



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: August 29, 2018

AGENDA TITLE: Continuation of a second reading and consideration of a motion to adopt Ordinance 8256 amending standards for accessory dwelling units and owner accessory units including Section 4-20-43, “Development Application Fees,” Title 9, “Land Use Code,” and Section 10-3-19, “Short-term Rentals,” B.R.C. 1981, and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Jim Robertson, Director for Planning, Housing + Sustainability (PH+S)
Kurt Firnhaber, Deputy Director for Housing (PH+S)
Lesli Ellis, Comprehensive Planning Manager (PH+S)
Jay Sugnet, Senior Planner (PH+S)
Jean Gatza, Senior Planner (PH+S)
Chris Ranglos, Associate Planner (PH+S)
Brayan Marin, Planning Intern (PH+S)

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider updates to the accessory dwelling unit and owner accessory unit regulations. This is a continuation of the public hearing held on June 5. The Housing Advisory Board and Planning Board held public hearings on April 24 and May 3 respectively.

**ACCESSORY
DWELLING
UNIT UPDATE**

On Feb. 21, 2017 City Council requested that staff bring forward a list of potential incremental changes to city regulations governing accessory dwelling units. Council has identified this as a potential work plan item for the past several years. On Aug. 22, 2017 staff presented council with a list of potential changes that would remove some of the barriers to creating accessory units. The approach was to identify incremental changes rather than wholesale changes to the existing regulations.

Since Aug. 22, staff conducted additional research and community engagement to refine the “why” and purpose statements for the project, update the list of incremental changes, and gauge community support for encouraging more accessory units in the city. Most recently, council held

a study session on Feb. 27, 2018 to discuss the results of the community engagement, research and provide feedback on the options for incremental code changes. This memo summarizes the background of accessory units in Boulder, community engagement to date, and the list of recommended incremental code amendments with analysis.

There are 12 options for incremental changes in this memo that address parking, saturation, nonconforming structures, allowed zones, unit size, lot size, design, the five-year requirement, permit renewals, short-term rentals and accessory unit occupancy. This is more than the five options proposed to council in August as a result of feedback from the community engagement and City Council input. The 12 options are described in the Recommended Code Change and Analysis section of the memo and are reflected in the recommended ordinance in **Attachment A**. Additional minor amendments in the recommended ordinance are summarized in **Attachment B**.

Questions raised at the May 22 City Council first reading of the ordinance are addressed in either this memo or in a separate communication to council that was sent prior to the public hearing.

STAFF RECOMMENDATION

Staff finds that the ADU Update Ordinance, as recommended, would achieve the project goals to simplify the regulations and remove apparent barriers to the construction of this housing type in ways that are compatible with neighborhoods. Based on this conclusion, staff recommends the following motion:

Motion to adopt Ordinance 8256 amending standards for accessory dwelling units and owner accessory units including Section 4-20-43, “Development Application Fees,” Title 9, “Land Use Code,” and Section 10-3-19, “Short-term Rentals,” B.R.C. 1981, and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** The recommended ordinance provides a positive economic impact by creating opportunities for diverse housing types in the form of accessory units and providing a potential source of income for existing middle-income homeowners to remain working and/or living in Boulder.
- **Environmental:** Providing diverse housing opportunities in the form of accessory units allows workers in Boulder to live in Boulder, thereby reducing in-commuting and advancing the city’s overall climate commitment goals.
- **Social:** The ability to create accessory units allows middle income homeowners the opportunity to generate addition income and for many to remain in Boulder. This helps to provide important social and economic diversity.

OTHER IMPACTS

- **Fiscal:** It is anticipated that additional accessory units will not have a significant impact on city finances or infrastructure.
- **Staff Time:** The simplified regulations are expected to reduce the amount of staff time required to answer questions from homeowners and assist amateur developers (i.e., homeowners) in creating an accessory unit.

BACKGROUND

One key component of the city's Public Engagement Framework is to work with the community to define the problem we are trying to solve and clearly articulate the purpose of a public process.

“Why” Statement

Accessory units have been discussed as one tool to address Boulder's housing challenges over the past decade or more to help provide “a diversity of housing types and price ranges,” which is a core value of the Boulder Valley Comprehensive Plan. The current regulations regarding accessory units are intentionally restrictive and have resulted in a relatively small number of legal accessory units (231 as of March 2018) being constructed since the first ordinance was adopted in 1983.

Project Purpose Statement

The city, with the community, will craft a proposal for incremental changes to the relevant regulations addressing accessory units (i.e., Accessory Dwelling Units (ADUs) and Owner's Accessory Units (OAUs)) to simplify the regulations and remove apparent barriers to the construction of this housing type in ways that are compatible with neighborhoods.

The ADU Update project is intended to achieve the following:

- Provide additional flexibility to homeowners to stay in their homes by allowing for options that may either create supplemental revenue sources or allow for aging in place on the property.
- Increase workforce and long-term rental housing opportunities while balancing potential impacts to existing neighborhoods.

What is an Accessory Unit?

An accessory unit, also known as an “in-law apartment” or “garage flat”, is an additional living unit that has separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit on a single-family lot. The land use code defines three types of accessory units:

- An **Accessory Dwelling Unit (ADU)** is defined as “a separate and complete housekeeping unit within a single-family detached dwelling unit.” ADUs are the most common accessory unit type in the city.
- An **Owner Accessory Unit (OAU)** is defined as, “a separate and complete single housekeeping unit which is accessory to the owner's occupancy of the lot or parcel upon which the unit is located. OAUs can be within or attached to the primary structure or located in an accessory building (e.g., above a garage).
- A **Limited Accessory Unit (LAU)** is a separate and complete housekeeping unit which is accessory to the owner's occupancy of the lot or parcel upon which the unit is located that has been converted from an existing nonconforming duplex or two detached dwelling units located on the same lot within the R1 use module. The purpose of a LAU is to bring an existing non-conforming duplex into compliance with the underlying zoning. To date, there is only one LAU in the city.

Currently, ADUs are limited to the following zoning districts: RL-1, RL-2, RE, RR-1, RR-2, A and P; and OAU's are limited to the following zoning districts: RE, RR-1, RR-2, and RMX-1. The full text of the current regulations pertaining to accessory units is available [here](#).

History of Accessory Units

- 1975: The city began to explore accessory units as a housing option.
- 1983: First Accessory Dwelling Unit ordinance adopted to:
 - provide a broader mix of housing choices for various ages and incomes, while preserving single-family neighborhood character;
 - reduce the number of illegal and unsafe rental units constructed; and
 - offer homeowners a way to offset the increasing cost of living in the area.
- Late 1980s: First amendments to the 1983 ordinance. Primary dwelling must be at least five years old (allow accessory units for existing homeowners).
- 1995: Allowed accessory units in a garage or carriage house; and when the property sells, nearby owners on a waitlist receive an opportunity to apply for an accessory unit and the new owner must sign a Declaration of Use within 60 days of ownership transfer.
- 1997: Expanded certain accessory units into what is now the RMX-1 zone.
- 1998: Matched license renewal timing with rental licensing requirements.
- 1999: Created minimum ADU size of 300 square feet; reduced neighborhood notification to adjacent properties only; allowed transfer of an accessory unit permit to new homeowner under certain circumstances; and allowed owner to sign a Declaration of Use rather than remove kitchen when accessory use discontinued.
- 1999 and 2014: Community generated Toolkits of Housing Options (2014 version available [here](#)) identified potential amendments to make the ordinance more effective.
- 2012: A study conducted by the city (available [here](#)) included a survey of accessory unit owners, a national best practice review and identified barriers to the creation of the units.
- 2016: As part of the Boulder Valley Comprehensive Plan Community Survey (available [here](#)), 62 percent of the respondents were supportive of the statement "Allow options for residential infill such as accessory dwelling units and small detached homes in some single-family Residential Neighborhoods." 28 percent were opposed to the statement.
- 2017: Accessory unit owner survey updated (see summary below).
- 2018: As of May, there are 231 legal accessory units in the city representing less than 1/2 of one percent of the housing stock.

2017 ADU Survey

A survey was sent to the 230 owners of accessory units in Boulder to update the 2012 study. The 2017 survey response rate was 70 percent and includes a comparison of the 2012 and 2017 results. The full report is available [here](#), and a summary of key findings is below:

- For most respondents (74 percent), supplemental income through rental of the accessory unit was the reason they had created or retained the accessory unit; supplemental income was also seen as the primary benefit.
- When asked if they had noticed an increase in their property taxes after building their accessory unit, 20 percent said they noticed a large one and 18 percent said they noticed a small increase. About 63 percent said they had not really noticed an increase or could not remember.

- When respondents were able to make an estimate of the annual household income of their accessory unit tenants:
 - 35 percent were estimated to have incomes of less than \$40,000;
 - 40 percent were between \$40,000 to \$80,000; and
 - 25 percent were more than \$80,000.
- Overall, about one percent of accessory unit owners reported receiving occasional complaints about their unit from their neighbors. When examined by type of unit, OAU owners received zero occasional complaints, while one percent of ADU owners reported receiving occasional complaints.
- Sixty-four percent rent long-term and 11 percent rent short-term.
- Seventy-three percent are within the detached single-family home (52 percent are in the basement).

PUBLIC INPUT

Since the council direction in August, staff has engaged community members to provide feedback in multiple ways.

- **250** people “shared their ADU story”.
- **190** people attended open houses in Nov. and Dec. 2017 with staff presentation, Q&A, feedback forms.
- **26** people attended an open house in Mar. 2018 to share information and learn about the city’s new online platform Be Heard Boulder.
- **194** people took the Be Heard Boulder online survey.
- **26** individuals spoke to Planning Board and the Housing Advisory Board.
- **10** meetings with groups and city boards, and numerous meetings with individuals.

These activities are summarized below, additional detail is available in **Attachment C**, and the verbatim feedback can be found on the project website [here](#).

Share Your ADU Story...

The ADU Update project website asked the community to share their experiences with accessory units in Boulder. Over 270 submissions were received between Nov. 10, 2017 and Mar. 21, 2018. The city sent the request for community submissions through various means (City Planning email list, NextDoor notices, ads in the Daily Camera, postcards to 10,973 households living within 300 feet of existing legal accessory units, and a survey to 230 ADU owners).

Commons themes from the input received:

- Many neighbors of accessory units who received a postcard reported not being aware that one or more accessory units existed in their neighborhood.
- Respondents showed overall strong support for accessory units as one tool to address Boulder’s housing affordability challenges.
- People expressed concerns with accessory units as rentals and rental housing in general. Many perceive rentals, generally, as a root problem of neighborhood nuisances (e.g., noise, parking, trash, etc.). Many believe the city is not doing enough to address these nuisances.

- Stories illustrate how important accessory units are to households (e.g., housing for family members with special needs, additional income enabling them to stay in Boulder amid rising living costs, providing an option for aging in place, providing socio-economic diversity in the community, etc.).

Nov. 27 Open House

The event was held at St. Paul's United Methodist Church from 5-7 p.m. Eighty-eight people participated in the open house format that included a brief staff presentation followed by a 30-minute question and answer period. Forty-three people shared their thoughts via a feedback form. The following are general themes:

- General support for the project purpose and why statements.
- General support for changes to accessory unit regulations: to create additional diversity in the community, to allow empty nesters to age in place, to provide housing for family members and to provide additional affordable rental opportunities.
- Support for keeping in place current requirements regarding owner occupancy.
- Support for certain accessory unit changes (i.e., saturation, size) to provide more flexibility.
- Concern with potential impacts of additional housing units in terms of nuisances that many associate with rentals (e.g., trash, noise, parking, etc.).
- Disagreement over whether or not short-term rentals should be allowed in accessory units.

Of the 46 comments submitted, 31 responses were supportive of all or some of the incremental changes, 6 were opposed to changes, and 10 would support if certain conditions were met.

Dec. 11 Open House

The event was held at Shining Mountain Waldorf from 5-7 p.m. Eight-nine people participated in the open house that included a brief staff presentation followed by a 30-minute question and answer period. Twenty-nine people shared their thoughts via a feedback form. The feedback was similar to the November event with the following additions:

- Requests to address tiny homes, Homeowner Association restrictions on accessory units, and grandfathering of existing illegal units.

Of the 29 comments submitted that evening, 23 were generally supportive of all or some of the incremental changes and 6 were opposed to the changes.

Mar. 15, 2018 Open House

The event was held at the Boulder Public Library - Canyon Theater from 5:30 – 7:30 p.m. Twenty-six people participated in a similar format to previous events. The feedback was also similar to the November and December events with the following additions:

- Grandfathering of short-term rentals at the expense of new ADUs seems unfair and discriminatory.
- Consider what would make deed restriction more attractive to people.
- There is a disconnect between the incremental principle and compatibility of other types of new development occurring in neighborhoods – why are we going so slow?

Be Heard Boulder



The city launched a new online engagement platform in March that featured the ADU Update. A survey was created to gather community input on the staff recommendations for regulatory changes. A link to the Be Heard Boulder webpage is available [here](#) and a summary report of the survey results is available [here](#). Much of the feedback is similar to what community members shared previously, below is a summary of feedback focused on new input:

Parking

- Similar to previous feedback, support and opposition was expressed for removing the one additional off-street parking requirement.
- Some were concerned with using the Neighborhood Parking Permit (NPP) program areas (either that parking should not be required in an area that has managed parking or that the NPP areas are not all the areas of Boulder with parking problems).
- Some were supportive of the compromise proposed by staff to use the NPP program areas as a proxy for where to continue the parking requirement.

Short-term Rentals

- Staff initially proposed not to change the current policy of allowing short-term rentals in accessory unit, however, council feedback at the study session was to prohibit short-term rentals for new owners.
- Survey participants were split on this issue. Some view the prohibition as necessary to address the perceived nuisances of short-term rentals while some view the prohibition as unfair and over regulation.

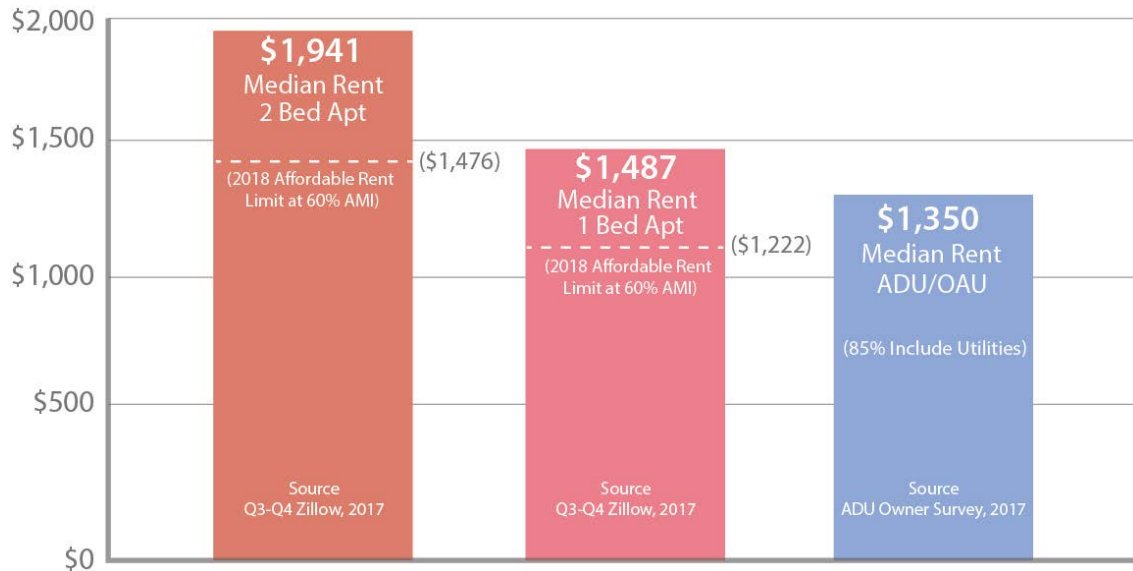
Summary of Key Community Concerns

Community members involved to date identified the following key concerns:

- **Neighborhood Nuisances** – while the majority of residents appreciate and enjoy their neighborhoods and neighbors, many are concerned with current rentals and associated nuisances (e.g., parking, trash, noise, etc.).
- **Over Occupancy** – although occupancy limits are the same for a home with an accessory unit and a home without, many in the community are concerned that the city is not adequately enforcing current regulations in other rental situations.
- **Owner Occupancy** – keep this provision, as expressed by overwhelming support.
- **Short-term Rentals** – strong opinions were expressed on both sides of this policy question. Allowing short-term rentals (e.g., AirBnB) is a contributor to neighborhood nuisances and is contrary to the project purpose to “...increase workforce and long-term rental housing opportunities...” However, many current owners are depending on the anticipated income to finance the construction of their accessory unit.
- **Illegal Rentals** – concern that illegal rentals throughout the city should be addressed prior to allowing any additional accessory units.
- **Saturation** – while the majority of feedback to date is supportive of increasing the saturation rate, there continues to be concerns voiced about additional rental properties in single-family neighborhoods.
- **Affordability** – concern was expressed for both accessory unit rents charged and the future appreciation of the accessory unit property and impact on surrounding properties.

National research shows that accessory units are typically rented well below market rents (58 percent of homeowners report renting below the market rate).¹ Boulder accessory unit rents are lower than market rents and often include utilities (see chart below). The average size of an ADU is 711 sq. ft. and an interior OAU is 738 sq. ft. Therefore, 2-bedroom apartments are more comparable; however, 1-bedroom apartment rents are also included for context. In either case, 88 percent of all accessory units in Boulder are affordable to a household earning 75 percent of the area median income.²

How affordable are ADUs in Boulder?



