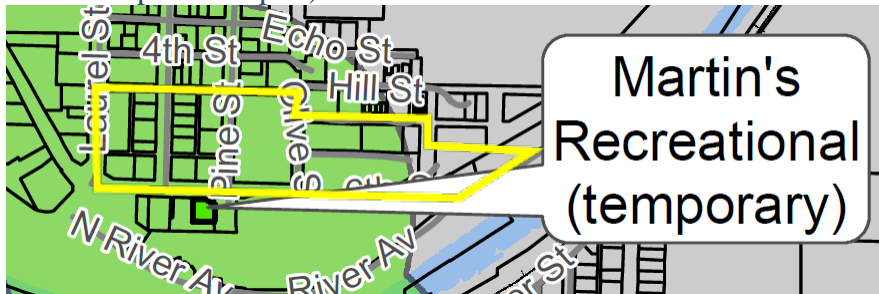
4. East Glenwood Meadows (subject to anticipated application submittal)



5. Far West 6<sup>th</sup> Street and Devereux Road



6. North Glenwood (significant potential especially once Martin's current operations cease and permit expire)



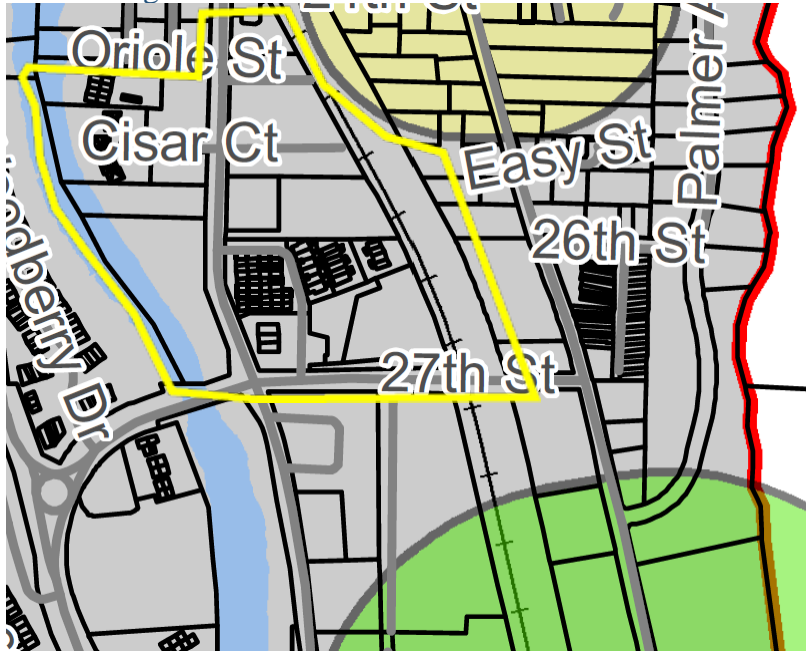
7. Commercial zoned area of Riverside Drive



