C I T Y O F B O U L D E R
PLANNING BOARD AGENDA ITEM
MEETING DATE: December 17, 2015

AGENDA TITLE: Continuation of a Public Hearing to consider a motion to approve findings of fact and conclusions of law for the denial of the application for a Minor Amendment to an Approved Site Plan, application no. LUR2015-00092, to amend the approved Dakota Ridge North design standards to allow fences up to 60 inches (5 feet) in height that back onto an alley to be built to within 18 inches of the alley with a maximum of 42 inches of solid fence and a minimum of 18 inches of lattice above.

Applicant: John McCarthy for the Dakota Ridge North HOA

REQUESTING DEPARTMENT:
Community Planning & Sustainability
David Driskell, Executive Director
Susan Richstone, Deputy Director
Charles Ferro, Development Review Manager
Chandler Van Schaack, Planner II

OBJECTIVE:
1. Planning Board action to adopt the findings of denial, as proposed, or modify and adopt the findings of denial.

Proposal: MINOR AMENDMENT to an Approved Site Plan (LUR2015-00092) to amend the approved Dakota Ridge North design standards to allow fences up to 60 inches (5 feet) in height that back onto an alley to be built to within 18 inches of the alley with a maximum of 42 inches of solid fence and a minimum of 18 inches of lattice above. The Dakota Ridge North PUD lies within the RL-2 (Residential – Low 2) and RM-1 (Residential – Medium 1) zoning districts.

Project Name: Dakota Ridge North Design Code Amendment
Location: 0 Dakota Blvd.
Zoning: RL-2 (Residential – Low 2) and RM-1 (Residential – Medium 1)
Comprehensive Plan: Low and Medium Density Residential

Summary.
On December 3, 2015, the Planning Board held a quasi-judicial hearing to review the proposed application for a Minor Amendment to an Approved Site Plan at 0 Dakota Blvd. described above. On a motion by **C. Gray**, seconded by **L. May**, the Planning Board voted unanimously to deny the application and to continue the hearing to its next meeting for preparation and consideration of draft findings of fact. The Planning Board is required to make findings within 30 days of the hearing. Staff has prepared the following draft findings of denial:

FINDINGS OF FACT

Introduction

In accordance with the requirements of Chapter 9-2-14, B.R.C. 1981, the City of Boulder Planning Board (the "Planning Board"), on December 3, 2015, held a public hearing after giving notice as required by law on the application for the above captioned Site Review.

John McCarthy, President of the Dakota Ridge North Homeowners Association, as the proponent (The "Applicant") has submitted an application for a Minor Amendment to an Approved Site Plan, seeking an amendment to the approved Dakota Ridge North design standards that would allow fences up to 60 inches (5 feet) in height that back onto an alley to be built to within 18 inches of the alley with a maximum of 42 inches of solid fence and a minimum of 18 inches of lattice above. (Site Review Application # LUR2015-00092) (the "Project"). The Applicant has the burden of proof to demonstrate that the application meets the requirements of the Boulder Revised Code. Subsection 1-3-5(h). B.R.C. 1981.

Criteria

The review criteria for a minor amendment to an approved site plan can be found in Subsection 9-2-14(l), Minor Amendments to Approved Site Plans," B.R.C. 1981, and read as follows:

Minor Amendments to Approved Site Plans:

(1) Standards: Changes to approved building location or additions to existing buildings, which exceed the limits of a minor modification, may be considered through the minor amendment process if the following standards are met:

(A) In a residential zone as set forth in Section 9-5-2, "Zoning Districts," B.R.C. 1981, all approved dwelling units within the development phase have been completed;

(B) In residential zones, dwelling unit type is not changed;

(C) The required open space per dwelling unit requirement of the zone is met on the lot of the detached dwelling unit to be expanded; and

(D) The total open space per dwelling unit in the development is not reduced by more than ten percent of that required for the zone; or

(E) If the residential open space provided within the development or an approved phase of a development cannot be determined, the detached dwelling unit is not expanded by more than ten percent and there is no variation to the required setbacks for that lot;

(F) For a building in a nonresidential use module, the building coverage is not increased by more than twenty percent, the addition does not cause a reduction in required open space, and any additional required parking that is provided is substantially accommodated within the existing parking arrangement;

(G) The portion of any building over the permitted height under Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, is not increased;

(H) The proposed minor amendment does not require public infrastructure improvements or other off-site improvements.

(2) Amendments to the Site Review Approval Process: Applications for minor amendment shall be approved according to the procedures prescribed by this section for site review approval, except:

(A) If an applicant requests approval of a minor amendment to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The manager will provide notice pursuant to Subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected, and to all property owners within a radius of 600 feet of the subject property.

(B) Only the owners of the subject property shall be required to sign the application.

(C) The minor amendment shall be found to comply with the review criteria of Subparagraphs (h)(2)(A), (h)(2)(C), and (h)(2)(F) of this section.