As for property values, the 2017 Boulder ADU Survey shows that 20 percent of accessory unit owners noticed a significant increase in property taxes, 80 percent either noticed a small increase, no increase or don't remember. In addition, most lending institutions do not allow appraisals to factor in the expected rental income from an accessory unit to estimate market value of a residential property. Because of this and other factors, homes with accessory units were found in one study to be undervalued by up to 9.8 percent.³

- **Permanent Affordability** – staff heard a desire from some community members that any new accessory units created should be deed restricted to address escalating housing prices.

Staff has conducted research on efforts elsewhere to ensure the affordability of ADUs. The following paragraphs summarize that research.

¹ Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver (Jul. 6, 2017) http://turnercenter.berkeley.edu/uploads/ADU_report_4.18.pdf

² [Maximum rents](#) for affordable housing are established by the Colorado Housing and Finance Authority based on Boulder's area median income to assure that rents are not more than 30 percent of a household income.

³ Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver (Jul. 6, 2017) http://turnercenter.berkeley.edu/uploads/ADU_report_4.18.pdf.

Santa Cruz has an established an optional fee waiver program in exchange for a permanent deed restriction of ADUs; however there has been little activity likely due to the minimal compensation of \$14,000 in fee waivers in exchange for the obligation to rent to a household earning 50 percent Area Median Income (AMI) or lower. The city recently launched a new pilot with Habitat for Humanity to build accessory units for seniors (only 3 to date) with the purpose of allowing them to remain in their homes. The pilot provides three loans:

- \$80,000 loan from the city at 3 percent interest due at the time of sale or 30 years;
- \$80,000 loan from Habitat at 0 percent interest also due at the time of sale or 30 years;
- \$50,000 loan for from Habitat to cover the volunteer labor at 0 percent interest and due at time of sale or forgivable after 30 years.

Rents are restricted ONLY for life of the loans at 60 percent AMI.

Denver is in the process of creating a West Denver Pilot with Habitat for Humanity (west of I-25 near Colfax) for predominantly lower income households to help keep up with the rising costs of homeownership. There are a number of components to keep costs down (i.e., pre-approved prototype designs, volunteer labor and donated building materials) and the following loans:

- \$25,000 loan from city's housing fund at 0 percent and due at time of sale or 30 years;
- Balance of cost loan from Fannie Mae HomeStyle Renovation (allows borrowers to make home improvements with a first mortgage, rather than a second mortgage, home equity line of credit, or other costlier methods of financing).

Rents are restricted for 20-30 years at 80 percent AMI. A key component of this future pilot is that the city provides funding and therefore the transaction is voluntary and addresses the state prohibition on rent control (see below). Council requested that staff explore this type of program as a future workplan item, possibly as part of the middle-income down payment assistance program.

The state of Colorado prohibits municipalities from controlling rents. An exception exists for voluntary agreements. For an agreement to be considered voluntary, the owner must have the option to charge market rents and there must be consideration for the owner's agreement to limit rents. This consideration could be monetary (e.g., the municipality funds the unit in some way); or could be a bonus to incentivize charging lower rents (e.g., increased occupancy, increased unit size, etc.).

BOARD AND COMMISSION INPUT

The Housing Advisory Board held public a hearing on April 24, deliberated on May 7, May 14 and finalized deliberations on May 21. Much of the discussion occurred in the context of affordability and neighborhood impacts. While the Board could not agree on a specific mechanism for affordability and mitigating neighborhood impacts, the Board supported the 12 options by a majority vote, with some caveats.

The Housing Advisory Board conducted a straw poll on each of the 12 options and those results are documented in the board recommendation (**Attachment D**). The recommendations that differ from the staff recommendation are noted in *blue italics* in the section below.

Planning Board held a public hearing on May 3 and made the following motions (H. Zuckerman recused):

- On a motion by B. Bowen seconded by D. Ensign the Planning Board voted 6-0 to recommend City Council adopt an ordinance amending standards for accessory dwelling units and owner accessory units including Section 4-20-43, “Development Application Fees,” Title 9, “Land Use Code,” and Section 10-3-19, “Short-term Rentals,” B.R.C. 1981, and setting forth related details as discussed and modified during the board deliberations.
- On a motion by C. Gray seconded by L. Payton the Planning Board voted 6-0 to further recommend that City Council consider incentives for permanently affordability, landmarking and net zero opportunities within the OAU/ADU revisions within a time frame City Council finds appropriate.
- On a motion by J. Gerstle seconded by L. Payton the Planning Board voted 6-0 to further recommend that City Council to move ahead with Subcommunity Plans in an expedited way to deal with many issues that are in direct concern with ADUs and OAUs.

Planning Board conducted a straw poll on each of the 12 options and those results are documented in the meeting minutes (**Attachment E**). The recommendations that differ from the staff recommendation are noted in *blue italics* in the section below.

RECOMMENDED CODE CHANGES AND ANALYSIS

What is Not Proposed to Change

The staff recommendation does not suggest changing important safeguards for health, safety and community compatibility including, but not limited to:

- Building code requirements (e.g., life safety regulations);
- Zoning code requirements (e.g., building setbacks and height limits);
- Occupancy limits (e.g., no more than 3 or 4 unrelated persons); and
- Owner occupancy requirements (e.g., owner must live in either the main house or the accessory unit).

Options for Incremental Changes

The following are incremental changes to the regulations based on the issues identified from the 2012 and 2017 ADU surveys, specific cases brought before the Board of Zoning Adjustments, input from the Open Houses, the online “Share your ADU story...”, feedback from Be Heard Boulder, meetings with city boards and commissions and staff experience in working with property owners who would like to create accessory units.

The following 12 options for change were evaluated using the follow criteria that relate directly to the project purpose statement:

- Simplify the regulations;
- Remove apparent barriers;
- Balance potential neighborhood impacts;

- Increase workforce and long-term rental housing opportunities; and
- Provide additional flexibility to homeowners to stay in their homes.

The 12 options are ordered from the greatest barrier to create an accessory unit to the least. Although it is difficult to estimate how many accessory units could be created by changing one or more requirements, staff believes that the two greatest impediments currently relate to parking and saturation. The recommended ordinance addresses the 12 options and is **Attachment A**. Additional minor amendments to the Land Use Code as shown in the recommended ordinance are summarized in **Attachment B**.

1. Parking (9-6-3(a)(2)(B), (3)(C) and (4)(A), B.R.C. 1981)

Recommendation. Remove the parking requirement for all parcels in the city. *Staff initially proposed to Planning Board and the Housing Advisory Board to only remove the one additional parking space requirement for parcels outside a Neighborhood Parking Permit program area in response to council feedback at the Feb. 27 study session (see discussion below).*

Background. Parking has been cited as one of the more significant obstacles to creating an accessory unit. Some properties cannot easily accommodate an additional off-street parking spot, while other areas are more conducive. The parking standard is generally to provide one additional off-street parking space for ADUs and OAU's in addition to the standard parking requirement for that zone district. In line, or tandem, parking is not counted as two or more spaces. Also, a homeowner must first meet the current parking requirements of the zone and then provide the additional space(s) required by the accessory unit. The original intent of the parking requirement was to reduce the potential impact of additional cars parked in the street as a result of the accessory unit. Few other cities in North America continue to require off-street parking for accessory units.

Community Feedback Themes

- Additional vehicles are guaranteed with an accessory unit and that exacerbates existing parking problems in particular neighborhoods.
- Recognition that parking may be an issue in some areas, but many process participants reported it is not an issue where they live.
- Providing affordable housing options is important enough to remove the barrier of parking provision.
- The future of transportation is changing dramatically, and parking should not be a consideration.

Analysis. Establishing an accessory unit on a property does not increase the occupancy limits for a property, so the parking demand should not be any greater than that of a single-family dwelling that was adding a roomer. The number of cars at a residence is determined by who lives there and at what life stage – not the type of structure they live in (i.e., a senior couple has very different car ownership patterns than a couple with several teens of driving age). The 2017 ADU Survey showed that 68 percent of all accessory unit tenants had one car, 23 percent had 2 cars and 9 percent had no car. The average car ownership for accessory unit tenants is 1.1 and the average occupancy is 1.51.

At the Feb. 27 study session, council expressed discomfort with removing the parking requirement entirely and one member requested a street by street analysis of parking. Staff indicated that this would be a time consuming and imprecise process. Instead, staff proposed to Planning Board and the Housing Advisory Board to not require parking where parking is not a documented issue for residents (i.e., outside of existing Neighborhood Parking Permit Program (NPP) areas). Both boards unanimously recommended against the staff proposal arguing that parking should not be required in a NPP or any other part of the city.

The NPP is a mature program and is meeting many of the community needs for which it was originally designed. However, since the creation of the NPP program in the mid-1990s, the city's approach to parking management has evolved into a holistic focus on access management, including recognition that parking spaces in the public right-of-way are an integral part of community infrastructure and valuable public assets. Community Vitality is in the process of updating the program to improve the efficiency of applying, creating, administering and enforcing NPP areas (<https://bouldercolorado.gov/parking-services/npp-update>). The primary benefit of using the NPP as a proxy for parking issues is that it is neighborhood initiated and voted upon and is a dynamic tool that changes based on changing parking conditions. See map of current NPP areas [here](#).

Currently, a variance process is in place to allow parking in the front yard setback. However, a variance is designed to address limited situations where a hardship is proven. As a result, very few variances have been granted over the years. Often an applicant cannot meet the parking requirements for the primary dwelling, in addition to the one additional space requirement for the accessory unit. This is a citywide issue not directly related to the ADU Update process. Council identified changes to parking regulations as a priority after the ADU Update and Community Benefit. Known as Long-term (Phase II) Parking Code changes, this is a comprehensive update to the parking regulations including but not limited to parking maximums, parking by land use, automatic parking reductions, more unbundled parking requirements, special parking requirements along transit corridors, shared parking requirements etc. The anticipated timeframe is 2018-2019.

2. Saturation (9-6-3(a)(2)(A), B.R.C. 1981)

Recommendation. Increase the saturation rate from 10 to 20 percent.

Background. Under current rules, no more than 10 percent of properties within a 300-foot radius of the applicant's property may have an ADU in Residential – Low and Public zoning districts. In Residential – Estate, Residential – Rural, and Agricultural zoning districts this provision applies to properties within a 600-foot radius of the applicant's property.

In addition, legal nonconforming structures are included in calculating the 10 percent limitation factor. These are typically duplexes, but sometime include apartments (see #3 below).

The intent of these provisions was to prevent an overabundance of non-single-family units in predominantly single-family neighborhoods. This provision is unique among accessory unit

regulations across the nation. As of this month, there were three people on the waiting list in three different neighborhood areas (18th/Bluebell in East Chautauqua – at 10 percent saturation due to ADUs, 9th/Grant Pl in Rose Hill – at 16 percent saturation due to non-conforming structures, and 9th in Grant – at 12 percent saturation due to the non-conforming structures and one ADU). It is difficult to estimate how many people consider building an accessory unit, but don't pursue it because other accessory units or nonconforming structures already exist in their neighborhood without knowing if the neighborhood area is at maximum saturation.

Community Feedback Themes

- The current saturation rate discourages individuals from applying for permits altogether and may instead encourage the creation of illegal units.
- The saturation rate should be higher than 20 percent or removed completely.
- No additional accessory units should be allowed in the city due to the potential impacts (e.g., parking, noise, litter, etc.) of additional rentals.

Analysis. Staff estimated the total number of accessory units that are likely to be built if the incremental changes to the regulations are adopted. The table below shows the total number of parcels by zone where accessory units are allowed and the total number of existing legal accessory units. Certain parcels are not eligible to create an accessory unit under the current regulations (i.e., minimum lot size requirement of 5,000 sq. ft. and rental properties). These ineligible parcels are subtracted from the total number of parcels to generate an estimate.

Staff recognizes that not every homeowner is interested in, or financially capable, of creating an accessory unit and further estimated that currently only 1.9 percent of the eligible properties in Boulder have accessory units. Assuming that some or all of the current barriers to creating an accessory unit are removed, staff estimates how many accessory units could be created if the current accessory unit production rate is more than doubled from 1.9 to 5 percent – shown in blue. A map showing the location of parcels eligible for an ADU, licensed rentals, and lots less than 5,000 sq. ft. is available [here](#).

Scenarios of Parcels Eligible for Accessory Units

Zoning	Number of Parcels	Parcels NOT Eligible	Existing ADUs/ OAUs		What if 5% Get Built
RE	1,463	211	23	1.8%	61
RL-1	10,643	3,020	138	1.8%	374
RL-2	4,444	2,006	16	0.7%	121
RR-1	123	6	1	0.9%	6
RR-2	249	40	4	1.9%	10
RMX-1	1,725	1,389	49	15%	14
RMX-2	844	345	-	-	25
Total	19,501	7,017	231		612

% of eligible parcels	1.9%	5.0%
% of all city housing units	0.5%	1.3%

The potential doubling of accessory units from 231 to 612 represents a small increase in the overall number of accessory units (1.3 percent of all city housing units). It is important to note that this analysis averages all parcels by zone and that saturation is more likely to be reached in certain parts of the city (currently three neighborhoods). This is an incremental change that will not have a significant effect on the total number of accessory units created but more Boulder households will be eligible to construct an accessory unit.

3. Nonconforming Structures (Saturation Rule) (9-6-3(a)(2)(A)(iii), B.R.C. 1981)

Recommendation. Remove non-conforming structures from the saturation requirement.

Background. Existing legal, nonconforming structures are currently included in calculating the 10 percent saturation limitation for ADUs. The intent was to prevent an overabundance of non-single-family units in predominantly single-family neighborhoods. This provision is also unique among accessory unit ordinances across the nation. Duplexes are different from a principal dwelling unit with an accessory unit as they are two self-contained units often of equal size that appear to the observer as two units. The neighborhoods with grandfathered duplexes, such as the Hill, are constrained from creating ADUs by counting nonconforming uses in the neighborhood area. The original rationale for counting these structures within the neighborhood areas is because it was thought that they would have similar or greater impacts than an ADU.

Community Feedback Themes

- There was relatively little input on this issue as it is complex and nuanced.
- Some think legal, nonconforming structures are a detriment to single-family neighborhoods and neighborhoods with a significant number of these types of structures should not be allowed to create additional ADUs.
- Some think the inclusion of nonconforming structure is an unnecessary complication to the regulations that make it difficult for a property owner to easily determine if they are eligible to create an ADU.

Analysis. The addition of these structures makes determining if a property is eligible for an ADU confusing to applicants (it requires a manual search of neighboring properties by city staff). The data source for nonconforming structure is not reliable, which is why city staff manually check each property within the neighborhood area. An additional complication is that attached units (i.e., duplexes) are allowed in the RL-2 zone, yet those contribute to the saturation limit (see blue row below). The majority of non-conforming structures are in the RL-1 zone district (see map [here](#)) in the Mapleton, University Hill and area between the two. This change will allow the city to develop an on-line tool for property owners to quickly see if they are eligible for an ADU.

Non-conforming Structures by Zone District

Zoning	Number of Parcels*	Existing ADU/LAU	Potential Non-Conforming Properties*	
RE	1,463	23	32	2.2%
RL-1	10,643	138	387	3.6%
RL-2	4,444	16	34	0.8%

RR-1	123	2	7	5.7%
RR-2	249	3	4	1.6%
Total	16,932	182	474	2.8%

*Number of parcels is determined by selecting all properties in the zoning district that currently have dwelling units present. Non-conformity potential determined by selecting all properties that have 2 or 3 dwelling units per city mapping and then de-selecting those properties that have current accessory unit status.

4. Allowed Zones (9-6-3(a)(2),(3), and (4), B.R.C. 1981)

Recommendation. Allow OAU's and ADUs in all the same zones, including RMX-2 and rename OAU's and ADUs to Detached ADUs and Attached ADUs, respectively.

Background. Currently, OAU's are allowed in the RR, RE and RMX-1 zoning districts and ADUs are allowed in the RL-1, RL-2, RE, RR-1, RR-2, A or P zoning districts. Specifically, OAU's are not allowed in the RL-1 zoning district, which is one of the most prevalent zones in the city. These areas of the city are typically developed post World War II and do not have alley access and most garages are attached to the primary structure. The original intent of limiting OAU's to the RR, RE and RMX-1 zoning districts was due to the potential for additional impacts of a detached OAU (e.g., noise, privacy, solar access).

Community Feedback Themes

- ADUs and OAU's should be allowed anywhere a single-family home is allowed.
- No more ADUs or OAU's should be allowed due to potential impacts.

Analysis. Staff created maps showing currently where ADUs are allowed (available [here](#)) and where OAU's are allowed (available [here](#)). It is important to note that OAU's are not currently subject to the saturation rule. Therefore, staff recommends applying the saturation rule to all types of accessory units in the RL-1 and RL-2 zones.

Where ADUs and OAU's are Allowed

Zoning Districts	EXISTING		PROPOSED	
	Currently ADUs are Allowed (saturation limit applies)	Currently OAU's are Allowed (saturation limit DOES NOT apply)	Allow ADUs and OAU's	Apply Saturation Limit
RR-1	X	X	X	
RR-2	X	X	X	
RE	X	X	X	
RL-1	X		X	X
RL-2	X		X	X
A	X		X	
P	X		X	
RMX-1		X	X	
RMX-2			X	

Allowing flexibility in the type of accessory unit allowed in each zone does not increase the potential number of accessory units that can be built (with the exception of the RMX-2 zone discussed below). These areas are currently eligible to create an ADU or an OAU, but not both. Staff heard from property owners in the RL zones who have alleys and detached garages but are prohibited from creating a detached OAU. Due to the presence of detached garages in these zones, there may be additional opportunities to create detached OAUs that are compatible with the existing neighborhood character through a suite of development regulations commonly known as Compatible Development. These regulations, found in sections 9-7, "Form and Bulk Standards" and 9-8, "Intensity Standards", B.R.C. 1981, include Side Yard Wall Articulation, Side Yard Bulk Plane, Building Coverage and Floor-Area Ratio requirements. These zoning requirements create regulations that ensure that the size, height and building design of additional development on a property is limited and sensitive to neighboring properties. Allowing both types of accessory units in the predominant single-family zones is an approach used in most other North American cities.

