

Land Use Coalition Pros and Cons of Proposed House Size Regulations

(January 8, 2008)

Proposed modifications to the Site Plan Review (SPR) standards section of Boulder County's Land Use Code (applicable to the rural portions of Boulder County), Section 4-806(A). The proposed changes and/or additions are shown in bold, underlined type:

2. The height, size, location, exterior materials, color, and lighting of proposed structures shall be compatible with the topography, vegetation, and general character of the applicable neighborhood or surrounding area.
 - a. **To provide a greater measure of certainty as to the size of development which is compatible with the general character of the applicable neighborhood or surrounding area, the following presumptions shall be used to review proposed Site Plan Review applications:**
 - i. **The applicable neighborhood or surrounding area is the area within 1500 feet from the applicable parcel.**
 - ii. **Development compatible with the general character of that applicable neighborhood or area is development that is of a size within 150% of the median residential floor area for parcels in the defined neighborhood or area.**
 - b. **Either the applicant or the Director may demonstrate that these presumptions do not adequately address the neighborhood compatibility of the proposed development.**
 - i. **Factors to be considered when determining the adequacy of these presumptions in addressing neighborhood compatibility include visibility to and from the parcel at issue, transportation patterns, topography, development patterns, and the boundaries of established subdivisions, communities or areas.**

According to the county's Land Use Dept., the median house size in rural Boulder County is about 3200 square feet; adding 50 percent would yield 4800 square feet as the maximum house size deemed compatible with the average rural location. The actual maximum size deemed compatible would vary greatly depending upon the prevailing size of existing houses in the area evaluated.

Arguments for the changes:

Boulder County has struggled for years to define the term "neighborhood". An arbitrary measurement of 1500 feet from a parcel's property line would be an easily understood and applied definition. Likewise, using 150% of the median residential floor area within this area as a standard should also be fairly easily understood and applied.

One of the most frequently heard complaints regarding new or enlarged buildings in the county

is their size relative to those existing nearby. Restricting such changes to somewhat larger than the median size of existing development nearby would inhibit rapid changes, and thus should significantly reduce such complaints regarding size.

Finally, both landowner-applicants and their neighbors would have a clear idea of what generally will be regarded as normal and the to-be-expected outcome from the Site Plan Review process.

Arguments against the changes:

The definition of neighborhood is completely arbitrary, and does not suit the very diverse characters of rural building lots. Although the standard minimum lot size in most of the rural areas of the county is now 35 acres, many subdivisions exist where lots are less than an acre. Also, issues obviously are different in the eastern portion of the county than in the mountainous areas of the west; topographic features commonly define neighborhoods in the rougher terrain of the mountains, while surrounding urbanization frequently dominates considerations in the eastern plains areas. The arbitrary 1500-ft. definition of “neighborhood” is too simplistic to capture such realities.

As indicated in the excerpt from the SPR criteria, development size is only one of the factors that SPR is supposed to balance. In order to be defensible and proper, governmental regulations on land use must show a compelling public interest in health, safety, and/or general welfare over the land owner's basic right to use his or her property as desired. In the SPR regulation under consideration here, the county asserts that there is such an overriding public interest in whether the visual impact of new residential development is compatible with the surrounding area (other potential impacts are addressed by different SPR criteria). Such an assertion is more than somewhat debatable at best. Over the years that the existing SPR criteria have been in effect Boulder County has been subject to much criticism and ridicule over its efforts to regulate house colors, architecture, etc. The trend of increasing size of new houses has been about the only compatibility issue of much public concern, and the county's Land Use Department's focus has shrunk over time mainly to the issue of these buildings' size relative to those existing nearby.

Boulder County faces some substantial hurdles in making a case that development in the rural county is sufficiently rapid to warrant major new restrictive regulations. Currently about 17,000 residences exist in the rural portions of the county, with new or replacement residences totalling only about 100 per year (much less than one percent). Of the new residences, many or most of the very large structures are associated with the county's existing Transferable Development Right (TDR) receiving sites. Originally intended as a means by which private land owners would be encouraged to sell building rights (TDRs) from large parcels of agricultural lands to developers of special county subdivisions, this program has come to be dominated by the county's Parks and Open Space Department which has been selling TDRs associated with Open Space purchases. Roughly 200 residences stemming from TDRs generated by this program, averaging about 7000 square feet in size, have been built during the past few years, with about 100 more currently in the pipeline. These constitute a major portion of the large houses recently built in the rural county. Since it is already controlled by the county, this program is the obvious place to make changes if large, new houses really are of concern.

Another category which has generated some discussion is replacement of existing residences with new, usually larger, houses (“scrape-offs”). The Land Use Dept. reports that fewer than 20 scrape-offs are occurring per year, which is roughly 1/10 of one percent of the total housing stock. This hardly seems to be enough to warrant much concern.

