

MEMO

TO: Boulder Planning Commission
FROM: Lee Nellis, FAICP
DATE: November 7, 2022

RE: Possible Steps After 11/17 Housing Meeting

This memo provides a list of ordinance changes that could be made to facilitate creation of more affordable housing in Boulder. It begins by pointing out the need for strategic public engagement in making those changes.

Before listing potential ordinance changes, it is important to point to the roots of any action you take in the general plan.

Get More People Involved

Appoint a Housing Working Group?

The PC could appoint a housing work group, chaired by a member of the PC, to review the results of the November 17 meeting and the recommendations made here, then advise the PC about which, if any, changes might make sense. Such a group must be representative of the diversity of interests in Boulder, encourage public participation in its meetings, and have a tight deadline.

Alternatives to a Working Group?

A series of meetings is not always the best way to engage people. Those who have the greatest need for housing choices are often also those who have the least time – between work and family – to participate. Would one or more well-structured events be better? I have been following the Adirondack North Country Association's *Dreaming of Home* project, which attempts to engage folks who are unlikely to attend multiple meetings to share their housing needs. Please check out the link below. Boulder does not have the resources of an organization like ANCA, but I encourage the PC to think about alternatives that might involve more people.

<https://adirondack.org/dreamingofhome>

Convene Potential Housing Providers

The PC should communicate with landowners who might be able to create affordable housing if the Town made some ordinance changes and promoted participation in housing assistance programs. This could take the form of a meeting, but will almost certainly also require one-on-one conversations. The goal should be to understand, as well as possible, what incentives landowners would need to provide space for affordable housing.

Potential Ordinance Improvements

Eliminate Confusion

Delete §153.189 NUMBER OF BUILDINGS ON A LOT, renumber accordingly.

This does not, despite its title, address the number of buildings on a lot. It just says that every building must be on a lot. Given the recently adopted definitions, not all buildings are on lots in subdivisions. Many are on parcels, which are properties that are not within a platted subdivision. This language has no role in the ordinances except to create confusion. It should be eliminated.

Amend the Table of Development Standards

Some change is necessary, if only for clarity, but exactly how the table should be changed requires discussion of the possible changes listed below. What seems certain to me is that the existing wording— which says that there can only be one dwelling unit per five acres - is unhelpful. Between allowing External Accessory Dwelling Units, which Boulder did before Utah law changed, and the fact that State law requires the town to permit Internal Accessory Dwelling Units, the language of the table is easy to misinterpret. It is accurate if one notices and understands the division between principal and accessory structures, but fails to tell the whole story of what is allowed. I will draft changes to this table after the PC has made its decisions about the rest of this list.

Please think of the remainder of the list as a menu of choices.

Allow Duplexes on Five Acres. Do you want to simplify the ordinance while facilitating provision of more affordable housing? Allow a duplex on all five-acre lots or parcels. Given the generous treatment of ADUs the Town has already adopted, the number of dwellings allowed has already, theoretically, doubled. I do not think that this change will generate much housing. How many ADUs have been built? And I don't think that most people who want a five-acre lot want to live in a duplex. Making duplexes a use-by-right would just simplify the flexibility that is already allowed by the current requirements for ADUs and, maybe, result in a more affordable unit or two. It is different only in that both units could be rented. But would the Town really take action against an owner who rents both the principal house and an ADU?

