

June 16, 2021

City of Boulder Planning Board

Elaine McLaughlin, Senior Planner, City of Boulder Planning Department

Boulder City Council

Re: Site and Use Review Application (LUR2020-00063), 4775, 4725 and 4649 Spine Road - Proposed 230 unit development on 10 acres

Gunbarrel Community Alliance Comment: **Standard of Review for Site Review**

Dear Elaine and Planning Board:

This comment is submitted on behalf of the Gunbarrel Community Alliance (“GCA”).

1. The Code, the BVCP, Annexation/PUD Requirements and Standard of Review

An important issue for consideration of the development proposal is the applicable standard of review.

Staff review identifies the key issues in the Packet at page 2:

1. Is the proposed project consistent with the Site Review Criteria including those related to consistency with the Boulder Valley Comprehensive Plan (BVCP)?
2. Are the proposed residential uses consistent with the Use Review Criteria?

Staff’s formulation omits a third issue that was included in the Shining Mountain review, which needs to be added here in light of the annexation and PUD issues raised by GCA but missed by staff and the developer:

3. Is the proposed change to the Annexation Agreement consistent with the intent of the original desired urban design and North Boulder Subcommunity Plan?

Absent consistency and compliance with the underlying PUD, the applicant is not entitled to approval at Spine.

The Agenda Title provides that the Site Review is “an amendment to the previously approved Celestial Seasonings Planned Unit Development.” Thus, the first question is whether Celestial complied with the PUD and the underlying annexation agreement. It did not. GCA’s June 11, 2021, comment establishes that Celestial failed to perform on material commitments in the PUD to provide active recreational uses on 4-5 acres of land, and various other uses that would have benefitted the community, such as a childcare center and community gardens.

These failures are grounds to deny the proposed use, and/or to make it conditional on rectifying all material omissions from the PUD. The developer cannot rely on the PUD

when he comes before the City and the Board with “unclean hands” due to the failure of Hain Celestial (the landowner of the PUD) to honor community amenity obligations under the PUD.

Second, Criteria for Review must be satisfied per the Code at 9-2-15(e) which provides that “No use review application will be approved unless the approving agency finds all of the following” including consistency with zoning; reduces adverse impacts to the surrounding issues or neighborhood; is necessary to foster a specific city policy; compatibility; infrastructure; and character of area.”

The Site Review section of the Code provides that the Board shall not approve a site review application unless it finds that the site plan is consistent with the land use map and, on balance, applicable BVCP policies:

Criteria for Review: No site review application shall be approved unless the approving agency finds that:

(1) Boulder Valley Comprehensive Plan:

(A) The proposed site plan is consistent with the land use map and the service area map and, on balance, the policies of the Boulder Valley Comprehensive Plan.

Code at 9-2-14(h) (underlining added).

The Code provides specific density requirements and limitations at section (h)(1) references BVCP densities and intensity standards at (B), and “the broad range of BVCP policies” in light of economic feasibility and site reviews criteria at (C).

The Code provides that the purpose of Site Review encompasses concerns raised by community members:

(a) Purpose: The purpose of site review is to allow flexibility and encourage innovation in land use development. Review criteria are established to promote the most appropriate use of land, improve the character and quality of new development, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space, to assure consistency with the purposes and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community, to ensure compatibility with existing structures and established districts, to assure that the height of new buildings is in general proportion to the height of existing, approved, and known to be planned or projected buildings in the immediate area, to assure that the project incorporates, through site design, elements which provide for the safety and convenience of the pedestrian, to assure that the project is designed in an environmentally sensitive manner, to assure that the building is of a bulk appropriate to the area and the amenities provided and of a scale appropriate to pedestrians, and to set requirements for additional

height, density, and intensity that provide additional benefits to the community beyond the underlying zoning.

Code at 9-2-14(a) (underlining emphasis added).

In applying the Code, the Board should be careful not to get lost in the weeds, or miss the forest for the trees. BVCP guidance for high and ultra-high density residential is unequivocal directing such development to locations that qualify as 15 Minute neighborhoods, offer a wide range of mixed uses, and have ready access to transit. Those who ask this Board to approve ultra-high density at locations that fail to meet these criteria are asking the Board to ignore the BVCP, our planning charter. The 2020 BVCP Update reaffirmed that guidance and criteria as the City increasingly recognizes the importance of issues including food deserts, walkability, urban heat islands, and smart growth modeled on Holiday. Site review decisions must be, on balance, consistent with the BVCP. This proposal is not.

