

MEMO

TO: Boulder Planning Commission, Michala Alldredge, Steve Cox, other interested parties
FROM: Lee Nellis, FAICP
DATE: June 30, 2021

RE: Amendments Required by Recent Legislation - #1

The purpose of this memo is to get us started on the amendments that will be needed for Boulder Town to comply with recent changes in Utah law. We will begin with the requirement that all local governments provide for Internal Accessory Dwelling Units (IADU). Boulder allowed external accessory dwellings in Ordinance 2018-4, but did not anticipate recent changes in state law.

The law now requires the town to allow IADUs in all owner-occupied primary dwellings (basically all detached single family dwellings) as a use-by-right. The Town may not require a CUP or any other discretionary review.

The Town may prohibit IADUs in 25% of the area of its single-family zoning districts. That could end up being part of our broader discussion of the difference between the GMU and LDR zoning districts, but I don't think this exception will be useful at this time because so little land is encompassed within the clearly residential zoning districts.

I do not think the new law requires changes in the general plan nor does it affect anything we have done during the past year. It will require changes in the zoning ordinance, including in the table of uses, the parking table, and the definitions. It will also require the addition of one or more standards for IADUs.

Ordinance 2018-4

This current ordinance on accessory dwelling units (ADU) is best repealed. It is inconsistent with state law now and embodies what, in practice, is an artificial distinction that is difficult to administer. I have appended draft amendments to the zoning ordinance that will replace Ordinance 2018-4.

Those draft amendments propose eliminating the difference between rental and guest ADUs. The existing ordinance clearly says that the two types of ADU may be alternated depending on the needs (whims?) of the owner. How then can the Town monitor and, if necessary, enforce the distinctions?

The current ordinance also clearly assumes that ADUs are external (EADUs). It does not anticipate the new requirement that IADUs be permitted by right in owner-occupied detached single-family dwellings. I will return to EADUs, but let's continue on the impacts of the new state law.

Relationship to Short Term Rentals

Maybe the most important question about IADUs is whether they can be used as STRs. IADUs are, per the new law, rented for 30 consecutive days or more. This should keep the topics of IADUs and STR's separate.

Standards for Internal Accessory Dwelling Units

The new law imposes substantial limits on how IADUs may be regulated, but does give municipalities some power to set certain types of standards for IADUs. The Town may:

- prohibit IADUs in mobile homes – which probably makes sense;
- require a bedroom egress window – which probably makes sense;
- prohibit IADUs on lots of 6,000 SF or less – this may not apply in Boulder, but probably makes sense;
- prohibit an IADU in a dwelling that is served by a failing septic tank – which certainly makes sense;
- require that an IADU not change the appearance of the dwelling – which is a very vague power that I do not recommend using; and/or
- require the provision of one additional parking space for the IADU (meaning that three spaces would be required) – which definitely makes sense.

I will put these standards into ordinance form after we have discussed them. The new law gives the Town a somewhat unique enforcement mechanism, a lien. There isn't any choice about how that works, so I will add the enforcement language after we have agreed on the definitions and standards. The new law also allows the Town to record a notice that puts any restrictions on an IADU on record. This is important because recording a notice helps give the Town enforcement power against an owner who tries to use an IADU as a short-term rental (STR).

Note that there are also numerous building code changes to accommodate IADUs in the new law. I presume these will become part of the state building code and be adopted by the Town by reference.

External Accessory Dwelling Units

Since Ordinance 2018-4 will be superseded, and because it has redundancies and – in my view, at least – flaws, we should revisit the topic of EADUs. I am interested in hearing why the distinction the existing ordinance makes between rental and guest EADUs was important, but for now I am recommending that it be eliminated and replaced for the reasons explained below.

Section 1 of 2018 is a definition that is superseded in part by the change in state and by my recommendations, as appended. Section 2 is redundant of the table of uses. Section 3 requires a CUP for an EADU, which is redundant of the table of uses. Items a and b (in part) of that section are redundant of definitions the new state law requires you to add. Item c should be part of all CUP applications. The attached draft amendments would add this requirement to Chapter 8.

