

Meeting Minutes, Boulder Town Planning Commission

November 12, 2015

Commissioners present: Loch Wade, Donna Jean Wilson, Alyssa Thompson, Caroline Gaudy, and Tabor Dahl. Pete Benson, Town Liaison. Peg Smith, Secretary; Members of the public: John Veranth, Donna Owen, Ryan Haws, Molly Swan.

Loch called the meeting to order at 7:07 p.m. Caroline moved to approve the Oct 8 minutes; Alyssa seconded the motion, and all approved.

Discuss John Veranth Application for Subdivision and Application for Zoning Change (conceptual plan discussion)

[Secretary's note: This item was mistakenly omitted from the meeting agenda. However, chairperson Loch Wade agreed to add it due to the conceptual nature of the discussion.]

John summarized his conceptual plan: He would propose to split his current (low density residential) two lots. The upper lot, containing his home, would remain LDR; the lower lot, including the red barn would be rezoned to commercial. If it were rezoned, it would solve the Hills n Hollows setback problem as it would be two adjoining commercial lots. The process would also clean up the question about prescriptive easements, and he would record an easement up the asphalted driveway to store, and to trailer, and to the Haws property. The proposed commercial use would be consistent with the town's General Plan in that it would provide a space for cottage industry and employee housing, it's appearance would be in keeping with an agricultural appearance, and it's adjacent to a long-standing commercial property. He would like to hear the Commission's reaction to this plan.

Caroline: My thought is that once this is rezoned as commercial, it can be anything. I thought the General Plan intended to keep commercial on outlying areas but not along a corridor. Anything there would be very visible. This wouldn't cause me to oppose the idea, but the thought did come up. I do like the idea of breaking up the property, and you've been responsible in how you're developing the landscape.

Donna Jean: I'm wondering about building up by the sandstone and if there's room enough up there? John said the principal building on the commercial lot is the red barn, but he could potentially ask to build later. It would have to go through the town process. He could put in a small auxiliary building, a small campground.... And there is enough room to build and still be semi-protected from view.

In response to a question John said the red barn contains a studio apartment: a bathroom, and a single large room with cooking available off to the side, basically for one person.

Alyssa asked about occupancy. Yes, for the red barn, as it was intended for living in while constructing the green house. If the land isn't subdivided, that occupancy permit would become void as soon as the house can be occupied. However, he said it would be of advantage to the town to subdivide and create another living unit.

Loch said he initially thought it was a good idea but since then has developed a few concerns. One regarded intent about building two housing spaces when only one is allowed on a residential lot. John said he knew it would take a long time to build the house. "I anticipated

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using this as a study or workspace later, and I could do that now without the rezoning. It wasn't my intention to build something as an end run around the ordinance. I came up with this idea only after hearing the problems with the HnH subdivision and thought it could solve some existing problems and make something useful too."

Loch: It does open up the opportunity for everyone who lives along Hwy 12 to rezone to commercial too. We'd be setting a precedent. It would create an economic incentive to rezone with property value going up. I'd probably be the first in line to apply next. I personally don't have a problem with rezoning and having commercial properties along Hwy 12. But I don't think the Planning Commission has the authority to speak for everyone in town... this is more of a General Plan issue, and it needs a more comprehensive discussion.

John: My applications would have to go through public hearings twice, so it would have two opportunities for people to speak out. I've also heard you want to avoid spot rezoning, and this property would be contiguous to another commercial zone and has a history of encroachment of commercial activity, so it is different from most other properties along Hwy 12.

Caroline: This is a perfect example of why we need to open out discussion to the whole community. This is a meaty topic and I don't think even two hearings are enough to really get a sense of what the town wants for development.

Loch: First, it is completely legal to spot zone, including rezoning to commercial even without contiguousness. Spot zoning isn't something we could use as a refusal. Maybe in this case we need to move forward with a General Plan discussion to see if the will of the town is to open up Hwy 12 as a commercial corridor.

Pete asked John about the fit of his plan with the General Plan. John said yes, in several instances, his plan is consistent: the space in the barn would promote cottage industry, it would create employee housing, it is a compatible land use, the buildings are consistent with the community character. A commercial use would still have to go through conditional use application process.

Donna Owen: You should know what commercial business is coming and not just make the zone commercial without knowing the plan. Loch agreed, saying that it would be helpful to also come in with some type of business plan describing the commercial use. John said in his narrative (attached to the application papers) he describes what he could do immediately with the existing building (the red barn).

