

## **Boulder Zoning Process Memo #5**

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

**FROM:** Lee Nellis, FAICP

**DATE:** June 12, 2020

**SUBJECT: Commercial Use Standards**

### **Step 1: Basis in General Plan**

It may be desirable to make minor amendments to the general plan to support some of the commercial use standards. That will come after we agree on the standards.

### **Step 2: Consistent Terminology**

A minor issue is the confusion caused by the ordinance's use of "C" for the Commercial Zoning District and also "C" to indicate that a conditional use permit (CUP) is required in Table 1. There are different ways to fix that, but it would reinforce the Town's approach to call those uses for which a CUP is required, "Potentially Compatible." That says something about why those uses can be considered while others are simply prohibited. It is also sums up the purpose of CUP review, which is to determine whether a proposed use is compatible.

### **Step 3: Definitions**

A definition of "potentially compatible" will be needed. This will require changes in Table 1 and at least one minor amendment in Chapter 10.

**Potentially Compatible (abbreviated PC in Table 1)** – Uses listed as Potentially Compatible are uses that may be permitted only upon approval of a conditional use permit and in continuing compliance with the terms of that permit and other applicable requirements of this ordinance..

We probably need additional definitions to support the standards. Please think about that as you read the proposed standards and make a note of terms you would like to see defined.

### **Step 4: Commercial Use Standards**

The last meeting resulted in improvements to the materials I presented. I also have written comments from Curtis. To help keep our June 16 meeting focused, I will present those improvements in a later memo, while offering three things for consideration on the 16<sup>th</sup>.

First, I thought it would be helpful to create a single-page checklist of how commercial uses will be reviewed if we make the changes we have discussed. See Appendix A.

Second, we need to talk about the possible locations of new commercial uses. Do you want to continue to prohibit essentially any new commercial uses in the residential zoning districts? That's reasonable, but we should affirm. Table 1 allows a few commercial uses in the LDR. We need to be sure that is still what you want.

Finally, Appendix B is a draft of the standards that would guide review of proposed commercial uses or significant changes in existing commercial uses. Before you turn to that, however, here are a few thoughts about regulating the scale of development.

## **Regulating Scale**

I believe there is agreement that Boulder wants only small-scale development. This is both for compatibility with what exists (community character), and to limit impacts on the Town's infrastructure. Regulating scale is not as simple as it may seem.

Boulder's current limit of 30 units in a lodging place is an example. Can you imagine a dysfunctional and even ugly motel with only 29 units? Of course, you can. Can you imagine a compatible motel with 31 units? Of course, you can. Arbitrary standards like this one tend to put communities in the position of having to approve development they don't like, while eliminating projects that might be better. So, let's talk about non-arbitrary limits on scale.

A common non-arbitrary limitation on the scale of buildings is FAR – Floor Area Ratio – which keeps a building in scale with its lot and the surrounding properties. An issue in Boulder may be that where parcel sizes are large, FAR will sound severely restrictive, even when it isn't. For example, to keep buildings in scale on a five-acre lot, you might require that FAR not exceed 5%. That sounds miniscule, but allows almost 11,000 SF of building.

FAR is a good tool if you can sell it. So is a maximum lot coverage. Lot coverage is different from FAR because it encompasses outdoor activities (parking, workspaces, outdoor storage, outdoor sales) and only the footprint of buildings, not all floors. I have provided examples of both these tools in the draft standards.

Another non-arbitrary limit on scale that might work for Boulder, would be to establish a maximum number of parking spaces. That maximum would vary by type of use (following Table 3 in the zoning ordinance) and could vary by zoning district, being larger in the GMU than in the LDR. This is non-arbitrary because it limits impervious cover (gravel parking counts as impervious, it isn't asphalt, but becomes so compacted with use that it generates substantial runoff) on the site and indirectly limits traffic volume and building size. Parking also has aesthetic impacts, depending on where it is (front of a building, to the side) and how it is landscaped. For example, think of a restaurant. Your ordinance requires one parking space per 100 SF (your ordinance also limits the number of seats, but that's not a good basis for regulation because the number of seats is easy to change). So, you could restrict the size of restaurants by limiting the number of parking spaces to, say, 20. That would cap the size of restaurants at 2000 SF.

