

MEMO

TO: Boulder Planning Commission, other interested parties

FROM: Lee Nellis FAICP

DATE: May 9, 2022

RE: Zoning Options for Affordable Housing

I have been chatting informally with individual PC members about how to make affordable housing possible in Boulder. It is a challenge.

I have three basic observations:

1. Enabling employee or owner housing as an accessory use to commercial development and allowing ADUs are potentially helpful supplements to an affordable housing program, but they are unlikely to result in a significant quantity of affordable housing being added.
2. None of the programs – grants, housing trusts, etc. - that you hear about in other communities will be possible until the zoning changes. I cannot imagine an even arguably affordable dwelling penciling out at one unit per five acres unless the land is sold well below market price.
3. There are other excellent reasons for revisiting the current five-acre zoning. Build-out at the five-acre density will irrevocably alter the character of the community. If that's ok, so be it (and we need to revise the general plan to say its ok). But there ought to be a conversation about this rather than passive acquiescence.

There are several ways that the current zoning could be changed, I am going to list the options here as a stimulus to conversation.

Employee Campgrounds. It would be possible to expand the length-of-stay permitted in campgrounds. My experience with employee campgrounds during the '70s-80s energy boom leads me to be wary of this, but with sufficient conditions and enforcement of the CUP, it is a possibility. I think the PC should ask employers if it would make a helpful difference.

Change the Minimum Lot Size to Average. A simple way to enable a few smaller lots would be to change the current minimum lot size in the GMU and LDR zoning districts to an average. This would allow large landowners to create a few smaller lots, while keeping ultimate build-out the same. There is no guarantee, of course, that anyone would take advantage of this flexibility. Even if someone does, it is unlikely to make a significant difference in housing availability or community character. Also, there is no guarantee that the resulting housing would be affordable.

Expand the Higher Density Zoning Districts. It would be possible to expand the MDR and/or HDR zoning districts. Given the lack of central sewerage and the terrain, I am not sure there is any obvious place where a map amendment makes sense. PC members should discuss the possibility though. Is there a place? It is also important to understand that you cannot impose conditions on legislative acts (which map amendments are), so there would be no way to guarantee that the change resulted in affordable housing. It could end up being a windfall to the landowner/s, expanding build-out without resulting in affordable housing.

Reduce the Minimum Lot Size in the LDR, or the GMU, or Both. The LDR and GMU have, by default rather than design, I think, become essentially the same. That's an issue with or without a discussion of affordable housing. But one way to reduce the cost of land for housing would be to reduce the minimum lot size in one or both zoning districts. That's not hard to do if there is agreement on how much to reduce it. There is no guarantee, however, that the reduction would be anything but a windfall for certain landowners.

Agricultural Digression. *We need to talk about the minimum lot size in the GMU in light of the general plan goal of preserving agriculture and community character. These discussions can't be kept separate for long, but affordable housing is on everyone's mind, so it is where we begin.*

Make Affordable Housing Subdivisions a Conditional Use. This sounds simpler than it is, but this option is most likely to facilitate the addition of affordable housing without making changes that create unearned windfalls and affect community character. It would reflect the same logic we used for commercial uses. Boulder does not have infrastructure or existing land use patterns that provide obvious guidance for the location of commercial uses or, even more so, higher density housing. It is more realistic to set performance standards that apply to these uses wherever they are proposed. The list of standards for an affordable housing project would resemble the one for commercial uses, but could go beyond it to include a requirement that all or some significant share (mixing in market rate units can be good both for the bottom line and the social mix) of the housing created be held in trust so that it is perpetually affordable. The performance standards could also enable the construction of attached housing, which offers another way to reduce cost.

Fix the Subdivision Regulations

Finally, these options for trying to encourage affordable housing would lead to land divisions if they're successful. The existing subdivision ordinances are not helpful in facilitating desirable land divisions or preventing undesirable ones. They are vague and process intensive. They require complicated applications, but provide little in the way of standards that tell a developer what the Town wants or aid the PC and Town Council in making decisions. You could take a step in this direction by adopting the minor subdivision amendments I proposed, but we can do the best job of rewriting the regulations for larger subdivisions if we know how they could facilitate the provision of affordable housing.

Subdivision is Permanent

A final thought. Fixing the subdivision regulations may sound daunting. Even the proposed minor subdivision amendments may seem complicated. I think that's only by contrast with a situation in which no one has had to wade through the existing regulations. But I want you to think about this:

Creating lot lines is, in our system of property law, a permanent decision.

There is no way the Town can say, "oh whoops, that wasn't a good idea." Land uses and buildings may come and go over time. The lot lines remain. Trying to remedy that situation is difficult and expensive, IF it can be fixed. Is it worth dealing with some complexity in making a decision that will have consequences for as long as we can anticipate?