On Feb. 27, council feedback was to expand the zones where both OAUs and ADUs are allowed to the list above, including the RMX-2 zone. RMX-2 has 499 eligible parcels that will increase the potential for additional accessory units. A map showing RMX-2 zoning is [here](#).

The benefit of allowing both ADUs and OAUs in all the above zones is that it allows changing the definition of OAUs to be only detached accessory dwelling units and renaming it to Detached ADU. ADUs can then be renamed Attached ADUs to provide greater clarity when discussing the two distinct accessory unit types with the community and applicants. As a result, the recommended ordinance (**Attachment A**) references three types of accessory units: 1) Attached ADUs; 2) Detached ADUs; and Limited Accessory Units.

5. ADU and Interior OAU Sizes (BRC 9-6-3(a)(2)(C)(ii) and 9-6-3(a)(4)(B)(iii), B.R.C. 1981)

Recommendation. Change the 1/3 size limit to 1/2 of the principal dwelling. This primarily affects homes less than 2,000 sq. ft. by providing additional flexibility in creating an ADU or interior OAU.

Background. The size of an ADU or an interior OAU is limited to either 1,000 sq. ft. or 1/3 of the size of the principal dwelling unit (whichever is less). The original intent was to ensure that the accessory unit is smaller in size and therefore subordinate to the main home. This requirement presents challenges for people with smaller homes. The size restrictions in some cases leads to unnecessary remodel work such as walling off portions of a basement to meet the size limit. The current average size of an ADU is 711 sq. ft. and an interior OAU is 738 sq. ft.

Community Feedback Themes

- The 1/3 size limit is a constraint in smaller homes and sometimes requires sections of basements to be walled off for no practical reason.
- There should be a consistent limit on ADU and OAU size of 800 sq. ft. regardless of the size of the primary dwelling to help keep the units affordable in the future.

- The size of the unit should depend entirely on the size of the primary unit and there should not be an upper limit to provide additional flexibility.

Analysis. It is important to note that the 1/3 provision is only an issue for homes less than 3,000 sq. ft. Larger homes will always be limited to 1,000 sq. ft. (i.e., which is less than 1/3). The intent of this regulation is to ensure the ADU or interior OAU is subordinate to the primary dwelling. Therefore, raising the limit to 1/2 will only affect homes less than 2,000 sq. ft. Other mechanisms to ensure that the ADU or interior OAU are subordinate to the primary dwelling remain, such as requiring the accessory unit entrance be appropriately screened "...in a manner that does not detract from the single-family appearance of the principal dwelling (9-6-3(a)(2)(C)(v) and (4)(B)(iv), B.R.C. 1981)." Therefore, the exterior appearance will not change with the additional square footage.

6. Lot Size (9-6-3(a)(1)(C)(i) and (4)(B)(i), B.R.C. 1981)

Recommended in the Ordinance. Lower the minimum lots size to 5,000 sq. ft. for ADUs and OAUs in all zones where accessory units are allowed.

Background. A single-family home must be on a lot of 6,000 sq. ft. or more to construct an ADU or an OAU. Detached OAUs are further restricted and in the RE and RR zoning districts must meet the minimum lot requirements of the underlying zoning district. Finally, if an OAU is located within a primary dwelling unit, the dwelling unit must be at least 1,500 sq. ft. These code requirements were intended to ensure that only lots meeting the minimum lots size of the typical zone can build accessory units because smaller lots (considered substandard) and smaller homes may not be appropriate to accommodate an additional complete housekeeping unit. These provisions are a barrier to property owners that wish to create a new accessory unit or legalize an existing unit.

Community Feedback Themes

- Lot size and minimum primary dwelling sizes are arbitrary criteria. The design and configuration of the ADU or OAU in the house or on the lot is more important to address any potential impacts to neighbors.
- Minimums are necessary to protect against neighbor and neighborhood impacts.

Analysis. It may be more appropriate to regulate the size and presence of an ADU or OAU based on the size of the existing home rather than the lot size or minimum home sizes. Accessory structures (e.g., home offices) are allowed on substandard lots and have similar impacts to an ADU/OAU. To date, staff has heard from property owners on lots greater than 5,000 sq. ft. that are prevented from building an ADU/OAU or legalizing an existing accessory structure as an accessory unit. The largest number of lots impacted by the limitation are less than 4,000 sq. ft. However, these lots have significant design challenges. Many are not able to meet the other accessory structure requirements for height, floor area, setbacks, etc. and still be able to create an accessory unit above the 300 sq. ft. minimum floor area. Therefore, staff recommends lowering the minimum lot size to 5,000 sq. ft. A map showing the location of parcels less than 6,000 sq. ft. is available [here](#).

Parcel Sizes

Zoning	Number of Parcels*	Parcels < 4,000 sq. ft.		4,000 – 4,999 sq. ft.		5,000 – 5,999 sq. ft.		Parcels > 6,000 sq. ft.	
RE	1,463	36	2.5%	3	0.2%	0	-	1,424	97%
RL-1	10,643	276	2.6%	75	0.7%	197	1.9%	10,095	95%
RL-2	4,444	1,070	24.1%	247	5.6%	278	6.3%	2,849	64%
RR-1	123	0	-	0	-	0	-	123	100%
RR-2	249	18	7.2%	0	-	0	-	231	93%

* Number of parcels is determined by selecting all properties in the zoning district that currently have dwelling units present.

At this time, staff does not recommend adding variance process for lot size. This would add complexity to the code and create uncertainty for a property owner as the outcome requires discretion on the part of staff or the Board of Zoning Adjustments.

7. Detached OAU Size (BRC 9-6-3(a)(4)(B)(iii), B.R.C. 1981)

Recommendation. Increase the size limit for a detached OAU to 800 sq. ft. and remove the building coverage limit.

Background. Detached OAUs are limited to 450 sq. ft., creating a barrier for homeowners with an existing garage or structure that is often larger than 450 sq. ft. In addition, the existing building (e.g., garage) must have less than 500 sq. ft. of building coverage to be eligible for an OAU. This disconnect between a 450-sq. ft. habitable living space limit and a 500-sq. ft. building coverage limit is confusing and a challenge to implement. The original intent of limiting the size was due to a potential for increased impacts, compared to ADUs, in terms of noise, privacy, and solar access.

Community Feedback Themes

- The current size limit is too restrictive, prevents good design, and does not provide sufficient living space to keep “a married couple married” as stated by an open house participant.
- There should be a consistent limit on ADU and OAU size of 800 sq. ft. regardless of the size of the primary dwelling to help keep the units affordable in the future.
- The size of the unit should depend entirely on the size of the primary unit and there should be additional flexibility to build larger than 1,000 sq. ft.
- Many homeowners are able to build an accessory office of larger than 800 sq. ft. without the same restrictions. Office uses should not be prioritized above housing.

Analysis. With a minimum size of 300 sq. ft. and a maximum size of 450 sq. ft., there is little flexibility to account for the size of an existing detached building (e.g., building an OAU above an existing garage). Similar to the other design constraints, these issues may be more effectively addressed through a suite of development regulations commonly known as Compatible Development. These regulations, found in sections 9-7, "Form and Bulk Standards" and 9-8, "Intensity Standards", B.R.C. 1981, include Side Yard Wall Articulation, Side Yard Bulk Plane, Building Coverage and Floor-Area Ratio requirements. These zoning requirements create

regulations that ensure that the size, height and building design of additional development on a property is limited and sensitive to neighboring properties.

Staff recommends increasing the unit size to 800 sq. ft. for detached OAU's, which a common accessory unit size limit throughout North America. It provides a comfortable space for two people while helping to keep the unit more affordable than typical market rents. It is important to note that allowing 800 sq. ft. does not guarantee that a property can accommodate that size while still meeting all the height, floor area and setback requirements.

Staff also recommends removing the building coverage limitation. Both a building coverage and floor area limitation are redundant. In addition, the total building coverage (principal and accessory buildings combined) for a site is currently limited by the coverage requirements for accessory buildings of Section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981.

8. Detached OAU Design (9-6-3(a)(4)(v), B.R.C. 1981)

Recommendation. Remove the design requirements related to garage doors, roof pitches, and expansion of building coverage for detached OAU's and rely on the Compatible Development Standards.

Background. Detached OAU's are subject to additional design requirements because these are built as a detached accessory structure. Some design requirements are important to retain, such as setbacks, requiring consistent architecture and materials, and the provision of open space. However, the detailed requirements prescribed for garage doors, roof pitches, and expansion of building coverage may no longer be necessary. The intent of these regulations was to create accessory buildings that look like traditional carriage houses in predominately older neighborhoods like Whittier.

Community Feedback Themes

- OAU owners observed that the design requirements are too prescriptive and lead to bad design outcomes.
- Ensuring compatibility of OAU's (detached in particular) was a common theme in the community due to privacy concerns and potential loss of solar access.

Analysis. The OAU design requirements are intended to help the buildings be compatible with the existing character of the neighborhoods. However, the restrictions on accessory unit size and some design requirements may no longer be necessary, as they were put in place prior to the adoption of a suite of development regulations commonly known as Compatible Development. These regulations, found in sections 9-7, "Form and Bulk Standards" and 9-8, "Intensity Standards", B.R.C. 1981, include Side Yard Wall Articulation, Side Yard Bulk Plane, Building Coverage and Floor-Area Ratio requirements. These zoning requirements create regulations that ensure that the size, height and building design of additional development on a property is limited and sensitive to neighboring properties.

9. Five-Year Requirement (9-6-3(a)(2)(D), B.R.C. 1981)

Recommendation. Remove the 5-year minimum requirement for the primary home.

Background. Currently, a home must be at least 5 years old for an owner to create an ADU. The original intent was to help existing property owners remain in their homes who may have challenges meeting a mortgage and other housing costs. It was not intended for a developer to add value as part of a speculative development.

Community Feedback Themes

- This is a requirement that few people know about or encounter, but the majority feel the requirement is arbitrary and unfair.
- Homeowners shared that not being able to build the ADU at the same time of the primary dwelling adds unnecessary expense.

Analysis. It is not clear today that preventing potential speculation is the only policy objective. In recent years, council members have discussed the desire to provide more flexibility for additional housing opportunities in general. In addition, staff have witnessed property owners who build the ADU with the new house and wait five years to legally permit the unit.

10. Accessory Unit Permit Renewal (9-6-3(a)(1)(F), B.R.C. 1981)

Recommendation. Remove the accessory unit permit transfer system and rely entirely on rental licensing and building permitting to address life and safety issues.

Background. Currently, all accessory units are required to obtain an accessory unit permit separate from a rental license. There are specific code requirements to obtain a permit and the number of permits that may be issued for a given area is limited based on the saturation rule (see #2 above). The permit may be transferred from one property owner to the next, but only if there is not someone on the waiting list for the area. The intent was to provide fairness for other property owners limited by the saturation rule in obtaining an accessory unit permit when a property changes hands. However, the current permit system is confusing to many in the community and creates a burden on current accessory unit owners and future homebuyers if they do not transfer the permit within 30 days as it requires the removal of the kitchen and the separation between the house and the accessory unit.

Community Feedback Themes

- This is less known code provision that comes up only when selling and buying an ADU. There was general confusion why this requirement exists and there seems to be general support to remove it.

Analysis. Currently, the city requires a new accessory unit owner to sign a declaration of use as part of the permit renewal process to ensure that the new property owner understands the regulations and requirements of having an accessory unit. Now that the city has a rental licensing program, the accessory unit permit renewal is duplicative. Staff recommends eliminating the accessory unit permit process provisions that require the expiration of the permit at the time of

sale, conveyance or transfer (9-6-3(a)(1)(F)(i), B.R.C. 1981) and the permit renewal process (9-6-3(a)(1)(H)(i), B.R.C. 1981). The waiting list will remain, and the declaration of use will continue to be recorded with the deed for future owners to understand the circumstances under which the accessory unit is allowed.

11. Short-Term Rentals (10-3-19 (d-l), B.R.C. 1981)

Recommendation. Prohibit short-term rentals for newly created accessory units but allow owners with a current short-term rental license to continue renting until they either fail to renew the permit or a change of ownership. *Staff initially proposed to Planning Board and the Housing Advisory Board to prohibit short-term rentals for newly created accessory units and only allow existing short-term license holders to rent for a period of 5 years. After that time no short-term rentals would be allowed. Note: the Housing Advisory Board recommended no change to the current rules regarding short-term rentals in either the principal or accessory dwelling.*

Background. Short-term rentals have become more common throughout Boulder in recent years. Short-term rentals (e.g., AirBnB, VRBO, etc.) may provide more revenue for a homeowner than renting to a long-term tenant. Short-term rentals for accessory units requires a rental license and are limited to renting only 120 days in a year. An owner is required to occupy either the accessory unit or the primary dwelling and therefore cannot rent both.

Community Feedback Themes

- Short-term rentals contribute to neighborhood nuisances (noise, parking, trash, etc.) as these are tourists coming to Boulder and not long-term renters that may have more of a connection with neighbors and the neighborhood and be more respectful.
- Short-term rentals are essential to financing the creation of the accessory unit and provide the additional source of income that enable some Boulder residents to afford their homes. Simply raising this as a potential issue is creating anxiety for some current owners.

Analysis. Allowing short-term rentals is perceived as a contributor to neighborhood nuisances and is contrary to the project purpose to "...increase workforce and long-term rental housing opportunities..." Although renting accessory units is limited to 120 days per year, this limit is difficult to enforce and the potential nuisances (noise, parking, trash, etc.) remain. However, only a small percentage of accessory units are used as short-term rentals (11 percent). During the community engagement, staff heard from several current owners who are depending on the income to finance the construction of their accessory unit. Existing owners that primarily use the space for family and visitors also value the flexibility to rent short-term. Additionally, the owner occupancy requirement remains and therefore homeowners would be expected to be responsible for the behavior of their short-term renters. Based on feedback from council and the boards, staff recommends prohibiting short-term rentals for newly created accessory units and only allowing accessory unit owners with a current short-term rental license to continue short-term rentals until they either fail to renew the permit or the parcel changes ownership.

12. Accessory Unit Occupancy Limit (9-8-5(b), B.R.C. 1981)

Recommendation. Remove the 2-person occupancy limit for the accessory unit and allow roomers in the principal dwelling. However, the overall occupancy limit for the property remains (i.e., 3-4 unrelated people depending on the zone). *Staff did not initially propose to Planning Board and the Housing Advisory Board to remove the prohibition on roomers in the principal dwelling.*

Background. Currently, only two people are allowed to occupy an accessory unit. This prohibits a couple with one or two children from living in an accessory unit. The original intent was to ensure the number of people in the accessory unit is less than the number of people living in the primary dwelling unit.

Community Feedback Themes

- A couple should not be evicted simply for having a child.
- Accessory units are not appropriate for more than two people.

Analysis. This change allows additional flexibility for how people occupy the primary dwelling unit and the accessory unit. Although this has not been identified as a barrier, there is a desire to offer this additional flexibility. Staff recommends clarifying the occupancy limit for properties with an accessory unit to state that the occupancy limit applies to both the principal dwelling and accessory unit combined. Staff also supports the recommendation to remove the prohibition on roomers in the principal dwelling and leaving it to a homeowner to determine how occupancy limits are met.

FUTURE WORKPLAN ITEMS

Members of the community identified numerous items that were beyond the scope of this incremental ADU Update. Staff heard a desire to:

- address accessory units as part of a neighborhood pilot process or sub-community planning rather than citywide;
- address tiny homes as part of the ADU Update;
- grandfathering existing illegal accessory units;
- allocate accessory unit permits based on an applicant's age, length of tenure in Boulder, or other preferential criterion rather than the current saturation limit method;
- waive certain accessory unit requirements in exchange for landmarking the historic dwelling;
- require new accessory units to pay the same Capital Facility Impact Fees as a new dwelling unit;
- create a process to determine if a hardship exists that would justify exceeding the occupancy limits for a zone; and
- require all future accessory units as permanently affordable or create incentives for deed restriction.

Council may wish to prioritize some or all of these as future work plan items.

FUTURE MONITORING AND ENFORCEMENT

Any changes to the accessory unit regulations will be accompanied by monitoring and enforcement. The monitoring will ensure that the intent of the changes is met, and any unintended consequences are addressed in future code changes. Experience from other cities shows that as community attitudes towards accessory units change over time, so must the regulations. The city will also continue enforcement efforts as directed by council related to occupancy, nuisances, and life safety issues not just in accessory units, but also rentals in general.

NEXT STEPS

At a future meeting, City Council will potentially vote to adopt an ordinance. The ordinance, which includes changes to the regulations, would be effective 30 days after adoption.

STAFF RECOMMENDATION

Staff finds that the ADU Update Ordinance, as recommended, would achieve the project goals to simplify the regulations and remove apparent barriers to the construction of this housing type in ways that are compatible with neighborhoods. Based on this conclusion, staff recommends the following motion:

Motion to adopt Ordinance 8256 amending standards for accessory dwelling units and owner accessory units including Section 4-20-43, "Development Application Fees," Title 9, "Land Use Code," and Section 10-3-19, "Short-term Rentals," B.R.C. 1981, and setting forth related details.