Parking leads me to another aspect of regulating scale: A community can regulate scale directly (like by adopting a maximum FAR) or it can regulate the perception of scale. You can see the possibilities of this approach in Boulder. What if the long axis of the Boulder Mountain Lodge ran parallel to Highway 12 and the parking was along the highway? Would you perceive Boulder as having more commercial? What if there were no large trees along the highway at the state park? Would that building have more impact?

Finally, there are temptations to regulate scale in ways that are not enforceable (the number of employees, which can change daily, and what about employees who are only there part-

time?) or effective. I once worked with a town that was swamped by growth. Among other knee-jerk reactions, they had decided that no building could have a dimension of more than 125 feet. That allowed a nearly 16,000 SF store (125 X 125) that would, on average, generate more than 60 trips on local streets per hour at peak, while prohibiting a 20,000 SF warehouse that would only generate 18. Needless to say, that was not defensible.

What I propose below give you a starting place for defensibly regulating scale. I will be interested to see how our conversation goes.

## **Appendix A - Commercial Use Review Steps**

*This list is an educational aid. It is accurate, but not complete. Please see the Boulder Zoning Ordinance for details.*

**Step 1 – Is the proposed commercial use potentially compatible?** The only commercial uses permitted in Boulder are those listed as Potentially Compatible in Table 1 of the Boulder Zoning Ordinance. To keep this list simple, the term “commercial” includes some artisanal uses that are technically industrial (making pottery, building furniture).

*If a use is not listed as Potentially Compatible in Table 1 it is prohibited and the only recourse for someone who would like to establish that use is to propose an amendment to Table 1. Depending on the nature of the proposed use, it might also be necessary to amend other parts of the zoning ordinance or the general plan.*

**Step 2 – If the use is potentially compatible, the landowner or the landowner’s representative may request a preapplication meeting.** A CUP is required for all new commercial uses and for any significant change in a previously approved or nonconforming commercial use. Because the Planning Commission’s consideration of an application for a CUP must be formal, an informal preapplication meeting, based on a sketch plan, is the best way to identify questions and concerns that the applicant should address in preparing an application.

*A preapplication meeting usually makes the CUP hearing much more efficient. This is especially true of complex or controversial projects.*

**Step 3 – Following the preapplication meeting, the landowner or the landowner’s representative may file an application for a CUP.**

**Step 4 – The Administrator must determine that the application for a CUP is complete and then, if it is, schedule a public hearing.**

**Step 5 – Notice of the public hearing will be provided as required by Utah law and the Boulder Zoning Ordinance.**

**Step 6 – A public hearing will be held before the Planning Commission.** The Planning Commission will take public comment before it reviews the application for compliance with the standards of the Boulder Zoning Ordinance. The purpose of CUP review is to determine

whether a potentially compatible use (or a change to an existing use) is, in fact, compatible and to attach any conditions that are needed to ensure continuing compliance.

**Step 7 – Notice of the Planning Commission decision will be provided.** Written notice of the Planning Commission’s decision will be mailed to the applicant and all parties who have requested it.

## **Appendix B - DRAFT Commercial Use Standards**

This chapter provides detailed standards for Potentially Compatible commercial uses. The Planning Commission shall approve any application that complies with these standards. Compliance means that the proposal meets all absolute standards of this chapter and has a positive cumulative score on the relative standards.

### **1. Are there environmental constraints on commercial development in Boulder?**

Yes.

