

Boulder Town

Planning Commission

Meeting Minutes

March 14, 2019

Commission quorum was present: Matt Cochran, Elizabeth Julian, Josey Muse, Colleen Thompson, and Perry Tancredi. Also attending: Secretary Peg Smith; Zoning Administrator Curtis Oberhansly, Town Council Liaison Peter Benson. Members of the public: Troy and Ron Julian, Kate McCarty, Blake Spalding, Tony Jacobsen, Mark Nelson, Tessa Barken, Donna Owen, Walt Gove, Michala Alldredge.

Perry called the meeting to order at 7:05 p.m. He asked for a motion to approve February 2018 minutes. Matt so moved, Elizabeth seconded. All approved by voice vote.

Public Comments

Blake Spalding, owner of Hells Backbone Grill and farm, asked about the temporary housing stipulation currently in effect. She said she needs to move her chickens and goats from their winter quarters to the HBG farm and have a caretaker reside with them full-time. The duration a farmworker would be resident there exceeds the current 90-day limitation on temp housing. Is there a way to accommodate a different category of housing for ag and farm needs? She said a septic system has been installed, with a trailer functioning as a bathhouse for the one or two employees who will reside there. Secondly, she said a company has donated four wall tents to the farm. She'd like to use these to house the periodic university students and other volunteers who come to the farm to learn and work and who need to live near bathroom facilities. Her third question related to a future plan for holding special events, such as weddings, at the farm.

After a brief discussion of the current ordinances, the commission generally suggested Blake apply for the 90-day conditional use that could solve the immediate chicken-sitter problem while other possibilities can be considered that accommodate ag/small business needs. Curtis will work with Blake's employee, Tony Jacobsen, to get details.

Discuss Revised Residential Short-Term Rental Draft

Perry summarized the current changes to the draft that resulted from last month's public comments and subsequent discussion:

- Rewrote the 4th "whereas" clause for clarity.
- Added language on owner occupancy as a requirement.
- Removed requirement for an architectural diagram of the dwellings.
- Removed requirement for obtaining written permission from neighbors within 300 ft.
- Added a parking space requirement.
- Added signage requirement for identifying the location.
- Changed requirement for meeting person upon arrival to just being available while they're there.
- Added language about public roads, public lands, not trespassing on private property.
- Added requirement for a site plan showing the property.
- Added requirement that no more than one group of guests can occupy the RSTR at a time.

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- Added requirement for description of surrounding property.
- Changed language on firepits and how to describe following fire restriction notices.
- Changed info on neighborhood quiet time and dark sky.

Perry opened discussion on owner occupancy, establishing a quota on the number of allowable RSTRs within designated geographic area of town, and minimum number of nights.

The geo quota: Establishing a “lower, upper, and middle” Boulder and setting a maximum number of RSTRs per area. Perry argued the quota serves as a safety net for preventing skyrocketing numbers of RSTRs and also to disperse the RSTRs so that one area is not unduly impacted to the point of changing the character of a neighborhood.

Elizabeth asked if a quota is imposed, how does the town handle those RSTRs currently in existence? Is this considered a nonconforming use? If ownership changes, does the nonconforming use transfer to the new owner? The commissioners agreed these questions need to be addressed. Concurrence was that the Conditional Use Permit for a RSTR would not automatically transfer. Curtis will research the law and probably recommend revising language in the current Zoning Ordinance related to CUP transfer. The commission agreed on the intent that running a local RSTR requires the property owner to be a local resident.

Matt asked if there should still be a limit per geographical area to spread them out and that without a limit, we could be turning residential areas into commercial zones. He suggested basing the quota on population of the area. Josey suggested a proportion, not a fixed number. Elizabeth questioned legality creating zones and limiting numbers. Curtis said the only justification is spreading out the RSTRs, but boundaries can be interpreted as arbitrary and capricious. You need facts and findings upon which you make your decisions. Josey said the path of logic makes sense and could be shown to not be arbitrary and capricious.

Colleen said she hasn't decided on the restrictions and quota; Elizabeth saw both sides. She said there isn't a current problem with short-term rentals; what problem is the ordinance solving? Matt said we're not making ordinances because there's currently a problem, we're controlling growth for the future. Perry said the problem we're solving is that people are asking about it. That's what we're solving.

Curtis asked Elizabeth to read into the record the number of currently listed rentals (or listed last year) on Air BnB or VRBO within town limits: there are four. The county is compiling a list of current RSTRs. Within the town, RSTR owners can't apply for a business license for them and Boulder can't collect those taxes because the “use” doesn't officially exist. Curtis said it's been happening in all the surrounding towns, there's an increase in traffic through Boulder, so there's a reasonable assumption RSTRs are happening and we want to control them by geographic area.

Donna Owen commented that three of the units advertised at Sugarloaf Ranch are actually on a guest ranch and are not individual Air BnBs.

Elizabeth likes to base a quota on actual proportions and not arbitrary lines and reviewed yearly. Colleen said she doesn't want to get us into trouble, but look to future uses and controlling uses.

Perry proposed changing the ordinance to a percentage of fulltime residents in a neighborhood, such as 15 percent of the residents in a zone. The commission agreed with having a quota for the total number in town and having a general quota for the geographic regions.

Perry brought up next item, minimum occupancy requirement, section 1. He suggested “consecutive nights” not “days,” and the current range would be 1-29 nights. The commission agreed one night is ok as the minimum.

