

CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
February 19, 2015
1777 Broadway, Council Chambers

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PLANNING BOARD MEMBERS PRESENT:

Aaron Brockett, Chair
Bryan Bowen
Crystal Gray
John Gerstle
Leonard May
Liz Payton

PLANNING BOARD MEMBERS ABSENT:

John Putnam

STAFF PRESENT:

David Driskell, Director of CP&S
Susan Richstone, Deputy Director of CP&S
Hella Pannewig, Assistant City Attorney
Susan Meissner, Administrative Assistant III
Lesli Ellis, Director of Comprehensive Planning
Chris Meschuk, Planner II
Beverly Johnson, Temporary Senior Planner

1. CALL TO ORDER

Chair, **A. Brockett**, declared a quorum at 6:03 p.m. and the following business was conducted.

2. APPROVAL OF MINUTES

On a motion by **C. Gray** and seconded by **J. Gerstle**, the Planning Board approved the January 8, 2015 and January 22, 2015 Planning Board meeting minutes as amended.

3. PUBLIC PARTICIPATION

No one from the public spoke.

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

- A. Call Up:** Kum & Go Store 943 Subdivision (TEC2014-00040). Expires **February 23, 2015**.
- B. Call Up:** Use Review proposal (LUR2015-00002) at 1043 Pearl. Expires **February 26, 2015**.

C. Van Schaack answered questions from the board.

No items were called up.

5. PUBLIC HEARING ITEMS

- A.** Public hearing and recommendation on the Annexation and Initial Zoning of Residential-Rural 2 (RR-2) of 23 properties and right-of-way in the Old Tale Road Neighborhood (LUR2014-00004) including the following property owners and addresses:

Applicants/Owners:

1165 Old Tale Rd., Macinko Exempt Trust
1193 Old Tale Rd., Cynthia and Charles Anderson
1221 Old Tale Rd., Constance Ekrem
1228 Old Tale Rd., Steven Erickson
1245 Old Tale Rd., Harold and Sherlynn Bruff
1270 Old Tale Rd., Jeffrey and Wendy Mortner
1275 Old Tale Rd., Thomas and Barbara Corson
1305 Old Tale Rd., Monty Moran
1310 Old Tale Rd., Raynard A Hedberg Living Trust
1315 Old Tale Rd., Joanne M Simenson
1325 Old Tale Rd., Sarah Kingdom
1402 Old Tale Rd., Kellie Masterson-Praeger
1409 Old Tale Rd., William Dick III
1412 Old Tale Rd., John and Penelope Bennett
1435 Old Tale Rd., Joyce Peterson Thurmer
1436 Old Tale Rd., Thomas Perry
1457 Old Tale Rd., Cameron Bradley Peterson
1462 Old Tale Rd., Conway and Jacqueline Olmsted
1483 Old Tale Rd., Jason and Jennifer Kiefer
1507 Old Tale Rd., Richard and Jeanie Leddon
1510 Old Tale Rd., Mark and Mary Beth Vellequette
1533 Old Tale Rd., Laurie Duncan-McWethy
1566 Old Tale Rd., Stewart and Robin Elliott

Board Disclosures:

J. Gerstle recused himself from agenda item 5A.

A. Brockett, C. Gray, L. Payton and **L. May** received phone calls from neighbors regarding the annexation.

Staff Presentation:

C. Meschuk and **B. Johnson** presented the item to the board.

Board Questions:

C. Meschuk, B. Johnson and **H. Pannewig** answered questions from the board.

Public Hearing:

- 1. Melissa Clymer, 1486 Old Tale Road**, did not participate in the annexation because she did not feel that she should have to pay for the storm water connection. She did not feel that the city gave enough incentives to property owners and was not listening to the neighbors' concerns and needs.
- 2. Wendy Mortner, 1270 Old Tale Road**, was concerned by the easement language and wanted to assure that it was for maintenance and not for a greenway. Assure that homeowners landscaping is not greatly impacted by the easement access.

