**Boulder Zoning Process Memo #6**

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

**FROM:** Lee Nellis, FAICP

**DATE:** June 25, 2020

**SUBJECT: Follow Up on Last Meeting**

**Step 1: Basis in General Plan**

Our last meeting made it clear that we should propose additional amendments to the General Plan to support the standards we have been discussing. While the most important proposed revisions are in Chapter 7 of the plan, which we have already talked about amending, I also recommend changes in Chapter 9 and 12. See Appendix A, which includes the changes in Chapter 7 we previously talked about, as well as the additional revisions I suggest. Please note that the outline (section numbering) is not consistent within Chapter 7 as it now stands. So, subsections are lettered, others are numbered. I have not corrected that.

**Step 2: Consistent Terminology**

No specific terminology issues, but some of the General Plan amendments I am proposing are aimed at making the language of the Plan more consistent, both internally and with the zoning ordinance.

**Step 3: Additional Definitions**

Please remember to send me your lists of terms that you believe need to be defined in the amendments.

**Step 4: Commercial Use Standards, Revised**

I have attempted to reflect our last conversation in the revised draft of the commercial use standards. See Appendix B.

***Building Design.*** I have been advised to avoid proposed regulations on building design in Boulder. But in closely reviewing Chapter 10 of the zoning ordinance, I discovered this:

g) Building Design. The design of all building facades shall be consistent with the natural and/or historical designs currently within the Town. The Planning Commission shall, if necessary, request the developer to provide an analysis of how a particular design is compatible and complementary to the existing or historical design pattern of the Town. The use of shapes, color, and other characteristics that cause new buildings to call excessive attention to themselves and create a jarring disharmony shall be avoided.

I am not anxious to write definitions of “excessive attention” or “jarring disharmony,” but we should discuss this existing requirement - after we have reached agreement on the other draft commercial use standards – and whether you want to consider a less dramatic approach to reviewing the design of building facades.

**Appendix A – DRAFT General Plan Amendments**

**Chapter 7. Land Use**

**7-4 Land Use Goals and Policies**

**Goal 4: Responsible Growth Management**

**G4-3 -** Consider capacity and effects on Boulder’s school, parks, community centers, emergency services, etc. when evaluating development proposals. ~~under the land use plan.~~

**7-5 Land Use Zoning Categories and Patterns**

**D. Commercial.** ~~The commercial properties that presently exist are the only commercial zones within the Town.~~ ~~The Town should continue with its past process whereby future commercial uses are established by the conditional use application and hearing on a case by case basis only. The burden should remain on the applicant to demonstrate that the location and type of commercial application is fitting within the overall General Plan and goals of the Town. All commercial applications that arise out of franchise or large corporate environments should be discouraged and locally owned and operated businesses encouraged.~~

As part of its effort to maintain its special character, Boulder will not engage in speculative commercial or industrial zoning. That practice is not consistent with the available public facilities and services, anyway, and would undercut the vision and goals adopted in this plan.

Boulder will instead establish performance-based zoning regulations that permit commercial and industrial activity pursuant to a conditional use permit, as authorized by the Utah Municipal Code, Title 10, Chapter 9a, Section 507. Each proposed commercial or industrial enterprise, including home-based businesses, will be reviewed for compliance with a pre-adopted set of standards. Those standards will ensure that new commercial or industrial activities do not overtax Boulder’s infrastructure and are compatible with the peaceful agricultural village ambience that attracts and sustains current residents and respectful visitors.

There will be two sets of performance standards:

* one for home-based businesses that are operated by an occupant of residential premises and expected to have essentially no impact on neighboring properties, and

* one for other commercial or industrial enterprises that are not home-based and may have more potential impact on the community, but still meet the goals of this plan.

The handful of properties that are now in the Commercial Zoning District will continue pursuant to their approved permits or as nonconforming uses. Changes within the mapped commercial districts will require a conditional use permit.

*It would be helpful to add a map of the existing commercial properties here. It would also be helpful to know if any of the existing businesses predate the zoning and are operating in the Commercial Zoning District, but not under a CUP.*

Attaining the goals of this plan requires, above all, that the scale of commercial development be consistent with Boulder’s character. Dimensional limits on scale, like floor area ratio or lot coverage, will not effective here, where large, mostly agricultural parcels are mixed with smaller parcels. Even the most restrictive dimensional standards could still permit out-of-scale development. Restricting floor area to just one percent, for example, would still permit what would, for Boulder, be massive buildings on some of the larger lots that adjoin Highway 12. A 120-acre parcel could accommodate a 52,000 square foot structure.

*It would really help this explanation to be able to talk about building sizes in Boulder. That would be easy in most places, but Utah does not seem to make tax records easily available.*

The most straightforward and appropriate way to regulate scale in Boulder will, instead, be to directly address that aspect of commercial development that has the most impact on the view from the road (and thus, peoples’ perception of the community) and traffic generation, as well as a potentially significant impact on the environment through storm water runoff: parking. Boulder will impose maximum parking lot sizes and frontages on commercial development, along with standards for the buffering or screening of parking.

This approach is less arbitrary than the alternatives. For example, the Town formerly regulated lodging places by the number of units, a measure that says nothing about the functionality or appearance of the business, nor anything direct about impacts on its neighbors or the community. Limiting parking, on the other hand, directly addresses potential impacts, functionality, and appearance.

