

MEMO

TO: Boulder Planning Commission

FROM: Lee Nellis, FAICP

DATE: December 2, 2022

RE: Following Up on the Forum - Options for Facilitating BES Housing Possibility

First, it was great to be in Boulder again. Thanks for all your hospitality. I will not wait four years to return.

Second, congratulations on sponsoring a successful public event. As always, however, the reward for doing good work, is more work! And so you are off and running with the three working groups.

It is important not to get too far ahead of the working groups, but I suggest that the PC at least briefly return to and evaluate the list of housing steps in light of what you learned at the forum. What I learned for sure – you may have other lessons to add – is that:

- we need to spend some time on the idea of employee housing, to add addressing it more completely to the list of housing steps, and
- beyond the need for housing, there are “homesteaders” (we can talk about what they would prefer to be called) for whom housing is not sufficient. They seek a land base on which to try to make a living. I will prepare another memo about this potentially important part of Boulder’s future after I work my way through a series of conversations – I was talking to someone at the American Farmland Trust yesterday – with people who have been struggling with this issue.

This memo is intended to begin the discussion of employee housing. We are all excited about the possibility of adding housing to the Boulder Elementary School parcel, but any ordinance changes we propose to facilitate that project will necessarily affect other properties and projects in the future.

Housing at BES and Other Employee Housing Questions

Substantial work needs to be done to assess the feasibility of placing a dwelling on the BES parcel. While the school district and its community council pursue that, the Planning Commission needs to think through both the impact of the Town’s zoning on the BES parcel (and there is some potential impact, as I explain below) and the larger concept of employee housing.

Its important to start with the fact that any employer may acquire or build housing that is then used by her or his employees. That housing just has to comply with the applicable ordinances. What the PC needs to focus on is housing that is provided in association with another use, accessory housing.

Definitions

This leads us first to a question about the clarity and utility of the definitions in the zoning ordinance. “Accessory Building” is defined at §153.011, which says that accessory buildings cannot include living quarters. I added a sentence saying that External Accessory Dwelling Units are separately defined when we made the changes re ADU’s. That was a last-minute effort to avoid an internal contradiction, but it is insufficient. An EADU can only be accessory to another dwelling, not to an institutional or commercial building or use.

So, there is still an internal contradiction that was created when §153.415, which both allows and encourages employee housing accessory to commercial uses, was adopted. That should be fixed, even if the PC decides to make no other changes. The simplest solution is to amend §153.011, as follows:

ACCESSORY BUILDING. A subordinate building detached from but located on the same lot or parcel as the principal use, the use of which is clearly incidental to and ~~accessory to~~ supportive of that of the principal use. ~~An Accessory Building shall contain no living facilities. External accessory dwellings are separately defined.~~

This revision eliminates two mistakes, using the word “accessory” to define itself and setting a standard (no living quarters) in a definition. It also makes it clear that this definition applies to both lots and parcels.

This revision leads us to other housekeeping.

ACCESSORY DWELLING UNIT, EXTERNAL. An accessory dwelling unit that is in a separate structure, but on the same lot or parcel as the primary dwelling to which it is accessory, and, when rented, is rented for 30 or more consecutive days. For the purposes of this definition, an ADU may be attached to the primary dwelling via a sidewalk and/or a breezeway, or through a garage, but must have a separate entrance.

The change to “lot or parcel” is necessary to be consistent with the recent clarifications regarding land divisions. This definition incorporates standards (rental for more than 30 days and the requirement for a separate entrance). As you know, I try not to mix definitions and standards, but there was no logical place for these standards elsewhere in the ordinance unless a separate set of standards just for EADUs was added. That seemed unnecessary at the time.

Then we come to a definition that needed a little further thought before it was adopted.

ACCESSORY DWELLING UNIT, COMMERCIAL. A dwelling unit for an employee of or the owner that is on the same lot or parcel as a commercial use. It may be internal to a commercial structure or external. It must be approved as part of the CUP for a new commercial use, or where it is proposed to add an accessory dwelling to an existing commercial use, approved via an amendment to the existing CUP or, for commercial uses that predate the requirement for a CUP, via the CUP process established by this ordinance. ~~Nonconforming commercial uses may not add an accessory dwelling.~~

I corrected a typo and added the “or parcel” in the revisions proposed above. But this was problematic it created a class of existing commercial uses – those for which there is no CUP – that are prohibited from having an accessory employee dwelling (as noted above, such a business could have employee housing elsewhere, in compliance with the zoning for that location). Upon reflection, I am reasonably sure that’s not the right policy, so I propose changing this to allow addition of an accessory dwelling to an older commercial use via the CUP process.

