

Meeting Minutes, Boulder Town Planning Commission

March 12, 2014

Commissioners present: Loch Wade Tabor Dahl, Donna Jean Wilson, and Caroline Gaudy. Alyssa Thompson was out of town. Also present, Secretary Peg Smith and Town Council Liaison Tom Jerome. Members of the public present: Farlan and Mary Behunin, Dennis Bertucci, and Cindy Wilson.

Loch called the meeting to order at 7:10 p.m. Donna Jean moved to approve the February minutes, and Caroline seconded the motion. All approved. Loch asked for a motion to close the meeting and open a public hearing. Donna Jean so moved, and Caroline seconded the motion. Loch opened the public hearing at approximately 7:12 p.m.

Public Hearing on Revised Definitions and Uses: Major and Minor Home Occupation

Loch read the complete definitions proposed for both Major and Minor Home Occupations:

Major Home Occupation: A use or activity conducted within a legally existing dwelling or accessory building and carried out and conducted without changing the nature of the zoning district or creating noise, vibration, light, odor, dust, smoke, or other air pollution nuisances to any adjoining properties. Home Occupation (Major) shall be conducted by the persons residing in the dwelling and a maximum of one (1) employee who is not a family member. Activities or storage associated with the Home Occupation (Major) may occur outside of the dwelling.

A Major Home Occupation is not permitted in the High Density Residential zone; it is conditional in all other zones.

Minor Home Occupation: An activity carried out for gain by a resident and conducted entirely within the resident's legally existing dwelling, or accessory building of no more than 750 square feet, and is clearly incidental and accessory to the residential use of the dwelling or property and provided that the home occupation does not change the residential character of the residence and does not result in noise, vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line, does not include any outside storage of goods, materials, or equipment, has no signage, complies with all required Federal and State licensing requirements, complies with all required Local licensing requirements.

A Minor Home Occupation is permitted in all zones.

Loch opened the floor to comments.

Farlan asked about the restriction on noise and dust, citing his woodcutting enterprise. "You want to make sure people can make a living here," he said.

Tom noted that the Home Occupation definitions don't apply to agricultural activities.

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Loch further explained that the current Zoning Ordinance only defines minor home occupation, which doesn't allow for a non-family member employee or for outside storage or related materials. Creating a new Major Home Occupation definition acknowledges individual enterprises that are still in keeping with a residential area.

No one else had any comments. Caroline moved to close the public hearing and reopen the regular meeting; Donna Jean seconded the motion, and all approved.

Discussion and Action Resulting from Public Hearing

Loch re-read the definitions and uses. Caroline moved that these definitions be recommended to the Town Council. Donna Jean seconded the motion. All approved.

Discuss Definition for Agricultural Farmstand Sales

Loch asked Tom for his suggestion. Tom said the reason for spelling this out related to a complaint earlier in the year--- there was no allowance for selling your produce out of your own home other than in a commercial zone. Since we're a rural community with many home occupations, it makes sense to straighten out our retail definition so that people can sell goods to people legally. We're mainly saying that retail sales from home occupations will be allowed in all zones because Home Occupations will be permitted (or conditional) in all zones [except for Major HO in high density residential]. The definition needs to allow all ag and home occupation sales in all zones, with other retail sales in the commercial zones.

Caroline said her concern is not with individuals selling stuff on their own property. She doesn't want the definition to include multiple people selling their products and produce from one farmstand. This statement and the example of products being sold that originate outside Boulder were the heart of the following discussion:

Tom: My definition doesn't include a sack of grain I obtain from somewhere else and then want to resell. Caroline mentioned the example of the Green River melons and that a temporary use permit would cover that type of sale, which benefits many people. Dennis said you could also sell those melons up at the corner Farmers' Market.

Loch asked if Boulder actually has a problem with the sale of outside goods. Does Boulder even have the market depth to create a problem? What problem are we trying to address?

Tom mentioned his and Lauren's PT practice. They have related products that they store and make available to patients at cost; they're not charging a markup on those products. They could just as easily tell their patients to order the products online.

Caroline: If someone else wants to sell their product at another's farmstand, then you're getting closer to the definition of a store. Loch: Is that a problem?

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Caroline: The problem is that you can't envision every possible future problem. No one anticipated hours, traffic, and parking problems at Red House Farm five years ago.

Cindy: There's not really an industry in town because there's not enough people in town to buy everything. It's never going to be an issue that people are going to flood Boulder with anything.

Tom: We made a commitment [in the General Plan] to remaining an ag community; we need to support those efforts.

Donna Jean: If you're selling something from another town it's resale. If you make it at your home, it's a sale. We can define that. Tom: If you're talking about hay, are you becoming a distributor? Loch asked what the problem was if he wanted to go elsewhere to bring back hay and then sell for a profit? How else does he cover the expense of going to get it and driving it back?

