

Meeting Minutes, Boulder Town Planning Commission

October 8, 2015

Commissioners present: Loch Wade, Donna Jean Wilson, Alyssa Thompson, and Caroline Gaudy. Tabor Dahl was absent. Pete Benson, Town Liaison. Peg Smith, Secretary; Members of the public: John and Martha Veranth, Sergio Femenias, Peter Schaus, Bob and Naomi Brems, Colleen Thompson, Bill and Judith Geil, Donna Owen.

Loch called the meeting to order at 7:10 p.m. Caroline's requested a correction to the minutes (erroneous inclusion of a statement from the previous month), then she moved to approve the September 2015 minutes with the corrections. Alyssa seconded the motion, and all approved.

Public Hearing: Requested Change to Zoning Ordinance Table of Uses to Include Recycling Use

Loch introduced the application coming from the town in support of Boulder Recycles. The request is to add "recycling" and "waste management" to "Public uses and utilities." Loch read the submitted application. He then closed the regular meeting and opened the public hearing:

Judith Geil: I support the addition of that language into the uses.

Donna Owen: I like how that was written.

Pete Schaus: I'm for it too.

Sergio Femenias: I'm for it too.

No other persons wished to comment. Loch closed the public hearing and reopened the regular meeting to discuss the results.

Alyssa said this was the direction we hoped it would go. Donna Jean moved to recommend approval of the requested change to the Town Council, Alyssa seconded the motion and all approved.

Public Hearing: Hills and Hollows Preliminary Subdivision Application

Loch briefly reviewed the background on the application: Donna Owen came to the Planning Commission in August with a conceptual plan for the division of her property into two lots. Since then, the plat has gone through a few changes. The subdivision will result in roughly one-third of the current parcel to include the store and the remaining two-thirds will contain a mobile home and the rest of the land. John Veranth had sent substantive written comments to the Planning Commission (attached as part of the official record).

Loch opened the public hearing:

John Veranth: I own the property immediately to the northeast of Hills and Hollows. First, I completely support the right to subdivide; it's their right to do it. I don't have concerns as long as Boulder Town ordinances are enforced. They're very protective ordinances; they'll do a very good job of mitigating the impacts. Section 10-03 of the Zoning Ordinance prohibits creating a nonconforming lot. This process would create two new lots, and you can't create a nonconforming lot. There are several reasons why the lots would be non-conforming. 1: ZO requires 30 foot setback from principal building to a residential zone, but plat shows as 11 feet

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from my property. 2. No front parking and the front setback. 3. No backlit signs and parking lot lighting. 4. More than 1 sign at the east entrance. These were the things immediately coming to mind making it nonconforming.

(Veranth, cont'd) There are many properties like this in Boulder where historic use exists. But there is nothing documented creating the easement across my property. ...There's a 35 foot undeveloped access, the developed access is no more than 18 feet. Then there's the question of the turnaround at the end. The driveway going to the white trailer is the fire and emergency access to lot 2, as well as accessing to a portion of my property, really an access to three different lots. The Subdivision ordinance defines a street as providing access to two or more lots. I'd argue that especially for a commercial property the appropriate standards should be that of a street, not a private drive.

(Veranth, cont'd) I have surveys from 1970, 1997, 1999, others, and everyone knows where the boundaries are and that the driveways are partially on my property. I've always given permission [for access], but regarding prescriptive easements, these are agency interpretations of state law: [reads from his submittal]. I've always granted permission, but that does not create a prescriptive easement. I've offered good solutions and I'm offering to sign off on the easement, and just want access to the west side of property. I've made good faith efforts to resolve these issues, and I look forward to working with the Planning Commission on this process.

Donna Owen: I went to same website [as John mentioned], and it does indicate we're a prescribed road, and if not that type of easement, we fit into the other types. John wants to go all the way up to the end of the trailer and that's too close to the trailer window.... I was going to approach John and we walked the property, but as of today, I don't think we need to. I have a letter from Tom Torgerson (eng) to Pete Schaus that he was fine with the access, fine with the turnaround. We've had access from highway... rest of it is a driveway going up to a trailer. Until John goes to court, I have every right to go up there, the trailer guests can go, ambulance or fire can go up there, so I feel the issue of fire safety is met and we are willing to put in more of a road to make it more accessible. [Donna read the Torgerson letter]. "Considered prescriptive easement under Utah law. Documented and in place before 1999. A written document or plat is not necessary to establish an easement in this case. But Tom is willing to add that comment if so directed. ... I've not heard about or addressed the nonconforming issue.

Pete Schaus: Tom did send me a copy of the 1999 plat, and on that it indicated access across the area in question. When I walked it with Donna I didn't realize the access was where it was. I thought the access was from the other side. When I saw the first copy of the plat with the access across John and Martha's property, I asked for clarification. My position on access is that it is a prescriptive easement and meets Utah requirements for public safety. It doesn't meet the 50 foot radius, but as fire marshal, I have the latitude to make some adjustments. The international fire codes are written to include big cities with large fire apparatus. We don't have the big rigs that cities do. So we adjusted the turnaround and I feel it's totally adequate.

Pete Benson: As far as access goes, there seems clearly an historic easement. Not sure about the meanings of the nonconforming lot, and those are important issues.

Loch closed the public hearing and opened the regular meeting.

Loch: It looks like two basic issues to talk about it: First is the nonconforming status. My basic comment is, do the nonconforming structures and their setbacks create a nonconforming lot, or is this a separate issue aside from the lot boundaries?

Donna Jean: It shows on the map... it's only 11 feet, not 30 feet on commercial. That is one thing that makes it nonconforming lot. Loch said he saw the same thing.