Tabor said most of the concerns mentioned by others mirror his own. He asked John if he had talked with any potential renters. John said several people had approached him about the space but his hands were tied, and that he'd formulated the ideas in about three days after the last meeting as a way to resolve a couple problems. Specifically, he hadn't talked to anyone about the automotive repair center than Tabor asked about.

Alyssa said the green house is to be your fulltime residence. An accessory dwelling unit for an employee is typically for the owner of the lot, or at least the person would have to work for that business, so we'd have to know what the plan is. Commercial housing precludes residence. We'd need the plan first before we could even consider this. ... and accessory dwellings best work in GMU, not commercial zones.

Donna Jean asked why rezone at all. Why not just conditional use?

Alyssa said most small businesses can operate in LDR now. That can provide the housing without going commercial. John said he has no need to go commercial.

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Loch: I agree that your solution would solve the problems you mention. But the medicine may be worse than the disease. I think we are coming up pretty quickly on a revision to the General Plan and commercial zoning is something we need to talk about. He asked for final comments.

Alyssa: If you were coming in with a business plan now [it would be better], but the vagueness makes it difficult to consider. I would like to revisit this idea as a General Plan topic. John said he's happy to put this on back burner and work through the General Plan process. Donna Jean said the usage is too easy to change if a rezoning were granted now. Tabor said it's better to get more input from the community. It's not about that one piece of property, it's about all properties along Hwy 12. Caroline agreed. She said she would push for the discussion to get underway right away--- commercial development and housing. What sort of development, where would it be, where would employees live... this is a nice hand-in-hand set of issues.

John said he'd be delighted to participate in the General Plan revision process, and Loch thanked him for his proposal.

Discuss recommendation on Hills and Hollows preliminary application for subdivision

The public hearing took place October 8 and the Commission discussed the application and agreed to postpone making a decision until this meeting.

Loch summarized: There is simply a part of the building that is only 11 feet from the property line, not the required 30 feet; in the Commission's thinking, this would be taking an existing nonconformity and regenerating it to a new (subdivided) lot. He'd written to the town attorney to ask these questions: 1) if there's an existing nonconformity, can we subdivide? 2) is there a prescriptive easement or does John V's granting of permission nullify the definition of prescriptive easement, and 3) does the easement, if it exists, affect the setback? [He then read Mark McIff's response.]: The safest course for the town is to not approve something that creates a nonconformity... The simplest remedy would be for the adjacent neighbors to negotiate a boundary change. He disagreed somewhat with the engineer's interpretation, but said this is a private matter, not a town matter. He would recommend recording the easement to clarify it. The setback is what it is until there is a lot line adjustment.

Loch: So our safest bet, based on current lot dimensions, is to deny the application for subdivision.

Donna Owen: I'd like to present something else. She presented a rough drawing to the commissioners to illustrate her point. She said the main retail building is the building in question. The accessory building touches the main building, but it isn't a retail space. The 11 feet on it shouldn't be in question, because it isn't the principal building. The roofing makes it look like everything is connected, but it isn't connected. And the setback from the main building is 31 feet. Alyssa read about accessory buildings. "detached from" doesn't allow a roof that connects. Tabor thought she was stretching the definition. "We can't just decide that the buildings aren't connected. Loch disagreed: The walk-in cooler area is an integral part of the principal building, whether customers can access it or not. You're interfacing along that whole wall, with employees as well as customers. The fact that you have an entrance from the main building and the walk-in is entirely connected, I don't see how I can call that an accessory building and not part of the main building.

Donna: So I'm only 13 feet off being legal. Maybe some grace can be granted. Loch: I still suggest you work something out with John so that the distance from the edge of the storage building to his line is 30 feet. Donna said she and John Veranth had had a conversation but they hadn't agreed to anything. John said he'd like to have better access to the flat area that would have been

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part of the new commercial area, giving him a lower angle to deal with. But he said even if he sells her a piece of land, he's selling a part of a LDR property. We still have the problem. If a lot is in two zones, it opens a can of worms to just sell a wedge of land.

Donna said if the Commission can't give a 13 feet grace, she won't subdivide. My son and I will work something out. If John's lower lot does become commercial, the problem is null and void.