It is probable that most of the public perception and concern over development is associated

with construction occurring within the county's municipalities, which are not subject to regulation by Boulder County government. Given the small percentages which prevail in the rural county as indicated above (based upon figures supplied by the county's Land Use Dept.), greatly increased restrictions on development of individual, rural lots do not appear justifiable.

Even if a convincing case could be made that building size is the predominant factor in neighborhood compatibility, and that rural development is rapid enough to require significantly more regulation, the current proposal is deeply flawed in not taking lot sizes into consideration. The potential visual impact from a large house on a fractional-acre lot is inherently much greater than on a large lot with large setbacks. The county could probably make a reasonable proposal to require increasingly large setbacks with increased house size (where the ability to visually screen the new house does not exist otherwise). Instead the proposal is a simplistic formula based upon previous development which neglects to consider lot size.

In public discussions of this proposal, county staff have offered wildly diverse indications of the effects to be expected from this formula. These have ranged from an expectation that new residences' sizes will cluster at the maximum size calculated for their respective areas, to the opposite extreme that the formula will serve only as a starting point for negotiations by landowners wanting to build housing larger than the formula would allow. Most recently, the Land Use Dept. presented statistics indicating that 60 percent of the SPR applications from the past year would have exceeded the formula's limits, and an economic analysis based upon the assumption that housing construction would continue to produce about the same number and sizes of houses as in the recent past. Obviously these conflicting indications are major problems for anyone trying to make sense of the county's proposal, and do nothing to "provide a greater measure of certainty" regarding interpretation of the SPR criteria (the major objective of the new proposal, at least as stated within the proposal).

Since house sizes have generally increased during the years, areas where older house sizes prevail will generally find their "compatible" house size is smaller than 4800 square feet, in many cases much smaller. Currently areas desiring to adopt limits on maximum house sizes, among other things, have the option of voluntarily establishing a county Neighborhood Conservation Overlay District (NCOD). Even with much less than unanimous support by affected landowners required to establish these districts, NCODs have not been popular. The current proposal may in effect establish a county-wide NCOD by fiat, with county-imposed limits on house sizes.

Although it is not exactly clear in the proposal, as written it would seem to preclude the larger houses already existing in any given area of the county from adding any additional area, probably including outbuildings.

Several other factors should be considered in this discussion. Many of the older houses in the rural county have been rendered "legally non-conforming" through county mandates of increased setbacks. These are typically required because of increased traffic on the road in front of the house. According to the Land Use Code, "non-conforming" almost always means "should be eliminated". Some other residences were poorly designed or constructed in the first place, or have deteriorated to the point they should be replaced. The current rate of scrape-offs really should be of concern because it is too slow to accomplish these replacements, rather than being of concern because it is too fast.

Real estate values depend mainly upon development potential, either already built or possible in the future. Boulder County's increasingly restrictive land use regulations have the effect of encouraging building to the extent possible, while possible, and penalizing those who choose not to develop their land as much and as quickly as possible. The current proposal is a case where a significantly increased restriction may be imposed without much of a case being made for why it is necessary or desirable. This is the reverse of what ought to prevail if Boulder County is really

interested in encouraging rural landowners to help in preserving what remains of its rural character.

In some portions of rural Boulder County, the essence of rural good manners still prevails (mind your own business, not your neighbor's). In promulgation of any regulation, deference should be made in cases where there is no neighbor objection to the landowner's proposal. No such provision exists in the currently proposed regulation. To the contrary, it implicitly assumes that such neighbor objections to most or all development proposals will exist. Again, this is contrary to the objective of preserving rural character – which includes social attitudes as well as buildings and scenery.

Land Use Coalition (LUC) position on the proposed changes:

The LUC vigorously opposes the proposed changes in their current form for the reasons discussed above. We are in favor of sensible modifications to this section of the SPR criteria, and this has consistently been one of our major objectives for the Land Use Code revision process. Unfortunately this process has detoured from concentrating on improving the existing Code into an exercise which now seems mainly to be producing ever more restrictive regulatory proposals.

We might favor a proposal requiring increased setbacks for “large” houses, if sensible and logically structured. Any proposed regulation should address all of the issues raised above, including lot size, inherent potential for effective visual screening, identifying and addressing legitimate neighbor concerns, and a more sensible definition of “neighborhood or surrounding area”.

The current proposal would probably make sense, and accomplish some of its stated objective of adding some more certainty into the SPR process, if it was limited to assuring that SPR applications for houses below the size calculated by its formula will not be subject to any further scrutiny regarding size. Unfortunately, as currently proposed, it would serve either as a limit to house sizes in any given area (if the formula's size is actually treated as a limit) or just add to the general confusion regarding the SPR process (if the formula's size is actually just some sort of starting point for negotiations). In either case, the county has major clarifications to make regarding just what it actually is proposing, and how its proposal would be administered if adopted.