8. Areas along Grand Avenue between 20<sup>th</sup> and 23<sup>rd</sup> Streets



9. Areas along South Grand and South Glen Avenues

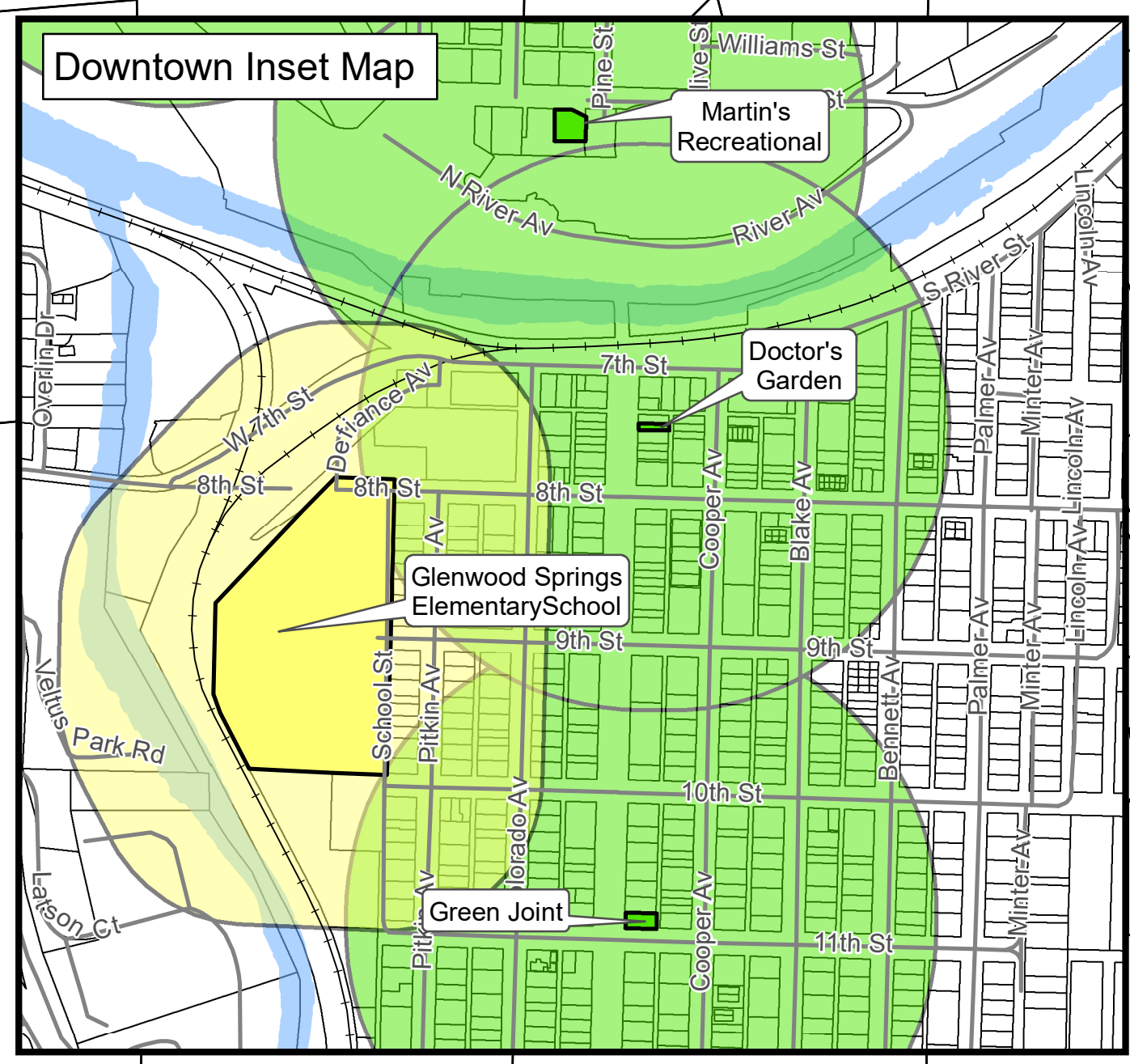
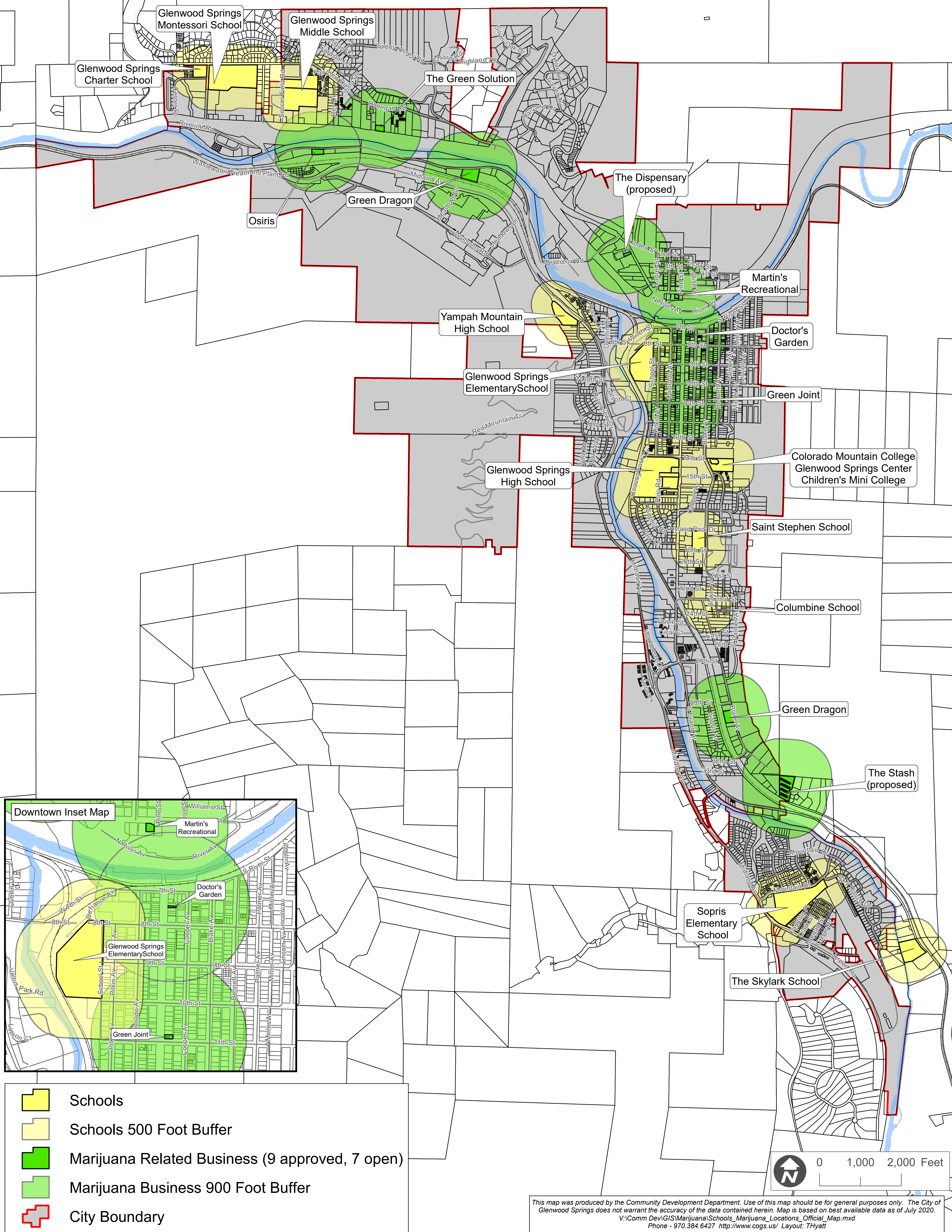