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Loch: My opinion is that it's a nonconforming structure. Are we creating a non-conforming lot? In section 10-003 we're specifically prohibited from doing that. Does the fact that it's currently nonconforming as to the setbacks, would that mean we're creating a new non-conforming lot.

Alyssa: I did call Meg Ryan ULTC and Justin Fischer (Garfield County planner) .. You may not subdivide any commercial property abutting residential property without the 30 foot setback. We have to seek legal advice. Can we remedy this issue? Yes, move the property line out or remove the building back to create the 30 feet. Loch: the nonconforming signs don't have a bearing on the lot, but these setbacks against the lot boundaries, do. Caroline: So by creating the two lots we'd be illegally creating something. Alyssa said, "I called Tom Torgerson and he knew the entire time and was hoping we'd make an exception. And according to Meg Ryan, there are remedies to this; we have lots of nonconformities in town that are prohibited from doing anything about, but have new policies that can be put in place. We can allow for these, but right now we don't have these in the ordinance. Right now we'd be doing something illegal.

Loch: 1) If John and you can enter into negotiation to change the property line to create the 30 feet, then come back after change is made. John: For the record I'll work with the PC to resolve the issues, but value for value, 2) We will talk to the lawyer about this and if he says ok, we could maybe create the loophole; there's a chance of that. 3) If Meg Ryan comes through with some changes that we can incorporate into the ordinance, but that will take a long time. The quickest thing is to work things out with John.

Donna: I wouldn't feel comfortable with you making an exception. That building wasn't there when we bought the property. We may be able to move it. Or we just don't subdivide, and sell anyway. I wish Tom would have told me. ... we did have several conversations about setbacks before, so I didn't know. Loch: We got focused on the IBC for fire setbacks, and overlooked the residential/commercial aspect of that. I also thought could continue to be a nonconforming building on a new lot. So that's our question for the lawyer...does creating a subdivision result in us creating a second nonconforming lot?

Alyssa: That's what I asked Meg directly. It's not the building, it's the setback itself, which is part of the land use of the lot. It's a land use policy that has to be met. Donna asked which part of the building was in question? Alyssa said any part of the building applies.

Alyssa: Tom did ask about going to Board of Adjustment, but the BoA also can't allow creating a nonconforming lot, and you can't create the hardship.

Loch: I suggest we postpone a vote on this pending hearing what the lawyer says, then take it up next month. In the meantime maybe you can work out something with John Veranth. And we will try to get legal opinion and vote next month.

Pete Schaus: I gave copy of the easement statement for the record.

Donna: So depending on the lawyer's answer, I could go to the BoA for a variance? Loch: No, we can address it here if the lawyer says it's ok. Alyssa said: On the trailer, whether you subdivide or not, it's the use, not the building.

Loch will talk to the lawyer. Alyssa will call Meg to send Loch the info she'd discussed.

Conditional Use Permits

Alyssa had started an inventory matching all Boulder land uses with all known entities using them, and the CUPs that exist for these.

Loch: We need to invite all entities who don't have that they need. Alyssa said we just need to send out a standardized letter between now and Jan 1 when we start reviewing what we have on

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file, but we start now to notify people. Loch asked how to help people expedite the process. We can send out an application packet with the letters. Alyssa said many of the uses, other than those where the use actually changed, are considered pre-ordinance and therefore wouldn't need the CUP. For example, the church, the school, etc. But if the use has changed, then the entity would need to reapply. 1997 is when the ordinance came into effect.

Donna Jean: I'd say we go back to 2008 because we didn't have a Table of Uses before that ... Why do we have both commercial sales and retail sales?

Loch said we've obviously had conditional use permits in the ordinance since the early 2000s, so the need to have the permit would exist since then.

Bill Geil: I'd suggest adding this to the list of questions for the attorney about CUPs pre-2008. You're going to run across some people you'll exempt because of pre-2008. Take the church. Say the church doesn't need to do this because was here before 2008, ok; but not the Outpost since 1997 which you would review, even though both were grandfathered. Is that fair? Caroline added that CUPs go out the window if the use changes. How do you track use?

Donna Jean: It shouldn't be too much of a problem with a standard letter and a CUP form. Loch will ask the lawyer; it might be easier to get everyone up to speed rather than try to separate out the various conditional uses. Alyssa said it may be easier to change some uses to permitted uses.

Judith Geil: If you send out all the letters on Jan 1, how long do you have to review it? Alyssa said we'd decided on a single date we'd do the reviews. But the letters need to go out prior to that. People can come or not to the meeting.

Caroline: I suggest we allow ourselves plenty of time this time around. Once we're in the groove and things are in the file, it shouldn't take much effort.

Loch: List of everyone who needs the letter. Either need CUP. Caroline said she would still like to hear Meg or Justin's take first, before talking to lawyer.

Loch: We basically have two months. We need to start sending letters out in November. We're not going to do the preferential treatment; will send letters to everyone. Next, we need an inventory of signs in town. If there's a nonconforming sign, there still needs to be a CUP, as long as the purpose of the sign hasn't changed.

Loch: Peg will draft a letter. The packet should include request for landowner notarized signature, proof of property tax payment, the full application.

Alyssa: Consider Zoning ordinance change to include construction storage, conditional in MDR.

November 12 Meeting and Agenda

Items anticipated for the Nov 12 agenda are:

- CUP letters drafted by Peg, plus packet
- Potential Hills and Hollows approval
- Possibly the CUP for recycling center
- Determine 2016 meeting schedule

Donna Jean moved to adjourn the meeting, Caroline seconded the motion, and Loch adjourned the meeting at 8:56 p.m.

Peg Smith, Planning Commission Clerk

Date