CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
February 4, 2016
1777 Broadway, Council Chambers

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PLANNING BOARD MEMBERS PRESENT:
Bryan Bowen, Chair
John Putnam
John Gerstle
Leonard May
Liz Payton
Crystal Gray

PLANNING BOARD MEMBERS ABSENT:
None

STAFF PRESENT:
David Driskell, Executive Director of Community Planning
Hella Pannewig, Assistant City Attorney
Cindy Spence, Administrative Specialist III
Chandler Van Schaack,
Elaine McLaughlin, Senior Planner
Sloane Walbert, Planner I
David Thompson, Civil Engineer II - Transportation
Kalani Pahoa, Urban Designer
Sam Assefa, Senior Urban Designer

1. **CALL TO ORDER**
Chair, **B. Bowen**, declared a quorum at 6:06 p.m. and the following business was conducted.

2. **APPROVAL OF MINUTES**
On a motion by **J. Gerstle** and seconded by **B. Bowen** the Planning Board voted 6-0 to approve the January 21, 2016 minutes as amended,

3. **PUBLIC PARTICIPATION**
No one spoke.

4. **DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS**

B. Bowen recused himself from the Call Up Items.

A. Call Up Item: USE REVIEW (LUR2015-00087): Conversion of the former "John's" restaurant space located at 2328 Pearl St. within the MU-3 zone district to a new restaurant, "River and Woods." The call-up period expires on February 10, 2016.

B. Call Up Item: USE REVIEW (LUR2016-00007): Request to allow for a parking lot as a principal use at 2206 Pearl St. in the MU-3 zone district. The call-up period expires on February 10, 2016.

None of the items were called up.

B. Bowen rejoined the meeting.

5. PUBLIC HEARING ITEMS

A. AGENDA TITLE: Public hearing and consideration of a Use Review application to convert an existing skin care use at 2449 Pine Street to a medical office entitled the Alpine Eyecare Center, an optometry clinic. The building, which is not proposed for expansion, is located within the Residential - Mixed 1 (RMX-1) zoning district. Case no. LUR2015-00105.

Staff Presentation:
E. McLaughlin presented the item to the board.

Board Questions:
E. McLaughlin answered questions from the board.

Applicant Presentation:
Chuck Beatty, the Applicant, introduced himself to the board.

Public Hearing:
No one spoke.

Board Comments:
No discussion

Motion:
On a motion by **J. Gerstle** seconded by **J. Putnam** the Planning Board voted 6-0 to approve the Use Review application LUR2015-00105, adopting the staff memorandum as findings of fact and subject to the recommended conditions of approval.

B. AGENDA TITLE: Public hearing and consideration of a Nonconforming Use Review for the addition of two bedrooms in the basement of an existing non-conforming duplex at 940 14th Street. The project site is zoned Residential - Low 1 (RL-1). Case No. LUR2015-00073.

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Staff Presentation:
S. Walbert presented the item to the board.

Board Questions:
S. Walbert and **H. Pannewig** answered questions from the board.

Applicant Presentation:
Michael Hirsch, the owner's representative, presented the item to the board.

Board Questions:
S. Walbert, H. Pannewig and **M. Hirsch**, the owner's representative, answered questions from the board.

Public Hearing:

1. **Ellen Aiken** spoke in opposition to the project. She stated that the broader issue should be the quality of life in this area and the planning policy should not be to increase the number of students in this area. She suggested working with the University to create a better community interwoven with students and residents.
2. **Jyotsna Raj** spoke in opposition to the project. She stated that this area was originally single family homes. She urged to not give this location over to student housing completely. She asked for a balance of students and long-term residents.
3. **Sam Simkin** spoke in opposition to the project. He expressed concern that this would set a precedent to do conversions and ask permission later
4. **Steven Walsh** spoke in opposition to the project. He urged the board to reverse staff's decision to expand based on the concerns that the illegal apartment is unsafe. He expressed concern that if this would be allowed, it may incentivize many other owners.
5. **Lani King** spoke in support of the project. She stated that the owner was not aware that the bedrooms were illegal and explained that the owner had begun the process to conform. Remodels have begun on the interior and better tenants will improve the situation.
6. **Jessica Ramer**, the owner of the property, discovered the bedrooms were illegal after purchasing the property. By making the property conforming, she stated it would not increase the amount of residents. The property would remain two units with three bedrooms each. The amount of people in the unit would not increase. She stated that she encourages her tenants to meet their neighbors. She is attempting to correct the problem.

