

**CITY OF BOULDER  
PLANNING BOARD AGENDA ITEM  
MEETING DATE: Sept. 17, 2015**

AGENDA TITLE: Continuation of the consideration and recommendation to City Council on the rezoning application for a 0.8 acre portion of land generally located at 385 South Broadway from the Residential - Low 1 (RL-1) to the Business - Transitional 2 (BT-2) under case no. LUR2015-00047 and consideration of a motion to approve findings recommending denial of the application.

Applicant: Erin Bagnall and Adrian Sopher  
Owner: 385 Broadway LLC

**REQUESTING DEPARTMENT:**

Community Planning & Sustainability

David Driskell, Executive Director

Susan Richstone, Deputy Director

Charles Ferro, Land Use Review Manager

Elaine McLaughlin, Senior Planner

**OBJECTIVE:**

Planning Board action to adopt the findings to recommending denial

Proposal:	Proposal at the request of the property owner to rezone a portion of the property at 385 Broadway from Residential – Low 1 (RL-1) to Business – Transitional 2 (BT-2) consistent with the Boulder Valley Comprehensive Land Use designation of Transitional Business.
Project Name:	385 South Broadway Rezoning
Location:	385 South Broadway
Size of Property:	1.01 acre (44,253 square feet): area to be rezoned 0.8 acre (35,361 square feet)
Zoning:	Residential - Low 1, RL-1 (currently), with Business – Transitional 2, BC-2 (proposed) for a 0.8 acre portion of the site.
Comprehensive Plan:	Transitional Business (TB) and 25-foot wide area of Low Density Residential (LDR) on the north and west of the subject property.

**Summary.**

On Aug. 27, 2015, the Planning Board held a quasi-judicial hearing to review the proposed rezoning application for 385 Broadway described above. On a motion by **L. May**, seconded by **C. Gray** the Planning Board voted to recommend to City Council to deny (7-0) the request for a rezoning (pending staff to draft findings for consideration at a later date and to continue this discussion at a future Planning Board meeting). The Planning Board is required to make findings within 30 days of the hearing. Staff has prepared the draft findings of denial, provided in [Attachment A](#).

## **Background.**

The Applicant for LUR-2015-00047 is seeking rezoning of a 0.8 acre portion of land generally located at 385 Broadway from the Residential-Low 1 (RL-1) to the Business-Transitional 2 (BT-2) zoning district (the "Property").

In accordance with the requirements of Chapter 9-2-18, Rezoning, B.R.C. 1981, the City of Boulder Planning Board (the "Planning Board"), on Aug. 27, 2015, held a public hearing after giving notice as required by law on the application. The staff memorandum can be and the hearing audio are available on the city website at the following link: [Planning Board 8.27.2015](#).

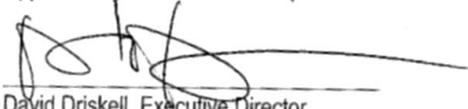
Applications for Rezoning are reviewed for consistency with the criteria set forth in subsection 9-2-18(e), "Criteria," B.R.C. 1981. The Planning Board found that the Applicant failed to demonstrate by a preponderance of the evidence that the proposed rezoning is consistent with the criteria applicable to this rezoning request. Upon direction by the Planning Board, staff drafted Findings of Fact for the Board's consideration on September 17, 2015. The draft Findings of Fact are provided in [Attachment A](#).

## **Staff Recommendation.**

Staff recommends that Planning Board adopt the Findings of Fact, attached as [Attachment A](#) to the staff memorandum, as findings for the Board's recommendation of denial for the 385 Broadway rezoning application in the form of the following motion:

The Planning Board finds the applicant failed to demonstrate that application no. LUR2015-00047 meets the requirements of the Boulder Revised Code, recommends to City Council denial of the application, and adopts the staff memorandum dated for the Sept. 17, 2015 Planning Board meeting and its Attachment A as findings of fact and conclusions of law.

Approved By:



David Driskell, Executive Director  
Department of Community Planning and Sustainability

## **Attachments**

[Attachment A: Draft Findings of Fact for Denial](#)

**Attachment A**

PLANNING BOARD, CITY OF BOULDER, COLORADO

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IN THE MATTER OF THE APPLICATION FOR A REZONING APPLICATION FOR A  
PORTION OF THE PROPERTY LOCATED AT 385 BROADWAY, LUR2015-00047

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FINDINGS OF FACT

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On August 27, 2015, in accordance with the requirements of Section 9-2-18, "Rezoning," B.R.C. 1981, the City of Boulder Planning Board (the "Planning Board") held a public hearing after giving notice as required by law on application LUR2015-00047 seeking rezoning of a portion of the property located at 385 Broadway, Boulder, Colorado.