Other comments: Site plan: what are the requirements? Curtis said this would define entrances and exits, parking location, adjacent structures/property lines, etc. It provides info for the CUP, but also familiarizes the guests with the layout of the area.

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Map of public roads and trails: Josey said one map, created by the town, would solve everyone's problem. There are no public trails from most people's property and should be identified. Let's have the town create that map.

Fire pits: include any provision for outdoor fire, including barbecues, grills.

Quiet time and lighting: The intent is to protect dark sky while providing for safety of guests. Change language to turn off outdoor lights at night. Commission agreed with exterior lighting complying with existing language on dark sky lighting.

Review of changes:

- Minimum 1-29 from "days" to "nights"
- Update quota from hard number to percentage of geographic area 15%
- Town will provide a map of public walking areas
- Language on fire—add barbeque, grills, etc.
- Language on dark skies.

Curtis: Also add "nonconforming use ceases upon sale."

The revised RSTR will be available for public hearing at the next meeting.

Discuss General Plan Initial Updates

Josey had distributed drafts to the commission, which has incorporated 118 line items from the work group reports. Perry suggested taking next month to review the changes and discuss the changes first before holding a public hearing. Commissioners agreed: public hearing in May.

Matt wanted to thank Josey for all the effort, including the summary spreadsheet she created.

Schedule Public Hearings for General Plan and Residential Short-term Rental ordinances

The Commission decided to begin the regular business meeting at 6:00 and start the RSTR public hearing at 7:00. Perry so moved, seconded by Matt. All approved.

Discuss Public Comment Policy

The commissioners agreed the initial comment session works well, but maybe needs a time limit, probably 10 minutes. People who need more time ought to sign up to be on the agenda. Commenters will come to the podium and state their name it will be on the recording.

This allows people options of making a comment without staying through the entire meeting. It can be a comment or question on any subject, not just agenda items. Mark Nelson said bringing new business should be on the agenda. The commissioners agreed with that.

Perry moved to change the agenda to add 10 minutes of public comment at the beginning of the meeting. Matt seconded. All approved. Comments that elicit a recommendation or opinion by the commission should first go through the Zoning Administrator and may need to go on the agenda for the following meeting.

Final public comments

Tessa Barken asked for clarification on nonconforming uses: do the existing, and therefore nonconforming RSTRs count within the quota? Perry thought the ordinance needs to address it one way or the other. He favors not counting them because doing so penalizes new applicants who may have been waiting for this decision. Josey disagreed, saying Lower Boulder is becoming a commercial zone with all the RSTRs and the nonconforming ones should be counted in the total. For the draft ordinance, let's say nonconforming uses do *not* count in the

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percentage. We're trying to find a balance between controlling a situation and allowing a resident's ability for earn income.

Mark Nelson: Before you vote on the nonconforming part, you need to brush up on nonconforming uses. They are not allowed uses, they are not grandfathered in. Perry said the issue is whether to allow people who already have them to continue. They could be required to comply with new requirements, such as a CUP, but can you stop anyone? Curtis said cases are on the record: a municipality can require CUPs and a business license and pay taxes. The commissioners agreed with that. People may voice opinions on what they'd like, but there are legal precedents that will have to be researched and followed.

Peg Smith: The Table of Uses currently says anything not listed is not allowed. Curtis said that statement is strictly illegal and needs to be changed.

Tessa Barken: renewals of CUPs? Permittees would have to reapply each year. She asked about having a lottery system. Perry said the commission had discussed that and had agreed first come/ first serve works best for now to be fair to people investing in building for that use. If it's onerous we remedy by increasing the quota.

Pete Benson: There is a lighting ordinance right now. It doesn't include dark sky certification stuff, but it does talk about lighting, light trespass, etc. Dealing with nonconforming uses, if they're in a whole separate bin and the use doesn't go with the land, they'll eventually go away. It's an argument for not including them in the quota; they're handled separately.

Matt Cochran: What about a bunch of people who decide to apply? Perry suggested if you provide evidence you've been renting your property for past two years, you should be in the quota, or as Curtis suggested, use date of when topic appeared on a Planning agenda.

Troy Julian: I don't understand the concern and emotion about RSTRs. Why restrict them? What's the emotional conflict?

Donna Owen: I have issues with the quota and dividing the town. It can't be arbitrary. If you want a quota, maybe do it per zoning. Looking at the town council and manufacturing, you can't make rules just to help one person and not another. Perry said it wasn't on the agenda and will be brought up at the next meeting. Finally, I thought ADUs were not to be used as RSTRs. Perry said it was always the Planning Commission's intent to allow RSTRs within ADUs. The ADU ordinance now restricts that use until or unless this RSTR ordinance is passed.

Josey Muse: Look at our GMU and residential zones as ways to determine the quota.

Discuss Upcoming Business for April 11 Meeting

- Starting at 6pm for regular business.
- Public hearing on RSTRs
- General Plan review
- Light Mfg discussion
- Short presentation on dark sky certification. Money has been donated for lighting.

Peg brought up the need to modify town business licenses for RSTRs—cost, CUP, etc. Different cost for RSTR license because of inspections? Save this for later.

Perry moved to adjourn, Matt seconded. Perry adjourned the meeting at 9:16.

Peg Smith, Planning Commission Clerk

Date