ATTACHMENTS

- A. Recommended Ordinance
- B. Minor Code Amendments Summary
- C. Community Engagement Summary
- D. Housing Advisory Board Recommendation
- E. Planning Board May 3, 2018 Meeting Minutes

ORDINANCE 8256

AN ORDINANCE AMENDING STANDARDS FOR ACCESSORY DWELLING UNITS AND OWNER ACCESSORY UNITS INCLUDING SECTION 4-20-43, "DEVELOPMENT APPLICATION FEES," TITLE 9, "LAND USE CODE," AND SECTION 10-3-19, "SHORT-TERM RENTALS," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 4-20-43, "Development Application Fees," B.R.C. 1981, is amended and subsequent paragraphs shall be renumbered, to read as follows:

...

(b) Land use regulation fees:

...

(11) An applicant for an attached accessory dwelling unit permit shall pay \$420.00

~~(12) An applicant for the transfer of an accessory dwelling unit shall pay \$168.00~~

~~(123)~~ (13) An applicant for an owner's detached accessory dwelling unit shall pay \$420.00

~~(14) An applicant for the transfer of an owner's accessory unit shall pay \$168.00~~

~~(135)~~ (14) An applicant for a limited accessory unit shall pay \$420.00

~~(16) An applicant for the transfer of a limited accessory unit shall pay \$168.00~~

...

Section 2. Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, is amended to read as follows:

9-2-3. – Variances and Interpretations.

...

(d) Board of Zoning Adjustment (BOZA): The BOZA may grant variances from the requirements of:

(1) Setback, separation and bulk plane requirements listed in Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, and standards referred to in that section;

(2) The building coverage requirements of Section 9-7-11, "Maximum Building Coverage," and chapter 9-10, "Nonconformance Standards," B.R.C. 1981;

- (3) The spacing requirements for mobile homes of Section 9-7-13, "Mobile Home Park Form and Bulk Standards," B.R.C. 1981;
- (4) The porch setback and size requirements of Section 9-7-4, "Setback Encroachments for Front Porches," B.R.C. 1981;
- (5) The side yard wall articulation standards of Section 9-7-10, "Side Yard Wall Articulation Standards," B.R.C. 1981;
- ~~(6) The size and parking setback requirements for accessory units of Subsection 9-6-3(a), B.R.C. 1981;~~
- ~~(7)~~ (6) The total cumulative building coverage requirements for accessory buildings of Section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981;
- ~~(8)~~ (7) The use of a mobile home for nonresidential purposes subject to the requirements of Subsection 10-12-6(b), B.R.C. 1981;
- ~~(9)~~ (8) The parking requirements of Subsection 9-9-6(d), B.R.C. 1981, with regards to parking in landscaped front yard setbacks; and
- ~~(10)~~ (9) Sign code variances and appeals as permitted by Subsection 9-9-21(s), B.R.C. 1981.

In granting any variance, the board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this title.

...

- (i) Floor Area Variances for Accessory ~~Dwelling~~ Units: The BOZA may grant a variance to the maximum floor area allowed for an attached accessory dwelling unit or for a detached accessory dwelling unit under Subsection 9-6-3(a), B.R.C. 1981, only if it finds that the application satisfies all of the following applicable requirements:

- (1) That the interior configuration of the ~~house-building~~ is arranged in such a manner that the space to be used as the attached accessory dwelling unit or detached accessory dwelling unit cannot feasibly be divided in conformance with the size requirements;
- (2) That the variance, if granted, meets the essential intent of this title, and would be the minimum variance that would afford relief; and
- (3) That the strict application of the provisions at issue would impose an undue and unnecessary hardship on the individual and that such hardship has not been created by the applicant.

...

Section 3. That portion of Table 6-1 in Section 9-6-1, "Schedule of Permitted Land Uses,"

B.R.C. 1981, related to accessory units, is amended to read as follows:

TABLE 6-1: USE TABLE

Zoning District	RR-1, RR-2, RE, RL-1	RL-2, RM-2	R M-1, R M-3	RM X-1	R M X-2	RH -1, RH -2, RH -4, RH -5	RH -3, RH -7	R H-6	M H	MU -3	MU -1	MU -2	M U-4	BT-1, BT-2	B M S	BC -1, BC -2	BC S	BR -1, BR -2	DT -4	DT -5	DT-1, DT-2, DT-3	IS-1, IS-2	IG	IM	IMS	P	A	
Use Modules	R1	R2	R3	R4	R5	R6	R7	R 8	M H	M1	M2	M3	M4	B1	B 2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A	Specific Use Standard
Accessory units:																												
A. Attached accessory dwelling unit	C	C	*	<u>*C</u>	<u>*C</u>	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	C	C	9-6-3(a)
B. Owner's Detached accessory dwelling unit	C	<u>*C</u>	*	C	<u>*C</u>	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	<u>*C</u>	<u>*C</u>	9-6-3(a)
C. Limited accessory unit	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-3(a)
Caretaker dwelling unit	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	A	A	

Section 4. Section 9-6-3, "Specific Use Standards – Residential Uses," B.R.C. 1981, is amended to read as follows:

9-6-3. – Specific Use Standards – Residential Uses.

(a) Accessory Units:

- (1) General Requirements: Three types of accessory units are permitted: Attached Accessory Dwelling Units, ~~Owner's Detached Accessory Dwelling Units~~, and Limited Accessory Units. The following standards apply to all three types of accessory units:

(A) Standards:

- (i) Owner-Occupied: ~~The owner of the property must reside in one of the permitted principal dwelling units or accessory unit on the site parcel or lot~~ must be owner-occupied.

- (ii) Occupancy Requirement: The occupancy of any accessory unit must not exceed two persons. For purposes of determining occupancy requirements under Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, the principal dwelling unit and accessory unit shall be considered one dwelling unit. The occupancy of the owner-occupied principal dwelling unit together with the occupancy of any accessory unit does shall not exceed the occupancy requirements set forth in Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, for one dwelling unit. The floor area limitation for quarters used by roomers under Paragraph 9-8-5(a)(1), B.R.C. 1981, shall not apply to an accessory unit.
- (iii) ~~Additional Roomers Prohibited: The property is not also used for the renting of rooms pursuant to Paragraph 9-8-5(a)(1), B.R.C. 1981.~~
- (iii) Rental License: No owner of the property shall allow, or offer to allow through advertisement or otherwise, any person to occupy the accessory unit or the principal dwelling unit as a tenant or lessee or otherwise for a valuable consideration unless such rented unit has been issued a valid rental license by the city manager consistent with the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.
- (iv) Short-term Rental: Short-term rental of an accessory unit and short-term rental of a principal dwelling unit on a lot or parcel with an accessory unit are prohibited except as specifically authorized in Section 10-3-19, "Short-term Rentals," B.R.C. 1981.
- (B) Application: All applicants shall apply on forms provided by the city manager showing how and in what manner the criteria of this subsection are met, provide a statement of current ownership and a legal description of the property, pay the application fee prescribed by Section 4-20-43, "Development Application Fees," B.R.C. 1981, and submit plans as may be required by the manager.
- (C) Public Notice: Notice of the application shall be provided consistent with "Public Notice Type 4," as defined by Subsection 9-4-3(a), B.R.C. 1981.
- (D) Review and Approval: All applications for accessory units shall be reviewed under the procedures of Section 9-2-2, "Administrative Review Procedures." B.R.C. 1981.
- (E) Declaration of Use Required: Before ~~receiving the permit~~obtaining approval, all owners shall sign a declaration of use, including all the conditions for continued use, to be recorded in the office of the Boulder County Clerk and Recorder to serve as actual and constructive notice of the legal status of the owner's property.
- (F) ~~Expiration and Revocation of Permit: An accessory unit permit granted by the city manager or planning board automatically expires 180 days after the date on which it is granted unless a rental license for the unit is obtained within such period. The manager may grant an extension of this period for good cause shown, but only if application therefor is made prior to the expiration of the period. After revocation or expiration of the accessory unit permit, the manager will inspect the property to ensure that the accessory unit has been removed.~~

- (i) ~~Expiration: An accessory unit permit expires upon the failure of the permittee to satisfy any condition prescribed by this Subsection (a) or upon the sale, conveyance, or transfer of the property upon which the unit is located.~~
- (ii) ~~Revocation: An accessory unit permit may be revoked by the city manager upon the permittee's or the permittee's tenant's conviction of a violation of this title or any provision of chapter 5-9, "Noise," Section 6-1-21, "Animals as Nuisance Prohibited," chapter 6-2, "Weed Control," chapter 6-3, "Trash," or Section 9-9-21, "Signs," B.R.C. 1981.~~
- (iii) ~~Removal Required: Upon notification of permit expiration or revocation, the permittee may request a hearing as provided in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Within thirty days of revocation or expiration of a permit, no owner shall fail to remove the accessory unit and return the property to its single family use status as a single dwelling unit. The applicant shall either:~~
- ~~a. Remove the kitchen within the accessory unit and any physical separation between the accessory unit and the balance of the unit; or~~
 - ~~b. Remove any physical separation between the accessory unit and the balance of the unit and sign a declaration of use in a form acceptable to the city manager, which will be recorded with the Boulder County Clerk and Recorder, stating the property will remain owner-occupied for so long as the accessory unit kitchen remains and that the dwelling unit is used by the owner and the owner's family in a manner consistent with Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981. No person shall fail to remove the additional kitchen installed pursuant to this subsection if the dwelling unit is no longer owner-occupied and if the dwelling unit requires a rental license under chapter 10-3, "Rental Licenses," B.R.C. 1981.~~
- (G) ~~Limitations on Reapplication After Revocation: Upon revocation of a permit, the owner may not reapply for an accessory dwelling unit permit for any location in the city for a period of three years following the date of revocation or conviction.~~
- (H) ~~Transfer: An accessory dwelling unit permit may be transferred to the new owner of a dwelling unit that has an existing, approved accessory unit, if there is no person on the waiting list within the dwelling unit's neighborhood area. A new property owner may apply to transfer an accessory unit permit into its name if the following standards are met:~~
- ~~(i) Proof of Ownership: The transfer applicant shall provide proof of ownership or of pending ownership of the dwelling unit.~~
 - ~~(ii) Declaration of Use Required: The transfer applicant shall sign a declaration of use, that will be recorded with the Boulder County Clerk and Recorder acknowledging that the accessory dwelling unit is not automatically transferable to subsequent purchasers, that no vested right to duplex status arises by virtue of the city's granting of the accessory dwelling unit permit or a building permit to construct the same, and that lists all the conditions for the continued use of the accessory dwelling unit.~~

- (iii) ~~Rented or Occupied: The transfer applicant shall provide proof that the accessory dwelling unit has been rented or occupied in the year prior to the application for the transfer.~~
- (iv) ~~Expiration: If a new owner fails to apply for a transfer of the permit within thirty days of the purchase of the dwelling unit, the permit shall automatically expire and the reestablishment of an accessory dwelling unit will require a new application.~~
- (v) ~~Fees: The applicant shall pay the fee required by section 4-20-43, "Development Application Fees," B.R.C. 1981, and all necessary fees for recording documents with the Boulder County Clerk and Recorder.~~
- (vi) ~~Rental License Required: The new owner shall apply for a rental license after the transfer of the accessory dwelling unit has been approved.~~
- (2) Attached Accessory Dwelling Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to attached accessory dwelling units. The owner or the owners of a lot or parcel with an existing single-family dwelling unit may establish and maintain an attached accessory dwelling unit within the principal structure of a detached dwelling unit in the RL-1, RL-2, RE, RR, RE-1, RR-2, RL, RMX, A or P districts if all of the following conditions are met and continue to be met during the life of the attached accessory dwelling unit:
- (A) Neighborhood Area: In the RL-1 or, RL-2, RE, RR-1, RR-2, A or P zoning districts, no more than ten-twenty percent of the single-family lots or parcels in a neighborhood area contain an accessory dwelling unit. For the purpose of this subparagraph:
- (i) The "neighborhood area" in RL-1, and RL-2 and P zoning districts is the area circumscribed by a line three hundred feet from the perimeter of the lot line within which any accessory dwelling unit will be located. The "neighborhood area" is limited to lots or parcels within the RL-1 and RL-2 zoning districts.
- (ii) ~~The "neighborhood area" in RE, RR-1, RR-2 and A zoning districts is the area circumscribed by a line six hundred feet from the perimeter of the lot line within which any accessory dwelling unit will be located.~~
- (iii) ~~For the purpose of calculating the ten percent limitation factor, a legal, nonconforming structure containing two or more units or a limited accessory unit is counted as an accessory dwelling unit. The city manager may promulgate regulations defining additional methods to be used in calculating the ten-twenty percent limitation factor and the neighborhood area.~~
- (iii) ~~If an application for an accessory dwelling unit exceeds the ten-twenty percent requirement set forth in this subparagraph (a)(2)(A), the city manager will place the applicant on a waiting list for the neighborhood area. At such time as there is room for an additional accessory dwelling unit within a neighborhood area, the city manager will notify the first eligible person on the waiting list. Such person on the waiting list shall be required to provide notice of intent to file an application within thirty days and file an application within sixty days of such notice.~~

- (B) ~~Parking: In addition to the off-street parking required in each the zoning district for a principal dwelling unit shall be, one off street parking space is provided on the lot or parcel upon which the detached dwelling unit is located meeting the setback requirements of section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, unless a variance to the setback is granted pursuant to section 9-2-3, "Variances and Interpretations," B.R.C. 1981.~~
- (C) Criteria: The attached accessory dwelling unit is clearly incidental to the principal dwelling unit and meets the following criteria:
- (i) The attached accessory dwelling unit is created only in a single-family detached dwelling unit on a lot of six-five thousand square feet or more.
 - (ii) The attached accessory dwelling unit ~~is a minimum of three hundred square feet, and~~ does not exceed one-third-half of the total floor area of the principal structure, unless a variance is granted pursuant to section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or one thousand square feet, whichever is less.
 - ~~(iii) The accessory dwelling unit utilizes only those utility hookups and meters allotted to the detached dwelling unit.~~
 - ~~(iv) The accessory dwelling unit is created only through internal conversion of the principal structure. Minor exterior changes may be made on the building if the square footage added constitutes no more than five percent of the principal structure's existing foundation area.~~
 - ~~(viii) If there is an interior connection between the attached accessory dwelling unit and the principal dwelling prior to the creation of the attached accessory dwelling unit, the connection shall be maintained during the life of the attached accessory dwelling unit.~~
 - ~~(iv) Any additional entrance resulting from the creation of an attached accessory dwelling unit may face the side of the lot fronting on the street only if such entrance is adequately and appropriately screened in a manner that does not detract from the single-family appearance of the principal dwelling.~~
- ~~(D) Permits for Existing Units: No permit for an accessory dwelling unit shall be granted for a detached dwelling that is not at least five years old.~~
- ~~(E) Accessory Unit Will Not Become a Nonconforming Use: If the provisions of this subsection are repealed by this or any future city council, the legal use of an accessory unit must be terminated within five years from the date of repeal, and the accessory unit will not become a nonconforming use.~~
- ~~(3) Limited Accessory Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to limited accessory units. An existing nonconforming duplex or two detached dwelling units located on the same lot and within the R1 use module may be converted to limited accessory dwelling units. A limited accessory dwelling unit may be modified and expanded as a conditional use. Conversion to a limited accessory dwelling unit is subject to compliance with all of the following standards:~~

- (A) ~~Applicability: This subsection (a)(3) is only applicable to dwelling units that legally existed, were actively used as multiple dwelling units, and had a valid rental license on January 1, 2005.~~
- (B) ~~Expansion Limitation: The cumulative total of any expansion shall not exceed twenty percent of the total floor area that was documented at the time of the initial expansion. Any expansion of the restricted accessory unit shall not exceed ten percent. In no case shall any expansion cause the cumulative size of the restricted dwelling units to exceed the maximum allowable floor area ratio of the underlying zoning district as set forth in Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981.~~
- (C) ~~Parking: The minimum number of off-street parking spaces shall not be less than three spaces. All parking shall comply with the design and access requirements set forth in Section 9-9-6, "Parking Standards," B.R.C. 1981. A minimum of one off-street parking space shall be available for use by the restricted accessory dwelling unit.~~
- (D) ~~Loss of Prior Nonconforming Status: If a nonconforming duplex or two detached dwelling units are converted to limited accessory units through the conditional use process, any prior nonconforming status is lost.~~
- (34) Owner's Detached Accessory Dwelling Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to ~~owners'~~ detached accessory dwelling units. An owner or the owners of a lot or parcel with an existing single-family dwelling unit may establish and maintain an ~~owner's detached~~ accessory dwelling unit ~~within the principal structure of the detached dwelling unit, or~~ within an accessory structure meeting the size restrictions described below, on a lot or parcel in the RR, RE, RL, and RMX-1, A and P districts if all of the following conditions are met and continue to be met during the life of the ~~owner's detached~~ accessory dwelling unit:
- (A) Neighborhood Area: In the RL-1 and RL-2 zoning districts, no more than twenty percent of the lots or parcels in a neighborhood area contain an accessory unit. For the purpose of this subparagraph:
- (i) The "neighborhood area" in RL-1 and RL-2 zoning districts is the area circumscribed by a line three hundred feet from the perimeter of the lot line within which an accessory unit will be located. The "neighborhood area" is limited to lots or parcels within the RL-1 and RL-2 zoning districts.
- (ii) The city manager may promulgate regulations defining additional methods to be used in calculating the twenty percent limitation factor and the neighborhood area.
- (iii) If an application for a detached accessory dwelling unit exceeds the twenty percent requirement set forth in subparagraph (a)(3)(A), the city manager will place the applicant on a waiting list for the neighborhood area. At such time as there is room for an additional accessory unit within the neighborhood area, the city manager will notify the first eligible person on the waiting list. Such person on the waiting list shall be required to provide notice of intent to

file an application within thirty days and file an application within sixty days of such notice.