3. **Jeff Mortner, 1270 Old Tale Road**, explained that neighbors would be more interested in the annexation if the city were more willing to negotiate and more explicit about the terms. He thought 60 feet was too large of an easement for work on the creek. He doubted that the grant money was being used to offset neighbors' fees.
4. **Porche Young, 1548 Old Tale Road**, would be willing to annex if the city made more concessions. She felt that a 60 foot easement was excessive, did not like the options and fees and requested written agreement that a bike path would not be installed on the easement.
5. **Stewart Elliott, 1566 Old Tale Road**, wanted some legal assurance that the city would not put a path along the easement.
6. **Lou Kingdom, 1325 Old Tale Road**, noted that the neighborhood was being charged a capital cost for the storm water hookups but did not think that they would put any real added impact on the system. He thought the neighborhood should be exempted from paying the PIF.
7. **Joanne Simenson, 1315 Old Tale Road**, asked staff to add the cost to applicants and grant amount to the agreement. She was fearful that neighbors would be liable for the full amount should the grant fall through.
8. **Tom Perry, 1436 Old Tale Road**, feared that the city would use the easement for a multiuse path. He was not comfortable with public access through his backyard.
9. **Sarah Kingdom, 1325 Old Tale Road**, expressed concern about the unknown costs involved with the annexation.
10. **Steve Erickson, 1228 Old Tale Road**, will be affected by the easement but was not concerned that the city would add a multiuse path. He thought that 60 feet could be excessive but was not adamantly opposed to it if it were truly necessary to prevent future flooding. He was satisfied with the easement language and felt that it was a good deal.

Board Comments:

- The Planning Board agreed that the annexation was consistent with state statutes pertaining to annexation and the BVCP.
- The board addressed the issues raised by the neighbors, which included the following:
 - The limited ability and time to negotiate the provisions of the annexation agreement;
 - The city's request for a 60 foot flood maintenance easement and allowed uses;
 - The requirement that landowners pay the Stormwater and Flood Management Utility Plant Investment Fee (PIF);
 - The potential draw-down of the water table from the construction of a water main;
 - The triggers for future connection to city water under Option C; and
 - The lack of clarity in the annexation agreement over what the grant is paying for.
- The board recommended that the trigger for connecting to water to not be contingent upon sale of the property or inheritance, especially in the event that the property has its own functioning well. They agreed that it made sense to require a sewer hookup.
- **B. Bowen** recommended that the trigger be changed from a small sink to something larger that could indicate increased occupancy such as the addition of a full or ¾ bathroom.
- Add language to clearly state what the grant will cover and that no additional fees will be incurred.
- Provide assurances that the annexation expenses for neighbors will be capped.

- The board requested that City Council clarify the allowed uses within the 60 foot flood easement, namely that it will not allow bike or multiuse trails.
- The board clarified that structures within the flood easement can remain intact. However, in the event that structures in the easement are damaged or destroyed, they could not be rebuilt.
- The board debated whether to recommend that the easement be reduced from 60 feet. The majority felt that the 60 feet should be left in place for flood mitigation purposes; the neighborhood could potentially apply for an easement vacation in the future if upstream improvements mitigated the flood danger.
- The board requested that staff share the water main engineering analysis with the neighbors and provide materials about the recourse for any property damage to the flood control easement.
- Clay plugs in public right-of-way will be specified by the city but neighbors can choose what plugs they would like on their own property.
- The board debated whether the neighbors should incur storm water fees (PIFs) as they are already connected to the city's system. The majority did not think that storm water fees should be reconsidered; the fees go toward the larger city-wide system and community at large.

Motion:

On a motion by **A. Brockett**, seconded by **L. Payton**, the Planning Board voted 5-0 (**J. Putnam** absent, **J. Gerstle** recused) to recommend to City Council approval of the proposed annexation of 22 properties (Note: two properties have dropped out of the annexation since the board hearing) and right-of-way in the Old Tale Road neighborhood subject to the annexation conditions in the respective annexation agreements attached to the staff memorandum and approval of an initial zoning for the properties of RR-2 with the following additions:

- Change the trigger for connecting the city water if people take Option C, to not be triggered by sale or inheritance of the property.
- Change the trigger for wet plumbing fixtures to be equivalent to six or more residential fixture units per the plumbing fixture unit calculation worksheet that the city already uses.
- Modify the language to clarify what expenses are being paid by the grant and clarify exact expenses being paid by the homeowners, and
- Clarify that the flood easement does not allow a bike trail.