- a. There shall be no commercial development within the Sensitive Lands, Hillside, and Mesa Tops Overlay District established by Chapter 12 of this ordinance or on other sensitive lands, as defined in this ordinance. *This will require a minor amendment to Chapter 12 and possibly in Chapter 10.*
- b. Commercial development must provide a vegetated buffer along all watercourses, permanent and intermittent, including irrigation works and wetlands. Where feasible, the buffer along a watercourse shall include the entire riparian or wetland area and an additional upland buffer of at least 25 feet. Where it is not feasible to include the entire riparian or wetland area, the minimum buffer along a watercourse or around a wetland, shall be 50 feet. The minimum buffer along an irrigation ditch shall be determined in consultation with the owner of the ditch. Irrigation works may, with permission of the owner, be moved underground.
- c. Commercial development is encouraged to avoid slopes of 15% or more. *I made this one relative so that minor incursions on moderate slopes could be allowed if the rest of the project merits some positive points.*
- d. An exception may be made to allow utilities and pedestrian trails, or, where no other vehicular access is feasible, an access drive to cross watercourses and their buffers or moderate slopes. Where a crossing is permitted, it shall take the shortest feasible route and disturb the minimum area necessary for its safe functioning.
- e. The siting and design of commercial buildings and outdoor spaces is encouraged to preserve views and make use of the site’s natural and cultural features. *Vague, but since every site is different, it has to be. I would not make this standard absolute, but use the potential award of negative points to help negotiate for a better site plan.*

### **2. Must some existing vegetation be retained during construction and occupancy of a commercial development?** In some cases.

- a. The removal of existing perennial vegetation, particularly trees, that provides buffering, shade, and/or other functions is discouraged.
- b. All vegetation required for compliance with these standards shall be protected during construction, including clearly marking the permitted limits of grading and, where necessary, the installation of tree wells or other barriers.

**3. *Must commercial development manage its storm water runoff?*** Yes. All development must comply with the requirements of Utah’s Storm Water Management Program. *This affects development that will clear more than one acre.*

**4. *Must commercial development provide utilities and access in accord with Town standards?*** Yes.

- a. Utilities must be provided in accord with Chapter 10 of this ordinance and Utah law.
- b. UDOT approval is required for access to Highway 12.
- c. Points of access (driveways) to town or county roads must meet state and county standards. *We may need to be a little more specific about driveway standards, but this makes the point.*

**5. *Must commercial development comply with the dimensional requirements of Table 2?*** At a minimum, yes, but the Planning Commission may condition approval of a commercial use on the provision of setbacks deeper than those established by Table 2 where it finds that a greater distance from property lines or public ways is necessary to mitigate potential impacts of the proposed commercial use.

**6. *Is the scale of proposed commercial uses directly limited?*** Yes. *Think of this part of the draft as a menu of choices about how regulate scale. You could order one of everything or make some choices.*

Maximum FAR

- a. The maximum FAR for commercial buildings in the LDR zoning district is one percent (1%).
- b. The maximum FAR for commercial buildings in the GMU zoning district is five percent (5%).

Maximum Lot Coverage

- c. The maximum lot coverage for commercial uses in the LDR zoning district is two percent (2%).
- d. The maximum lot coverage in the GMU zoning district is 10%.

## Maximum Number of Parking Spaces

- e. No parcel in the LDR shall have more than 15 total parking spaces serving a commercial use.
- f. No parcel in the GMU shall have more than 50 total parking spaces serving a commercial use.

*There can also be a dwelling unit on each parcel that has a commercial use. The parking and lot coverage associated with that dwelling would be in addition to what is permitted for the commercial use.*

## An Alternative Use of FAR and/or Lot Coverage

- g. Floor Area Ratio should (is encouraged to) be compatible with that on neighboring properties.
- h. Lot Coverage should (is encouraged to) be compatible with that on neighboring properties.

*These standards speak to a reasonable issue, but they are not as defensible as the others. If you want to try them, it is important to remember that compatible does not mean identical or even nearly the same. That two things are compatible means that they are able to exist together without conflict, that they are reconcilable.*

**7. Can a commercial use have outdoor workspace or store materials outdoors?** Potentially. Outdoor workspaces and the outdoor storage of materials, supplies, equipment, vehicles, or will be evaluated using the following standards.

