

Boulder Zoning Process Memo #1

TO: Boulder Planning Commission, Curtis Oberhansly, Zoning Administrator, Mayor Steve Cox, Other Interested Parties

FROM: Lee Nellis, FAICP

DATE: April 14, 2020

SUBJECT: Regulating Home Businesses without Discouraging Them

This is going to be a good topic for starting our work together. Home businesses are, and will continue to be, an important land use in Boulder and talking about the potential impacts of home businesses will provide a foundation for talking about the impacts of other businesses.

Step 1: Basis in Plan

When we talk about a regulation, we will begin by looking for guidance in the general plan. If that guidance is not there, or what is there is not helpful, we may have to pause and discuss a plan amendment. For home businesses, there is some guidance, which is appended.

Step 2: Consistent Terminology

We will sometimes need to talk about consistent terminology even before we talk about definitions. The plan talks about home-based businesses and home businesses. But the zoning ordinance talks about home occupations (as well as the particular cases of home day care and home preschool). There is also a separate ordinance regarding short-term rentals, which are also home businesses. The Town's plan and ordinances will be easier for everyone to understand and use if there is consistent terminology. I am going to use the term home businesses, but we can discuss which is best.

Step 3: Definitions

I have appended the definition of home occupations from the zoning ordinance. It fails a basic test of good zoning practice, which is to keep definitions and standards separate. In fact, it consists primarily of standards.

The term "for gain" in the current definition is especially problematic. What if an activity is not making a profit? Is it then exempt because there is no "gain?" And what about hobbies that are commercial or industrial in nature, even if there is no proactive attempt to sell a product or service? What if my hobby is furniture building? I don't advertise my products (though I may occasionally sell something) or have a sign, BUT I do store solvents and finishes, operate saws and other noisy machinery, and pile things outside, all in a residential neighborhood. Prohibiting that type of activity would not be consistent with your general plan or the community's character. But you do need to think about the potential impacts on the neighbors. So, you need standards. They're coming up next, but you still need a definition. The one below is sufficient.

Home Business. A 'home business' is an industrial or commercial activity that is conducted in a dwelling or in an accessory structure that is appurtenant to a dwelling, and that complies with the standards of _____ .

You will observe that this relies on other definitions, including “dwelling,” “industrial,” and “commercial.” We will define those terms, but I want to maintain a focus on home businesses for now.

Step 4: Making Standards Usable

One thing you may have observed at our training workshop is that I didn’t mix topics. There are good reasons for that. Suppose that under your current definition of home occupations, I propose a use that generates dust (what type doesn’t matter for this example) but doesn’t generate any of the other potential nuisances and seems to comply with the other standards. Are you going to approve it?

Having all the different possible issues jammed into a single paragraph raises the question of how to know what it requires. Are you seeking compliance with every part of that definition? Or will you be tempted to look at the application overall and say “there’s not going to be that much dust” and approve it? If you decide to deny, you have a practical problem. How does the Administrator cite a specific reason for the denial? And then how do you defend it? If you approve and there is a challenge from a neighbor, how do you explain allowing the dust to a judge?

The best way to think about standards is that they provide up-front reasons for a decision. If they are structured properly, they will help you explain and defend your decisions. So, let’s take a look at home business standards that are well tested in experience. These standards have an uncommon, but useful question-and-answer format. I didn’t edit them because it will be easy to make the changes needed to make them work for Boulder. Comments about how they might or might not apply in Boulder appear in italics.

Home Businesses

This appendix provides detailed standards for home businesses. The Administrator shall approve a permit for a proposed home business that complies with **all** of these requirements.

In Boulder’s current format, these would be a chapter, not an appendix. Note also that these come from a larger – though not large – town where the Administrator makes a lot of decisions. If you want proposed home businesses to come before the planning, that is not a problem. You can continue to use CUPs for them.

1. Must the owner of a home business be in residence? Yes. The proposed home business must be owned and operated by a current resident of the dwelling in which it is proposed. Should the owner move away, the right to continue the home business ends.

2. How much space can be used for a home business? The space that can be used for a home business is limited as follows:

- a. in the MURZD and RZD: 25% of the floor area of the dwelling or 500 square feet, whichever is smaller;

You probably guessed that ZD stands for Zoning District. These zoning districts are only a little more complicated than Boulder's, but the point doesn't depend on that. The point is that you can, and in Boulder may want to, have different rules for home businesses in different zoning districts.