B. Public Hearing and Consideration of recommendations to City Council regarding an ordinance amending Title 9, "Land Use Code" B.R.C. 1981 by amending the building height regulations and requirements for certain areas of the city.

Staff Presentation:

D. Driskell presented the item to the board.

Board Questions:

D. Driskell answered questions from the board.

Public Hearing:

1. **Lois LaCroix, 2835 Elm Street**, thought the existing ordinance should be enforced. She does not want tall buildings because they block solar access and are not helping affordable housing. She wanted development to pay its own way.
2. **Jane Angulo, 869 Dearborn Place**, did not think that any exemptions should be given until the BVCP is revisited. The height exemptions and density questions should be put to a vote.
3. **Ken Farmer, 345 South 40th Street**, did not think that the city could support the proposed density and infrastructure. Defer exemptions until questions about density are answered in the BVCP update.
4. **Kristen Momme, 375 South 40th Street**, noted that residents love sunlight and mountain views. She would not like for them to be obstructed.
5. **Cliff Harold, 2440 Pearl Street**, proposed a shorter duration and process for special exceptions to the moratorium.
6. **Raymond Bridge, 435 S. 38th Street**, spoke on behalf of PLAN Boulder. He thought that the moratorium should be more comprehensive. Create a better process for creating and enforcing subarea plans. If exceptions, do not grandfather based on concept review. They should only be granted per site review.
7. **Michael Bosma, 1885 Quince Ave.**, pooled with **Gary Berg**, spoke on behalf of the Mapleton Hospital development group. The buildings on their site exceed the regulations. Topographic constraints will greatly impact their height. The height exemption would limit their possibilities for good design; it would create a more sprawling design.
8. **Dorothy Cohen, 2845 Elm Avenue**, did not agree with height variances or added density. She thought Boulder was too large and does not want it to become another Denver.
9. **Mike Marsh, 265 31st Street**, he thought that the exemption should be removed in the proposed areas. He thought there was a disconnect between the community desires and what is happening. He looks to the BVCP update process as an opportunity for the public to comment.
10. **Cosima Krueger-Cunningham, 977 7th Street**, quoted Victor Dover and felt that the proposed ordinance ignores his advice. She requested area plans be accelerated. She did not want any more height exemptions.
11. **Ruth Blackmore, 705 S. 41st Street**, she supported the two year pause but did not agree with the exemption. She quoted Victor Dover and quoted several of his recommendations. Stitch together meaningful area plans.
12. **Tim Johnson, 350 Ponca Place**, the CEO of Frasier Meadows, spoke about the impact of the flood on the building. If it did not have an exemption, they would be out of business and could not provide the community benefit to the senior citizens in Boulder. He endorsed the proposal.
13. **Ron DePugh, 180 S. 34th Street**, would like neighborhood planning to better involve the people. He did not want to see tall buildings in Boulder.
14. **Jan Trussell, 125 S. 36th Street**, requested that the height limit be enforced throughout the city until the BVCP is completed.
15. **Kimberly Campbell, 29th Street**, noted that 29th Street was exempted for 55 foot heights by public vote. The site has been planned for 55 foot building heights for years and this ordinance could greatly affect its ability to bring its plan to fruition. It is a large employer and should be kept where it is currently zoned.

16. **Stephen Haydel, 1935 Grove Street**, felt that most buildings get height exemptions and did not feel that the Goss Grove neighborhood did not get much opportunity for input. He wanted the board to go back on previous decisions in the area.
17. **Lynn Segel, 538 Dewey Street**, wanted to height exemptions except for Frasier Meadows until the BVCP is updated and area plans implemented.
18. **Mary Eldred, 5376 Gunbarrel Circle**, spoke about the changes to Gunbarrel. Consider thoughtful planning with community input, including the surrounding county.
19. **Jyotsna Raj, 803 14th Street**, was happy with the policies that have made Boulder the place that it is today. She asked that they be upheld.