Board Comments:
Key Issue: Does the proposal meet the criteria for the expansion of a nonconforming use per land use code section 9-2-15, *"Use Review,"* B.R.C. 1981?

- **L. May** stated that the number of legal bedrooms or how the previous owners maintained the property is not the issue. He disagreed with staff on how adding bedrooms could reduce or alleviate the degree of nonconformity, it actually exacerbates it. Therefore, he would not be supporting this issue.

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- **C. Gray** agreed and stated that the proposal does not meet the criteria for expansion of a non-conforming use per the Land Use Code. She stated that it increases the nonconformity and does not meet the compatibility criteria. The property becomes more incompatible.

- **J. Putnam** agreed that their analysis should not consider the fault of the prior owner, but should focus on the criteria and City Council's policy. The policy on nonconforming use reviews was created by council to encourage these types of proposals. Given the state of the property, the neighborhood would be better with the improvements, if maintained. He stated that he would need to see some assurance in the form of bonding or letter of credit to make sure the improvements would be maintained. He would lean towards approval with those pieces in place. The precedent discussed by the neighbors was actually created by City Council. They would need to revisit this policy to change the criteria at hand.

- **B. Bowen** stated that the occupancy would not change on the property and that the proposal is a building code issue. They can currently have 3 people in the bottom unit and the number of bedrooms is not the occupancy push. He stated that the issue seems to be whether the occupancy is being violated or enforced.

- **L. Payton** agreed with **C. Gray** and **L. May**. This does not appear to be compatible with the neighborhood and does not reduce the affects of the use. Based on testimony of the neighbors the proposal would not be compatible and would attribute to changing the character of the area. It would encourage more students to rent from more permanent residents. Overall, this would increase the effect of nonconformity.

- **J. Gerstle** said that it would be appropriate not to consider the past and the new owner should be given the benefit of the doubt. He stated that he agrees with **L. Payton**. This does not alleviate the effects of the nonconformity in the surrounding area. Not appropriate to move ahead with an approval.

Motion:
Motion by **L. Payton**, seconded by **L. May** to deny the nonconforming use review for the addition of two bedrooms in the basement of an existing nonconforming duplex at 940 14th Street.

- **L. May** stated that there seems to be a fundamental disconnect between downzoning and application. Downzoning to not add to higher intensity uses. Expanding that would undercut the downzoning. Need to look at code to add clarity on nonconforming use review requests.

- **J. Putnam** stated that we have the code as it is. The criteria are designed to fix up properties like this and the intent was to create an incentive to maintain and improve properties. The proposal is a significant improvement to compatibility. With the current costs and pressure the unit will still have three people. The proposal would improve the property and decrease impacts. There is no potential to be non-student housing in the

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future. These proposals are needed to keep properties from spiraling out of control. He is against the motion.

- **L. Peyton** stated that she is concerned about the condition of back yard. The proposal probably doesn't address. There was no testimony in support of landscape improvements to offset the proposed bedrooms. She is relying on the testimony of neighbors.

- **J. Gerstle** the review should not be a bargain with the city and allow homeowners to allow property to fall into disrepair unless they get what they want. Economics should not be the basis of approval. There should not be a threat of further degregation.

- **L. May** stated that he is not convinced the improvements will happen if they grant the approval.

- **B. Bowen** said that the improvements would be required.

- **J. Putnam** stated that the tradeoff for improvements has already been made by council. This review is a question of whether the proposal meets the criteria.

- **Gray** stated that the addition of two bedrooms will increase the nonconformity.

On the motion by **L. Payton**, seconded by **L. May**, the Planning Board voted 4-2 (**B. Bowen** and **J. Putnam** opposed to deny the nonconforming use review for the addition of two bedrooms in the basement of an existing nonconforming duplex at 940 14th Street.

On a motion by **L. Payton**, seconded by **J. Putnam**, the Planning Board voted 6-0 to continue the hearing to the next scheduled Planning Board meeting and to ask staff to prepare written findings of fact.

