



**THE PLANNING & DEVELOPMENT DEPARTMENT  
APPEAL TO CITY PLANNING COMMISSION**

Complete this form if you are appealing a Notice and Order for a zoning violation to City Planning Commission in accordance with 7.5.906.

**APPELLANT CONTACT INFORMATION:**

Appellants Name: M & J 2150 GG LLC Telephone: (719) 359-1723  
Address: PO Box 76120 City Colorado Springs  
State: CO Zip Code: 80970 E-mail: munderw840@aol.com

**SITE INFORMATION:**

Site Address: 2150 Garden of the Gods, Road, Colorado Springs, Colorado  
Case Number: 1710104  
Code Officer's Name: Jeff Huddleston  
Hearing Date: \_\_\_\_\_ Item Number on Agenda: \_\_\_\_\_

**YOUR APPEAL SUBMITTAL SHOULD INCLUDE:**

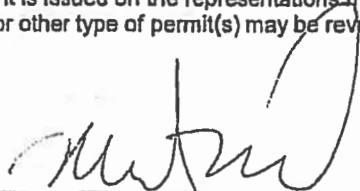
- 1. Completed Application
- 2. \$176 check payable to the City of Colorado Springs
- 3. Appeal Statement
  - See page 2 for appeal statement requirements.
- 4. A copy of the Notice and Order

Submit all 4 items above to the City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903). Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals, submittals received after 5pm or outside of the 10 day window will not be accepted.

If you would like additional assistance with this application or would like to speak with the neighborhood development outreach specialist, contact Katie Sunderlin at [sunderka@springsgov.com](mailto:sunderka@springsgov.com) (719) 385-5773.

**APPELLANT AUTHORIZATION:**

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I (we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

  
\_\_\_\_\_  
Signature of Appellant Michael Underwood, Manager Date January 19, 2018

**THE APPEAL STATEMENT SHOULD INCLUDE THE FOLLOWING**

- If you are appealing a Notice and Order, you are stating that one or both of the following are true:
  - You are not in violation of City Code and believe the official is in error, and/or
  - The abatement period is unreasonable and should be lengthened.
- 1. Your appeal statement should include justification of City Code 7.5.906.A.4
  - i. Identify the explicit ordinance provisions which are in dispute.
  - ii. Show that the administrative decision is incorrect because of one or more of the following:
    - 1. It was against the express language of this zoning ordinance, or
    - 2. It was against the express intent of this zoning ordinance, or
    - 3. It is unreasonable, or
    - 4. It is erroneous, or
    - 5. It is clearly contrary to law.
  - iii. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

**CITY AUTHORIZATION:**

Payment: \$ \_\_\_\_\_

Date Application Accepted: \_\_\_\_\_

Receipt No: \_\_\_\_\_

Appeal Statement: \_\_\_\_\_

Intake Staff: \_\_\_\_\_

Completed Form: \_\_\_\_\_

Assigned to: \_\_\_\_\_

**M & J 2150 GG LLC**  
**APPEAL STATEMENT / CASE NO. 1710104**

1. City Code Regulation in Dispute: § 7.5.505
2. The administrative decision is incorrect because:
  - a. It is unreasonable; and
  - b. It is erroneous.

M & J 2150 GG LLC (M&J) received the Notice of Violation and Order to Abate (“Notice”) based upon its claimed failure to comply with the approved development plan for the property. According to the Notice, the development plan “does not indicate the area outside of the mini-warehouse structures at the property to be used as automotive storage.” The inspection of the property was precipitated by a complaint filed by Michael Flynn who reportedly owns an adjacent property at which an RV Storage facility is operated. The motive for Mr. Flynn’s complaint is suspect. He may well have been attempting to eliminate perceived competition to the services his company provides. Regardless, the complaint did not state that M&J was “storing” any vehicles on the property. It merely stated that that he had observed RVs and trailers parked at the property. No information was provided in the complaint regarding how long the RVs and trailers had been “parked” at the property or if the locations of the RVs and trailers changed over time. A mini-storage facility is operated on M&J’s property. Logically, to access the storage units people must park on the drive areas. Trailers are typically used to move personal property. Therefore, the presence of trailers at a mini-storage facility should not be surprising and the complaint does not support the conclusion that RVs and trailers were being “stored” at the property.

During a December, 2017, inspection, the inspector observed “*several* recreational vehicles, boats, and the other vehicles *stored* outside of the warehouse structures on the north and east portions of the property.” How the inspector could have concluded these vehicles and the boat were being “stored” on the property is not explained. Observing what was present at the property on a single day does not support a conclusion that the vehicles were being stored. While the inspector spoke with Ms. Leigh Bass, the property manager, during that inspection, nothing in the inspector’s notes state Ms. Bass confirmed that any vehicles were being stored at the property. In fact, Ms. Bass confirmed to the inspector that the majority of the vehicles were used in M&J’s business.

Rather than reinspecting the property after the December, 2017, visit to confirm that RVs, a boat and trailers were being stored at the property, the inspector reached that conclusion and sent M&J the Notice claiming the vehicles were being stored there. This is unreasonable. This conclusion is confirmed by reference to the inspector’s later conversation with Mr. Michael Underwood, M&J’s Manager, who, consistent with what Ms. Bass had previously stated, advised the inspector that the trailers on the property were owned by him and used for business.

While there have been periods of time when vehicles have been parked at the property in the secure mini-storage area away from the road and not visible from it, M&J does not “store”

vehicles there. M&J parked the vehicles near the storage units because it is in a secure area. Previously a vehicle was stolen from the property when parked in an unsecured area. Because the Colorado Springs Police were unwilling to take action against the thief who stole the vehicle even though he was caught, M&J believed moving the vehicles to a more secure area of its property was reasonable. To require M&J to park vehicles in an area of the property where theft can easily occur is not reasonable.

Finally, the Notice is unreasonable and erroneous because Section 7.5.505 of the City Code only requires that any changes in the use of property "substantially conform" to the approved development plan. If the transitory parking of vehicles at the rear of the property is considered "storage," that storage substantially complies with the development plan. It isn't as if M&J is using the property for purposes unrelated to the approved use and operation of M&J's business.

### 3. Benefits and Adverse Impacts of Decision

There is no apparent benefit to enforcing the decision. As stated above, the area of the property in question is at the back of the property away from Garden of the Gods road and is not visible from it. To disallow the transitory parking of vehicles at the property does not benefit the community to any extent. The only potential beneficiary of the Notice is the person who filed the initial complaint, presumably in an attempt to thwart any potential business competition nearby. M&J does not intend on "storing" vehicles at the property. If it decides to do so, if necessary, it will request a variance or amendment of its development plan so as to specifically allow that use.

The adverse impact on M&J if it is not allowed to park the trailers it uses for the operation of its business on its property in a secured area is significant. M&J's ability to move personal property efficiently will be significantly impaired. Likewise, if it is required to park its trailers in the unsecured area in front of its facility, those trailers are subject to vandalism and potential theft.

Simply put, the burdens which will be imposed upon M&J if the Notice is enforced substantially outweigh any benefit accruing to the community by allowing M&J to continue to conduct business in a reasonable manner on its property.