- b. in the VZD: 25% of the floor area of the dwelling or 750 square feet, whichever is smaller; and
- c. in the ARZD: no more than 1,500 square feet within a building.
- d. **EXCEPTION FOR ADAPTIVE REUSE OF HISTORIC BARNs:** The DRB may encourage the preservation of historic barns in the VZD and ARZD via adaptive reuse for a home business by waiving the area limitations established here. The DRB may not permit the expansion of an historic barn that is less than the maximum area, but may permit the use of a larger, historic barn for a home business that otherwise complies with the standards of this bylaw.

DRB stands for Development Review Board. I thought about cutting this out to save space, but it might apply in Boulder. It was an important conversation for the people who use it because their town does have a number of historic barns that are not used for agriculture anymore, even if they are on a working farm. The old barns have mostly been superseded by more functional buildings, so we want to encourage a commercial use that would preserve the town's scenery and heritage.

- e. Applicants must demonstrate compliance with this standard by submitting a scaled floor plan of the dwelling or accessory structure that clearly delineates the area that will be used for the home business.

Why are there application requirements here? So that the Administrator or Town Clerk can hand someone who wants to have a home business a thin document, not the entire ordinance. The same is true of the definition of "historic barn" that appears below. The goal is to be user-friendly and save paper.

What is an Historic Barn? An historic barn is wood frame structure (which may have a masonry foundation or elements) that was historically used for agricultural purposes, including the storage of feed and/or housing of livestock. Questions about whether a particular structure qualifies as an historic barn will be referred to the Historic Preservation Commission.

3. Can a home business have work spaces or store materials outdoors? That depends on where it is located.

- a. In the RZD, MURZD and VZD zoning districts, the space used for the proposed home business shall be within the dwelling or in an accessory structure that complies with all requirements of this bylaw. Outdoor work spaces and the outdoor storage of materials, supplies, equipment, vehicles, or goods for sale are prohibited in the RZD, MURZD, and VZD.

- b. Outdoor work spaces and the outdoor storage of materials supplies, equipment, vehicles, or goods for sale associated with a home business in a one-family dwelling will be permitted in the ARZD, provided that they fall within the required setbacks and are fully screened from view from public ways and adjoining properties that are zoned for residential use.
- c. The screening provided shall be a Type I or Type III landscaped buffer, as defined in Chapter 18, with a width of at least 36 feet.

Boulder probably does not need to make its landscaping standards so elaborate. We will tackle landscaping in another meeting (there is more than enough to do at this one). The point here is that new or expanding home businesses that involve outdoor activity can be required to provide landscape buffers.

- d. Applicants must demonstrate compliance with this standard by submitting a scaled drawing of their property that clearly delineates the space (indoor and outdoor) that would be used for the proposed home business. This drawing must also show proposed landscaped buffers. Where it is proposed to use existing vegetation as the buffer, photographs of that existing vegetation must be submitted. Where the buffer will be installed, a planting plan must be submitted.

4. Must a home business provide parking? Yes. Off-street parking must be provided at a rate determined by the Administrator. Where more than one additional parking space is required, the Administrator may require that off-street parking for a home business meet the location (side or rear) and landscaping requirements that would apply in a commercial or industrial zoning district.

5. Are there restrictions on traffic generation by home businesses? Yes. Traffic generation by home businesses will be evaluated using the ITE Trip Generation manual. A home business generally should not generate more than one P.M. peak hour trip of traffic generation in the RZD or two P.M. peak hours trips in the VZD or ARZD. The DRB may permit exceptions where traffic flow from the proposed home business will not have an adverse impact on neighboring homes. The Administrator may use potential traffic generation as cause to refer a proposed home business that he/she would normally review to the DRB for discretionary review.

Boulder doesn't need this complexity. I don't think you need to address traffic generation at all (it is a big deal where these standards are used), but I left it in to let you know that you could if you want to.

6. Are there restrictions on potential nuisances generated by home businesses?

- a. No home business shall require an NPDES permit, as required by state law.

An NPDES permit is a state permit for the discharge of wastewater.