10. South Grand to 33<sup>rd</sup> Street

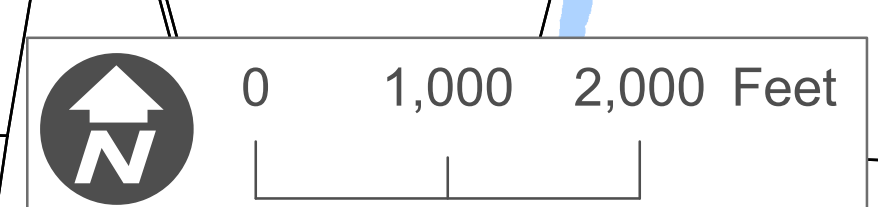




# School and Marijuana Business Locations and Required Buffers Per Ordinance No. 17-15 Effective September 5, 2015



- Schools
- Schools 500 Foot Buffer
- Marijuana Related Business (9 approved, 7 open)
- Marijuana Business 900 Foot Buffer
- City Boundary



This map was produced by the Community Development Department. Use of this map should be for general purposes only. The City of Glenwood Springs does not warrant the accuracy of the data contained herein. Map is based on best available data as of July 2020.  
 V:\Comm Dev\GIS\Marijuana\Schools\_Marijuana\_Locations\_Official\_Map.mxd  
 Phone - 970.384.6427 <http://www.cogs.us/> Layout: THyatt



## Planning Commission Report

Date: September 15, 2020  
 To: Planning and Zoning Commission  
 From: Gretchen Ricehill, Asst. Director  
 Subject: **Workshop:** Discussion of adding design variance criteria to Title 070, Section 070.060.070, Flexibility and Relief Procedures.

<b>REQUEST</b>	<b>Workshop:</b> Discussion of adding design variance criteria to Section 070.060.070, Flexibility and Relief Procedures
<b>APPLICANT</b>	City of Glenwood Springs
<b>LOCATION</b>	City wide
<b>ZONE</b>	All

### REQUIRED ACTION

None: This is a workshop to discuss and receive Planning Commission direction regarding design variance criteria.

### BACKGROUND

This is a continued discussion from the July 28 and August 25 Planning and Zoning Commission meetings. Attached are previous staff reports for background information and following is a summary of the August 25<sup>th</sup> discussion:

George Shaver favored the Greenwood Village model which required meeting a certain number of criteria, then an option of meeting other criteria. He believed that every variance should meet Glenwood Springs' criteria #4 and #6 and giving leeway on the other 5.

Jenn Ooton provided an example of the reason for requiring that every variance meet the fire and building code criteria. The design standards might want a window on an elevation but that side of the building might be too close to the property line or too close to another structure and openings would not be allowed by the fire and building code.

Carolyn Cipperly agreed that criteria 4 and 6 should be met but she was not necessarily in favor of having applicants meet a hard number.

Kathryn Grosscup felt that applicants needed to meet at least two criteria, plus a certain number of the others. She wished that #7 was applied more and pointed out that #1 was always a struggle. George Shaver noted that #7 frequently appeared in many jurisdictions.

For reference, the current variance criteria are copied below.

2. *Variance Approval Criteria.* In reviewing a variance application, the Planning Commission shall find that all of the following exist:
- i. The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zone district;
  - ii. The strict application of the Code standards for which a variance is sought would produce undue hardship;
  - iii. The applicant did not create the hardship by his/her own actions;
  - iv. The variance requested does not harm the public and does not impair the intent or purposes of this Code, goals, and policies, including the specific regulation for which the variance is sought;
  - v. The variance request demonstrates exceptional hardship not related to purposes of convenience or financial burden;
  - vi. The variance request will not violate building or fire code requirements; and
  - vii. The variance is the minimum variance that will afford relief of the subject standards of the Code.

**DISCUSSION**

Based on the August 25<sup>th</sup> discussion where most Commissioners favored meeting two criteria and some of the remaining criteria, staff offers the following for consideration:

**Option 1**

Uses the existing variance criteria

<b>All design variances shall meet the following criteria:</b>	<b><u>And</u></b>	<b>At least <u>two</u> of the following criteria:</b>
The variance requested does not harm the public and does not impair the intent or purposes of the Code, goals, and policies, including the specific regulations for which the variance is sought; <b><u>and</u></b>		The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zoning district; or
The variance request will not violate building or fire code requirements.		The strict application of the Code standards for which a variance is sought would produce undue hardship; or
		The applicant did not create the hardship by his/her own actions; or
		The variance request demonstrates exceptional hardship not related to convenience or financial burden; or
		The variance is the minimum variance that will afford relief of the subject standards of the Code.

Comment: It may be difficult for applicants to meet two of the criteria in the right column. In many cases there is not an exceptional site condition or a particular hardship especially when dealing with variance requests from architectural design or landscaping requirements. Therefore, we offer a second

option that expands the criteria in the right column and a third option that simply requires conformance to four criteria, none of which reference hardship.

**Option 2-** Mixes the Alternative Equivalence Compliance Criteria with the current Variance Criteria

All design variances shall meet the following criteria:	And	At least <b>two</b> of the following criteria:
The variance requested does not harm the public and does not impair the intent or purposes of the Code, goals, and policies, including the specific regulations for which the variance is sought; <b>and</b>		The variance requested advances the goals and policies of the Code or achieves the intent of the subject standard to the same or better degree than the subject standard; or
The variance request will not violate building or fire code requirements.		The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zone district; or
		The variance requested results in benefits to the community that are equivalent to or exceed benefits associated with the subject standard; or
		The variance is necessary and appropriate to make possible the reasonable use of the land or the structures on the property; or
		The variance is the minimum variance that will afford relief of the subject standards of the Code; or
		The strict application of the Code standards for which a variance is sought would produce undue hardship.

