

**MEMO**

TO: Boulder Planning Commission

FOM: Lee Nellis, FAICP

DATE: March 9, 2022

**RE: Motions for Correction and Improvement**

Having had a long and beneficial conversation with John Veranth and having read Ray Gardner’s comments, I submit the following comments and recommendations.

My original work on all this tried to avoid additional revisions to Chapter 151. I was trying to keep us focused on subdivision questions, but it seems necessary to recommend some changes to Chapter 151. I do not think these are substantive changes that require a new hearing. It is also necessary, to make those changes work, to make a few changes in the zoning part of the code. The question of whether these are substantive changes arises with those, too. They may edge us closer, but my definition of substantive change is that it would have to affect how things turn out the ground. All of these changes are purely procedural. They do not change the standards for development.

**RE VESTED RIGHTS**

**I move that §151.01 and §151.02 of the Boulder Town Code be revised as follows:**

**§151.01 IS A ZONING PERMIT OR PROJECT APPROVAL REQUIRED BEFORE I CAN APPLY FOR A BUILDING PERMIT? Yes.**

~~Any person or entity, before building, remodeling or otherwise structurally altering any dwelling or other building of any kind, including mobile homes, at a cost and/or value of a certain amount, within the incorporated area of the municipality, shall first obtain project approval from the town, verifying that there is sufficient water, sewer and wastewater capacity, and that the project complies with the zoning ordinance and floodplain ordinance and all other adopted ordinances for the municipality.~~

- (A) Where land-use approval is not required, you may apply at any time for a zoning permit. Zoning permit requirements and procedures are established in Chapter 153 of this code. You may apply for approval of a building permit at any time within 60 days after approval of a zoning permit.
  
- (B) Where land-use approval is required, you must apply for and receive that approval, which is equivalent to a zoning permit, before applying for a building permit. The application and review procedures for discretionary approvals are established by Chapters 152 and 153 of this code.

**§151.02 WHEN IS A BUILDING PERMIT REQUIRED?** ~~After obtaining project approval from the municipality, the party shall then obtain a building permit from the County Building Inspector.~~ A building permit is required for any work subject to the codes adopted by reference in §151.10.

**I move that the proposed revision of §151.11 of the Boulder Town Code be changed to the following:**

Revise the proposed §151.11 as follows:

**§151.11 HOW LONG IS A BUILDING PERMIT VALID? IS THERE A DEADLINE FOR THE COMPLETION OF CONSTRUCTION AFTER A BUILDING PERMIT IS ISSUED?**

~~The final step in obtaining permits for any development that is subject to the codes adopted in §151.10 is to obtain a building permit, as provided here in Chapter 151 and in the applicable code/s.~~

- (A) ~~An application for a building permit must be filed within 90 days after approval of a zoning permit by the Zoning Administrator or after approval of a CUP or any other discretionary approval required by this code.~~
- (B) Construction must then begin within 18 months after the issuance of a building permit. Construction begins when clearing, grading, excavation, and/or the installation or erection of site improvements or buildings has and is being diligently pursued.
- (C) Construction must be completed within 18 months after ~~the date of issuance of the a building permit~~ it begins. Construction will be deemed to have been completed when an occupancy or use permit has been issued by the County Building Inspector. ~~or if the project is one for which occupancy or use such permits are not required, the project has passed final inspection by the County Building Inspector the Town.~~

The remaining subsections will re-lettered, but are unchanged.

In order to make all this more clear and coherent, we need to tinker with the zoning chapter, too. I had hoped to avoid this at this time, but here we go with the minimum changes needed to be sure that revised Chapter 151 and Chapter 153 work together. Other changes in this part of 153 will eventually be desirable, but this is enough for now.

**I move that §153.091 of the Boulder Town Code be revised as follows, that §153.092 be replaced as follows, and that§ §153.093-095 be deleted in their entirety with remaining subsections be renumber accordingly.**

**§153.091 APPLICABILITY IS APPROVAL REQUIRED FOR DEVELOPMENT AND CONSTRUCTION IN BOULDER TOWN?** Yes. A development or building zoning permit or land-use approval application shall be is required for any development activity, including all new uses, intensifications changes of in uses, and new construction or modifications of buildings. for all properties located within the municipal boundaries of the town. Zoning permit procedures are established in §153.092. The procedures for other land-use approvals are established elsewhere in this chapter.

## **§153.092 APPLICATION FORMS WHAT IS THE ZONING PERMIT PROCEDURE?**

(A) ~~All development~~ Applications for zoning permits are to be presented to the ~~town~~ Zoning Administrator on the ~~applicable application~~ form(s) available from the town. Incomplete applications will not be accepted.

