

# Meeting Minutes, Boulder Town Planning Commission

## August 20, 2015

Commissioners present: Loch Wade, Donna Jean Wilson, Alyssa Thompson, Caroline Gaudy, and Tabor Dahl. Also, Peg Smith, Secretary; Peter Benson, Town Liaison. Members of the public: Mark Nelson, John and Martha Veranth, Donna Owen, Carla Saccomano, Bill and Judith Geil, Tina Karlsson, Dennis Bertucci.

Loch called the meeting to order at 7:01 p.m. Caroline moved to approve the July 2015 minutes. Alyssa seconded the motion, and all approved.

Caroline asked to postpone the overlay discussion until next month at which time she'll lead the discussion in lieu of a training session.

### ***Training: Board of Adjustment Duties Regarding Nonconforming Uses***

Alyssa led this session: According to the Boulder Town Zoning Ordinance, the Board of Adjustment is the Land Use Authority that renders decisions related to the existence of nonconforming uses or structures and any disputes that arise therein. Commonly, and mistakenly, referred to as "grandfathering," nonconformities are a use or a structure that was legal at the time it was established, but due to changes to rules or ordinances, no longer complies with current law. It is then called a "legal, non-conforming" use or structure. (Section 1300, Boulder ZO)

As long as that use or structure remains unaltered, other than to effect necessary maintenance and repairs, the use or structure is considered legal non-conforming, even if the property changes owners. The Board of Adjustment handles issues and disputes regarding abandonment of legal non-conforming uses and structures. Have an amortization schedule (section 1300-12). Town can enact this on uninhabitable properties. BoA has lots on their plate to follow up on.

There is also an amortization schedule in our ordinance that says if a structure is allowed to deteriorate to the point it is uninhabitable, then after six months, the town can require either rehabilitation or demolition.

A legal nonconforming sign can't be enlarged or moved, but it can be painted and the actual text on it can be changed as long as the text doesn't advertise a different use. For example, a restaurant sign can't change to some other business.

Loch asked about his own house and the roof on it which is becoming less functional. Since his house is nonconforming, he would have to make an application of determination before the Board of Adjustment to determine existence. The BoA would determine he has a non-conforming structure, then he could apply for the building permit and conduct the maintenance.

Determination of nonconforming use due to abandonment: a party can make a claim of abandonment by applying to the BoA for a determination. Obviously Boulder has many abandoned uses and structures, but they can stay that way until someone claims abandonment.

### ***Hills and Hollows Conceptual Plan***

Donna Owen is presenting a conceptual plan for what she and Robert want to achieve with Hills n Hollows property. She wanted to start with the supposition that they already have a legal

## Boulder Town Planning Commission, Meeting Minutes

subdivision, as she and Robert went through the process with the town in 1999, with the two lots recorded on the deed, but never recorded with the County as a subdivision. Donna read an email from her attorney dated 8/20/15 stating that he thought she had a case to do so even though the deeds were not recorded with the county. Loch said he thought she would need to get the lots resurveyed. There is a small, triangular chunk of land on which the HnH signage sits that needs to be added to the survey.

Alyssa asked why the Owens' didn't go through the full process of getting the subdivision recorded with the county. Donna said the little signage section has been included in the deed for 15 years, and that they did go through the county with a quit claim deed long ago. Donna wanted to know if the town recognized it as a subdivision in 1999.

Loch said because the two lots weren't recorded, it isn't a subdivision, and with the addition of the little extra piece of land that wasn't defined back then, it all needs to be resurveyed and recorded with the county. Donna said she'd continue with the process. She described new property lines that would divide the buildings between the two lots. Each lot includes a leach field and septic system.

She did try to get information from the International Building Code people regarding setbacks and received a mailing that she had forwarded to the Planning Commission. According to him, the side setback on commercial buildings is usually 0 feet. Alyssa said there could be a fire setback of 0-10 feet, depending on the type of construction and occupancy group of the building. That has to be determined by an engineer and would be part of the preliminary application.

Loch read from pg 55 of the Zoning Ordinance, development standards table. He then read the definition of front, rear, and side yard. Basically, the frontage of the lot is dependent on where the road is. The rear of the lot is opposite the front and behind the principle building (which is the store in this case). Alyssa: the accessory building rear yard is subject to IBC--- maybe 10 feet. Loch: someone will have to determine what type of building it is, and determine feet based on type; this isn't up to us...There may be some leeway on the back lot as to what is front and rear. Alyssa said none of this is for us to determine or make comment on. The surveyor needs to determine what is best for your lot. This information will have to be provided with preliminary application to the zoning administrator and be checked off prior to the next meeting.

Loch: If you want to proceed with the subdivision process, work with your engineer who'll make sure the preliminary application is complete. Then we can schedule the public hearing. Alyssa added that there's a checklist in the ordinance, which the engineer is well familiar with. There are 12 requirements for the preliminary application, and she read from the Subdivision ordinance.

John Veranth: Your ordinance says every lot must be accessible from an approved road. If that's the driveway on the east side, the lot line between us goes up that driveway. I think there are some road issues for that back lot. Loch said to Donna that either she'd have to get an easement from John, move the road, or something else.

Loch: If you're going forward with a subdivision application, get all this complete, and the additional documentation for the type of building construction to determine setbacks. After the Zoning Administrator determines the packet of information is complete, then notify us to schedule a public hearing. Donna asked if a public hearing can be scheduled on a non-meeting day? Answer: typically no.