Tables

Clarifying the definitions leads us to think about the tables in the zoning ordinance.

The use table makes accessory commercial dwellings potentially compatible in the GMU (which is where future commercial uses will be), but neglects to allow them for the existing commercial uses that are still zoned “C.” So, consistent with the revision in the definitions I propose above, revise the table adopted at §153.117 to add a “PC” where the “C” column and Accessory Commercial Dwelling Row intersect.

Next, we come to the table of dimensional standards adopted in the table at §153.117. These standards affect the idea of adding a dwelling to the BES parcel. Lot coverage (the area covered by all buildings) in the zoning district in which the school is located is limited to 30%. It is hard to measure accurately from aerial images, but I think the existing school building and sheds occupy roughly 16% of the parcel. That’s not prohibitive, but lot coverage bears watching as plans are formulated.

What is prohibitive in this table is the maximum size of an accessory building, which is set at 1000 SF. The only reason that limit has not become an issue in Boulder yet is that agricultural accessory buildings are generally exempt from the Town’s rules. This standard will have to be changed to permit a dwelling of reasonable size at BES. We need to talk about how much to change it, and that may depend on other changes that are discussed below.

Also, the table of development standards relies on the International Building Code for the side and rear setbacks. This was intended, I suppose, to allow sheds and similar accessory structures to come up to, or at least very close to, the lot lines. Whether that is a good idea or not, how helpful is it to the ordinary citizen to cite the building code here? It is not! These requirements should be replaced with simple distances so that everyone understands the rules with a glance at the table. That will require some discussion. The table does set a front setback of 30 feet. That probably can be met by a new dwelling, but again, needs to be kept in mind. Given the minimal setback of the school building, the setback would not need to be so deep.

Districts

So, there are some challenges for employee housing in general and a dwelling on the BES parcel in particular in the definitions and dimensional standards set by the zoning ordinance. Those are easily corrected. And if that is done, it is clear the accessory dwellings

are permitted with all commercial uses, as guided by the commercial development standards.

But the BES is not a commercial use. The PC can respond to this in one of three ways.

Change the Zoning District. The PC could change the table of uses for the MDR zoning district to specifically permit (either by-right or with a CUP) accessory employee housing. I advise against this because the change would necessarily apply to all properties in that district, most of which are residential. It would also raise the question of why the change was not made for the other zoning districts. You don't need that complication.

Change the Definition. The PC could expand the definition of commercial to clearly include the school and other institutional uses (town hall, the fire station). This isn't hard to do (see below) and allows the BES to have an accessory dwelling.

COMMERCIAL. The generic term this chapter uses to refer to the conduct of business, including, but not limited to, retail sales, the provision of services, and industrial activities. By itself, this term tells one nothing about which commercial uses are or are not permitted. Please refer to the table of uses and standards established by §§ [153.115](#) et seq. Standards that apply to "commercial" uses apply to all of them, except when a specific use is specifically exempted. This term specifically encompasses more specific terms that were used in this chapter prior to the 2021 amendments, including automotive care, commercial sales and services, lodging, professional offices, recreation facilities, restaurants, and veterinary clinics. For the purposes of this ordinance, this term also includes institutional uses like churches, government buildings, and schools.

Is there a drawback to this seemingly simple change? That depends on your perspective. It would apply the requirement for a CUP and the commercial design standards to churches, private schools (which I would say are commercial, anyway, but that's not clear) and government buildings. Is that the right policy?

Create a New Zoning District. Taking the long view of Boulder's future might suggest (and I know this has been discussed in the past) creating a new Institutional Zoning District or, better yet because of the intent it expresses, a Town Center Zoning District. This would require discussion, but allow the possibility of some uses-by-right (with site plan review by the PC, probably, a somewhat simpler process than a CUP). This is a topic that could be brought before the Community Vision Working Group.

Summary

The PC needs to make the changes proposed above in the definitions and tables of the zoning ordinance to clarify the possibilities for employee housing as an accessory use. This is important whether the BES housing project is feasible or not.

The PC needs to make at least one change in the table of dimensional standards to enable the addition of a dwelling at BES. It could also make the dimensional standards more useful for everyone as long as it is amending that table.

The BES either needs to change the definition of commercial to enable the BES housing project or create a new zoning district (or both, these ideas are not mutually exclusive). Creating a new zoning district has potential advantages, but will require more process,.