(D) The minor amendment is found to be substantially consistent with the intent of the original approval, including conditions of approval, the intended design character, and site arrangement of the development, and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts.

(E) The city manager may amend, waive, or create a development agreement.

To approve a minor amendment to an approved site plan application, the Planning Board must find that the Applicant has proven by a preponderance of the evidence that all of the applicable criteria have been met.

Summary of Findings

1. Based on a consideration of the entire evidentiary record, the Planning Board makes the following findings of fact. The Applicant failed to demonstrate, based upon a preponderance of evidence, that the minor amendment is substantially consistent with the intent of the original approval, including conditions of approval, the intended design character, and site arrangement of the development, and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts. §9-2-14(l)(2)(D), B.R.C. 1981.

Findings of Fact and Conclusions of Law

In evaluating the credibility and weight to be given to the evidence, the Planning Board considered the entire record (which included materials provided by the Applicant, Planning staff, and the public and testimony and information produced at the public hearing), and weighed a number of specific factors, the collective and corroborative weights of which were considered as follows:

1. Consistency with PUD Intent: §9-2-14(l)(2)(D), B.R.C. 1981. The Applicant failed to demonstrate, based on a preponderance of evidence, that the project would be substantially consistent with the intent of the original approval, in particular, the intended design character. The board determined that the intent of the approved design code is to ensure openness and transparency in the alleyways, and that the proposal to allow for fences up to five feet in height to be set back 18 inches from the rear property line would be inconsistent with this intent, as it would reduce transparency and openness.

Discussion

The Applicant is requesting to amend the adopted Dakota Ridge North Design Code (Design Code) to allow, for those properties abutting an alley, a rear yard setback of 18 inches for fences up to 60 inches in height composed of a maximum of 42 inches of of solid fencing and a minimum of 18 inches of open lattice above.

The Dakota Ridge North PUD is located in North Boulder, north of Lee Hill Dr. and west of Broadway. The Dakota Ridge North PUD was originally approved by Planning Board in July, 1997 (Site Review #SI-96-17) as a residential project containing 66 mixed-density housing units and a neighborhood park. The approval included a Design Code. The Design Code's introduction on page 1 reads as follows:

> *"The primary intent of this design code is to create a community with characteristics similar to those of a traditional "town." Parks are a focus for public activity. Hopefully, this can be a place where its residents and visitors can rediscover the community of a small town. Dakota Ridge North consists of a variety of single-family homes, attached homes, and a small park. The configuration of these elements in Dakota Ridge North and the following code are meant to enhance the feeling of community, user convenience, and identity. The plan and the code also seek to create a pedestrian and bicycle-oriented community that provides for the realities of the automobile, but does not let it dominate the street or the neighborhood."*

The primary intent of the Dakota Ridge North development was to create a traditional, town-like setting where automobiles are de-emphasized and with a feeling of community, user convenience, identity, and activity and interest at the pedestrian level. The standards of the Design Code are drafted to achieve this desired traditional, town-like setting. The Design Code includes architectural, open space, and landscape standards but also standards for fences, walls and privacy screens to achieve the desired character. The current Design Code standards require that any fence over 42 inches in height or with a solid design be set back at least 15 feet from the rear property line when abutting an alley. Such privacy fences and walls are also required to be set back a minimum of 30 feet from the front property line. Privacy screens are similarly restricted and are allowed only within the building setback, which is 25 feet from the rear property line. Fences that do not exceed 42 inches in height and are of an open design (split rail, post and rail, or wood frame with vinyl coated or painted metal fabric) are allowed along or very close to sidewalks, right of ways and alleys. These standards, including the standard that restricts fences over 42 inches in height or with a solid design to be set back at least 15 feet from the rear property line when abutting an alley, are clearly intended to create an open design character at the rear of the property where abutting an alley to create activity and interest at the pedestrian level and a feeling of community and identity.

Evidence presented at or for the hearing shows that solid fences of up to five feet in height with an additional 18 inches in lattice above set back only 18 inches from the alley would not create the intended open design character that creates activity and interest at the pedestrian level and a feeling of community and identity of the neighborhood. The proposed amendment would decrease transparancy, interest, activity and the feel of community along the alley by walling off yards along the alley into private, secluded spaces contrary to the intent of the original approval.

Conclusion

For these reasons, the Planning Board finds that the applicant has failed to establish that the proposal is substantially consistent with the intent of the original approval and has failed to establish that the application meets the requirements for Minor Amendments to Approved Site Plans of the Boulder Revised Code.

Planning Board Options.

Planning Board may adopt the findings of denial, as proposed, or modify and adopt the findings of denial.

Staff Recommendation.

Staff recommends that Planning Board adopt this memorandum as findings of denial for the 0 Dakota Blvd. site review application in the form of the following motion:

The Planning Board finds that application no. LUR2015-00092 fails to meet the requirements of the Boulder Revised Code, denies the application, and adopts the staff memorandum dated for the December 17, 2015 Planning Board meeting as findings of fact and conclusions of law.