**Option 3-** Requires that design variances meet four criteria.

In reviewing variance applications from section 070.040.080, *Residential Site and Building Design*, and 070.040.090 *Nonresidential and Mixed-Use Site and Building Design*, the Planning Commission shall find:

- a. The variance is in general conformance with the Comprehensive Plan and with the stated purpose and intent of the Code; and
- b. The variance request will not violate building or fire code requirements; and
- c. The variance will not result in significant adverse impacts to surrounding properties, neighborhoods, or the public health, safety or welfare; and
- d. The variance presents an alternative site or development design that represents an improvement in quality over what could have been accomplished through strict application of the standard.

**RECOMMENDATION**

None. Staff requests that the Commission consider the three options and provide direction regarding adding design variance criteria to the Flexibility and Relief procedures.



# Planning Commission Report

Date: July 28, 2020  
 To: Planning and Zoning Commission  
 From: Gretchen Ricehill, Asst. Director  
 Subject: **Workshop:** Discussion of adding design variance criteria to Title 070, Section 070.060.070, Flexibility and Relief Procedures.

<b>REQUEST</b>	<b>Workshop:</b> Discussion of adding design variance criteria to Section 070.060.070, Flexibility and Relief Procedures
<b>APPLICANT</b>	City of Glenwood Springs
<b>LOCATION</b>	City wide
<b>ZONE</b>	All

### REQUIRED ACTION

None: This is a workshop to discuss and receive Planning Commission direction regarding design variance criteria.

### SUMMARY

Since August 2018 and the adoption of the new Land Use Code, staff and the Planning Commission have been processing and deciding on a wide range of applications, including variance requests. The Commission has commented on many occasions that it wanted a separate set of criteria to address deviations from design regulations. As the Commission is aware, when the new code was adopted, it included a set of strict variance criteria by which all variances are judged. Under the previous code there was flexibility in that design variances were held to lesser standard than deviations from zoning requirements (setback, building height, lot coverage, for example). Specifically, the new code holds that all variances meet all seven of the following criteria:

1. The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zone district;
2. The strict application of the Code standards for which a variance is sought would produce undue hardship;
3. The applicant did not create the hardship by his/her own actions;
4. The variance requested does not harm the public and does not impair the intent or purposes of this Code, goals, and policies, including the specific regulation for which the variance is sought;
5. The variance request demonstrates exceptional hardship not related to purposes of convenience or financial burden;
6. The variance request will not violate building or fire code requirements; and
7. The variance is the minimum variance that will afford relief of the subject standards of the Code.

### Alternative Equivalent Compliance

It should be noted that the new development code already has a mechanism for addressing deviations from the residential and nonresidential design standards, referred to as Alternative Equivalent Compliance. Its purpose is to allow the decision-making body (staff, Commission and/or Council) to consider a unique or creative design that does not strictly adhere to the code requirement but that results in a design that is equal to or better than the standard. Decisions are based on how well the alternative design meets the following criteria:

1. Achieves the intent of the subject standard to the same or better degree than the subject standard;
2. Advances the goals and policies of this Code to the same or better degree than the subject standard;
3. Results in benefits to the community that are equivalent to or exceed benefits associated with the subject standard; and
4. Imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this Code.

Since adoption of the new code, the Alternative Equivalent Compliance review has been used in two applications: one was an administratively reviewed site/architectural plan for a new single family home; and the other was a Major Site/Architectural plan review for ANB Bank. In the latter case, the Commission and Council approved a design deviation related to the amount of required glazing and the degree to which the front door and building edge met the sidewalk edge (e.g.: zero setback).

Variance

As indicated above, Alternative Equivalent Compliance offers applicants the opportunity to suggest a design that is equivalent to or exceeds the code requirement. It offers applicants a tradeoff. It does not offer the ability to eliminate the design requirement entirely. So, a variance mechanism remains necessary. The Commission has requested the mechanism include a degree of flexibility, and the standards not be as rigorous as those under the existing code.

To review, since Code adoption, the Commission has considered 14 land use applications involving a variety of variance requests including setback, building height, lot size, landscaping, common open space, street trees & planting strip, sidewalks, signs, residential design standards, and the Glenwood Meadows design & development standards. Below is a chart showing the variances by type (zoning/design/sign) and the number of approvals (note some of the 14 land use applications included multiple variance requests). Each of the variances were considered and decided upon using the seven variance criteria listed above.

Variance Type	# Requests	# Approved
<b>Zoning</b>		
Setback	5	5
Building Height	1	1
Lot Size	1	0
<b>Design/Development Standard</b>		
Sidewalk	1	1
Landscaping	5	5
Common Open Space	1	1
Variety of housing type	1	*
Building Frontage (Glenwood Meadows)	1	1
<b>Signs</b>		
Glenwood Meadows Sign Plan	4	3

\*under consideration at the writing of this report

Recommendation

Recognizing the difficulty in meeting all seven of the existing stringent variance criteria, the Commission requested a separate set of criteria for deviations from the design/development standards. Staff recommends both of the following amendments-

1. Expanding Alternative Equivalent Compliance using the following four determining criteria to cover more than just the residential and nonresidential design standards as it does currently.
  - a. Achieves the intent of the subject standard to the same or better degree than the subject standard;
  - b. Advances the goals and policies of this Code to the same or better degree than the subject standard;
  - c. Results in benefits to the community that are equivalent to or exceed benefits associated with the subject standard; and
  - d. Imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this Code.
  