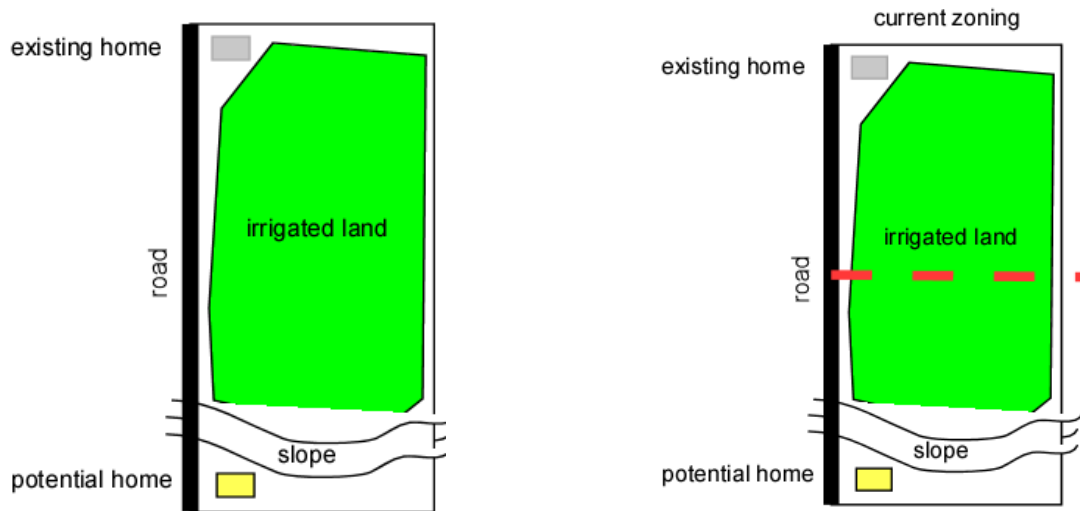
Make the Currently Allowed Density an Average. Several people have noted that the way arguably affordable lots are being created now is through sales by landowners to someone they know. Could the Town encourage such sales by making them easier? Yes, by making the required five-acres per dwelling (two dwellings if you include ADUs), an average instead of a minimum lot size. I have included an example to help you think about this on the next page.

Set Density Free (Transferable Development Rights). It would result in a better land use pattern if the Town expanded the idea of flexibility that is reflected in using an average density to allow landowners to transfer the right to development among parcels. There are three levels to this.

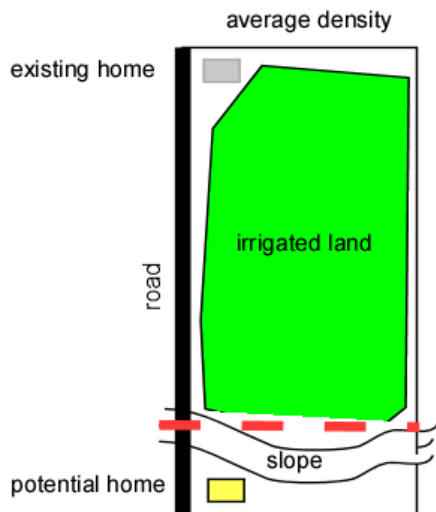
First, a landowner who has multiple parcels would be allowed to shift the right to build from one parcel to another to optimize access and access to infrastructure, keep productive land in larger parcels, and achieve both their own goals and those of the community. The average density would be maintained.

How Changing to an Average Density Would Work

Imagine 10 acres along a road (so that access is not an issue in this example) with an existing home and a patch of irrigated pasture. This parcel also includes a break in the terrain and a usable, non-irrigated building site above that slope. The current zoning allows the landowner only one way of creating a lot to build on or sell that homesite; to divide the parcel into two five-acre lots. This is unwise because it disrupts irrigation of the parcel and the present owner's management.



Doesn't it make more sense to allow the landowner to create two parcels that reflect the terrain and continued productive use of the property? There is no difference in the impact on the community; the same area is occupied by structures and there is the same number of wastewater systems, trips generated, visual impact, and demand for public services.



Second, and more complicated, landowners would be allowed to sell development rights to other owners who have property more suitable for development. This involves a lot of paperwork, but also great potential. The average density would prevail. You can adopt the first level without adopting this one, but given how seldom a deal like this can be worked out, I recommend allowing the possibility.

Third, and this leads into the next sections of this memo, there could be an incentive for transferring the right to develop to a better site if that transfer helps implement the general plan.

Provide Effective Incentives for Affordable Housing and/or Open Space. The existing subdivision ordinance tries to do this with its “cluster” language. But that has not generated a successful project, nor do I think it will.

First, experience shows that success in promoting open space development (we are going to drop the word “cluster”) often requires a procedural incentive as well as a substantive one.

I’ll explain that, but second, experience shows both that the incentive offered to the landowner must be substantial and that the project’s appeal to potential buyers must be compelling. You market a project like the ones I envision to people who have an inclination toward open space protection and being good citizens by helping provide affordable housing.

Procedural Incentives for Affordable Housing and/or Open Space. We’ll start here because there are fewer variations to consider. As Boulder’s ordinances currently stand, it is somewhat more difficult to create a “cluster” subdivision. The Town needs to make it easier. Clearly easier!