(AB) ~~Parking: In addition to the off-street parking required in each the zoning district for a principal dwelling unit, one paved off street parking space is shall be provided on the lot or parcel upon which the detached dwelling unit is located meeting the setback requirements of Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, unless a variance to the setback is granted pursuant to Section 9-2-3, "Variances and Interpretations," B.R.C. 1981. To the extent practical, any additional off street parking that is constructed in the RR or RE zoning district required for the owner's accessory unit shall be screened from the view of properties that directly abut a property line of the owner's accessory unit.~~

(BC) ~~Incidental to Principal Dwelling Unit: The owner's detached accessory dwelling unit is clearly incidental to the principal dwelling unit and meets the following criteria:~~

(i) ~~The owner's detached accessory dwelling unit is created on a lot of six five thousand square feet or larger, which contains only one detached single family dwelling in the RMX zoning district. The owner's accessory unit is created on a lot that meets the minimum lot size requirements of the underlying zoning district in the RR or RE zoning districts and contains only one detached single family dwelling.~~

(ii) ~~If the owner's accessory unit is located within the detached dwelling unit, the principal structure shall be at least one thousand five hundred square feet in size, excluding garage space.~~

(iii) ~~The owner's detached accessory dwelling unit does not exceed one third half of the total floor area of the principal structure, unless a variance is granted pursuant to Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or one thousand eight hundred square feet, whichever is less.~~

(iv) ~~If there is an interior connection between the owner's accessory unit and the principal dwelling prior to the creation of the owner's accessory unit, the connection shall be maintained during the life of the owner's accessory unit. Any additional entrance resulting from the creation of an owner's accessory unit, within the principal building, may face the side of the lot fronting on the street only if such entrance is adequately and appropriately screened in a manner that does not detract from the single family appearance of the principal dwelling.~~

(iii) ~~The following design standards apply to owner's detached accessory dwelling units in a detached accessory structure:~~

a. ~~If garage doors are placed on the unit, they shall be single car doors (no two car wide doors).~~

b. ~~All units shall be designed to have a pitched roof of 6:12 or greater. No flat roofs or lower pitched roofs shall be permitted unless consistent with the architecture of the existing house on the property.~~

1 ea. Maximum height of accessory buildings with an ~~owner's detached~~
2 accessory dwelling unit shall not be greater than twenty feet unless the roof
3 pitch is greater than 8:12 and the resulting ratio of the height of the roof
4 (measured from the eave line to the top of the roof) to the height of the side
5 walls (measured from the low point of grade to the eave line) is less than a
6 1:2 ratio. In no case may a building be taller than twenty-five feet.

7 db. ~~An owner's detached~~ accessory dwelling unit shall have a minimum of
8 sixty square feet of private open space provided for the exclusive use of
9 the occupants of the ~~owner's detached~~ accessory dwelling unit. Private
10 open space may include porches, balconies or patio areas. Decks, porches,
11 patios, terraces and stairways, located at a height greater than thirty inches
12 above grade, shall be considered part of the building coverage.

13 ec. Architectural design and materials shall be consistent with the existing
14 residence on the site or the adjacent building(s) along the side yards of the
15 lot.

16 fd. Setbacks shall comply with accessory building setbacks. Where the rear
17 yard of a property in the RR or RE zoning district directly abuts an RL
18 zoning district, the rear yard accessory building setback shall be the same
19 as the side yard setback for accessory buildings for applicable RR or RE
20 zoning districts.

21 g. ~~The owner's accessory unit is in a building that has a building coverage of~~
22 ~~less than five hundred square feet and the owner's accessory unit does not~~
23 ~~exceed four hundred fifty square feet of floor area.~~

24 (C) ~~Variance of Building Coverage: The city manager may grant a variance to the~~
25 ~~building coverage requirements of Subparagraph (a)(4)(B)(v)g of this section upon~~
26 ~~finding that the following conditions are met:~~

27 (i) ~~The owner's accessory unit is created in a building that was legally in existence~~
28 ~~prior to June 3, 1997; and~~

29 (ii) ~~A reduction in the building footprint size of the existing building to conform~~
30 ~~to the five hundred square foot limitation would create a substantial hardship~~
31 ~~for the applicant.~~

32 (4) Limited Accessory Units: In addition to the general accessory unit standards in
33 paragraph (a)(1) of this section, the following standards apply to limited accessory units.
34 An existing nonconforming duplex or two detached dwelling units located on the same
35 lot and within the R1 use module may be converted to limited accessory dwelling units.
36 A limited accessory dwelling unit may be modified and expanded as a conditional use.
37 Conversion to a limited accessory dwelling unit is subject to compliance with all of the
38 following standards:

39 (A) Applicability: This subsection (a)(3) is only applicable to dwelling units that
40 legally existed, were actively used as multiple dwelling units, and had a valid
41 rental license on January 1, 2005.

(B) Expansion Limitation: The cumulative total of any expansion shall not exceed twenty percent of the total floor area that was documented at the time of the initial expansion. Any expansion of the restricted accessory unit shall not exceed ten percent. In no case shall any expansion cause the cumulative size of the restricted dwelling units to exceed the maximum allowable floor area ratio of the underlying zoning district as set forth in Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981.

(C) Parking: The minimum number of off-street parking spaces shall not be less than three spaces. All parking shall comply with the design and access requirements set forth in Section 9-9-6, "Parking Standards," B.R.C. 1981. A minimum of one off-street parking space shall be available for use by the restricted accessory dwelling unit.

(D) Loss of Prior Nonconforming Status: If a nonconforming duplex or two detached dwelling units are converted to limited accessory units through the conditional use process, any prior nonconforming status is lost.

...

Section 5. Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is amended to read as follows:

...

(b) Attached Accessory Dwelling Unit, ~~Owner's Detached~~ Accessory Dwelling Unit, or Limited Accessory Dwelling Unit: The occupancy of an attached accessory dwelling unit, ~~owner's detached~~ accessory dwelling unit, or limited accessory dwelling unit must meet the requirements of Subsection 9-6-3(a), B.R.C. 1981.

...

Section 6. That portion of Table 9-2 in Section 9-9-6, "Parking Standards," B.R.C. 1981, related to parking requirements for accessory dwelling units and owner accessory units is amended to read as follows:

TABLE 9-2: USE SPECIFIC MOTOR VEHICLE PARKING REQUIREMENTS FOR RESIDENTIAL USES IN ALL ZONES

<i>Use</i>	<i>Parking Requirement</i>
...	

1 2 3	Attached accessory dwelling unit, owner's detached accessory dwelling unit	1 space, paved, in addition to the off-street parking requirement for the principal DU <u>must be met</u>
4	...	

5 Section 7. Section 9-14-2, "General Provisions," B.R.C. 1981, is amended to read as
6 follows:

7 **9-14-2. – General Provisions.**

8 A system of managing the issuance of residential building permits in the city is established with
9 the following general provisions:

10 ...

(b) Allocations Needed: One allocation is needed to secure a building permit to construct each
dwelling unit, except as set forth below. The living quarters set forth below shall require:

- 11 (1) One-half allocation for an efficiency living unit; one-third allocation for a group
12 residence; and one-sixth allocation or one-eighth allocation for each occupant for a
13 group care facility or a residential care facility respectively, according to the density and
occupancy restrictions of subsection 9-6-3(f), B.R.C. 1981;
- 14 (2) One-fifth allocation for accommodations without kitchens or one-third allocation for
15 attached allocations for congregate care facilities, according to the density and
occupancy restrictions of section 9-8-6, "Occupancy Equivalencies for Group
Residences," B.R.C. 1981;
- 16 (3) One allocation for any other type of dwelling unit;
- 17 (4) No allocation for an attached accessory dwelling unit, an ~~owner's detached~~ accessory
18 dwelling unit, a bed and breakfast, a hostel, a hotel or a motel.

19 ...

20 Section 8. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended to read as
21 follows:

22 **9-16-1. – General Definitions.**

23 ...

(c) The following terms as used in this title have the following meanings unless the context clearly
indicates otherwise:

24 ...

25 Attached accessory dwelling unit means a separate and complete single housekeeping unit within
a detached dwelling unit, permitted under the provisions of Subsection 9-6-3(a), B.R.C. 1981.

1 ...

2 *Owner-occupied* means a dwelling unit or accessory unit that is actually and physically occupied
3 as a principal residence by at least one owner of record of the lot or parcel upon which the
4 dwelling unit or accessory unit is located, who possesses at least an estate for life or a fifty
5 percent fee simple ownership interest or is the trustor of a revocable living trust.

6 ~~*Owner's Detached accessory dwelling unit*~~ means a separate and complete single housekeeping
7 unit ~~which is accessory within an accessory structure to the principal dwelling unit~~ ~~owner's~~
8 ~~occupancy~~ of the lot or parcel upon which the unit is located that is permitted under the
9 provisions of paragraph 9-6-3 (a)(34), B.R.C. 1981.

7 ...

8 Section 9. Section 10-2-2, "Adoption of International Property Maintenance Code with
9 Modifications," B.R.C. 1981, Appendix C, Section C101.1 Scope, is amended to read as follows:

10 **10-2-2.-Adoption of International Property Maintenance Code with Modifications.**

11 ...

12 **APPENDIX C**
13 **ENERGY EFFICIENCY REQUIREMENT**
14 **EXISTING RESIDENTIAL RENTAL STRUCTURES**
15 **ENERGY CONSERVATION**

16 **C101**

17 **SCOPE**

18 **C101.1 Scope.** Appendix C sets standards for residential rental dwelling unit energy
19 efficiency. Effective January 2, 2019, the energy efficiency requirements of this section shall
20 apply to all residential rental dwelling units licensed according to Chapter 10-3, "Rental
21 Licenses," B.R.C. 1981, except:

- 22 1. Buildings that can be verified as meeting or exceeding the energy efficiency
23 requirements of the Energy Conservation Code, Chapter 10-7, B.R.C. 1981; and
- 24 2. Any manufactured home; and
- 25 3. ~~Attached Accessory accessory Dwelling dwelling Units units and Attached Owner~~
~~Accessory Units~~ as detailed in Section 9-6-3, "Specific Use Standards Residential Uses,"
B.R.C. 1981.

23 ...

24 Section 10. Section 10-3-19, "Short Term Rentals," B.R.C. 1981, is amended to read as
25 follows:

10-3-19. - Short-Term Rentals.

- (a) Short-term rentals are prohibited unless the city manager has issued a valid short-term rental license for the property.
- (b) The city manager shall only issue a rental license for short-term rental to:
- (1) A natural person, whose name appears on the deed to the property;
 - (2) A trust, if the beneficiary of the trust is a natural person;
 - (3) A not-for-profit corporation licensed pursuant to Section 501(c) of the Internal Revenue Code, provided, however, the city manager shall have discretion to reject any application for a not-for-profit corporation if the city manager deems the application to be inconsistent with the goals of this chapter, which include allowing not-for-profits the opportunity support their mission through short term rentals, preserving long term rental units and preventing investor owned short term rentals;
- (c) Any application for a rental license for short-term rental shall include the following:
- (1) If the applicant is a natural person, the application must include a sworn statement that the dwelling unit to be licensed is the applicant's principal residence;
 - (2) If the applicant is a trust, a sworn statement that the dwelling unit is a beneficiary's principal residence;
 - (3) If the applicant is a not-for-profit corporation, the application shall include proof of the corporation's status under Section 501(c) of the Internal Revenue Code and a statement of the manner in which short-term rentals serve the organization's charitable purpose;
 - (4) A certification that the dwelling unit is equipped with operational smoke detectors, carbon monoxide detectors and other life safety equipment as may be required by the city manager; and
 - (5) The names and telephone numbers of two contacts who for owner-operated rentals can be permanent residents on the property and who are capable of responding to the property within sixty minutes.
- ~~(d) If the dwelling unit is an accessory unit, only the accessory unit and not any other dwelling unit on the same property may be licensed or used as a rental;~~
- ~~(e) If a dwelling unit is licensed for short term rental, then no accessory unit on the same property may be licensed or used as a rental;~~
- ~~(f)~~ If the applicant is a natural person, the applicant's name must appear on the deed to the property on which the dwelling unit to be rented is located;
- ~~(g)~~ The city manager shall not issue a license for short-term rental of a permanently affordable dwelling unit.
- ~~(h)~~ Short-term rentals shall not be subject to the inspection requirements of Section 10-3-3(a)(1)(A), "Licenses," B.R.C. 1981, except as set forth in subsection (k):
- ~~(1) Accessory Units, permitted under Section 9-6-3(a), "Accessory Units," B.R.C. 1981 if such Accessory unit is in an Accessory Structure, as that term is defined in Section 9-16-1, "General Definitions," B.R.C. 1981.~~

- ~~(i) An accessory unit may not be rented as a short-term rental for more than one hundred twenty days in any calendar year.~~
- (jg) The occupancy of a dwelling unit rented as a short-term rental shall not exceed the occupancy permitted pursuant to Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981; provided, however, for the purposes of this section only, the licensee and people related to the licensee shall be counted as one person. ~~The occupancy of any accessory unit shall be limited to a family or two unrelated persons;~~
- ~~(k) Notwithstanding the provisions of Section 10-2-2, "Adoption of the International Property Maintenance Code with Modifications," B.R.C. 1981, Appendix C, effective January 2, 2019, the energy efficiency requirements set forth in Section 10-2-2, Appendix C section shall apply to Accessory Units, permitted under Section 9-6-3(a), "Accessory Units," B.R.C. 1981 if such Accessory unit is in an Accessory Structure, as that term is defined in Section 9-16-1, "General Definitions," B.R.C. 1981.~~
- (lh) No person shall rent a dwelling unit in a manner that requires or encourages a person to sleep in an area that is not habitable as that term is used in the International Property Maintenance Code as adopted in Section 10-2-2, "Adoption of the International Property Maintenance Code with Modifications," B.R.C. 1981.
- ~~(mi)~~ No person shall advertise a short-term rental, unless the advertisement includes the license number and the maximum unrelated occupancy permitted in the unit.
- ~~(nj)~~ The city manager shall not issue more than one short term rental license to any applicant.
- (k) An accessory unit or a principal dwelling unit on a single-family lot or parcel with an accessory unit may not be rented as a short-term rental unless all of the following requirements are met:
- (1) A current and valid short-term rental license exists for the unit.
 - (2) If the accessory unit is licensed for short-term rental, only the accessory unit and not any other dwelling unit on the same property may be a licensed or used as a rental.
 - (3) If a principal dwelling unit is licensed for short-term rental, then no accessory unit on the same property may be licensed or used as a rental.
 - (4) An accessory unit may not be rented as a short-term rental for more than one hundred twenty days in any calendar year.
 - (5) Notwithstanding the provisions of subsection (g), the occupancy of the accessory unit and the principal dwelling unit must meet the requirements of Subsection 9-6-3(a)(1), B.R.C. 1981.
 - (6) Licensing Limitations and Requirements:
 - (A) No application for a new short-term rental license shall be accepted after June 22, 2018. After June 22, 2018, a new short-term rental license may be issued only for complete applications received by the city manager on or before June 22, 2018. After June 22, 2018, the city manager may renew unexpired short-term rental licenses pursuant to Section 10-3-7, "License Renewal Procedures," B.R.C. 1981. A license for which a complete renewal application is not filed within ninety days from the expiration date, shall be considered expired.

(B) An applicant for a short-term rental license for a detached accessory dwelling unit, as that term is defined in Section 9-16-1, "General Definitions," B.R.C. 1981, must submit an inspection report for the accessory structure containing the unit consistent with the requirements of Section 10-3-3(a)(1)(A), "Licenses," B.R.C. 1981.

(C) Notwithstanding the provisions of Section 10-2-2, "Adoption of the International Property Maintenance Code with Modifications," B.R.C. 1981, Appendix C, effective January 2, 2019, the energy efficiency requirements set forth in Section 10-2-2, Appendix C shall apply to detached accessory dwelling units, as that term is defined in Section 9-16-1, "General Definitions," B.R.C. 1981, that are licensed for short-term rental.

Section 11. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

Section 12. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 22nd day of May 2018.