- b. No home business shall require an air quality permit, as required by state law.

c. The storage, use, and disposal of hazardous materials by home businesses shall be permitted only to the extent allowed for residential occupancies by NFPA 1, the 2006 Uniform Fire Code. The DRB may permit an exception for a home business on a parcel of one or more acres in the ARZD upon finding that:

- the proposed home business will comply with all requirements of the National Fire Codes, including the requirements for inspections by the fire department; and
- the proposed home business will comply with all buffering and screening requirements that would apply to the same activity located in a commercial or industrial zoning district.

The fire code reference here would have to be updated. DRB would be replaced with planning commission.

d. This bylaw sets limits on the outdoor lighting permitted for dwellings. No home business shall result in additional outdoor lighting.

We probably should have repeated the residential lighting requirement here, but since a home business is not permitted to add anything, we did not. Boulder is unlikely to want to enforce what these folks try to. Measuring and calculating light levels is not that easy. Fortunately, there is a partially effective alternative. The International Dark Sky Association approves outdoor lighting fixtures, including some that are available at places like Home Depot. Here is a link to check out that program,

<https://www.darksky.org/our-work/lighting/lighting-for-industry/fsa/fsa-products/>

The Town could adopt the standard below, while providing educational materials and links to help people find fixtures that comply. That would not prevent all light pollution, but it is easy to administer and will greatly reduce light pollution.

All outdoor lighting fixtures shall bear the seal of approval of the International Dark Sky Association.

e. No home business shall result in blowing dust, radiant heat, glare from welding equipment or other sources of intense light, or smoke that affects adjoining properties. See also the applicable standards of Chapter 15.

Here I am lumping topics in a way that I'd rather not. These are not common issues in the town I was working for, however, so we decided to save some space. I would suggest that Boulder rework this into two separate parts, one addressing air quality (dust and smoke) and one dealing with light and heat.

f. No home business shall generate sound that exceeds the standards set in Chapter 15.

Regulating noise is not easy for a small place like Boulder. Its not hard to learn how to do, but does require moderately expensive equipment that must be recalibrated on an annual basis. If you want to try, I will share the necessary ordinance language. If not, I recommend that you still list noise as an issue, as you do at present. We would use language similar to e., above.

7. Can a home business have a sign? Yes. Home businesses may display a single sign of no more than four square feet in size. This may be a freestanding, hanging, projecting, or wall sign. The application for a permit to establish a home business must be accompanied by scaled drawings that show the placement of the sign on the property and/or structure and the dimensions of the sign. There are additional restrictions on signs in the VZD.

The VZD is a National Historic District. Not applicable in Boulder.

8. Can commercial vehicles associated with the business be parked on residential premises? Only vehicles of 6,000 pounds gross vehicle weight or less can be parked overnight on residential premises in the RZD, MURZD, or VZD. The overnight parking of larger vehicles is not a permitted part of home businesses.

Note that this does do not apply in the ARZD, the agricultural zoning district. You probably aren't going to want to use it in Boulder either, but I left it here to show you the possibility.

Enough for Once Setting!

That was a lot to cover, but it is what works. This language has been in place without legal challenge or significant administrative problems for more than 10 years. And if these standards, with the appropriate changes, are acceptable for home businesses, we have a great start on standards to apply to larger industrial and commercial uses. I propose we look at those in two weeks.

Appendix A – General Plan Goals & Policies

7-4 Land Use Goals and Policies

Goal 1: Types and Mix of Land Uses to be designated -- To achieve the development of a well-balanced, financially sound, and functional mix of agricultural, residential, commercial, open space, recreational, institutional and educational land uses, without denigration of the rural character and heritage of the Town.

Policies: Allow the development of **home-based** service and cottage industry activities. These uses must be compatible with surrounding agricultural and residential land uses.

Chapter 9. Economic Goals

While Boulder is a small rural community, the value of a strong and viable local economy cannot be overemphasized.

Goal 1: To promote the development of small **home-based** businesses, sustainable agricultural, and nonpolluting cottage-type businesses that have minimal impact on town services or activities, i.e., traffic, noise, parking, etc.

Policies:

G1-1 Make small **home businesses that require minimal off-street parking, signs or audible characteristics a conditional use in all residential and agricultural zones.**

Appendix B – Zoning Language

Home Occupation: An activity carried out for gain by a resident and conducted entirely within the resident's home and/or a separate 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.