Erin Bagnall and Adrian Sopher, as the proponents (the "Applicant") of the application for a rezoning application is seeking approval of rezoning of a 0.8 acre portion of land generally located at 385 Broadway from the Residential-Low 1 (RL-1) to the Business-Transitional 2 (BT-2) zoning district (the "Property"). The Applicant has the burden of proof to demonstrate that the application meets the requirements of the Boulder Revised Code pursuant to Subsection 1-3-5(h), "Hearings and Determinations," B.R.C. 1981.

The review criteria for a rezoning application can be found in Subsection 9-2-18(e), "Criteria," B.R.C. 1981, and read as follows:

Criteria: The city's zoning is the result of a detailed and comprehensive appraisal of the city's present and future land use allocation needs. In order to establish and maintain sound, stable and desirable development within the city, rezoning of land is to be discouraged and allowed only under the limited circumstances herein described. Therefore, the city council shall grant a rezoning application only if the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan, and, for an application not incidental to a general revision of the zoning map, meets one of the following criteria:

- (1) The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map;
- (2) The existing zoning of the land was the result of a clerical error;
- (3) The existing zoning of the land was based on a mistake of fact;
- (4) The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils and inadequate drainage;
- (5) The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area; or
- (6) The proposed rezoning is necessary in order to provide land for a community need that was not anticipated at the time of adoption of the Boulder Valley Comprehensive Plan.

Based upon a consideration of the entire evidentiary record, the Planning Board makes the following findings of fact:

1. Summary Finding: The Applicant failed to demonstrate, based upon a preponderance of the evidence, that the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan.
2. In evaluating the credibility and weight to be given to the evidence, the Planning Board considered the entire record, including materials and testimony provided by the city staff at the hearing; the staff memorandum dated August 27, 2015, including all attachments thereto and material that was linked by way of internet web links; and all materials, testimony and information placed in the record at or before the public hearing; and weighed a number of specific factors. While the Planning Board did not rely exclusively on any of the following factors, their collective and corroborative weight were considered as follows:
  - a. **CONSISTENCY WITH GOALS AND POLICIES OF THE BOULDER VALLEY COMPREHENSIVE PLAN**

The Boulder Valley Comprehensive Plan has many policies related to neighborhood compatibility and the creation and protection of unique physical elements of neighborhood character and identity and livability, the Planning Board finds that the following Comprehensive Plan policies and goals are relevant to this application:

***1.29 Channeling Development to Areas with Adequate Infrastructure***

In order to protect and use past investments in capital improvements, new development and redevelopment will be located in areas where adequate public services and facilities presently exist or are planned to be provided under the city's Capital Improvements Program.

***2.09 Neighborhoods as Building Blocks***

The city and county will foster the role of neighborhoods to establish community character, provide services needed on a day-to-day basis, foster community interaction, and plan for urban design and amenities. All neighborhoods, whether residential areas, business districts, or mixed land use areas, should offer unique physical elements of neighborhood character and identity, such as distinctive development patterns or architecture; historic or cultural resources; amenities such as views, open space, creeks, irrigation ditches, and varied topography; and distinctive community facilities and business areas.

***2.10 Preservation and Support for Residential Neighborhoods***

The city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock. The city will seek appropriate building scale and compatible character in new development or redevelopment, appropriately sized and sensitively designed streets and desired public facilities and mixed commercial uses. The city will also encourage neighborhood schools and safe routes to school.

***2.13 Protection of Residential Neighborhoods Adjacent to Non-residential Zones***

The city and county will take appropriate actions to ensure that the character and livability of established residential neighborhoods will not be undermined by spill-over impacts from adjacent regional or community business zones or by incremental expansion of business activities into residential areas. The city and county will protect residential neighborhoods from intrusion of non-residential uses by protecting edges and regulating the impacts of these uses on neighborhoods.

***2.14 Mix of Complementary Land Uses***

The city and county will strongly encourage, consistent with other land use policies, a variety of land uses in new developments. In existing neighborhoods, a mix of land use types, housing sizes and lot sizes may be possible if properly mitigated and respectful of neighborhood character. Wherever land uses are mixed, careful design will be required to ensure compatibility, accessibility and appropriate transitions between land uses that vary in intensity and scale.

***2.15 Compatibility of Adjacent Land Uses***

To avoid or minimize noise and visual conflicts between adjacent land uses that vary widely in use, intensity or other characteristics, the city will use tools such as interface zones, transitional areas, site and building design and cascading gradients of density in the design of subareas and zoning districts. With redevelopment, the transitional area should be within the zone of more intense use.

***2.30 Sensitive Infill and Redevelopment***

With little vacant land remaining in the city, most new development will occur through redevelopment. The city will gear subcommunity and area planning and other efforts toward defining the acceptable amount of infill and redevelopment and standards and performance measures for design quality to avoid or adequately mitigate negative impacts and enhance the benefits of infill and redevelopment to the community and individual neighborhoods. The city will also develop tools, such as neighborhood design guidelines, to promote sensitive infill and redevelopment.