In sum, the “purpose of site review” in the Code and numerous BVCP provisions establish the Board’s authority to deny the proposed development. Denial can include direction on what conditions the Board believes would result in an application likely to be approved.

2. Analysis of Application Against the Code and the BVCP

Twelve points flowing from the review criteria warrant the Board’s consideration. Each could support a decision to either deny or defer a decision on the proposal at this time.

First, serious questions are raised as to whether the project is “**consistent with BVCP policies**”. It checks the boxes for providing new housing and on-site AH, but several important policies and core values are not met.

Second, “**compatibility**” with **adjacent residential neighborhoods** is questionable. West of Spine, adjacent residential in the City is low density. East of Spine, HOAs permitted by the County have far more built-in amenities and open spaces than the applicant proposes. Powderhorn and other developments east of Spine offer significant amenities including 10 acres of shared contiguous open space, community gardens, gas grills and fire pits, trails, outdoor workout stations, a pool, tennis courts, clubhouse and gym.

Third, compatibility with the existing **Gunbarrel Community Center Plan** is questionable. Although that plan focuses on the Community Center, it explicitly defines locations in Gunbarrel that are appropriate for high density residential developments. Consistent with that Plan, such developments in that area have recently won approval and many have been constructed.

Fourth, the commitment to the **Gunbarrel Subcommunity Plan** commitment in the BVCP Update argues for completing that process prior to approving or denying the instant proposal. This is squarely within the Board’s discretion. Approval in advance of

subcommunity planning will be perceived as an instance of the City failing to meaningfully engage with Gunbarrel or honor existing commitments.

Fifth, questions about “**environmentally sensitive design**” include: 1) urban heat island concerns; 2) remove mature pines lining Spine rather than designing buildings and sidewalks to avoid these trees; and 3) disregarding Celestial’s preservation pledge for the grasslands ecosystem and habitat. In 2021, Boulder needs to show leadership on “net zero” policies to meet the climate challenge detailed in our Climate Action Plan. We are out of time to defer solutions.

Sixth, the criteria explicitly require assuring that the building is “**appropriate to the area and the benefits provided.**” This provides grounds to support a discretionary determination by the Board either that: 1) this project is not appropriate for the location; or that 2) subcommunity planning should be looked to as to the adequacy of public amenities and uses for both existing residents and the additional 600-some residents of the proposed development.

Seventh, the Code explicitly provides for addressing “**density**” and “**intensity**” in a manner that provides benefits to the community “beyond the underlying zoning.” From GCA’s initial comments on Concept Plan review in 2020, density and intensity have been top-level concerns, recognized by staff’s initial memo incorporating comments and concerns raised by the Board’s initial consideration.

The developer asserts that reducing the total number of units by 14% from the initial proposal disposes of such concerns. GCA counters that the Board needs to make that determination in light of the BVCP. Whereas the developer would lead the Board to believe he has a “right” to approval, the Code disposes of that assertion.

Over numerous meetings on land use and planning issues in recent months and years, staff, the Board and Council have extolled the virtues of 15-Minute Communities, vibrant mixed use communities, accessibility to transit, sensitivity to “food desert” concerns, and the importance of subcommunity planning. Approving the developer’s current proposal for the Spine Road location at this time would be perceived as failing to follow through on the repeated statements as to the importance of these issues.

Eighth, on **transit**, staff accepted without critical review that the proposed “mobility hub” would address the lack of transit at the Spine location. As April Lyons’ recent Daily Camera comment establishes, the mobility hub will result in impacts that increase total miles traveled and traffic, contrary to BVCP transit and traffic policies. The hub may look good on paper, but not when considered against data and studies. The hub is no substitute for good urban planning and transit access.

Ninth, **industrial zoning** is not exempted from residential density guidance and policies. Whether the existing zoning is residential or industrial, proposals for high or ultra-high density must be considered in light of BVCP directives and careful consideration of community concerns.