2. Adopting the following new variance criteria that would apply only to certain deviations from Article 070.040, *Development Standards*:
  - a. The variance is in general conformance with the Comprehensive Plan and with the stated purpose and intent of the Code;
  - b. The variance will not result in significant adverse impacts to surrounding properties, neighborhoods, or the public health, safety or welfare; and
  - c. The variance presents an alternative site or development design that represents an improvement over what could have been accomplished through strict application of the standard.

To be clear, Staff recommends that the expanded Alternative Equivalent and new criteria DO NOT cover the entirety of Article 070.040, *Development Standards*, but rather just the following sections which are highlighted in red font.

070.040.010 Purpose: this is simply a one paragraph purpose statement.

- 070.040.020 Sensitive Area Protection: this section covers development in sensitive areas including steep hillsides, areas subject to flood and geologic hazards. Staff believes that deviations from the requirements in this section should be held to the higher variance standards.
- 070.040.030 Site Development and Improvement Standards: this section includes requirements for paying system improvement fees, providing dedications, and acceptance of public improvements.
- 070.040.040 Common Open Space: these requirements address percentage of open space; areas that qualify as open space; design standards; maintenance responsibilities. Because this section also includes a fee-in-lieu of providing the required amount of open space, staff does not recommend that any new variance criteria be applied to this section.
- 070.040.050 **Landscaping, Screening, and Fencing**: these standards address the on-site landscaping; streetscape (planting strip) requirements; screening; and fence & retaining wall design.
- 070.040.060 **Off-Street Parking and Loading**: this section addresses requirements for the number of parking/loading & bike parking spaces; provisions for paying fees-in-lieu; allowances for parking alternatives; and parking/loading design, including landscaping. Staff recommends that new design criteria apply only to **paragraph (h)(6), Parking Area Landscaping**
- 070.040.070 Access and Circulation: these requirements address street, alley, and vehicular circulation; public street connectivity; pedestrian & bicycle circulation. In most cases, requirements are based on Engineering Standards. The City Engineer and/or Community Development Director have the authority to waive or modify the requirement based on site-specific conditions.
- 070.040.080 **Residential Site and Building Design**: This section covers design and development requirements for all residential projects. These standards address lot coverage, parking location, building orientation, housing variety, architectural variety, transitions to adjacent development, building materials and colors, garage location and design.
- 070.040.090 **Non-Residential and Mixed-Use Site and Building Design**: This section covers design and development requirements for all nonresidential and mixed-use projects. The standards address building articulation, transparency (windows/doors), location of entrances, materials and building colors.
- 070.040.100 Exterior Lighting: The city is divided into three lighting districts based on zoning district classifications. The lighting standards address maximum lighting levels; fixture shielding; fixture mounting height; security lighting requirements; and lighting design. Under the former code, deviations from these requirements were processed as zoning variances. Staff recommends that deviations from the lighting code be required to meet the more stringent seven criteria.
- 070.040.110 Signs: this section addresses sign and sign lighting requirements. Staff intends to develop separate variance criteria that specifically address deviations from the sign code.

Links to the above highlighted sections are provided below. For general reference, a link to the entire [Development Code is provided here](#).

[070.040.050](#) Landscaping, Screening, and Fencing

[070.040.060\(h\)\(6\)](#) Parking Area Landscaping (note: you will need to scroll down to paragraph (h)(6))

[070.040.080](#) Residential Site and Building Design

[070.040.090](#) Non-Residential and Mixed-Use Site and Building Design



# Planning Commission Report

Date August 25, 2020  
 To: Planning and Zoning Commission  
 From: Gretchen Ricehill, Asst. Director  
 Subject: **Workshop:** Discussion of adding design variance criteria to Title 070, Section 070.060.070, Flexibility and Relief Procedures.

<b>REQUEST</b>	<b>Workshop:</b> Discussion of adding design variance criteria to Section 070.060.070, Flexibility and Relief Procedures – continuing discussion from July 28, 2020
<b>APPLICANT</b>	City of Glenwood Springs
<b>LOCATION</b>	City wide
<b>ZONE</b>	All

## REQUIRED ACTION

None: This is a workshop to discuss and receive Planning Commission direction regarding design variance criteria.

## SUMMARY

This is a continued discussion from the July 28, 2020 meeting.

During the July meeting, the Commission considered amending the existing variance regulations for deviations from the city’s design requirements. In the July report, staff suggested both expanding the existing Alternative Equivalent Compliance process to cover more than the residential and non-residential design standards, as it does currently, and adopting lesser variance criteria for deviations from 070.040-*Development Standards*. Refer to the attached July 28<sup>th</sup> staff report for information presented to the Commission at that meeting.

After considering the criteria for Variances and Alternative Compliance, the Commission decided to continue the discussion and requested the following additional information:

- Address why bulk and area (zoning) variance criteria are more stringent than design variance criteria
- Provide information about the Administrative Adjustment criteria in the current Code
- Add zoning information to the chart of variances granted since adoption of the new code

### Zoning Variance Criteria

Zoning standards, often referred to as “bulk and area requirements”, include requirements for building height, minimum lot size, setback, and use. These standards are in place to provide property owners with a level of assurance that adjacent properties or other properties within the same zoning district will be developed in accordance with the established zone district standards. Variances from these bulk and area requirements are usually held to rigorous standards.