- a. At a minimum, outdoor workspace and storage must fall within the setbacks required by Table 2. Deeper setbacks may be required for compliance with 1, above.
- b. Outdoor workspace and storage areas must fall within the maximum lot coverage established by 2, above.
- c. The effective buffering or screening of outdoor workspaces or storage is encouraged/required. If this is a relative standard, compliance will be determined by the Planning Commission using the scoring range and weights adopted on the Commercial Use Checklist. The lack of irrigation water to support effective landscaping is a valid reason for a finding that a proposed commercial use fails to comply with this standard.
- d. Outdoor work and/or storage must not occupy required parking spaces.

**8. Can a commercial use have outdoor sales space?** Potentially. Outdoor sales spaces will be evaluated using the following standards. *Outdoor work and storage areas can be set back and screened or buffered, but an outdoor sales area usually needs to be highly visible.*

*So, there may be a temptation to prohibit them. Which you could, but then what about a use like a garden center? Or an enterprise that makes and sells picnic tables?*

- a. Outdoor sales areas must fall within the setbacks required by Table 2 of this ordinance.
- b. Outdoor sales areas must fall within the maximum lot coverage established by 2, above.
- c. Outdoor sales areas may not occupy more than 10% of the parcel's street frontage up to a maximum of 40 feet. *Is this too stringent? Not restrictive enough? This policy could be made relative to provide some flexibility.*
- d. The landscaping of outdoor sales spaces is encouraged/required. If this is a relative standard, compliance will be determined by the Planning Commission using the scoring range and weights adopted on the Commercial Use Checklist. The lack of irrigation water to support effective landscaping is a valid reason for a finding that a proposed commercial use fails to comply with this standard.
- e. Outdoor sales must not occupy required parking spaces.

***9. Are there restrictions on parking or traffic generation by home businesses?***

Potentially. Commercial uses that are reasonably expected to generate parking or traffic congestion along town roads or Highway 12, or that have the potential to obstruct access to other properties are discouraged. The potential for congestion will be determined by the Planning Commission using the scoring range and weight adopted on the Commercial Use Checklist. Among other things, the Planning Commission may consider parking and traffic generated by deliveries and the possibility that the proposed commercial use will offer classes or stage events.

***10. Must a commercial use provide off-street parking? Yes.***

- a. Off-street parking must be provided at the rate set by Table 3.
- b. Off-street parking is discouraged from occupying more than 60% of a parcel's frontage. *This could be made absolute, keeping it relative offers some flexibility.*
- c. Effective buffering or screening of off-street parking is encouraged. Compliance with this relative standard will be determined by the Planning Commission using the scoring range and weights adopted on the Commercial Use Checklist.

***11. Are there restrictions on potential nuisances generated by commercial uses? Yes.***

- a. No commercial use shall require an UPDES permit, as required by state law.
- b. No commercial use shall channel surface run-off onto another property, into irrigation works or a storm water treatment pond, or onto a public way except in

compliance with an approved storm water management plan and with permission of the property owner/s.

- c. No commercial use shall require an air quality permit, as required by state law.
- d. Commercial storage, processing, use, and disposal of hazardous materials is not permitted by Table 1. It is recognized, however, that some compatible commercial uses may use small quantities of hazardous materials (paint, solvents, and the like). The use of hazardous materials is permitted only to the extent allowed by and in compliance with NFPA 1, the 2006 Uniform Fire Code.
- e. All outdoor lighting fixtures shall bear the International Dark Sky Association Fixture Seal of Approval.
- f. No commercial use shall aim or direct light onto another property or onto a public way.
- g. No commercial use shall result in blowing dust or smoke that adversely affects adjoining properties or the use of public ways.
- h. No commercial use shall result in radiant heat or glare from welding equipment or other sources of intense heat or light that adversely affect adjoining properties or the use of public ways.
- i. No commercial use shall generate sound that adversely affects adjoining properties.
- j. Compliance with the Utah Noxious Weeds Act, Utah Code, Title 4, Chapter 17, is required.

**12. Can commercial uses have signs?** Yes, but only in compliance with the requirements of Chapter 10 of this ordinance.

**13. Can the operating hours of home businesses be restricted?** Yes. The Planning Commission may condition approval of a commercial use on limited operating hours.

**14. Are drive-throughs or drive-ins allowed?** No. Drive-through windows and facilities for drive-in service are prohibited in Boulder.