Tenth, to “**economic feasibility**”, recently approved projects for the Shining Mountain Waldorf School site on North Broadway and the Silver Saddle Hotel on west Arapaho establish that significantly lower densities development would also be feasible on Spine. SMWS provided for 8 units/acre on the residential component and the Silver Saddle provides for 8.7 units/acre.

Eleventh, on **equity**, the City is rightly sensitive to density and intensity of use concerns for developments proposed in “Boulder proper” -- outside Gunbarrel. The question raised here is whether the City will act consistently when a developer pursues an ultra-high density proposal for a food desert in Gunbarrel that is nowhere near a 15-Minute Neighborhood. It’s a litmus test for whether the City engages with the Gunbarrel community for a better planned future.

GCA believes that well-planned projects like Holiday foster equity and diversity; rather than assuming that lower income or disadvantaged populations should settle for less vibrant or livable communities.

3. Potential Conditions

Potential conditions that the Board should consider requiring require denial of the current application:

- PUD obligations: Comply with the active recreation component the original annexation agreement and PUD maps (and any other material commitments not yet achieved; note that Hain Celestial retains ownership of the subject 10 acres as well as undeveloped lands in the annexation area that can be devoted to these commitments).
- BVCP Public Amenities: Require that either the City or the developer provide a level of amenities, including active recreation lands, and contiguous open space – commensurate with levels for the multi-family developments permitted by the County east of Spine and of City-managed public amenities available to City residents outside Gunbarrel.
- Equity: Integrate AH units with market units throughout the development.
- Mixed Use: Require that at least 20% of the development, measured by square footage, is mixed use – or another percentage informed by principles of land use planning, the BVCP, and area characteristics – rather than the developer’s convenience.
- Climate, Resilience and Net Zero Construction: Boulder is committed to Net Zero by 2031. GCA thinks we don't have time to wait and that Boulder and Gunbarrel should lead. This "solar lofts" development just outside Salt Lake City is the type of pilot project Boulder -- and developers seeking approvals in the City -- need to emulate, [Sustainable housing development will create massive community battery - Curbed](#).

4. Comparable Proposals and Context of South Gunbarrel

GCA asserts that model community engagement, coordination and site plans can be found to various degrees at other projects including the nationally recognized Holiday Neighborhood, Shining Mountain Waldorf School, Silver Saddle, and the ongoing Alpine-Balsam process.

The applicant is proposing a higher density for Spine than an ideally located AH project that checks off the boxes of BVCP directives for appropriate locations for ultra-high density. A comparison is apt. 30Pearl, an all-affordable project at a location that meets BVCP guidance for ultra-high density housing, has 120 units on 5.4 acres for a density of 22.2 units/acre. See [After 13-month 'sprint' to save affordable housing project, 30Pearl breaks ground in Boulder - Boulder Beat](#) .

Celestial Seasonings was a paragon of the Boulder business community and about the best corporate neighbor that Gunbarrel members could have asked for. Since the sale of Celestial to Hain, the billionaire dollar absentee corporation has shown little or no interest in the community or neighbors. Celestial and Mo Siegel's commitment to permanently preserve the grasslands habitat on lands adjacent to Celestial are of zero concern to Hain's corporate overlords.

Hain's only concern in selling these parcels appear to be the price. Similarly, the developers primary concern appears to be maximizing returns by maximizing the number of market-rate units. Neither is concerned with healthy, vibrant, equitable, resilient livable neighborhoods or the well-being of the community.

5. Conclusion

The applicant is not entitled to approval of any specific development proposal. The applicant must establish consistency with the Code, the BVCP and other applicable plans. The applicant has not done so. Much-vaunted changes from the 2020 to the 2021 application do not represent significant changes or community benefits: 1) mixed uses and "habitat" ownership units are only 3% of the total project; 2) the library annex appears a likely victim of funding issues; 3) the mobility hub will increase miles traveled and congestion; 4) "open space" amenities in the development are far less than those built for Powderhorn to the east; and 5) Celestial never delivered on significant "active recreation" acreage commitments from the PUD.