In administering the Code, if there are a number of variances for the same bulk and area requirements in the same zoning district, it is reasonable to assume that there is a problem with the standard and a code amendment is likely warranted to address the issue. For example, in the recent past, we frequently saw setback variance requests to allow accessory dwelling units in existing detached garages that did not meet rear setback requirements. We recently amended the Code to allow a 5-foot rear setback for accessory dwelling units, rather than requiring that the ADU meet the zone district's rear setback requirement.

Attached for the Commission's general information is Zoning Ordinance Variances, an article published by the American Planning Association in 2012. Note that in addition to discussing zoning variance, the article addresses use variances. Glenwood Springs does not allow variances from a land use.

Also attached for reference is a summary of variance criteria from other Colorado communities.

#### Administrative Adjustment Criteria

The new Code includes the ability of the Community Development Director to consider certain minor modifications or deviations from the dimensional (bulk and area) or numeric standards (refer to Table 060.3 below). These Adjustments are intended to provide a degree of flexibility when necessary, without requiring a formal zoning amendment or variance. This Adjustment process cannot be used in cases where a variance has already been granted.

In reviewing Adjustment requests, the Director considers whether and to what extent the Adjustment –

1. Will not result in incompatible development
2. Will not result in adverse impacts unless adequately mitigated; and
3. Is of a technical nature and is required to:
  - a. Compensate for an unusual site condition;
  - b. Eliminate a minor inadvertent failure to comply with a Code standard; or
  - c. Protect a sensitive resource, natural feature, or community asset.

**Table 060.3: Allowable Administrative Adjustments**

Code Standard	Allowable Administrative Adjustment (maximum percentage)
<b>Site Standards</b>	
Lot area, minimum	15
Lot coverage, maximum	15
Block length, maximum	15
<b>Lot Dimensional Standards</b>	
Front setback, minimum	15
Side setback, minimum	15
Rear setback, minimum	15
Encroachment into setback pursuant to Table 020.20, <i>Authorized Exceptions to Setback Standards</i> , maximum	15
<b>Building Standards</b>	
Building height, maximum (excludes wireless communication facilities)	15
Accessory building height, maximum (excludes wireless communication facilities)	15
Separation between buildings, minimum	15
Projection into height requirement pursuant to Table 020.21, <i>Authorized Exceptions to Maximum Height Standards</i> , maximum	15
<b>Development Standards</b>	
Number of required parking spaces, maximum or minimum	15
Lighting height, maximum	15
Sign height, maximum	15
Fence or wall height, maximum	15 (one foot maximum)
Minimum landscaping requirements	15

Variations Considered – August 2018 to Present

As stated in the July staff report, since adopting the new Code the Commission has considered 14 land use applications involving a variety of variance requests including setback, building height, lot size, landscaping, common open space, street trees & planting strip, sidewalks, signs, residential design standards, and the Glenwood Meadows design & development standards. The chart below summarizes variances requested by type (zoning/design/sign); the number of approvals (note some of the 14 land use applications included multiple variance requests); and staff has added zoning information per the Commission’s request.

Variance Type	# Requests	# Approved	Zoning Districts
Zoning			
Setback	5	5	RM1-residential medium density (2 applications); I2-river industrial (1 application); M1-mixed use corridor (1

			application)
Building Height	1	1	RT-residential transitional
Lot Size	1	0	RM2-residential multifamily limited
<b>Design/Development Standard</b>			
Sidewalk	1	1	I2-river industrial
Landscaping	5	5	M1-mixed use corridor (4 applications); RE-resort (1 application)
Common Open Space	1	1	M1-mixed use corridor
Variety of housing type	1	1	RT-residential transitional
Building Frontage (Glenwood Meadows)	1	1	M2-mixed use central core
<b>Signs</b>			
Glenwood Meadows Sign Plan	4	3	M2-mixed use central core; M1-mixed use corridor (3)

**RECOMMENDATION - ADDITIONAL CONSIDERATION**

The July staff report recommended amending both the Alternative Equivalent Compliance provision and adopting lesser variance criteria to address deviations from the development (design) standards. Rather than adopting entirely new variance criteria, Commissioners suggested that design variances could be required to meet 5 or 6 of the 7 existing criteria. For reference the existing 7 criteria are provided below:

1. The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zone district;
2. The strict application of the Code standards for which a variance is sought would produce undue hardship;
3. The applicant did not create the hardship by his/her own actions;
4. The variance requested does not harm the public and does not impair the intent or purposes of this Code, goals, and policies, including the specific regulation for which the variance is sought;
5. The variance request demonstrates exceptional hardship not related to purposes of convenience or financial burden;
6. The variance request will not violate building or fire code requirements; and
7. The variance is the minimum variance that will afford relief of the subject standards of the Code.

Staff believes that this is a viable option and recommends further Commission discussion on the matter.

## VARIANCE CRITERIA – COLORADO COMMUNITIES

### Longmont

An application for a Variance can only be approved by a decision-making body such as the Board of Adjustment or the Planning and Zoning Commission. Generally, home renovation projects, signs, and any other project that is not tied to another development application (such as Site Plan Review, Conditional Use, etc.) are reviewed by the Board of Adjustment. All other projects that require some other form of discretionary application (such as new commercial development), or any application requesting a height variance, are reviewed by the Planning and Zoning Commission.