The Property proposed for rezoning is located in the southeast corner of an older, existing low density residential neighborhood that is bordered to the east by South Broadway and to the south by the campus of a federal agency, the National Institute of Standards and Technology (NIST) and to the south and west by City of Boulder Open Space. The neighborhood's character is that of single family residential uses with quiet streets as there is no motor-vehicle connection from the local neighborhood streets to South Broadway (to the east) or to the south or west where the neighborhood is bordered by City of Boulder Open Space and NIST. Residents of the neighborhood testified that many families live in the neighborhood, children play on the streets, neighbors go for walks and socially interact on the streets, and bicyclists choose the neighborhood as a safe route to the mountains.

The existing building on the Property has been used for medical office uses since 1957 and has been non-conforming since its construction.

While a private access easement exists to the Property through the NIST property, it is possible that that easement through federal land may, through agreement, violation

of its terms, or use of eminent domain powers by the federal government, at some point in time be extinguished, which would most likely require motor vehicle access to the Property be taken from Bluebell Avenue and through the quiet neighborhood to the north. In a letter sent to the City of Boulder, a representative for NIST expressed serious reservations regarding the acceptability to NIST of access to the Property via the existing easement if the Property were rezoned to greater intensity. Based on staff testimony, it is very unlikely that the Property could meet the regulatory requirements for direct access to the Property from South Broadway.

The Boulder Valley Comprehensive Plan map shows the Property surrounded by properties with Low Density Residential designations, which are described as residential land use areas with two to six units per acre, with the exception of the NIST property, which is designated Public.

The current zoning of the Property and of the neighborhood is RL-1. The purpose of RL-1 zoning is defined as single-family detached residential dwelling units at low to very low residential densities. Section 9-5-2, "Zoning Districts," B.R.C. 1981. Uses allowed in the RL-1 zone without any additional standards or reviews are limited to detached dwelling units, in-home daycares, religious assemblies, park and recreation uses, crop production, public schools and colleges, and accessory buildings and uses. The purpose of BT-2 zoning is defined as transitional business areas which generally buffer a residential area from a major street and are primarily used for commercial and complementary residential uses, including without limitation temporary lodging and office uses. Section 9-5-2, "Zoning Districts," B.R.C. 1981. Allowed uses in the Business-Transitional 2 (BT-2) zoning district include duplexes, attached dwellings, townhouses, efficiency living units if less than 20 percent of total units, congregate care facilities, fraternities, sororities, and dormitories, boarding houses, art and craft studios, daycare centers with more than 50 children or adults, public and private office uses providing social services, adult educational facilities, data processing facilities, medical or dental clinics or offices, administrative, professional and technical offices, indoor recreational or athletic facilities, broadcasting and recording studios, computer design and development facilities, and telecommunication uses. Some retail uses could be approved pursuant to a Use Review application in the BT-2 zoning district.

The possible uses in the BT-2 zoning district and their impacts on this established quiet neighborhood in a unique location that does not allow for any through traffic to the south or west or east is not consistent with the development pattern of this neighborhood and its established character and identity. The potential noise and visual impacts as well as potential traffic impacts through this neighborhood of some of the allowed uses in the BT-2 zoning district would undermine the livability and character of this established neighborhood

The Property is not part of, and would not by itself create, an activity center and business area and, in light of the Land Use Map designations in the area, which anticipate low density residential and public uses on all the surrounding properties,

would also not function as a transition area to zones of more intense use. In light of the location of the Property, the access situation, and the negative impacts some of the allowed uses under BT-2 zoning would have on the character, livability, and identity of the established neighborhood, the Planning Board is also not convinced that the proposed rezoning would effectively meet the purpose of the BT-2 zone district - to create a transition to South Broadway buffering the residential area.

For these reasons, the Planning Board finds that the Applicant failed to demonstrate by a preponderance of the evidence that the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan.

b. THE PROPOSED REZONING IS NECESSARY TO COME INTO COMPLIANCE WITH THE BOULDER VALLEY COMPREHENSIVE PLAN MAP

The land use map designates the Property for a Business Transitional land use which is defined as follows: "The Transitional Business designation is shown along certain major streets. These are areas usually zoned for less intensive business uses than in the General Business areas, and they offer provide a transition to residential areas." The current zoning is RL-1. Based on the descriptions for Business Transitional land use and the regulations applicable to RL-1 and BT-2, the Planning finds that the Applicant has demonstrated this criterion; the proposed rezoning would render the zoning consistent with the Boulder Valley Comprehensive Plan map.

3. For the reasons set forth in these findings, the Planning Board finds that the application fails to meet the requirements of the Boulder Revised Code and recommends to City Council denial of the application on a vote of 7-0.

The Planning Board adopts these findings of fact on the above referenced application this 17<sup>th</sup> day of September, 2015.