~~The type of development application presented to the town is at the discretion of the applicant.~~

(B) The Zoning Administrator shall, within 10 working days of their receipt, review all complete applications for zoning permits for compliance with the applicable requirements of this code.

(C) The Zoning Administrator may: (1) find that an application for a zoning permit complies with all applicable requirements of this code and issue the permit; (2) find that an application for a zoning permit fails to comply with all applicable requirements of this code and deny the application; or (3) delay review of the application to seek advice of the Planning Commission at its next regularly scheduled meeting. All decisions by the Zoning Administrator are to be delivered to the applicant in writing within five (5) working days.

(D) Approval of a Zoning Permit allows the applicant to apply for a building permit, as provided in Chapter 151 of this code.

(E) Applicants may appeal decisions of the Zoning Administrator to the Board of Adjustment following the procedures adopted in this code.

**Regarding questions and concerns about proposed ~~§1~~§154.04-06:** Please consider §154.03 which I have reproduced below and which states that vested rights apply to land use regulations and thus to plans required by those regulations, not to building plans governed by the codes. It is also worth noting that existing §§153.099-100 can be read to impose the same requirements I propose. They just aren't nearly as clear and do not apply to subdivisions which they should.

**§154.03. DO VESTED RIGHTS EXEMPT DEVELOPMENT FROM CHANGES IN BUILDING CODES?** Usually not. **Vested rights only provide protection from changes in land-use regulations.** Changes in building codes usually still apply. There is a 10-year exemption in state law for single-family dwellings built on an approved subdivision lot.

I recommend that the following amendment be made in order to further clarify this.

**I move that proposed §154.02 be revised as follows:**

**§154.02. WHAT IS A VESTED RIGHT? WHEN IS ONE ESTABLISHED?** A vested right is the right to build in compliance with the previously approved plans ~~and on~~ which the approval of land-use permits required by this code was based regardless of

subsequent changes in ~~the~~ this code. A vested right is established on the date that the approved plans were deemed complete by the Zoning Administrator if those plans were ultimately approved as required by this code and all fees paid.

**If the other motions suggested here pass, then this one is appropriate.**

**I move that §153.100 of the Boulder Town Code be deleted in its entirety.**

## RE SUBDIVISIONS

I believe we can simplify the treatment of plat amendments.

**I move that proposed §152.116 be replaced in its entirety by the following:**

### §152.116 HOW CAN A RECORDED SUBDIVISION PLAT BE AMENDED?

- (A) *Is a public hearing required to amend a recorded subdivision plat?* Yes. The applicant must file the proposed amended plat, the accompanying materials required by the Town, including a mailing list of all affected entities and adjoining landowners, and the required fee with the Zoning Administrator at least 15 days before the regular Planning Commission at which the hearing is requested.
- (B) *What is the procedure for reviewing a proposed amended plat when a hearing is required?*
- (1) The Zoning Administrator will send notice that a plat amendment has been proposed to all affected entities, to all lot owners within the subdivision, and to all adjacent property owners who are not within the subdivision at least 10 days before the Planning Commission meeting at which it will be heard. This notice will give the date, time, and place of the Planning Commission hearing and either include or explain how to access a copy of the proposed plat and accompanying materials.
  - (2) The Planning Commission will employ its standard hearing procedure, including taking questions, taking formal statements, and then deliberating.
  - (3) If the Planning Commission finds that the proposed plat amendment has no adverse impact on adjoining properties or public infrastructure, including public ways, easements, and dedicated open spaces, and results in no violation of this code, the Planning Commission shall approve it, imposing any conditions it finds necessary to ensure compliance.
  - (4) If the Planning Commission finds that there will be adverse impacts or a violation of this code, it shall deny the proposed plat amendment.
  - (5) The approved amended plat, revised as necessary to fulfill any conditions imposed by the Planning Commission, must be submitted to the Zoning Administrator who will obtain the signature of the Chair or Acting Chair of

the Planning Commission within 180 days. The approved plat amendment may then be recorded as provided by state law.

(6) No permit required by the Town may be issued within the area covered by a plat amendment until that amendment has been recorded.

(C) ***What must be shown on a proposed amended plat?*** It must show:

(1) the portion of the subdivision that is proposed to be amended and how that portion fits into the entire subdivision;

(2) both the original lot lines and the proposed changes in lot lines;

(3) all public ways, easements (public and private), and dedicated open spaces, and other information depicted on the affected portion of the recorded plat, specifically including all utility easements;

(4) all watercourses and irrigation works;

(5) have a name that clearly distinguishes it from the recorded plat of the subdivision;

(6) have a signature block for all landowners whose consent is required;

(7) have a space for a signature indicating Planning Commission approval; and

(8) bear a signed surveyor's certificate.