Board Comments:

- **C. Gray** thought the ordinance should be approved for areas that meet the following conditions: Site Review applications that have already been approved by Planning Board, Site Review applications for emergency operations antennae and Concept and Site Review applications for Frasier Meadows given the need and flood damage. Planning Board needs more guidance for Site Review Criteria for height modifications that would help to define community benefit. Improve and clarify criteria for evaluation. There are currently no linkage fees to help provide for affordable housing; if the city limited exclusions temporarily, it could allow time for Council to adopt linkage fees. Consider extending downtown linkage fees to other parts of town.
- **B. Bowen** thought it would be a good idea to pause and look at the BVCP and to talk with the community and neighborhoods. This is a reasonable approach given the options. Council will determine the details and decide which areas to include.
- **A. Brockett** acknowledged and appreciated the public's viewpoints. He noted that the height limit that was adopted in a charter amendment in 1971 and passed by a vote of the people is 55 feet; it does not mention 35 feet. The 55 foot height limit cannot be exceeded except by vote and has been done only once for 29th Street. He thought that a certain level of density within the city's planning framework and in the right locations would be more environmentally sustainable. Areas with higher densities, access to public transit and oriented for pedestrian and biking activity such as downtown significantly reduce GHG emissions. Land use decisions to locate people in strategic activity centers in town are an important tool for combating climate change. The taller buildings approved by the Planning Board in recent years have been in strategic locations; others such as Waterview and Baseline Zero have been discouraged by the public and board. He understood the concerns about the rate of growth but thought it was important to have the community conversation to define where differences lie. The zoning currently blankets the city with a 35 foot height limit. Over the next year of the BVCP update, he would like to have community conversations and come to some agreement about where height is appropriate and not appropriate. He did not support the current ordinance; it was brought about too quickly and needed more community engagement. He hoped to devise an ordinance within the next year.
- **L. May** mostly agreed with the previous comments, especially with the environmental considerations involving density in strategic areas to reduce GHG emissions. The ordinance would pause development to allow important conversations to take place, but the exceptions

would reduce its effectiveness. He applauded staff for the proactive approach but feared that it could be cited as a precedent for policy documents and would erode Planning Board's discretion to evaluate 55 foot proposals. He would prefer to address community concerns about the number of 55 foot buildings and the exceptions to the rules as opposed to the locations of the buildings. The BVCP, Housing Strategy and form-based code should be determined with community input prior to resuming the current development trend. The ordinance should be applied universally to all projects not yet approved in site review or that no longer have a permit. He recommended rejecting the ordinance.

- **J. Gerstle** thought issues such as BVCP update, community benefit, neighborhood and subarea plans, linkage fees and form based code should be in place prior to the consideration of 55 foot buildings. He thought **C. Gray's** recommendation made sense and would accomplish the desired goals.
- **L. Payton** commended staff for being responsive to community reaction to tall buildings but did not think the ordinance as proposed would adequately address the community's concerns. She felt that allowing tall buildings in defined areas could create some inequities. She agreed with **C. Gray's** comments and would support her motion. She is excited by the form-based code pilot. She noted that the Spark development could also be exempted given its mix of different uses and its use as a pilot for form-based code.

Motion:

On a motion by **C. Grey**, seconded by **J. Gerstle**, that the Planning Board voted 4-2 (**A. Brockett** and **B. Bowen** opposed, **J. Putnam** absent) to recommend that City Council adopt Ordinance 8028 amending the building height regulations and requirements of Title 9, "Land Use Code, B.R.C. 1981, for certain areas of the city that meet the following conditions to be considered an exclusion:

- 1) A site review application submitted for site review by January 21, 2015.
- 2) A site review application that is for an upgrade of an emergency operations antennae.
- 3) A concept plan and site review application for Fraiser Meadows.