Suzanne Jones
Mayor

Attest:

Lynette Beck
City Clerk

1 READ ON SECOND READING, PASSED AND ADOPTED, this 29th day of August
2 2018.

5 _____
Suzanne Jones
Mayor

6 Attest:

8 _____
Lynette Beck
9 City Clerk

ADU UPDATE – MINOR CODE AMENDMENT SUMMARY				
	Description	Code Reference	Code Section Title	Summary of Proposed Change
1	Remove fee to transfer an accessory unit permit	4-20-43 (b)	Development Application Fees	Currently, the city charges a fee to transfer an accessory unit from one owner to the next at the time of sale. This process is recommended for elimination.
2	Amend accessory unit terms	4-20-43 (b) (11-12) 9-2-3 (i) 9-8-5 9-14-2 (b)	Development Application Fees Variances and Interpretations Occupancy of Dwelling Units General Provisions	Replaces the currently used terms of Accessory Dwelling Units and Owner Accessory Units to Attached Accessory Dwelling Units and Detached Accessory Dwelling Units, respectively, in different sections of the code.
3	Amend use table	9-6-1 (Table 6-1)	Schedule of Permitting Land Uses	Amends the use table to update the terms for accessory units and changes Detached Accessory Units to a conditional use in the RL and RMX-2 zoning districts and Attached Accessory Units to a conditional use in the RMX zoning districts.
4	Clarify occupancy limits	9-6-3 (a) (1) (A) (ii)	Specific Use Standards – Residential Uses	Clarifying the occupancy limits helps emphasize that for the purposes of determining occupancy limits, the accessory unit and the principal dwelling unit are considering one and the same (the removal of the 2-person limit in the accessory unit is addressed in 9-8-5 Occupancy of Dwelling Units).
5	Amend when a rental license is required	9-6-3 (a) (1) (A) (v)	Specific Use Standards – Residential Uses	Previously, a rental license was required for all accessory units even if the unit was not being rented. This is amended to require a rental license only when an owner allows another person to occupy the principal dwelling or accessory unit “...for a valuable consideration...”
6	Remove the expiration, transfer and revocation of an accessory unit permit	9-6-3 (a) (1) (F)	Specific Use Standards – Residential Uses	Previously, accessory unit permits could be transferred, revoked or expire. This language is removed in recognition that the city will no longer require a property owner to remove an accessory unit at the time of sale or due to non-renewal of the permit.
7	Amend the saturation requirement to apply to all accessory units in the RL zones	9-6-3 (a) (2) (A) 9-6-3 (a) (3) (A)	Specific Use Standards – Residential Uses	The saturation limit currently applies only to ADUs. Due to the change in allowing Detached Accessory Units (previously OAU) in expanded zones, the language is amended to include ALL accessory units in the saturation limit for the RL-1 and RL-2 zone districts.
8	Remove definition for saturation requirement in zones where it no longer applies	9-6-3 (a) (2) (A)	Specific Use Standards – Residential Uses	The neighborhood area in the RE, RR, and A zoning districts is currently calculated using properties within 600 feet. This is no longer needed as the recommendation removes the saturation requirement for the RE, RR and A zoning districts.

ADU UPDATE – MINOR CODE AMENDMENT SUMMARY					
	Description		Code Reference	Code Section Title	Summary of Proposed Change
9	Remove redundant language related to utility hook-up		9-6-3 (a) (2) (C)	Specific Use Standards – Residential Uses	The city’s Design and Construction standards currently requires all accessory units to utilize the existing utility hookups and meters of the principal dwelling. Metering devices are available to track usage separately for the principal and accessory dwellings.
10	Remove building coverage limitations		9-6-3 (a) (2) (C)	Specific Use Standards – Residential Uses	Removes the limitation on building coverage. Both a building coverage and floor area coverage limitation are redundant. In addition, the total building coverage for the site is currently addressed by the coverage requirements for accessory buildings of Section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981.
11	Remove minimum size requirement for an ADU		9-6-3 (a) (2) (C) (ii)	Specific Use Standards – Residential Uses	Remove the minimum size requirement for an ADU. This currently only applies to ADUs and not OAU’s or interior OAU’s. The building code has minimum standards for room sizes related to habitability and there is no compelling reason for a minimum in the zoning code.
12	Remove minimum home size for a detached OAU		9-6-3 (a) (4) (B) (ii)	Specific Use Standards – Residential Uses	The current standards only allow an OAU if the home is at least 1,500 sq. ft. in size. This penalizes smaller homeowners unnecessarily and is recommended for removal.
13	Provide consistent language on parking		9-9-6 (Table 9-2)	Parking Standards	Amends Table 9-2 to reflect the changes in 9-6-3.
14	Amend definitions for accessory units		9-16-1	Definitions	Amends the definitions to reflect Owner Accessory Units changing to Detached Accessory Dwelling Units and Accessory Dwelling Units changing to Attached Accessory Dwelling Units. This provides clarity for applicants and staff on the different types of accessory units. Previously, OAU’s could be either attached or detached.
15	Remove provisions related to the short-term rental of accessory units		10-3-19	Short-Term Rentals	Removes the additional requirements placed on renting accessory units (or the principal dwelling unit). This language was replaced with provisions prohibiting short-term rentals for accessory units (or the principal unit) for new accessory units. Accessory unit owners with current short-term rental licenses will be allowed to continue renting until the sale of the home or the time the owner allows the rental license to lapse.

ACCESSORY DWELLING UNIT UPDATE

Community Engagement

Since the council direction in August, staff has engaged community members to provide feedback in several ways.

- Online “share your ADU story” (*over 250 have been received*),
- Open Houses with staff presentation, Q&A, feedback forms (*approximately 216 people attended the 3 events*),
- Be Heard Boulder online survey (195 participated), and
- Meetings with groups, boards, individuals.

Feedback summaries and the full text of feedback can be found on the project [website](#).

ADU Stories

Over 250 stories have been shared. The stories describe a wide range of reasons why accessory units are important to property-owners for affordability or to house family members. Other stories from neighbors range from very positive benefits of accessory units with no negative impacts to the neighborhood to very direct and negative impacts to their use and enjoyment of their own properties.

The following provides a few examples of the range of experiences people shared.

Excerpts of responses sharing positive experiences with ADUs

- My ADU has truly changed mine and my husband's life. We [were] fortunate to buy our 1947 bungalow with ADU in 2014. The home had two other all cash offers that fell through before we got to go under contract. My husband and I put a lot of TLC into the main house and the ADU. We decided to live in the ADU and rent the main house long-term. Our tenants have been a small family for the last 4 years. The father works for CU grounds maintenance and his son walks to school. It's an amazing rental price for such a nice little house and neighborhood for them. BUT for us the extra rental income allows us to pay to upkeep the older home, and care for the amazing trees and yard. Without the ADU I doubt

my husband and I would have been able to buy a single-family home in Boulder. I LOVE ADUs! Small impact on the neighborhood, big impact on our life. I'd love to see more ADUs... possibly even an ADU grant program, (could work with a manufacturer like Studio SHed on kits) the grant recipient could repay at time of purchase.

- We established the ADU (in our unfinished basement) as temporary housing for our daughter when she was at CU and wanted to live "away from home". We had planned to subsequently use it for a rec room/video room/ office and designed it as such. Upon our daughter's graduation, we decided we did not need the extra living space and modified the space to become an apartment, meeting the ADU requirements. With this modification, we realized that it could be eventually used for our care-giver's living.
- Our OAU has been a great asset. It rents easily, and renters typically stay for extended lengths of time, and we come to know them. After living with it for a long time, I would suggest increasing the size of the unit from 450 Sq. Ft. to 750 sq. ft. My house is too big as my kids go to college, and the OAU is too small for 2 people to live in comfortably for an extended period. It is good for ONE person, but this property would be ideal if the OAU was larger and my primary house smaller.
- Our friends converted their walk-out basement to an ADU so they could afford to stay in their home with a growing family and reduced income. Their first renter worked as a nanny for several families in the area, and was grateful to find an affordable unit in Boulder. A win-win for our neighborhood.
- I have not had any negative experiences in this neighborhood (Melody Catalpa). As someone dealing with the challenges of housing an aging parent right now, this would be a very attractive option to us. In general, it seems like a way to help people afford housing here - way better than massive multi-family buildings to me.
- Our ADU benefits us in several ways. It is a semi-private living area where our friends, children and grand-children can stay comfortably when they come to visit. We have a rental license so that when it is not being used by our relatives, we are able to rent it.

Excerpts of responses sharing negative experiences with ADUs

- I am opposed to detached ADUs - we have one at our back-property line. Right now, it is permitted as an office/ studio but is still encroaches on our enjoyment in our backyard - There have been renters in it with the previous owner. The land noise, bright lights & foul language arguments we had to endure are not acceptable. if someone wants to add an apartment in their basement or other space in an existing structure, that is fine - please DO

NOT allow encroaching on existing yards by having detached ADUs constructed in neighborhoods.

- The only difficulty we experienced was the lack of parking, the house with the ADU (not marked on your map) had no off-street parking. This, sometimes caused problems, especially for the garbage truck which was unable to get through on occasion. I think all ADUs should have a designated parking place to avoid problems for the neighbors.
- My personal experience in applying and getting an approved ADU is that the biggest problem is the city planning process, language, requirements, and daytime hours which are almost impossible for working single parents. The process is so difficult people do not want to apply and go illegal.

Common themes from the input received to date:

- Generally, the in-person and written feedback has indicated strong support for accessory units as one tool to address Boulder's housing affordability challenges and there is a high level of support for making changes to the regulations. Although not statistical, estimates show about 80 percent of comments either in support of accessory units or suggesting constructive changes to the code to address issues. Approximately 20 percent of comments oppose increasing accessory units.
- The concerns cited about accessory units pertain mostly to issues with rental housing in general. Many perceive rentals as a root problem of neighborhood nuisances (e.g., noise, parking, trash, upkeep, over-occupancy, etc.). Many believe the city is not doing enough to address these nuisances and enforcement needs to be strengthened. People also comment that illegal units are problematic and that if changes are considered, the city should work to help people make their units legal so there could be better enforcement.
- Many people expressed the desire to add an accessory units but the requirements are currently prohibitive and confusing. While concerns have been expressed, a majority of the feedback indicates support for changes to allow more accessory units.
- Many ADU stories shared online illustrate how important accessory units are to households (e.g., housing for family members with special needs, additional income enabling them to stay in Boulder amid rising living costs, providing an option for aging in place, providing socio-economic diversity, increasing the ability to make upgrades to the property, etc.).

Community Responses to Questions

1. *What is your feedback on the draft purpose and why statements for the project?*

In-person and written comments indicate a high level of support for the purpose and why statements. Participants have suggested adding a goal to further define the purposes of increasing the feasibility of creating accessory units (e.g., aging in place, affordability, housing inter-generational family members, etc.) Staff heard suggestions that the purpose statement does not go far enough and should include other types of units such as tiny homes. Conversely, a small segment of people is not supportive of the purpose statements expressing doubt that accessory units truly address affordability issues and will further exacerbate negative neighborhood impacts.

2. What is your feedback on the list of focused code changes?

Participants have provided a broad range of feedback on the list of potential code changes. Participants so far are overwhelmingly in favor of simplifying the regulations. Many suggest allowing a higher saturation level and making it easier to measure neighborhood saturation. Results are mixed regarding easing parking requirements ranging from “why are we more concerned with housing cars than people” to “parking is the biggest issue in my neighborhood and accessory units will only make it worse”. Similarly, the feedback option to prohibit short term rentals in accessory units is mixed. Short-term rentals are perceived as having higher neighborhood impacts but some current and future owners would like to retain the flexibility, and some financed the construction of their accessory units with that additional income in mind. Keeping owner occupancy requirements is widely supported. A list of key themes related to the code changes is included in the memo for the February 27, 2018 City Council Study Session.

3. Do you have suggestions for analysis to understand potential benefits and impacts?

The most frequent suggestions include better understanding the number of existing unpermitted units that could be made legal; assessing demand and the potential number of new units that might be expected if code changes are approved; and understanding how adding accessory units or more accessory units in the neighborhood will affect housing prices and values.

4. What additional factors should be considered around neighborhood compatibility? (question listed size and/or height of house, good design, sufficient yard or personal open space, parking, noise, lighting, and energy efficiency).

Suggestions include: the degree to which the neighborhood already exhibits many of the stated objectives (e.g. inclusive of a variety of housing options); floor area ratio (FAR); setback requirements; potential increase in crime or vandalism; and vehicle speeds.

Be Heard Boulder – ADU Survey

In March 2018, the city launched a new online engagement platform that featured the ADU Update. A survey was created to gather community input on the staff recommendations for regulatory changes. A link to the Be Heard Boulder webpage is available [here](#) and a summary report of the survey is available [here](#). Much of the feedback is similar to what community members shared previously. Below is



a summary of feedback focused on new input related to changes in the options based on community and council input:

Parking

- Similar to previous feedback, support and opposition was expressed for removing the one additional off-street parking requirement.
- Some were concerned with using the Neighborhood Parking Permit (NPP) program areas (either that parking should not be required in an area that has managed parking or that the NPP areas are not all the areas of Boulder with parking problems).
- Some were supportive of the compromise proposed by staff to use the NPP program areas as a proxy for where to continue the parking requirement.

Short-term Rentals

- Staff initially proposed “no change” the current policy of allowing short-term rentals in accessory unit, however, council feedback at the study session was to prohibit short-term rentals for new owners.
- Survey participants were split on this issue. Some view the prohibition as necessary to address the perceived nuisances of short-term rentals while some view the prohibition as unfair and over regulation.

Meetings with Groups and Advisory Boards

From October 2017 – January 2018, staff met with any city board or organization that expressed interest in receiving information or to provide feedback on the purpose and why statements as well as the list of potential focused code changes:

October 18, 2017 – Boulder Area Realtors Association

- Supportive of ADU Update process and potential changes, particularly simplifying the accessory units permit renewal process.
- Mostly an opportunity to ask questions and understand the current regulations.

October 19, 2017 – Planning Board

- Recognition that parking will be an issue for the community, but supportive of removing this barrier.
- Support of expanding OAU to additional zone districts.
- Consider interactive mapping so a property owner can easily know if they are eligible for an ADU.
- Need to recognize accessory units as a desired housing type by removing punitive provisions (e.g., loss of non-conforming status, loss of permit at time of sale, etc.).
- Minimum lot size and house size need to be addressed.
- Analyze unintended consequences.
- Address illegal accessory units and consider a moratorium on enforcement until the ADU Update process is complete.

November 8, 2017 – Design Advisory Board

- Strong support for simplifying the regulations. Creating and maintaining an accessory units is too cumbersome.
- Expressed support for removing detailed design requirements and relying on compatible development standards.
- Supportive of increasing concentration, suggested middle ground (between 1/2 and 1/3).

December 6, 2017 – Landmarks Board

- Consider previous Landmarks Board proposal to waive certain accessory units requirements in exchange for landmarking the historic dwelling.

December 13, 2017 – Better Boulder

- Support for changes in general, mostly an opportunity to ask questions and understand the current regulations.
- Options do not go far enough to address barriers.

January 11, 2018 – Board of Zoning Adjustments

- Accessory units were a subject of previous year's letters to council based on number of variances requested and the lack of criteria or guidance on how to address.
- Support for providing clarity and consistency (ideally combine ADUs and OAU's into one).
- Accessory units are a tool to address some housing priorities.
- Need to understand who benefits from any changes.
- There is a disconnect between 450 sq. ft. limitation and 500 sq. ft. building limitation for OAU's.
- Would like to see more units brought into compliance.
- Support for removing 5 year requirement.
- Support for removing parking requirement (additional parking is not required just to add a roomer, but there is the same impact).

Summary of Housing Advisory Board Recommendations for Revised ADU Ordinance.

21 May 2018

In the Housing Advisory Board's (HAB) deliberation about modifications to the ADU/AOU ordinance, much of the discussion of Staff's 12-point recommendation occurred in the context of affordability and neighborhood impacts.

The Board could not agree on the mechanisms for affordability and mitigating neighborhood impacts. The Board generally agreed that permanent affordability and mitigating neighborhood impacts are important issues that need to be addressed.

As a result, the Housing Advisory Board supported the 12-point Staff recommendation by a majority vote, with some caveats as described below and as illustrated in the table below.

Two Board members advocated that specific and adequate permanent affordability and neighborhood impact mitigation mechanisms be incorporated into the HAB recommendation but registered their support for the 12 point Staff recommendation differently. Board member May withheld support for many of the 12 points on the basis that there were not currently, specific and adequate permanent affordability and neighborhood impact mitigation mechanisms recommended by the Board which would have affected his support/nonsupport of the points. Board member Nogg's support of many of the 12 points was conditional. The condition was that specific and adequate permanent affordability and neighborhood impact mitigation mechanisms will be incorporated into the ordinance. The *LM and *JN initials in the comments column of the table below indicates which of the points reflect these differing perspectives – for May, he might have supported, in some cases with some modifications, for Nogg she did support conditionally, but might not support, depending on the final ordinance.

This recommendation was adopted by the Housing Advisory Board 21 May 2018

Attachments A through D are concepts proposed by Board members and provide the context for the affordability and neighborhood impacts discussions.

Board member Moyers does not agree with this recommendation, structure and format. Moyers did not receive or review the attachments.