Alyssa: If you aren't making any changes to the subdivision other than that little piece of land, then after it is through the Preliminary Application and public hearing with the Planning Commission, then our recommendation goes to the Town Council for their action, according to section 400-7 of the SD ordinance.

## **Conceptual Proposal for a CUP for the Recycling Center**

Tina Karlsson described the plan proposed to the town council on Aug 6. In order to have a building on the site to house the baler as well as the materials, *Boulder Recycles* would need a grant, and to get a grant they would need to show a lease agreement with the town. The site it's on is appropriate because of its central access and proximity to the dumpsters. The group is asking the Planning Commission if they would consider recycling as falling under the public use and utility section and establish setbacks for that.

Access to the planned structure would be from the east side of building. Design wouldn't begin until all the requirements and constraints are known. This would be part of the town grounds itself, and would be platted as such. Tina asked about required permit processes.

Alyssa: First, I think our town needs to offer a recycling service. Public Uses and Utilities are conditional in all zones currently, but our current Table of Uses doesn't address recycling. I'd like to see Recycling actually added to the definition. This requires a Zoning Ordinance change.

Loch: Technically if a use isn't listed in the Table of Uses, it isn't allowed; even the dumpsters aren't listed as such. So you need a ZO change application; you can define it as Waste Management and add recycling and dumpsters to that definition. Then we go through public hearing and recommend that use to the town. Then you come back to talk about specifics such as site planning and setbacks. Right now, the Town grounds is a residential, medium density residential zone. (Public utilities are conditional in all zones.) First step is the ordinance change to amend the definition. Second step is to apply for a conditional use permit under the new definition. Alyssa said she'd help draft and submit the ordinance change request.

Bill Geil asked about the Public Uses and Utilities and Waste Management; what zone does this apply to? The commissioners said it is the medium density residential zone of the town grounds currently, with public utilities conditional in that zone. ..What is considered the front and side yards? The commissioners explained that community center is considered the principal building on this lot, and Hwy 12 is actually the rear of the front; the building fronts on 100 West. The orientation of the new building isn't important, as it's an accessory building on the town grounds lot, with setbacks conforming to MDR zone. The sides of the lot determine the setbacks, not the orientation of the building. Alyssa said, "You're not going through the engineering process, you're just handing us a site development plan and any major effects on any contours. The plat's already been dealt with. Check out Section 803. Donna Jean said it would need to be inspected with electricity supplied, etc. Tina asked about the ditch. Donna Jean said it's private and they have an easement. (Moosman)

Tabor asked about access and lighting. Bill said it would be accessed from D Street. Lighting would be mostly natural, but with general purpose outlets where needed. It's not like a heated, insulated building. People will only be there periodically, infrequently, so we're not anticipating water connection or septic system.

Tabor: It's a good idea. I know you've all worked hard so Boulder does recycle. I think this is going the right direction to have a nice facility.

Loch asked about parking. Bill said it would follow Public Uses standards.

Alyssa: The application is self-explanatory. You'll just need a site plan attached to it, and the conditions will be set at the meeting. It doesn't have to be an architectural rendering.

## Boulder Town Planning Commission, Meeting Minutes

### **Annual Reviews of Conditional Use Permits**

Alyssa said after talking with County Planner Justin Fischer, the commission needs to restart its CUP review process. A CUP review is typically done all at once, annually. It can even be done by clerical staff, once the process is set up. His suggestions:

Step 1: Compile a list of all CUPs in effect. You can't move to step 2 until you've compiled a list of all you're reviewing. We just need to add 3 or 4 that are missing. (Add approved use type, the holder, the zoning, the date approved, the review date. )

Step 2: Make three piles: certain valid uses, certain invalid, and unknown status.

Step 3: Set a single, annual date for all reviews. Send standard letter of notification to all permittees at once. Please reply within x days; the county uses 30 days. They need to reply if are still using the permit. Justin sent Alyssa the info about the lapsed info, which allows the Planning Commission to pull the permit.

Tabor: It's better to notify everyone at once. You don't want anyone feeling picked on.

Alyssa: The permittee doesn't need to be present, it doesn't even have to happen at a public meeting, but they do need to respond on the status of their CUP within 30 days. A person's name doesn't need to be on the agenda. We keep all this information in each file. We review the five conditions to determine validity of a permit.

Loch: Next month will try to compile a complete list of all CUPs out there. Then we'll send the letters out with requirement to respond within 30 days. If we do this after the September meeting, we could start reviewing in October or November, and then we need to set a date in the future--- a basic month and date to expect for the next review.

Alyssa asked Justin what to do if you know of someone who should have a CUP and doesn't? He said that's a town enforcement issue. The Planning Commission only needs to focus on the review. If the permittee has let it lapse and you have no record of it, Justin said the commission can void the use if it's obviously not in effect for a year by notifying the permittee.

Although the review can be done in a work meeting or even by a clerk, Caroline suggested that it should be open at the first meeting at least.

### **September 10 Meeting and Agenda**

Items anticipated to be on the Sept 10 agenda are:

- Hills and Hollows preliminary application for subdivision-- discussion
- Zoning Ordinance change to include Recycling on Table of Uses
- Compile complete list of CUPs and decide date to do annual review
- Caroline's training on overlays

Donna Owen had a question on setback requirement between buildings or between building and property line. Loch said to see page 41, commercial property on table, for rear setback on commercial building, refer to IBC. For an accessory building, the setback is whatever IBC says. (Question about setbacks between buildings versus property lines.)

Tabor moved to adjourn the meeting, Caroline seconded the motion, and Loch adjourned the meeting at 8:53 p.m.

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Peg Smith, Planning Commission Clerk

Date