Caroline: The goal is to honor the General Plan [in providing for livelihoods], but residents also have the right to enjoy a peaceful, rural environment.

Tom: In conversations with Robert Owen, they order produce and sell it from a licensed business in a commercial zone. If others can sell out of their homes, then why have stores? Why have a Farmer's Market even? Are we undercutting those businesses? And if we are, and we drive them away, then we don't have options.

Loch brought up the example of Bountiful Baskets for discussion. Cindy said that making things too restrictive ends up with unintended consequences. Bountiful Baskets happens for an hour every two weeks. That operation has to be kept inside since it happens in the winter as well as summer. They can't do it out in the open. And it benefits the people who want fresh produce.

Tom said one of your jobs is to look at things and not just make restrictions but come up with solutions. If you make accommodations to everyone who comes through the door, then you blow up the intent of the ordinance. How do we put together a mechanism for something like Bountiful Baskets to operate? Is it a community benefit or is it a private business? Does it profit one individual or serves the general population of the community and is basically a service?

Tabor said "I don't think profit is a bad thing."

Loch: Speaking theoretically.... I have a tentative definition that exempts ag and home occupation products with the stipulations that anything brought in from outside Boulder can only be sold with a temporary use permit and judging effects on local products.

Tabor: It doesn't seem that Bountiful Baskets is in competition with anything available.

Loch: What if we simply it more: Sale of goods produced in Boulder are not considered retail sales.

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Caroline: The challenge is with farmstands that sell what isn't produced on that land. If you just say "in Boulder," it opens up all zones in town to a mini-co-op.

Loch: Can't market forces take care of some of this? Let's say we allowed unrestricted sale of goods in Boulder--- however, wherever. This starts up a huge market struggle until there's one giant "Standard Oil" farmstand that has squashed everyone else. What is the probability of this happening? I think we're getting too protective about this.

Farlan: You can always address this again if the problem becomes a problem.

Tom said, returning to retail sales, we can address this by including items produced in home occupations or related to home occupations being exempt from retail sales restrictions. [A separate definition that doesn't specifically address farmstands.]

Loch: if we end up creating a problem with traffic, then we address it when it happens.

Tom: I suggest we find some way to address exceptions, like Bountiful Baskets, which is more of a distribution service for buying affordable food out of season. Caroline said that no money changes hands at the BB distribution, so it's not commercial.

Loch asked again for an example of a real problem. What's an example of a bad situation?

Caroline: a local coop out of someone's home.

Tom: Another issue is sales tax.... Alyssa pays sales taxes for goods she sells at Farmers Market. We already have a mechanism that works for people to sell what they want to sell.

Loch: Here's a scenario: A group of farmers want to create a coop and they don't want to sell at the Farmer's Market and they decide to sell at a farmstand. They create a competing farmer's market, and it's so successful that it actually shuts down the Farmers Market at the corner, but it creates traffic problems where it's located. Can we address it at that time? Tom: No, because a new ordinance won't apply to an existing situation. [That's where "grandfathering" comes from.]

Caroline: Five years ago, a CSA was started at Red House. Every 10 days, people would drive down and pick up box of goods and leave. I thought it was a fantastic idea. But it wasn't a 24/7 farmstand, and entertainment, and all that's evolved. I didn't object back when it started because I thought it was a great idea. It evolved, and then the burden falls on other people.

Caroline: I want a home occupation to be able to sell things that are directly related to the service provided. Sales to individuals on your property should be permitted.

Loch's definition: All goods produced in HO or related to the services provide by the HO and ag products produced in Boulder are exempt from zoning requirements under retail sales and permitted in all zones.

Caroline: and add "produced on the property itself."

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Loch and Donna Jean disagree. It adds too much restriction. Damage of restricting the economic activity outweighs the potential abuse.

Tom: I agree with Loch. If Hills and Hollows wants to sell things made by people in town, they can do that. There's not a big push to consolidate farmstands.

Loch: Take the Farmer's Market, where you can sell your produce one day a week. I'd rather sell seven days a week so my produce doesn't spoil. But individuals may not want to do their own separate farmstand. Dennis said the best location will get everyone's produce.

Tom: Great! We want to be an ag community. If there are five stands open along the highway, that's great. They're more likely to do well in a highly trafficked area.

Definition of Retail Sales: sales of a product to an end user.

Continue Discussion of Temporary Use Permitting Process

Postpone until April meeting.

Discuss Upcoming Business and April 8 Agenda Items

The April meeting will be the second Tuesday of the month, as scheduled.

Agenda items are assumed to include: public hearing and discussion on the preliminary applications for both Jepsen and Behunin subdivision, continued discussion on retail sales and farmstands and temporary use permitting process.

The Commissioners agreed to use the Boulder Exchange store as the pickup point for Planning Commission documents.

Donna Jean moved to adjourn, Caroline seconded the motion, and Loch adjourned the meeting at 8:43p.m.

Peg Smith, Planning Commission Clerk

Date