#	Staff Recommendations	Board Modification of Staff Recommendation	Board Support First number “for”, 2 nd is “opposed”	Comments
1	<p>Parking</p> <p>Recommendation. Remove the parking requirement for parcels outside a Neighborhood Parking Permit program area.</p>	<p>Remove parking requirements including in NPP areas</p>	<p>5-0?</p> <p>Would be 4-1 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>*JN</p>
2 &3	<p>Saturation</p> <p>Recommendation. Increase the saturation rate from 10 to 20 percent.</p> <p>Nonconforming Structures</p> <p>Recommendation. Remove legal non-conforming structures from the saturation requirement.</p>	<p>In addition to the staff recommendation, count illegal dwellings toward the saturation but bring them into compliance and do so before opening up increased ADU to new applicants. There must be a significant penalty to those property owners that do not bring their dwelling units into compliance.</p>	<p>4-1?</p> <p>Would be 3-2 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>Points 3 and 4 were discussed together.</p> <p>It was noted that the modification moves illegal dwellings to the front of the ADU line.</p> <p>*LM, JN</p>

4	<p>Allowed zones</p> <p>Recommendation. Allow OAU and ADUs in all the same zones, including RMX-2 and rename OAU and ADUs to Detached ADUs and Attached ADUs, respectively.</p>		<p>5-0?</p> <p>Would be 4-1 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>*JN</p>
5	<p>ADU and Interior OAU Floor area</p> <p>Recommendation. Change the 1/3 size limit to 1/2 for principal dwellings of less than 2,000 sq. ft. to give smaller homes additional flexibility in creating an ADU or interior OAU.</p>		<p>4-1?</p> <p>Would be 3-2 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>In an earlier discussion, it was proposed to have a 650sf limit but this was not incorporated in the final recommendation</p> <p>*LM, JN</p>
6	<p>Lot size</p> <p>Recommendation. Lower the minimum lots size to 5,000 sq. ft. for ADUs and OAUs in allowed zones and include a variance process for lots smaller than 5,000.</p>		<p>4-1?</p> <p>Would be 3-2 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>2 members wanted to remove all lot size restrictions</p> <p>*LM, JN</p>

7	<p>Detached OAU Floor Area</p> <p>Recommendation. Increase the size limit for a detached OAU from 450 to 800 sq. ft. and remove the building coverage limit.</p>		<p>4-1?</p> <p>Would be 3-2 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>Increased limit to 600sf for detached ADUs was proposed by Board member Swetlik earlier in the discussion.</p> <p>*LM, JN</p>
8	<p>Detached OAU Design</p> <p>Recommendation. Remove the design requirements related to garage doors, roof pitches, height, and expansion of building coverage for detached OAUs and rely on the Compatible Development Standards.</p>		<p>5-0?</p> <p>Would be 3-2 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms</p>	<p>*JN</p>
9	<p>Five Year Requirement</p> <p>Recommendation. Remove the 5-year minimum requirement for the primary home.</p>		<p>5-0?</p>	
10	<p>Permit renewal</p> <p>Recommendation. Remove the accessory unit permit transfer system and rely entirely on rental licensing and building permitting to address life and safety issues.</p>		<p>4-1?</p> <p>Would be 3-2 in the absence of adequate affordability or neighborhood impacts mitigation mechanisms.</p>	<p>May wanted to retain a separate ADU licensing system as an incentive mechanism to allow permanently transferability when affordability is committed to by an owner</p> <p>*JN</p>

11	<p>Short Term Rentals</p> <p>Recommendation. Prohibit short-term rentals in either the accessory or the primary dwelling unit for newly created accessory units and allow current short-term rental license holders to rent for a period of 5 years.</p>	<p>Allow STR's in principal dwelling, permanently, subject to current general STR limitations.</p>	3-2	
12	<p>Occupancy Limit</p> <p>Recommendation. Remove the 2-person occupancy limit for the accessory unit. However, the overall occupancy limit for the property remains (i.e., 3-4 unrelated people depending on the zone).</p>	<p>Incorporate a temporary hardship waiver that is tied to the additional temporary occupant rather than the property.</p>	<p>4-1 on overall item. 5-0 on hardship waiver.</p>	<p>Attachment D is provided as background. *LM</p>

ATTACHMENT A

In the affordability and neighborhood impact mitigation discussion, as framed in the pilot concept below, the Board was unable to agree on two prominent issues:

- The baseline unit size and how that would function as part of an incentive approach. Some Board members favored not reducing the Staff unit size recommendation as the baseline. Three members felt that too high of a baseline allowed no headroom for unit size to function properly as an incentive.
- Neighborhood impacts mitigation – one Board member did not want to enable any ADU creation in areas of concern for neighborhood impacts mitigation until those adaptations were resolved. Others felt that the neighborhood impact mitigations could be resolved as part of the pilot process and still allow ADUs to be created in areas of concern concurrent with the pilot process.

Board,

Jacques and I have spent a lot of time this past week working on a solution that will address some prominent concerns with the Board and in community – how to maximize affordability while mitigating impacts to neighborhoods and still keep an expansion of ADU opportunities moving forward. We think we have a good solution and hope you share that sentiment.

We propose recommending to Council that permanent affordability be added as a priority to this project. That will require further evaluation on our and staff's part to find the policy sweet spot that weaves the multiple objectives described above into a holistic whole. In order to not delay an expansion of ADU opportunities, we propose to you, and in sequence to Council if you accept the idea, to treat this project as a pilot whereby most elements of the staff 12 point proposal will be deployed this year while concurrently, HAB and staff continue to evaluate permanent affordability mechanisms and adaptation-to-local-context mechanisms (the opt-out concept) for incorporation into the ordinance.

After one year, the pilot would convert to a permanent condition incorporating suitable affordability and adaptation-to-local-context mechanisms. Incorporation of these mechanisms may entail altering some of the 12 staff proposed elements (as noted below). Any of these “flex” recommendations that are not adopted after the pilot period, would revert to the Staff recommendation. Any permissions granted under the pilot would be grandfathered regardless of how the ordinance might be altered as a result of what is learned from the pilot.

Pilot period alterations to 12 point staff proposal

- Unit size: 1/3 principal dwelling up to 450 sf
- ADU Permit: Continue to require separate ADU permit but streamline it and make it free
- Occupancy: retain current requirements

An adaptation-to-local-context process can be a means of testing neighborhood or subcommunity planning engagement techniques – sort of a neighborhood planning lite approach to resolving some specific issues such as overoccupied houses, parking stresses, nonconforming units, etc.

During the pilot period, neighborhoods or sub-community areas would have the opportunity to engage in a limited scope planning process by presenting alternate visions of how they have, or will, contribute to affordable housing efforts as well as identify what is unique about the stresses they experience relative to other areas. The determination of how they contribute, or will contribute to affordability efforts could be based upon that subcommunity area identifying an alternative method of enabling a similar number of similarly priced units as would have potentially been provided by the baseline ADU changes if there are not already many non-conforming (to zoning) circumstances in those zones. If good faith progress is being made, the pilot term end need not truncate that neighborhood or subcommunity planning process.

In addition to our belief that it is necessary to better address affordability and local context issues, we also believe that this ordinance adoption process is a bit too rushed to give adequate attention to these issues. The pilot approach enables us to explore incentive based affordability options as well as loan assistance, loan underwriting and purchase assistance options. A two prong and integrated approach can cover 2 distinct income groups. A City sponsored assistance program should focus on low AMI people (<80% AMI) that incentives are not able to address and an incentive approach that addresses 80% AMI people and higher. For the low AMI group, we could anticipate housing funds from IH or linkage fees could be used to create low income rental units. We should also recommend the city analyze whether use of affordable housing funds for ADUs is in fact the most economically efficient means of creating affordable units. Even though there are no land costs with ADU creation and thus it would seem to be the most economically efficient means of creating affordable units, a loan assistance or purchase assistance program has administrative costs and the usual method of creating affordable units through our housing authority may employ a lot more fund leveraging than might be the case with the loan assistance or purchase assistance approach. The relative efficiencies might not be what we presume.

If the ordinance is adopted permanently at the outset, and the governing criteria become fixed as entitlements, we will lose the option that the pilot affords us to make changes subsequent to the pilot, such as creating an incentive framework.

The explorations that occur during the pilot period are all things that we will want to explore regardless of whether there is an ADU project. We will learn from this so that we can apply the knowledge to future HAB endeavors such as the community benefit discussion and incentive based zoning.

Leonard May

ATTACHMENT B

Suggested ADU Neighborhood Variance Plan

ADUs have great potential to provide more affordable housing (or, at least, more housing) for Boulder, but their proliferation in a few neighborhoods would cause harm.

Some neighborhoods already have severe parking issues. Some have a much, much higher proportion of rentals, many of which are over-occupied. Some neighborhoods have a large number of nonconforming housing and/or relatively high density for single-family homes.

While it may be a good decision to go ahead with many/most of the staff recommendations to provide the opportunity for more ADUs, it is also vital to allow neighborhoods to receive a variance, so that they can come up with an ADU housing plan that is better suited to the realities within that neighborhood.

City Council and Planning Board recently indicated an interest in some type of variance process for specific neighborhoods. The City has discussed the need for sub-community planning for years. In addition, the City has accepted the Public Participation Working Group report that outlines the need for community input.

An additional benefit of a variance for ADUs in a few neighborhoods is that the process could provide a template for sub-community planning in general. The BVCP states an interest in sub-community planning and maintaining neighborhood character, as well as enhanced affordable housing options. An ADU Neighborhood variance option could be an incremental step towards this goal.

Since interest in a model for variances has been indicated, HAB could submit the outline of such a variance option.

Here is a process that might work:

1. Council approves some/many/most ADU recommendations (from staff, HAB and PB) that will advance housing options.
2. AT THE SAME TIME, Council will approve an avenue for neighborhoods to receive a variance for ADUs – only with clear procedures and evidence-based information. The option to apply for an ADU neighborhood variance will be prominently publicized at the time it is approved.
3. As soon as the ADU changes become law, any one or more persons in a neighborhood will have a specified number of months in which a request for a neighborhood variance can be filed. From then on, the previous rules for ADUs will apply to that neighborhood until a decision is made. (Any ADUs that have been approved in the interim – between the time the new ADU regulations become law and the time the request for a neighborhood ADU variance was registered - will remain valid.)

4. Once a neighborhood has applied for the variance, they will have a specified number of months to present their justification for the exemption(s). The neighborhood can select one, some, or all of the new ordinance items for exemption.
5. The neighborhood will have to present pertinent information on each exemption request and they will need to demonstrate reasonable buy-in throughout the neighborhood.
6. The neighborhood will have to provide concrete evidence of the need for the variance, rather than just suggest that they don't want to participate.
7. There will be no City fees charged for this process.
8. More detailed criteria for this process can be determined by a committee of one or two Engagement staff members, one or two Housing staff members, one or two members each selected from PB, BOZA, and HAB, and two or three people who have represented neighborhood groups. An extra benefit to this option is that it would advance two interests of Council – members from various boards working together and city departments working together.
9. The exemption request(s) can be reviewed by the Housing Advisory Board, Planning Board, and the Board of Zoning Adjustment (or any appropriate combination of boards). The City Council will make the final decision.

Allowing neighborhoods to receive a variance, based on legitimate concerns, demonstrates the City's interest in listening to community voices to maintain neighborhood character. Accelerating the potential for ADUs in other neighborhoods advances housing opportunities.

Bold moves towards more ADUs in most neighborhoods while allowing a path for overburdened neighborhoods to avoid negative impacts creates a win/win/win situation - good for all neighborhoods, good for increased housing, and good for City housing goals.

ATTACHMENT C

Hello All,

In regards to concerns regarding the potenial impact of ADU's on particular neighborhoods and the desire to allow those sub-community areas an opportunity to provide plans for affordability that will better match specific conditions and character, I have the following suggestion:

- 1) The Board proceed with a baseline, City-wide recommendation to Council regarding the roll-out of ADU Changes which fairly closely mirrors the staff recommendations (essentially solidifying those "conditional" yes votes that occurred during our last straw poll). And thereby allowing us to arrive at a 4-1 or even 5-0 recommendation to Council.
- 2) The Board recommends that Council defer the implementation of the new Rules by a period of 6 months.
- 3) During those 6 months, sub-community areas will have the opportunity to present alternate visions of how they will contribute in order to meet affordability needs in the City. The determination of how to meet the affordability criteria will be based upon providing an 1.5x the number of permanently affordable units within the Sub-Community Area as would have potentially been provided by the baseline ADU Changes. (The 1.5x number comes from the consideration that with ADU's we not only provide one new permanently affordable unit in the ADU itself, but are also providing added affordability by allowing a current owner to remain in their home. The .5 being a recognition that not all ADU's would necessarily provide that relief, but at least some would.)
- 4) Sub-Community Area plans presented and approved after the 6 month deadline will then replace the standard City-wide rules.

This is a rough sketch for your consideration prior to next Monday's meeting. I will flesh out some of the detail before then. I believe this provides the opportunity for area specific concerns to be addressed, while simultaneously providing motivation to not "kick the can down the road".

Until Monday!

Jacques

ATTACHMENT D

HARDSHIP OCCUPANT WAIVER FOR ADUs

At our deliberations on ADUs, there seemed to be unanimous agreement on HAB putting forward an addition to staff recommendation #12 to include a hardship occupant waiver for ADUs under certain circumstances.

Two examples of such circumstances might be: 1) a widow in the main house, who rents her ADU to two unrelated people, has a stroke and needs a live-in caregiver; or 2) Two unrelated people rent the main house and a man lives in the ADU when a friend of the people in the main house is deported and the two unrelated people want to take in the deported person's child.

It seems that the next step might be to consider the most efficient way to provide such a waiver.

After listening to discussion at HAB deliberations on May 7, 2018 and after a conversation with our City Attorney, Erin, it seems to me that the best way to proceed is to simply request Council to add the hardship occupant waiver onto staff's recommendation about occupancy (#12) and indicate that the method we suggest is very similar to that of other types of waivers that the city already utilizes – that being an administrative process.

Documentation would have to be provided at the time of the request that the waiver was necessary. Documentation would fit the situation, but might be a letter from the supervising doctor, case worker, faith leader, nonprofit leader, etc.

As was discussed on May 7, these waivers would be attached only to specific occupants under certain crucial situations. They would not be attached to the ADU, itself. They would remain with the ADU only as long as that particular occupant remained there.

**CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
May 3, 2018
1777 Broadway, Council Chambers**

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

Liz Payton, Chair
Bryan Bowen, Vice Chair
David Ensign
John Gerstle
Crystal Gray
Peter Vitale

PLANNING BOARD MEMBERS ABSENT:

Harmon Zuckerman (*recused*)

STAFF PRESENT:

Hella Pannewig, Assistant City Attorney
Cindy Spence, Administrative Specialist III
Jim Robertson, Director of Planning, Housing + Sustainability
Lesli Ellis, Comprehensive Planning Manager
Jay Sugnet, Senior Planner
Kurt Firmhaber, Deputy Director for Housing
Jean Gatza, Senior Planner
Karl Guiler, Senior Planner
Elaine McLaughlin, Senior Planner
Chris Ranglos, Associate Planner

1. CALL TO ORDER

Chair, **L. Payton**, declared a quorum at 6:02 p.m. and the following business was conducted.

2. APPROVAL OF MINUTES

On a motion by C. Gray and seconded by J. Gerstle the Planning Board voted 6-0 (H. Zuckerman absent) to approve the April 5, 2018 minutes as amended.

3. PUBLIC PARTICIPATION

No one spoke.

4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS

- A. CALL UP ITEM: TEC2017-00033: Final plat to replat the properties within the approved Diagonal Crossing development at 3600 State Highway 119 to create 6 new lots, two outlots and

dedicate a new public right-of-way within the Business Transitional – 1 (BT-1) zoning district. The 14-day call-up expires at the end of the day on **May 3, 2018**.

- B. CALL UP ITEM: LUR2018-00010, 1100 Balsam Avenue:** Staff level disposition for a Use Review for Parking as a Principal Use. Conversion of an existing 97 space parking lot, leased from Boulder Community Hospital (west side of Alpine/Balsam campus), for permit-only parking consisting of 92 standard parking spaces and four accessible spaces. Scope includes restriping, surface repairs and parking signage. Because the use of the parking is planned to serve as parking for off-site uses other than the former hospital (e.g., city, downtown, or other area employees), it is considered parking as a principal use which requires Use Review within the 'Public' zoning district. The 14-day call-up expires at the end of the day on **May 11, 2018**.

None of the items were called up.

5. PUBLIC HEARING ITEMS

- A. AGENDA TITLE:** Public hearing to consider a recommendation to City Council to adopt an ordinance amending Section 9-2-3, "Variances and Interpretations," Section 9-6-3, "Specific Use Standards – Residential Uses," Section 9-16-1, "General Definitions" and Section 10-3-19, "Short-Term Rentals," B.R.C 1981, regarding the regulations and requirements for accessory units, and setting forth related details.

H. Zuckerman recused himself.

Staff Presentation:

K. Firnhaber introduced the item to the board.

J. Sugnet presented the item to the board.

Board Questions:

J. Sugnet and **K. Firnhaber** answered questions from the board related to the Key Issues.

Public Hearing:

- 1) **Myriah Conroy** spoke on behalf of PLAN Boulder. She said the broadening of the ADU/OAU opportunities is a great idea and there should be broad community benefit and buy in. However there are some concerns such as the inability for individual neighborhood input and creating permanently affordable ADUs/OAUs. It would be creating up-zoning. In addition, it does not address unlicensed or illegal ADUs/OAUs.
- 2) **Lincoln Miller** spoke in support of the recommendation and ADUs should be easier to accomplish. They assist with aging in place, affordability, and preserve neighborhood character. There exists a natural barrier for the creation of ADUs which is the permitting, construction, engineering, etc. that keeps ADUs from being created and he would like to see all limitations removed.
- 3) **Keeli Biediger** spoke in support of the recommendation. While parking is one of the biggest concerns, all the proposals are important and need to be amended.
- 4) **Mili Robos** said that ADU/OAUs are different from other housing developments in that they are built and managed by single-family owners who are attempting to maintain property value,

leverage property taxes and not have to leave their neighborhood. They represent only 1% of Boulder's housing stock. However the human factor is paramount. She advocated that the ADU recommendation be equitable by removing the saturation requirement and the zoning exclusions. In addition, she asked that the land be considered in that small houses, with small footprints, provide better massing diversity, retention of landscaping and water retention than one large home on a lot. ADUs with pervious ground give more than they take. She asked that the board add a "pervious ground requirement" to the ADU policy.