**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 agriculture~~al~~, and nonpolluting, ~~cottage-type~~ small-scale businesses that have minimal impact on the town’s infrastructure and public services, ~~or activities, i.e., traffic, noise, parking, etc.~~ and are compatible with neighboring uses and the Town’s character as it is defined by the vision and goals of this plan. *I took “cottage-type” out because it invites confusion with “home-based.” I also wanted to “define” what is wanted here by referring to other parts of the plan.*

Policies: G1-1 - ~~Make~~ Small home businesses that require minimal off-street parking and signs, ~~or audible characteristics~~ and have little nuisance potential will be a ~~conditional~~ potentially compatible use in all ~~residential and agricultural zones~~ zoning districts. *It is important to be clear that noise (“audible”) is not the only potential hazard or nuisance that should be avoided. Home-based businesses still require a conditional use permit, we are just changing the jargon a bit here to clarify the process.*

G1-2 - All commercial development ~~on major streets in the town~~ should reflect and promote Boulder’s identity and character. *I don’t think it matters whether commercial development is on a main street or not, it needs to be compatible. I would move this idea into the preface to this goal, but didn’t at this time so we can talk about the revision.*

G1-3 - Encourage the placement of all utilities underground in commercial areas. *I have added a standard reflecting this to the proposed standards.*

G1-4 - Establish and regularly update site planning standards for all new commercial areas. A major review of how the Town regulates commercial development was undertaken in 2020, resulting in revisions to this plan and the zoning ordinance. *It is always important to show that you are implementing your plan.*

**Chapter 12. Public Facilities and Services**

12-1 - ~~Overview~~ A trade-off of living in Boulder is the relative lack of public facilities and services. ~~However,~~ This does not appear to detract from the overall quality of life for current residents, but an increase in the number of transitory visitors would impact the limited services available ~~in the community~~ and could place an undue burden – potentially including both reductions in the availability of services and increased taxes and fees - on ~~the~~ current residents. ~~Additional taxes to support such services as fire protection, emergency medical services, and search and rescue could become a burden to the current population. Services that do exist in Boulder include Boulder Elementary, which provides public education for grades K-6; a volunteer fire department; volunteer search and rescue; volunteer EMT crew and ambulance; and a resident county deputy.~~ *I shrank this so as not to dilute the point and because it is not necessary to repeat the inventory of facilities and services that already given in this chapter. It would be good if the Planning Commission re-read Chapter 12 to be sure it gives an accurate description of the currently available facilities and services. We can correct inaccuracies while we are making amendments.*

**Appendix B – Revised 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.
   1. 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.*
   2. 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.
   3. Commercial development is encouraged to avoid slopes of 15% or more. *I made this relative so that minor incursions on moderate slopes could be allowed if the rest of the project merits some positive points.*
   4. 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.
   5. 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, has to be. I would not make this 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.
   1. The removal of existing perennial vegetation, particularly trees, that provides buffering, shade, and/or other functions is discouraged.
   2. 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.

1. Utilities must be provided in accord with Chapter 10 of this ordinance and Utah law.
2. UDOT approval is required for access to Highway 12.
3. 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.*
4. Undergrounding of utilities is encouraged. *I added this after going through the General Plan again.*

***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.

1. No parcel in the LDR shall have more than 15 total parking spaces serving a commercial use.
2. 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.*

1. Land use intensity – as measured by the floor area ratio and lot coverage - is encouraged to be compatible with that on neighboring properties. Compliance with this relative performance standard will be determined by the Planning Commission using the scoring range and weights adopted on the Commercial Use Checklist. *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.*

6***. 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.

1. 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.
2. Outdoor workspace and storage areas must fall within the maximum lot coverage established by 2, above.
3. 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.
4. Outdoor work and/or storage must not occupy required parking spaces.

***7. 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?*

1. Outdoor sales areas must fall within the setbacks required by Table 2.
2. 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.*
3. 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.
4. Outdoor sales must not occupy required parking spaces.

***8. 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.

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

1. Off-street parking must be provided at the rate set by Table 3.
2. Off-street parking is discouraged from occupying more than 60% of the frontage of a commercial development (for corner lots, the frontage along the busiest street). *This could be absolute, but keeping it relative offers some flexibility.*
3. 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.

***10. Are commercial uses encouraged to moderate their visual impact, as seen from the road?*** They are. Compliance with these standards will be determined by the Planning Commission using the scoring range and weight adopted on the Commercial Use Checklist..

1. The long axis of commercial buildings is encouraged to be more or less perpendicular rather than parallel to the road (for buildings on a corner lot, perpendicular to the busiest road).
2. Long walls facing the road are encouraged to be relieved by the placement of entrances, windows, and other architectural features, including variation of siding materials. *I forgot to introduce this idea last time, but I think it offers a good tool.*

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

1. No commercial use shall require an UPDES permit, as required by state law.
2. 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.
3. No commercial use shall require an air quality permit, as required by state law.
4. 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.
5. All outdoor lighting fixtures shall bear the International Dark Sky Association Fixture Seal of Approval.
6. No commercial use shall aim or direct light onto another property or public way.
7. No commercial use shall result in blowing dust or smoke that adversely affects adjoining properties or the use of public ways.
8. 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.
9. No commercial use shall generate sound that adversely affects adjoining properties.
10. 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.