C. AGENDA TITLE: Public hearing to consider a recommendation to City Council on the 2016 Update to the Downtown Urban Design Guidelines.

Staff Presentation:
S. Assefa introduced the item.
K. Pahoa presented the item to the board.

Board Questions:
K. Pahoa, S. Assefa and H. Pannewig answered questions from the board.

Public Hearing:
No one spoke.

Board Comments:

- **B. Bowen** instructed the board to email any edits or comments such as typos to staff. He asked if the board would like to make any substantive comments at this time.

- **C. Gray** complimented the staff on their thoroughness and hard work. She stated that she would support the adoption of the 2016 Update to the Downtown Urban Design Guidelines (DUDG).

- **J. Putnam**, on page 42, in regards to the three zones encompassing sidewalks, street frontage and curb zone, felt that there may be too much focus on either parking or pedestrians and not enough on bikes. The curb zone needs to be transparent for cyclists getting from the street to bike parking. Should be more thought about how the bikes are suppose to move within this realm. The conflict from landscaping and street furniture should be minimized and seamless.

- **L. May** stated that he would support the DUDG. He stated that he was happy to see that the "add views and sun and shade" comments were included in the revised DUDG (*Table 1, Page 6, Item 4 of the packet*), however the language in the current DUDG was more explicit. He mentioned that **L. Payton** had cited some of the current language in the DUDG and he felt it had been diminished in the revision.

- **B. Bowen** added that within the committee discussions it was decided that the establishment of view corridors would be a separate process. He stated that a lot of language was removed that stated the obvious or that did not truly instruct applicants on how to design or reviewers how to review. The language that **L. May** was referring to was a part of that discussion and a simplification of language was conducted.

- **L. May** asked if there had been a consensus among the working group that the language should be de-emphasized. He stated that if there had not been a consensus, then the language should have remained the same. Staff confirmed that there had been a consensus. On another topic regarding the requirement to wrap alley corners with frontage material (*Item 12, Page 7 of the packet*), he stated the language is vague and does not provide guidance and suggested an image. In regards to "stucco surfaces" (*Page 21 of 185*), he suggested that when stucco is addressed in the DUDG, that perhaps "Elastomeric Coating" should be addressed under inappropriate surfaces. He suggested that a different image be used for the Patagonia façade (*Page 23 of 185*). He suggested removing the term "paseo" and replacing with "walkway".

- **L. Payton** mentioned that the Landmarks DRC is a "committee", not a "commission". She questioned how the revised DUDG will advance the design excellence of the downtown area and will better buildings be produced.

- Staff stated that it may not guarantee a better outcome but it will assist with the process.

- **L. Payton** continued by saying that this milestone, revision of the DUDG, must be met before the height moratorium can be lifted for downtown. She questioned why the revised DUDG would be a trigger for lifting the moratorium if it cannot guarantee better buildings. In addition, she pointed out that if images appear in the guidelines, then applicants will use those as a standard, therefore images are critical.

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- **J. Putnam** offered a recommendation in regards to images. He suggested adding the language "nor does it guarantee appropriateness or meeting all criteria in a future projects" to the statement on page 3 in the DUDG.

- The board and staff went through a number of images and discussed replacement or removal of them.

- **C. Gray** highlighted that there is a distinction in the interface between the downtown business zones and the downtown residential zones (*Page 40 of 185, section 2.3*). She pointed out that there may be some confusion on the part of applicants as to which guidelines to follow.

- **L. May** reintroduced the topic regarding "views and sun and shade" for open discussion among the board members. He wanted to discuss the idea of whether to include the original language from the 2012 DUDG or use the new language from the revised DUDG. He stated that the original language conveyed a stronger sentiment and gives a clearer direction.

- **L. Payton** suggested that the importance of the views and other ideas could be added within the bullets (*Page 11 of 185 in the sidebar*). **C. Gray** was in favor of giving staff guidance in this area. **L. Payton** suggested adding a sentence regarding the "exceptional mountain views".

- **J. Putnam** and **B. Bowen** opposed the suggestion based on the notion that the DUDG revision process has been reviewed very thoroughly and carefully and they were not comfortable with altering the document. In addition they did not feel this would help designs to be better. It would be reversing the consensus decision.