This is the wrong project for the wrong location at the wrong time. It can only be approved if the Board ignores the 2015 BVCP in Gunbarrel and the City essentially reneges on the 2020 BVCP priorities on Gunbarrel Subcommunity Planning and heightened review for proposals related to industrial zoning. If the same criteria are applied to Gunbarrel as to East Boulder, North Boulder and the myriad examples cited by GCA, this proposal must be denied at this time.

Sincerely,

/s

Mike Chiropolos, Attorney for GCA
Chiropolos Law, 303-956-0595

Transit and Mobility Hub Comment:

One of the Boulder Valley Comprehensive Plan “core values” goes to transportation.

The developer asserts, and staff seems to accept, that the proposed “mobility hub” proposed by the developer somehow makes up for the paucity of transit at the Spine Road location. It does not.

The BVCP “Core Value” on transit aspires to an “all-mode **transportation** system to make getting around without a car easy and accessible to everyone”. The location is a transit desert. The mobility hub looks like a temporary duct-tape and chewing gum attempted fix that is actually counter-productive to achieving our transit goals. That’s not surprising, because convenience and reliability are core to use of transit. This is why 15-Minute Neighborhoods near mixed uses, services and grocery stores are so important.

Most importantly, the goal of transit includes reducing vehicle miles traveled, traffic congestion, associated greenhouse gas emissions, and time wasted in cars.

A growing body of studies and papers establish that lift services increase miles traveled and traffic. Three examples are cited below.

First, a 2018 paper from the University of Denver provides:

The study, titled “The Impact of Ride-Hailing on Vehicle Miles Traveled,” was [published in the journal Transportation](#), and concludes that these transportation methods are increasing the number of miles vehicles put on the road and asserts that they are adding to congestion and exacerbating our inefficient transit habits.

See [Stuck in traffic? A new study from a CU Denver graduate says Lyft and Uber may be making it worse - Denverite, the Denver site!](#)

Second, a New York City study found that “As ride-hailing has exploded in popularity, it’s caused a slight decrease in car ownership — but has also reduced use of public transit, biking and walking.” See [Uber, Lyft Reduce Transit Use, Increase Vehicle Miles, Report Says \(nytransit.org\)](#). Faced with incontrovertible drama, Uber and Lyft admitted they are making traffic congestion worse, [Uber and Lyft finally admit they’re making traffic congestion worse in cities - The Verge](#).

Science Daily concluded: “For every 100 miles carrying passengers, Uber and Lyft drivers travel an additional 69 miles without a passenger, conservatively. [Ride-hailing increases vehicle miles traveled -- ScienceDaily](#)

A van that transports a resident to the city center or transit station will generally do the same. In addition to the trip to the transit center where the resident boards a bus or train, or the final destination (a grocery store or rec center, perhaps Folsom Field or City Hall), the van would drive back to the hub – then pick up the passenger at the end of the work-day or other function. If the rider had just used her private car, she would cover the distance once, to and from – parking at the transit station. The van will cover it twice when used for drop-off and pick-up. That doubles miles traveled. Uber, Lyft, other ride services and a van will *increase* vehicle miles traveled and impacts compared to using a private auto.

In sum, the mobility hub will not advance the goals of transit policies in the BVCP, or improve residents' quality of life. It might fail to get residents out of their cars, and if it doesn't – "success" on that metric will significantly increase traffic and related emissions by a factor of 69% or more.

Staff's failure to research this issue against the BVCP is similar to its failure to research density guidance and direction in the BVCP based on the proposed location for this development. GCA respectfully asks the Board to base its decision on the goals in the 2015 BVCP and the priorities in the 2020 Update. Past GCA comments questioned the efficacy of the proposed mobility hub, but neither the City nor the developer conducted any research.

What type of development would *advance* BVCP transit goals? Directing high density development with 100 or 230 units to a 15 Minute Neighborhood near transit, such as the Hill, North Broadway, Diagonal Plaza or the new Transit Center on Pearl.

In the event the Planning Board disregards the lack of transit access, Gunbarrel Subcommunity Planning and the BVCP -- and approves the development, I suggest that a condition be for staff to re-examine the proposed mobility hub based on facts and data in light of BVCP transportation goals and objectives.

Mike Chiropolos
Attorney & Counselor, Chiropolos Law
3325 Martin Drive - Boulder CO 80305
mike@chiropoloslaw.com
303-956-0595