The Board of Adjustment must find that it meets the following criteria:

1. The subject property has exceptional topographic conditions, such as being exceptionally narrow, shallow, or of an irregular shape which precludes meeting code for a proposed development.
2. The strict application of the zoning regulation would result in a peculiar, exceptional, and undue hardship upon the owner of the property.
3. The requested variance would not create a substantial detriment to the public good, would not substantially impair the intent and purpose of the zoning ordinance or Comprehensive Plan for the City, nor result in significant adverse impacts to the natural environment.
4. There are exceptional circumstances that apply to this specific piece of property, which do not generally apply to other properties in the same zoning area or neighborhood.

### Planning and Zoning Commission variance review:

Projects that request relief from maximum height requirements, or projects that require other development review applications, such as Site Plan Review, Conditional Use, etc., and are requesting a Variance, must have their application reviewed by the Planning and Zoning Commission.

In order to approve a Variance request, the Planning and Zoning Commission must find that the application meets the following criteria:

1. The requested variance is generally consistent with the Longmont Area Comprehensive Plan and with the stated purposes of the Development Code.
2. The proposed variance presents an alternative site or development design that: 1.) meets the purpose and intent of the standard being modified, and ii.) represents an improvement in quality over what could have been accomplished through strict application of the standard, and iii.) does not result in, or substantially mitigates, any detriment to surrounding properties or neighborhoods, the natural environment or to the City's ability to provide services and maintain public facilities.
3. The requested variance will not result in significant adverse impacts to surrounding properties or neighborhoods, or the natural environment.
4. The proposed variance does not create a safety hazard.
5. The decision-making body shall not grant a variance reducing the size of lots contained in an existing or proposed subdivision if it will result in the subdivision exceeding the density limit of the applicable zoning district.
6. The requested variance shall be the least deviation from the regulations that will afford relief.

**Greenwood Village**

The variance request(s) must meet ALL of the criteria listed in Section A, and at least ONE of the criteria listed in Section B.

<p><b>In order for a variance to be granted, the request must meet ALL of the following four criteria:</b></p>	<p><b>AND</b></p>	<p><b>At least ONE of the following three criteria:</b></p>
<p>Section A</p> <p>(1) The variance will not constitute a grant of special privilege inconsistent with the limitations upon similar properties or buildings in the vicinity and in the same zone district; AND</p> <p>(2) The variance will be in harmony with and not alter or weaken the spirit and purpose or essential character of the zoning for the zone district in which the property is located; AND</p> <p>(3) The variance will not substantially or permanently injure the appropriate use of adjacent property in the same zone district; AND</p> <p>(4) The variance will not be detrimental to the public health, safety or welfare.</p>		<p>Section B</p> <p>(1) The existence of special conditions or circumstances, such as size, shape, location, topography or surroundings of the land, structure or building involved, which deprive the applicant of privileges enjoyed by owners of other properties in the vicinity or in the same zone district; OR</p> <p>(2) The variance is necessary and appropriate to make possible the reasonable use of the land or the structures on the property; OR</p> <p>(3) The variance will ameliorate a difficulty which did not result from the acts or omissions of the applicant.</p>

**Montrose**

**SECTION 4-4-28 – VARIANCE CRITERIA**

- (A) The Review Board may grant a variance from the requirements set out in this Chapter, if it determines, following the review procedure of Section 4- 4-31, that the criteria of this Section will be met. Provided, however, no variance shall be granted from provisions restricting "uses by right" and "conditional uses" within any zoning district.
- (B) Variances shall be granted only if all the following criteria are met:
  - (1) The variance will not adversely affect the public health, safety and welfare.
  - (2) Unusual physical circumstances shall exist, such as unusual lot size or shape, topography, or other physical conditions peculiar to the affected property, and violations of code shown by clear and convincing evidence that they were made in good faith, which make it unfeasible to develop or use the property in conformity with the provisions of this Chapter in question.
  - (3) The unusual circumstances have not been created as a result of the action or inaction of the applicants, other parties in interest with the applicant, or their or his predecessors in interest.
  - (4) The variance requested is the minimum variance that will afford relief and allow for reasonable use of the property.
  - (5) The variance will not result in development incompatible with other property or buildings in the area, and will not affect or impair the value or use or development of other property.

## Vail

### 12-17-1: PURPOSE:

- A. Reasons For Seeking Variance: In order to prevent or to lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of this title as would result from strict or literal interpretation and enforcement, variances from certain regulations may be granted. A practical difficulty or unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from topographic or physical conditions on the site or in the immediate vicinity; or from other physical limitations, street locations or conditions in the immediate vicinity. Cost or inconvenience to the applicant of strict or literal compliance with a regulation shall not be a reason for granting a variance.
- B. Development Standards Excepted: Variances may be granted only with respect to the development standards prescribed for each zone district, including lot area and site dimensions, setbacks, distances between buildings, height, density control, building bulk control, site coverage, usable open space, landscaping and site development, and parking and loading requirements; or with respect to the provisions of [chapter 11](#) of this title, governing physical development on a site.
- C. Use Regulations Not Affected: The power to grant variances does not extend to the use regulations prescribed for each zone district because the flexibility necessary to avoid results inconsistent with the objectives of this title is provided by [chapter 16](#), "Conditional Use Permits", and by section [12-3-7](#), "Amendment", of this title. (Ord. 29(2005) § 39: Ord. 8(1973) § 19.100)