- Planning Board requested minor revisions to be incorporated into the draft for City Council:
    1. Page 2, Sidebar Note: Add "West Pearl" to the neighborhood list
    2. Page 3, Sidebar Note: Amend the following note "The design guidelines include photographs and diagrams to illustrate acceptable or unacceptable approaches. These photographs and diagrams are provided as examples and are not intended to indicate the only options." to include language which stipulates adherence to the photographs and diagrams does not guarantee appropriateness or approval.
    3. Page 7, Figure 2: Correct the diagram reference of the Landmark Design Review Commission Committee.
    4. Page 26, Item 2.1.C.4: Amend the alley material return. Provide clear guidance on the desired design outcome of the material return. Possible solutions could be requiring a minimum distance, or requiring the return to be representative of the structural bay, and/or an illustrative photo.
    5. Page 31, Figure 18: Replace the image with another building that has a commercial use in a residential zone. Add the zoning district to the caption, ex. DT-1.

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6. Page 33, Item 2.3.B – In respect to the construction of residential entries to be above grade modify the language for an exception to at grade porches which includes evaluation of the residential character of the block and matching the porch conditions of the adjacent properties.
7. Page 35, Figure 23 – Replace image with a different contemporary single family residential image.
8. Page 40-41, Figure 27 – Change "paseos" to "walkways"
9. Page 42, Item 3.2.C.3 – Add a bullet point for accommodating bicycle circulation with a clear zone area free from obstructions in the curb zone.

- Planning Board suggestions not incorporated into the Draft dated Feb 3, 2016.
    1. Pg. 14 – (*Section 1: The Historic Section*) 1.1.A (2) Amend bullet "EIFS systems or EIFS decorative elements" to include elastomeric stucco, or stucco with plasticizers, or synthetic stucco topcoats. (Currently, the materials list resides *in Section 1: The Historic Section* under the purview of the Landmarks Board. Staff will forward the comment to the Landmarks Board for the *Section 1* revision scheduled to take place later this year.) Planning board opinions on the addition of this item was varied. **L. Payton** stated it may not be necessary to list all the possibilities of "discouraged materials", B. Bowen mentioned the list may not need this addition but including synthetic stucco topcoats as a discouraged material may be a solution, and **L. May** pointed out that while specific stucco finishes generated by application technique are discouraged there is no mention of synthetic stucco as inappropriate material and discouraging EIFS only may not be sufficient.

Motion:
On a motion by **B. Bowen**, seconded by **C. Gray**, the Planning Board voted 6-0 to approve the 2016 Update to the Downtown Urban Design Guidelines with the staff proposed change to paragraph 5 on page 3 to add the word "independently" for the second sentence to read "The Landmarks Board independently approves the guidelines for the Downtown Historic District."

L. May, seconded by **L. Payton**, moved that the Planning Board amend the main motion to reinstate the original language from the 2002 DUDG from page 9 with regards to views and sun and shade to be included in the sidebar on page 3 of the 2016 revised DUDG. The board voted 3-3 (**B. Bowen, J. Putnam, J. Gerstle** opposed). The motion failed.

L. Payton, given that the 2016 revised DUDG do not provide substantially different guidance to design downtown, moved that Planning Board recommend to City Council that those areas north of Canyon Blvd and within the DT-4 and the DT-5 zoning districts not be added to the map designated as "Appendix J" areas where height modifications may be considered of *Ordinance 8028*. **J. Putnam, B. Bowen** and **J. Gerstle** objected stating that the proposed motion would be outside the scope of what was noticed to the public and that public notification should be done prior to making this type of motion. There was no second on the motion. **L. Payton** withdrew the motion.

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6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

A. Discussion of Planning Board Recess Dates

Staff Presentation:
C. Spence presented the item to the board.

Board Comments:

- The board agreed the Planning Board 2016 recess would start June 16th and run through July 7th. The first Planning Board meeting back in session would be July 21st.

B. Planning Housing & Sustainability 2016 Work Plan and Council Retreat Session

Staff Presentation:
D. Driskell presented the item to the board.

Board Questions:
D. Driskell answered questions from the board.

7. DEBRIEF MEETING/CALENDAR CHECK

8. ADJOURNMENT

The Planning Board adjourned the meeting at 10:19 p.m.

APPROVED BY

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Board Chair

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DATE

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