- 5) **Annlee Landman** spoke in opposition to the recommendation. She was concerned with saturation and parking. She suggested a cap on rents with ADUs that they would still remain unaffordable. She said that ADU restrictions should not be relaxed.
- 6) **Lisa Spalding** (pooling with **Tomoze Yano**) spoke in opposition to the recommendation specifically regarding saturation limits. There should be a case study regarding the large number of illegal ADUs and non-conforming ADU/OAUs. She asked the board to meet with residents of the neighborhoods to discuss their individual needs.
- 7) **Donna George** suggested that the parking requirement for the ADU/OAU remain, but if an additional parking space cannot be created, then it should be written in the ordinance or contract that the renters of the ADU/OAU cannot have a vehicle. She said the saturation rate should remain at 10% and should apply to all zones. Regarding the detached OAU size, they should not be a means to double the housing footprint size on a lot. They should stay small to only accommodate single or elderly residents. She suggested that if someone purchases a house, they cannot put the home up for sale for five years and must live in the unit if they are going to rent it. There should be no short-term rentals. And neighbors should have impact on the decisions concerning ADUs.
- 8) **Mike Marsh** spoke in opposition to the recommendation and that the process should not change. It should specifically address the neighborhood concerns through neighborhood plans. He suggested an amnesty period to bring all illegal ADUs into compliance then recount the number of ADUs. He would like the city to address and apply precise policy to the appropriate neighborhoods.
- 9) **Kurt Nordback** said ADUs are an affordable means of housing, low environmental impact, build community, and promote aging in place. Regarding parking, he suggested the occupier of the ADU not have a vehicle or the owner provide them with a parking space, and the tenant would not be allowed to obtain an on-street parking spot.
- 10) **Elizabeth Helgans** spoke in support of the recommendation. She said it makes sense, would be gentle infill, make use of existing buildings, and put homeowners in charge. She asked the board to solve the parking issue and to have historic landmarked buildings exempt. It may encourage people to landmark their homes.
- 11) **Will Toor**, on behalf of Better Boulder, spoke in support of the recommendation. It would make Boulder a more welcoming and climate friendly community. Boulder's ADU/OAU ordinances are very restrictive. The recommendation is a good starting point. He suggested a few modifications such as removing the saturation limit altogether, removing off-street parking requirements in all neighborhoods including those with NPP programs, removing any minimum lot size requirement, and interested in creating mechanisms for permanent affordability that are linked to a city investment in the property.
- 12) **Evan Freirich** spoke in support of the recommendation specifically in terms of affordability. Rent can be restricted based on the investment which can be excellent. He suggested staff review.

- 13) **Mark Gelband** spoke in support of the recommendation. Boulder has a housing crisis. While Boulder claims to have progressive values, but the approaches to housing and staff's recommendations to housing and ADUs are conservative. He suggested removing all barriers to creating affordable housing. The proposed changes are too conservative and inflexible.
- 14) **Ken Kroenlen** spoke in support of the recommendation. As a NIST staff member, affordability for housing is primary. While an ADU would have been ideal for him on his property, it was not possible. He would like to see better short-term rental possibilities.
- 15) **Macon Cowles** spoke in support of the recommendation. He focused on the parking recommendation. Due to the current ordinance, to build a small structure for friends or family, there is no way to accomplish this. The ordinance is requiring, when there is an NPP, for folks to build two parking spaces when adding an ADU where none were required before. Boulder should not be built around the vehicle. He suggested relieving the parking pressure by creating a parking permit for homes with an ADU/OAU by limiting it to one. Also, with respect to NPP homes, do not let one of the ADU tenants, purchase one of those spaces. Or, the parking requirement could be removed in NPP zones. Finally, he suggested the tenant and owner sign could sign a commitment that the tenant would not use a car but use a bike or public transit.

Board Comments:

Key Issue #1: Parking – Recommend removing the parking requirement for parcels outside a Neighborhood Parking Permit (NPP) program area.

- **C. Gray** recommended removing the parking requirement for parcels for OAUs/ADUs and leave out the NPP program areas.
- The other board members agreed.
- The board discussed that the Neighborhood Parking Permit program is designed to manage parking and the city should not be requiring off-street parking in those areas.
- This decision would be consistent with other board decisions to reduce parking through Site Review.
 - **DECISION:** Unanimous support from the board to remove the parking requirement entirely (not the staff recommendation).

Key Issue #2: Saturation – Recommend increasing the saturation rate from 10 to 20 percent.

- **P. Vitale** stated that the saturation rate is not a good gauge for the demand. He would support an increase in the saturation rate and staffs' recommendation.
- **L. Payton** said the saturation rate concept is odd and unequal. In addition, the saturation rate is dependent on enforcement and knowledge of the number of illegal ADUs. She would not support the recommendation and would prefer it were based on the number of permits per year.
- **B. Bowen** agreed the saturation limitation is arbitrary and there is a large equity problem surrounding it. He would not support **L. Payton's** suggestion of number of permits per year with the ordinance, but it could be pushed into a neighborhood planning process. If the current saturation rate is maintained, it will not eliminate illegal ADUs.
- **J. Gerstle** agreed that currently the saturation rate is not a good approach. He said it should be neighborhood specific and supported keeping it at 10% at the present time, and that possible changes should take place through neighborhood and subcommunity planning efforts. He suggested that the neighborhoods should take the initiative to identify illegal ADUs, and that

these should be included in the saturation limit assessment. He felt that establishing saturation limits without knowledge or consideration of illegal ADUs would be inappropriate.

- **B. Bowen** countered by saying that with the saturation rate at 10%, it would not change the number of illegal ADUs. If the saturation rate is maintained at 10%, the illegal ADUs will not come in the door.
- **P. Vitale** said that he is bothered by the ability of neighborhood subcommunity area plans being able to limit or exclude people and that neighborhoods may not be helping to solve the housing crisis which the entire community needs.
- **D. Ensign** reminded the board that the RL-1 and RL-2 zones were the only ones that had saturation rates that would apply. He would like there to be no saturation limits, but he would support the recommendation for 20%. He would like to continue working on the limit after it is in place.
- **C. Gray** would support the 20% saturation rate recommendation. She would like to see it done through a subcommunity area plan. She proposed a variance process to accompany the rate.
 - **DECISION:** There was no unanimous recommendation from the board. Opinions varied. Two board members supported the staff recommendation. One supported removing the requirement entirely. One supported replacing the requirement with a limited number of permits per year system. One supported keeping the current 10% saturation requirement and adjust as part of a subcommunity plan. One supported keeping the current saturation requirement but adding a variance process.

Key Issue #3: Legal Nonconforming Structures (Saturation Rule) – Recommend removing legal non-conforming structures from the saturation requirement.

- All board members supported the removal of legal non-conforming structures from the saturation requirement except **J. Gerstle** and **C. Gray**.
- **J. Gerstle** said that nonconforming structures have similar impacts to other ADUs and that this should be considered with respect to the saturation rate. They should be counted because they add density to the neighborhood and that is what the saturation rules are intended to address.
- **C. Gray** said there needs to be continuing discussions regarding The Hill area. However, this is one opportunity to help encourage homeownership on The Hill to help stabilize the area.
- The board agreed and that the city needs to get a better handle on illegal rentals citywide.
 - **DECISION:** Board support (4-2) to remove legal nonconforming structures from the saturation limits (**J. Gerstle** and **C. Gray** opposed). The board would like to encourage additional scrutiny and discussion regarding The Hill area.

Key Issue #4: Allowed Zones – Recommend allowing OAU and ADUs in all the same zones, including RMX-2 and rename OAU and ADUs to Detached ADUs and Attached ADUs, respectively.

- All Board members were in support of staffs' recommendation.
- **C. Gray** added that she would like to incentivize landmarking, affordable housing and net zero.

- **DECISION:** Unanimous support from the board to expand ADUs/OAUs in all the zones proposed by staff, including RMX-2.

Key Issue #5: ADU and Interior OAU Sizes – Recommend changing the 1/3 size limit to 1/2 for principal dwellings of less than 2,000 sq. ft. to give smaller homes additional flexibility in creating an ADU or interior OAU.

- All board members supported staff's recommendation and added that this would provide fairness to people with smaller homes as it would only provide flexibility for homes less than 2,000 sq. ft.
- **DECISION:** Unanimous support from the board to change the size limit from 1/3 to 1/2 of the principal dwelling.

Key Issue #6: Lot Size – Recommend lowering the minimum lots size to 5,000 sq. ft. for ADUs and OAUs in allowed zones.

- All board members supported staff's recommendation.
- **DECISION:** Unanimous support from the board to lower the minimum lot size from 6,000 sq. ft. to 5,000 sq. ft.

Key Issue #7: Detached OAU Size – Recommend increasing the size limit for a detached OAU from 450 to 800 sq. ft. and remove the building coverage limit.

- All board members supported to increase the size limit for a detached OAU from 450 to 800 sq. ft. and remove the building coverage limit except J. Gerstle and C. Gray.
- C. Gray felt the 800 sq. ft. increase was too large and non-incremental, however she supported 500 sq. ft.
- J. Gerstle felt 800 sq. ft. was too significant, considering the objective of making only incremental changes to existing regulations. He could support either 500 or 600 sq. ft. instead.
- There was overall board support for greater flexibility.
- **DECISION:** Board members (4-2) supported increasing the size limit for a detached OAU from 450 sq. ft. to 800 sq. ft. and remove the OAU specific building coverage limit. (C. Gray and J. Gerstle opposed)

Key Issue #8: Detached OAU Design – Recommend removing the design requirements related to garage doors, roof pitches, height, and expansion of building coverage for detached OAUs and rely on the Compatible Development Standards.

- The board was in support of the recommendation.
- C. Gray disagreed stating that the design requirements were developed without any historic guidelines and by removing them, less than desirable design will come through. She would rather see an area plan.
- These requirements are leading to poor design outcomes as they were designed to mimic carriage house designs. The important design requirements would remain.

- **DECISION:** The board supported (5-1) to remove the design requirements for garage doors, roof pitches, and expansion of building coverage for detached OAU's and rely on the Compatible Development Standards. (C. Gray opposed)

Key Issue #9: Five-Year Requirement – Recommend removing the 5-year minimum requirement for the primary home.

- The board was in support of the recommendation.
 - C. Gray opposed.
 - Some board members expressed concern about developer speculation. However, the board was sympathetic to extended families that wanted to pool resources to build a house in Boulder and would be prevented from having a separate unit for an aging parent.
 - Encourages two smaller homes rather than one big home – developers are going to maximize profit by building more square footage, not by building an accessory unit.
 - The board agreed that better design results when ADU/OAU's are designed with the initial home design instead of retrofitted.
 - The current regulation is not achieving the intended objective.
- **DECISION:** The board supported (5-1) to remove the 5-year minimum age requirement for the principal home to be eligible to construct an accessory unit. (C. Gray opposed)

Key Issue #10: Accessory Unit Permit Renewal – Recommend removing the accessory unit permit transfer system and rely entirely on rental licensing and building permitting to address life and safety issues.

- The board was in support of the recommendation.
- **DECISION:** Unanimous support from the board to remove the accessory unit permit transfer system and rely entirely on rental licensing and building permitting to address life and safety issues.

Key Issue #11: Short-Term Rentals – Recommend prohibiting short-term rentals in either the accessory or the primary dwelling unit for newly created accessory units and allow current short-term rental license holders to rent for a period of 5 years.

- J. Gerstle and L. Payton agreed with the original staff recommendation to prohibit short-term rentals in the original living unit and the newly created ADU.
 - The remaining board members were in support of *Option A* presented in the memo recommending the prohibition of short-term rentals for newly created accessory units but allow owners with a current short-term rental license to continue renting until they either fail to renew the permit or a change in ownership.
 - B. Bowen recommended eliminating “*primary/principle dwelling*” language from the recommendation.
- **DECISION:** The majority of the board supported (4-2) *Option A* to prohibit short-term rentals for newly created accessory units but allow owners with a current short-term

rental license to continue renting until they either fail to renew the permit or a change in ownership. (J. Gerstle and L. Payton supported the original staff recommendation)

The Board split (3-3) on a straw poll to allow limited short-term rental opportunities in the principal dwelling. There was agreement that short-term rentals should not be allowed in an accessory unit, however, several board members felt it was unfair to prohibit a property owner from occasionally renting on the principal home as it penalizes a homeowner for having an accessory unit.

Key Issue #12: Accessory Unit Occupancy Limit – Recommend removing the 2-person occupancy limit for the accessory unit. However, the overall occupancy limit for the property remains (i.e., 3-4 unrelated people depending on the zone).

- The board was in support of the recommendation.
 - **DECISION:** Unanimous support from the board to remove the two-person occupancy limit for the accessory unit while keeping the overall occupancy limit for the parcel. There was also unanimous support to remove a code provision that prohibited additional roomers in the principal home. Both changes allow a property owner to configure occupancy as they choose while still meeting the overall occupancy limit for the parcel (i.e., 3-4 unrelated people depending on the zone).

Other Discussion Issues

Family and Friends:

- C. Gray proposed a provision that spaces which are being used as offices could be used for friends and/or family legally to sleep in it. She questioned if there could be a hybrid rather than apply for an OAU thereby capturing some of the saturation rate.

Variables for Regulatory Relief: to make ADUS contingent/incentives on (CG & LP)

- C. Gray would like the above Key Issues could be contingent on one or several of the following incentives such as landmarking your house, permanent affordable housing, and getting close to net zero (i.e. renewables and no gas).
- B. Bowen suggested exemption from saturation as a variable.
- D. Ensign added this may be a big burden on staff to compile this bartering structure.
- B. Bowen recommended stating under the *Detached OAU Size (Key Issue #7)* to accept historic landmarked structures and that the 800 sq. ft. requirement would not apply.
- The board agreed.
- C. Gray suggested making this recommendation to City Council.
 - **DECISION:** The board was in support of recommending to the City Council that the twelve *Key Issues* could be contingent on one or several of the following incentives such as landmarking, permanent affordable housing, and getting close to net zero (i.e. renewables and no gas). In addition, the board agreed that 800 sq. ft. would remain as agreed upon to *Key Issue #7*, but it would not apply to “*historic landmarked structures*”.

Enforcement:

- **L. Payton** asked that a study continue to calculate how many illegal units exist since this number is key to understanding saturation levels.

Subcommunity Plans:

- **J. Gerstle** said subcommunity planning to address city goals should be initiated at the earliest possible moment, which would consider ADU regulations.

Motion:

On a motion by **B. Bowen** seconded by **D. Ensign** the Planning Board voted 6-0 (**H. Zuckerman** recused) to recommend City Council adopt an ordinance amending standards for accessory dwelling units and owner accessory units including Section 4-20-43, "Development Application Fees," Title 9, "Land Use Code," and Section 10-3-19, "Short-term Rentals," B.R.C. 1981, and setting forth related details as discussed and modified during the board deliberations.

On a motion by **C. Gray** seconded by **L. Payton** the Planning Board voted 6-0 (**H. Zuckerman** recused) to further recommend that City Council consider incentives for permanently affordability, landmarking and net zero opportunities within the OAU/ADU revisions within a time frame City Council finds appropriate.

On a motion by **J. Gerstle** seconded by **L. Payton** the Planning Board voted 6-0 (**H. Zuckerman** recused) to further recommend that City Council to move ahead with Subcommunity Plans in an expedited way to deal with many issues in direct concern with ADUs and OAUs.

Motion to Continue Tonight's Meeting:

On a motion by **C. Gray**, seconded by **L. Payton**, the Planning Board voted 6-0 (**H. Zuckerman** absent) to continue the Planning Board meeting and hear the remaining items on the agenda.

6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

- A. AGENDA TITLE:** Update on Area Plan processes for Alpine-Balsam and Civic Area East Bookend

Staff Presentation:

J. Gatza presented the item to the board.

Board Comments:

- The board was optimistic regarding the update.
 - **L. Payton** suggested both area plans, given their flood-prone locations, be designed for the 500-year flood, rather than the 100-year flood.
- B. AGENDA TITLE:** Discussion regarding Topics for Upcoming Planning Board Retreat and Recess Dates

Board Comments:

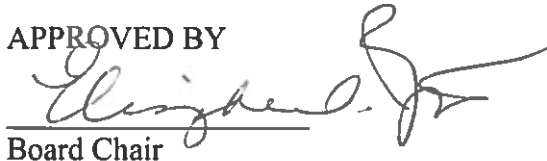
- The board agreed on Planning Board recess dates of June 22 – July 13, 2018.
- The board agreed on the following topics for their Retreat on June 6, 2018:
 - John Putnam will be asked to facilitate.
 - Regan Byrd, with Regan Byrd Consulting, will give a presentation (1 hour)
 - Liaison and subcommittee assignments (20 minutes)
 - Includes whether Planning Board should designate liaison members for other boards which we do not currently have (e.g. Transportation, WRAB, Uni-Hill, OSBT)
 - The Planning Board's overall functioning (1 hour)
 - Discussion by staff regarding how Planning Board could improve its procedures and effectiveness
 - Discussion how and when to retract deliberation from non-criteria-based decision making
 - Refresher on the Code of Ethics, Code of Conduct, Conflict of Interest, Appearance of Impropriety, swearing in, and disclosure requirements
 - Examine one or more of the proposed changes to the Land Use Code. (30 minutes)
 - Includes understanding of roles and processes around Use Table and other code changes;
 - Includes understanding realization of changes (e.g., encouraging smaller homes)
 - Engagement and public participation (30 minutes)
 - Can we improve on what we are doing and incorporate suggestions from the public participation working group - and when?
 - Tour – RiNo District, Denver

7. DEBRIEF MEETING/CALENDAR CHECK

8. ADJOURNMENT

The Planning Board adjourned the meeting at 12:15 a.m.

APPROVED BY


Board Chair

5/17/18
DATE