All other exclusions in Ordinance 8028 are recommended to be removed. Planning Board further recommends that before other exclusions are added to Ordinance 8028 that the following take place:

- 1) City Council considers expanding the Affordable Housing Linkage fees, that are currently only applied in DT zones, to all commercial zones and the fees are at the same rate that are currently applied in the DT zones until a new study is complete and adopted. In addition the Affordable Housing Linkage fees should be for the entire building's square footage.
- 2) City Council considers adoption of site review criteria for height modifications that define community benefit.

B. Bowen noted that there might be some unforeseen and important uses for the 55 foot exclusions. To avoid a legislative process involving a Planning Board hearing and two Council readings, he proposed allowing Council to preserve the right to make some height modifications.

B. Bowen made a motion to amend **C. Gray's** motion that City Council reserve the right to allow height modifications.

This motion to amend failed as it was not seconded.

On a motion to amend by **L. Payton**, seconded by **L. May**, the Planning Board voted 2-4 (**A. Brockett, B. Bowen, J. Gerstle, and C. Grey** opposed, **J. Putnam** absent) to amend the proposed (c)(2) of Section 9-2-14 to read "...may be considered for modification..." instead of "...may be modified..."

The motion to amend failed.

On a motion to amend by **L. May**, seconded by **A. Brockett**, the Planning Board voted 3-3 (**L. Payton, C. Grey, and J. Gerstle** opposed, **J. Putnam** absent) to add an additional exemption where height may be modified item (c)(2)(b) proposed in Ordinance 8028.

The motion to amend failed.

J. Gerstle voted against **L. May's** amendment because he felt that this was already addressed in the ordinance. He did not want to unnecessarily complicate the issue.

L. May discussed the possibility of linking the term of the moratorium to the BVCP revisions. There was some concern as to whether this might unduly complicate matters.

A. Brockett did not vote for **C. Gray's** motion, but did support item number one for affordable housing. He felt it was very important and should be addressed to mitigate Boulder's current housing problems. He would have voted for something similar to the staff proposal.

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

A. Update on the Housing Boulder community engagement process including Code for America

This item was postponed to a future date.

B. Outline of Analysis to be prepared for BVCP foundations, review community engagement strategy ideas

Staff Presentation:

L. Ellis presented the item

Board Questions:

L. Ellis answered questions from the board.

Board Comments:

- Find ways to engage the segments of the public that do not feel directly affected by the BVCP update. The most vocal segments do not represent everyone.
- Direct outreach to neighborhoods, but assure that the groups are not too finely grained.
- Perform community outreach to neighbors within their own neighborhoods. Be sure to

- capture input from mobile home park and affordable housing residents.
- Assure that the first phase of the engagement plan includes information gathering and listening to resident concerns to learn what people care about most.
 - It is important to address and diffuse NIMBY-ism. Couch questions about city goals in terms of what we want for the entire community. Direct dialogue toward how neighborhoods can implement goals to get what they want as opposed to how to keep certain things out.
 - Consider a joint study session between the Planning Board and County Planning Commissioners to discuss the BVCP update process.
 - Perform a formal and scientifically-based poll on key issues to capture the opinion of the silent majority. Educate residents on the issues first.
 - The board supported using visioning as a tool. Create a common vision for what kind of community we want to be.
 - It would be beneficial to adopt the Inter-governmental Agreement and BVCP at the same time. The IGA expires at the end of 2017.

C. Chris Meschuk gave an update on Flood recovery efforts and resilience efforts to aid people still affected by the flood.

L. Payton requested that staff forward the Growing Up Boulder report to the developers of Reve, Armory and SPARK because they all have family housing.

A. Brockett encouraged **B. Bowen** and **L. May** to read the Bank of America item carefully to expedite the second hearing at the following meeting.

6. DEBRIEF MEETING/CALENDAR CHECK

7. ADJOURNMENT

The Planning Board adjourned the meeting at 11:47 p.m.

APPROVED BY

Board Chair

DATE