Loch asked the commission what they thought, if there was any legal way they could overlook it: Alyssa and Donna Jean said no; Tabor said part of him wanted to help with this, but he also didn't want to twist the process. Loch said our hands are tied. If I could give you the 11 feet, I'd do it to see you be able to move ahead. I just don't see how we can ignore that. Based on what our town attorney said, that easement can't be counted as part of the setback.

Alyssa made a motion to recommend denial of the preliminary application for subdivision. Caroline seconded the motion. Vote: Caroline, Donna, Alyssa, and Loch voted to approve the motion; Tabor abstained. The recommendation for denial now goes to the town council.

Discuss Conditional Use Letters

Peg has drafted two letters to be sent to holders of Conditional User Permits: One merely notifies them of the new review process to be held in January; the other is to be sent to landowners who don't have current or known conditional use permits in place.

Alyssa: The first paragraph in the Conditional Use chapter describes the review. We only need to hold a public hearing if we determine a need to modify or revoke a conditional use. Caroline said the review can be separate from any action; it could be done in two steps. Tabor said maybe if a use has lapsed is our fault because it hasn't been reviewed. Loch said the more likely scenario is if someone put up a sign, then went out of business and the sign's still up, the sign CUP gets revoked. We only need a public hearing on those we need to change. Caroline said the fact that we haven't reviewed them doesn't impact the use.

Loch told Peg to start sending out the letters. Tabor asked about pre-ordinance uses. Alyssa said we're not touching those before any ordinances.

Alyssa asked about a CUP checklist. She thought we had one, but doesn't know if it goes out with current applications. We should include that in the letters asking for new applications. New applications should be due by December 30.

Discuss Temporary Use Applications Table of Uses

Donna Jean: Last spring we added mobile food businesses as a conditional use, but we didn't remove "food carts" from the definition for long term temporary use in the Table of Uses. We need to remove that conflict... we should allow TUP for food carts for special events only, and just change the wording on the long term temporary use definition. Alyssa agreed. It's a simple fix to just change TUP for special events; strike out food carts from long term temporary use and add to special events as a temporary use.

Stacy Davis's permit is fine for the next four months, under the current ordinance. After that, assuming the revision is in effect at that point, she either just has a TUP for a special event, or she has a CUP. The reason it was changed is that it was possible to have the mobile food cart in all zones for four months.

Donna: I've had people asked me if they could put a food cart at the store, and I think it would. Alyssa: It would be better to get the conditional use and then the property owners could change out the vendors if they wanted. Loch asked Donna Jean to come up with the wording and for Peg to schedule a public hearing for December.

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Discuss Bruce Parker Zoning Ordinance

[A few years ago, Boulder Town planning consultant Bruce Parker made suggestions for revising the Zoning Ordinance. The bulk of the changes involved reformatting the Table of Uses, which the Planning Commission opted to not do. Due to the recent discussion regarding Bruce's recommendation to change from a Board of Adjustment to a Land Use Hearing Officer, and the subsequent action by the town to not adopt that change, Loch wanted to revisit Bruce's recommendations to make sure all had been accounted for one way or the other.]

Loch: He made some we do need to consider. We didn't want to change the Board of Adjustment to one person and we didn't like his combining the Table of Uses with the definitions. But he has good changes on other stuff. I think we could change Land Use Hearing Officer to Land Use Hearing Board. There was some discussion about this. The Commission could review Section 304, pages 13 and 14, and compare this wording with his suggested changes of any revised powers and duties. There may be no substantive changes, only the order of some content. It needs to be reviewed.

Discuss prospective agenda items for December 10

Everyone feels they are working off outdated hardcopies of ordinances. Can commissioners get hard copies with all the changes embedded. Peg will talk to Judi.

Housekeeping rules should be added: 10 days for an application packet. Electronic meeting capability/conference phone. Post on website and bulletin board.

Next years' schedule: Thursdays, 6 p.m. standard time, 7 p.m. through daylight savings.

Caroline has a copy of community land trust material she got in CA. She'll scan and send it.

Items anticipated for the Dec 10 agenda are:

- "Housekeeping" policies and procedures for Planning Commission—deadlines for applications needs to be 10 days.
- TUP and public hearing , wording changes
- Talk about commercial zoning
- Accessory dwelling units—Alyssa will be presenting an application for ZO change
- Community land trust
- Housing, Community Land Trust--- initiating General Plan discussion

Tabor moved to adjourn the meeting, Alyssa seconded the motion, and Loch adjourned the meeting at 9:05 p.m.

Peg Smith, Planning Commission Clerk

Date