I have begun this in the draft bylaws. If the PC adopts those bylaws, projects that implement the general plan will be placed first on the agenda. That incentive doesn’t have great practical value, but symbolic values are important in communicating what the Town wants.

What is very practical is to ask why there is a ponderous preliminary plat procedure and whether a subdivision that clearly implements the general plan needs to submit a preliminary. Could it go from concept to final? The principal function of a preliminary plat in subdivision review is to evaluate proposed infrastructure for compliance with the community’s needs and standards. This is obviously more important for large subdivisions and, given, how little infrastructure there is in Boulder, more important in wherever the Town’s subdivision ordinances were copied from than in Boulder.

I am going to suggest that for proposed subdivisions which implement the general plan, which is to say for subdivisions that qualify for the incentives described below, and which create 12 or fewer lots (we can debate that number), the requirement for a preliminary plat be dropped. That will save landowners who are cooperating in implementation of the Town’s goals time and money. The “cost” of providing this incentive is that concept plan review must be well managed and complete. It can be more or less informal, as provided in the draft bylaws, but

it must clearly identify all the issues a proposed project raises and how those issues should be addressed in the final plat.

Substantive Incentives for Affordable Housing and/or Open Space. The substantive incentive the Town can offer a landowner who agrees to protect open space and/or provide affordable housing is an increased number of dwelling units and, thus (presumably) an increased financial reward. Such an incentive could take any of several forms, but wading into the possible variations will not do much to help everyone understand. I am therefore going to offer one version, on which discussion and questions can be based. I am going to put this in the question-and-answer format I like to use in ordinances. Don't be distracted too much by the numbers. They are subject to discussion.

Is it possible to create more than one homesite per five acres in Boulder? Yes, but only if the proposed development clearly implements the general plan.

The term homesite is used here in preference to "dwelling" because it is broad enough to include the ADUs the Town permits.

How do I have to implement the general plan to earn an increase in density? You must do two things.

First, you must permanently protect 100% of the significant open space resources on your property (minor exceptions may be possible for road and utility crossings and areas immediately adjacent to existing structures) including stream buffers, steep slopes, and irrigated lands. A conservation easement on these resources must be dedicated to the Town of Boulder on the face of the recorded plat and in a separate instrument that is filed before or simultaneously with the final plat. You may also want to take advantage of the tax benefits of permanent open space protection by working with a land trust. We encourage you to do so, but its your choice.

Second, one-third of the lots you create must be dedicated to perpetually affordable housing using the then current definitions and deed restrictions adopted by the Town.

If you do these things, as applicable, you will receive a density bonus.

The 'as applicable' acknowledges that it is possible that there is a parcel somewhere in Boulder that includes no significant open space resources. In that case, the landowner would be required only to provide the affordable lots.

How large will the density bonus be? You will be allowed to create up to one lot for every two full (no rounding up) acres provided that the proposed subdivision complies with the performance standards of the Open Space Subdivision Checklist.

May I also transfer development rights from open space resources on other properties? Yes. But only if those development rights permanently preclude development of significant open space resources on the land from which they are transferred and one-third of the lots they allow you to create are dedicated to perpetually affordable housing using the then current definitions and deed restrictions adopted by the Town.

Will I receive an additional density bonus for transfers? Yes. You will be allowed to create up to one lot for each full (no rounding up) acre provided that the proposed subdivision complies with the performance standards of the Open Space Subdivision Checklist.

That ought to get the discussion started.

Finally

It is entirely possible for Boulder to make all or part of these proposed ordinance improvements work **if** people are committed the goals of the general plan. If there is no such commitment, the Town needs to rewrite its plan.

There will be valid questions about the impact of higher densities. But those questions should be about the overall impacts of the permitted development rather than specific projects or lots (the tangible impacts of which should be mitigated by the adopted performance standards). To address and allay concerns about the overall extent of development, I suggest adding something like the following to the general plan.

The Town will, upon approving two-thirds of the build-out projected in 2022 (so, upon having approved 300 additional lots), immediately place a moratorium on further subdivision and initiate a community conversation (maybe we could call it a community audit?) about what has happened and future prospects. This process must lead promptly to any necessary ordinance revisions, including revisions of the permitted densities and density bonuses.