### 12-17-6: CRITERIA AND FINDINGS:

- A. Factors Enumerated: Before acting on a variance application, the planning and environmental commission shall consider the following factors with respect to the requested variance:
1. The relationship of the requested variance to other existing or potential uses and structures in the vicinity.
  2. The degree to which relief from the strict or literal interpretation and enforcement of a specified regulation is necessary to achieve compatibility and uniformity of treatment among sites in the vicinity, or to attain the objectives of this title without grant of special privilege.
  3. The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.
  4. Such other factors and criteria as the commission deems applicable to the proposed variance.
- B. Necessary Findings: The planning and environmental commission shall make the following findings before granting a variance:
1. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone district.
  2. That the granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
  3. That the variance is warranted for one or more of the following reasons:
    - a. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this title.
    - b. There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone district.
    - c. The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone district. (Ord. 29(2005) § 39: Ord. 8(1973) § 19.600)

## **Carbondale**

### **a. Approval Criteria - Generally**

- i. A variance may be granted if the Board of Adjustment finds all the following exist:
  - a. The subject property has an exceptional shape, topography, building configuration or other exceptional site condition which is not a general condition of that particular zone district; or there are exceptional circumstances unique to the owners of the property (e.g., a physically or mentally impaired occupant);
  - b. An exceptional, practical hardship to the applicant could be shown to occur if the provisions of this Code were literally enforced;
  - c. The variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this Code that are in question;
  - d. The applicant did not create the hardship by his/her own actions. By "own actions" means an act or omission of the applicant which creates a nonconforming situation;
  - e. The variance requested does not harm the public or injure the value of adjacent properties; and
  - f. The granting of the variance will be consistent with the spirit and purpose of the Code.
- ii. No variance shall be approved to allow a use in any zone district in which it is not listed as a permitted, conditional, or special use.

### **b. Approval Criteria - Special Variances in Original Townsite and Weaver's Addition**

In the original Townsite and Weaver's Addition, the placement of residential structures and/or the division of lots prior to zoning and subdivision regulations may have made nonconforming situations or may prevent an owner expanding an existing building or affecting new construction without violating setback requirements. The Board of Adjustment may grant a variance for these situations. An applicant must meet the following criteria:

- i. The structure to be built or altered is a residential dwelling unit or an accessory structure to the residential unit;
- ii. The lot must be located in the Old Town site or Weaver's Addition;
- iii. The applicant may not have caused the situation or hardship by his/her own actions. An exception may be granted if the owner/applicant built or placed the structure, or split the lot prior to subdivision or zoning regulations being instituted in the Town;
- iv. The new construction, alteration or addition could not be reasonably placed in another location;
- v. The new construction, alteration or addition is designed in a reasonable fashion and results in the variance requested being the minimum amount required in order to achieve the purpose of the variance request;
- vi. The variance requested does not harm the public or injure the value of adjacent properties;
- vii. The granting of a variance will be consistent with the spirit and purpose of the Code.

## Rifle

- (4) The Board of Adjustment may grant a variance based on the following:
  - a. Either of the following criteria exists:
    1. Minor additions or structural or cosmetic changes to existing structures, the result of which will be in harmony with the land use and existing structures in the neighborhood; or
    2. A practical difficulty has been demonstrated, based on:
      - a) Size, shape or dimensions of a site;
      - b) Location of existing structures;
      - c) Topographic or physical conditions on the site or in the immediate vicinity; or
      - d) Other physical limitations such as street locations or traffic conditions in the immediate vicinity.
  - b. Such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Comprehensive Plan or this Chapter.
  - c. The granting of the variance will not be detrimental to the public health, safety or welfare.
  - d. The proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods.
  - e. Compatibility with adjacent land development and land uses is assured.
- (5) In granting a variance, the Board of Adjustment may impose conditions deemed necessary to protect affected property owners and to protect the intent of this Chapter. (Prior code 17.05.550; Ord. 4 §1, 2005)

## Grand Junction

### 21.02.200 Variance.

- (a) **Purpose.** The purpose of this section is to provide a process for consideration of variances from certain standards of the code.
- (b) **Applicability.**
  - (1) A variance may be requested for a departure from bulk standards, performance or use-specific standards of Chapter [21.04](#) GJMC, all overlay district regulations of Chapter [21.07](#) GJMC, excluding corridor overlay districts, and the sign regulations of Chapter [21.06](#) GJMC.
  - (2) Variances shall not be requested for:
    - (i) The establishment or expansion of a use in a district in which such use is not permitted by this code;
    - (ii) Residential development which would result in an increase in density greater than that permitted in the applicable zoning district; and
    - (iii) Changes or modifications to any definition contained in this code.
- (c) **Approval Criteria.** A variance may be granted only if the applicant establishes that all of the following criteria have been met:
  - (1) There are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not apply generally to the other land areas or uses within the same zoning district, and such exceptional conditions or undue hardship was not created by the action or inaction of the applicant or owner of the property;
  - (2) The variance shall not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district;
  - (3) The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant;
  - (4) The applicant and the owner of the property cannot derive a reasonable use of the property without the requested variance;
  - (5) The variance is the minimum necessary to make possible the reasonable use of land or structures;
  - (6) The granting of a variance shall not conflict with the purposes and intents expressed or implied in this code; and
  - (7) The granting of a variance shall not conflict with the goals, policies and guiding principles of the City's Comprehensive Plan.
- (d) **Decision-Making.**
  - (1) A variance from bulk standards, performance or use-specific standards of Chapter [21.04](#) GJMC, all overlay district regulations of Chapter [21.07](#) GJMC, excluding corridor overlay districts, and the sign regulations of Chapter [21.06](#) GJMC shall be heard and decided by the Zoning Board of Appeals.
  - (2) Variances to all other standards, unless otherwise specified, shall be heard and decided by the Planning Commission.