Item 3.d and part of b are important. I include their intent in the new standards I recommend. Item e is, again, redundant of the draft definitions. We need to talk about Item f: Nuisance is too vague a term. I do not see the necessity of Item g, but we can talk about that. Item h has been folded into the definition of EADU. The proposed amendments add Item i to the parking table.

Items a-d of Section 4 are redundant. Item e is captured in the standards I recommend except that:

Item iii is inconsistent with the state definitions (a unit that shares a common wall is either an IADU or a duplex), and

Item iv is unclear and inconsistent with the zoning ordinance’s provisions for non-conforming uses.

And I am unclear on why an EADU in the HDR must be attached, so I have not included that provision at this time.

Sections 5 and 6 have are problematic, if the two types of ADU are so easily interchangeable why are these distinctions needed? Section 7 is redundant.

Final Note

This project of integrating changes in state law into Boulder’s existing regulations involves lots of detail. There may be additional changes, even on the topic of accessory dwellings. I will be preparing another memo on possible changes to the subdivision regulations and, possibly, some other zoning items.

Appendix – Proposed Amendments

Repeal Ordinance 2018-4

Amendments to Boulder Zoning Ordinance

Amend Section 602, the table of uses, as follows:

Section 603, Table 1, Table of Uses

use	zoning district				C
	GM	LDR	MDR	HDR	
Accessory Dwelling Unit for Employees, Commercial	PC				See Section 602.5
Accessory Dwelling Unit for Rental	PC	PC	PC	PC	
Accessory Dwelling Unit – Guest	P	P	P	P	
<u>Internal Accessory Dwelling Unit</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>External Accessory Dwelling Unit</u>	<u>PC</u>	<u>PC</u>	<u>PC</u>	<u>PC</u>	

The rest of the table remains the same.

I have shown EADU’s as a compatible or potentially compatible use in every residential zoning district, which is consistent with the old ordinance and an easy way to promote more affordable housing. It might do more to promote affordability if the Town made EADUs uses-by-right, but I have stuck with the old ordinance. The big question raised here is whether the GM is, in fact, primarily residential? This is one more reason to talk about having a more exclusively agricultural zoning district.

Amend Table 3, the parking table, as follows:

Table 3 - Table of Required Off-Street Parking

<u>use</u>	<u>Required Off-Street Parking number of off-street parking spaces required</u>
single family dwelling	2 per <u>primary</u> dwelling unit
<u>accessory dwelling unit</u>	<u>1 in addition to the spaces required for the primary dwelling</u>

The rest of the table is unchanged.

Amend Section 803, as follows:

Add a new Item 2, as below, renumber the other items accordingly.

2. proof of ownership of the lot on which the CUP is requested, and where the application for a CUP is presented by a representative, the owner's written authorization for the representative to submit the application;

Repeal Section 1019 in its entirety and replace it as follows:

Section 1019 Accessory Dwelling Units (ADUs)

1. ***Is there a limit on the number of ADUs per primary dwelling?*** Yes. There may be only one ADU for each primary dwelling, whether internal or external.

Since state law now requires the Town to permit an IADU, you would not accept an application for a CUP for an EADU where there was already an IADU.

2. ***Are there limits on the occupancy of ADUs?*** Yes.
 - a. The property owner may occupy either the primary dwelling or the ADU. ADUs (internal or external) may not be rented for fewer than 30 consecutive days.
 - b. An ADU may be converted to a short-term rental ONLY via approval of a CUP for a short-term rental, as provided by Section 1020 and other provisions of this ordinance.

I try not to repeat things, but the prohibition on short-term rental of an ADU probably does bear repetition.

3. ***Is there a maximum size for ADUs?*** Due to state law, there are different answers for external and internal ADUs.
 - a. EADUs in the GM and LDR zoning districts shall not exceed 1000 SF in size.

- b. EADUs in the MDR shall not exceed 800 SF in size.
 - c. EADUs in the HDR shall not exceed 600 SF in size.
 - d. IADUs must fit within the footprint of the primary dwelling at the time the application for a building permit for the IADU is established.
4. ***Are there standards for the location of EADUs on the lot?*** Yes. EADUs must be within 100 feet of the primary dwelling to be considered clearly subordinate and customarily accessory.
5. ***What about the added load an ADU may place on the wastewater system for the primary dwelling?*** Due to state law, there are different answers for external and internal ADUs.
- a. The applicant must demonstrate that the existing on-site wastewater disposal system is adequate to support an EADU or that the existing system will be upgraded before a certificate of occupancy for the EADU is issued.
 - b. An IADU may not be established in a primary dwelling that is served by a failed on-site wastewater system.

Amend Chapter 20, the definitions, as follows:

Accessory Building: A subordinate building detached from, but located on the same lot as the principal use, the use of which is clearly incidental and accessory to that of the principal use. An Accessory Building ~~shall be no larger than 1000 square feet and~~ shall contain no living facilities, ~~including cooking facilities, and shall not be used as a dwelling unit.~~ External accessory dwellings are separately defined.

Trying to make the amendments for IADUs led me to read the definitions of accessory carefully. One possible flaw that has nothing to do with residential uses is the 1000 SF limit. It is not hard to imagine an agricultural or commercial use that would need an accessory building that is larger. It is also possible to imagine an accessory building that includes a commercial kitchen. That should not be prohibited outright. The recently adopted commercial development standards regulate any impacts, so I propose to eliminate this arbitrary limit.

Accessory Dwelling Unit for Employees, Commercial. A dwelling unit for an employee ~~of or the owner and which~~ that is on the same lot as a commercial use. It may be internal to a commercial structure or external. It must be approved as part of the CUP for a new commercial use or, where it is proposed to add an accessory dwelling to an existing commercial use, approved via an amendment to the existing CUP. Nonconforming commercial uses may not add an accessory dwelling.

Accessory Dwelling Unit, External An accessory dwelling unit that is in a separate structure, but on the same lot as the primary dwelling to which it is accessory, and, when

rented, is rented for 30 or more consecutive days. For the purposes of this definition, an ADU may be attached to the primary dwelling via a sidewalk and/or a breezeway, or through a garage, but must have a separate entrance.

Accessory Dwelling Unit, Internal. An accessory dwelling unit created: (i) within a primary dwelling; (ii) within the footprint of that primary dwelling at the time the internal accessory dwelling unit is created; and (iii) for the purpose of offering a long-term rental of 30 consecutive days or longer.

Accessory Use. A use that is clearly subordinate and customarily incidental to, and located on the same parcel lot as an authorized permitted or conditional use the principal use to which it is accessory. Accessory Use may include the parking of one (1) vehicle or piece of equipment owned by the owner of the parcel and used in the conduct of a business or activity, as allowed and licensed by the Town. (Amended by the Adoption of Ord. #47 passed 6/19/2002).

As always, standards should not appear in definitions. But before we move this parking standard, we need to discuss it. The recently adopted home business standards are more restrictive about parking a commercial vehicle or equipment on residential premises. We can go with this more permissive standard if you want. We just need to eliminate the inconsistency.

Replace the existing definition of mobile home with the definition in state law:

Mobile Home. A transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit, which when erected on a site, may be used with or without a permanent foundation as a family dwelling. See [Utah Code 57-16-3](#)

The definition of mobile home that is currently in the ordinance is not consistent with state law.

Primary Dwelling. A single-family dwelling that: (i) is detached; and (ii) is occupied as the primary residence of the owner of record.

Single-Family Dwelling: A building arranged or designed to be used for and containing one dwelling unit. An internal accessory dwelling unit may be included as part of any single-family dwelling, in accord with state law and all applicable requirements of this ordinance.