TOWN OF BLUE RIVER, COLORADO
MEMORANDUM

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TO: Michelle Eddy

THROUGH: Bob Widner, Town Attorney

FROM: Keith Martin, Deputy Town Attorney

DATE: May 1, 2024

SUBJECT: Zoning Methods to Control Housing Size and Bulk

This memorandum provides a brief overview of some of the various land-use controls commonly employed to limit the size and bulk of residential homes. Size and bulk controls are often used to limit the new development and redevelopment of lots and prevent what has been colloquially referred to as "McMansions" or larger homes which can be inconsistent with the character of the existing developed neighborhood.

Authority

Colorado's Zoning Enabling Act provides that a community may enact "bulk" regulations for buildings.[1] "Bulk" regulations are a combination of controls (lot size, floor area ratio, lot coverage, open space, yards, height, and setback) that determine the maximum size and placement of a building on a zoning lot.

Types of Bulk Controls

Minimum Lot Size

Nearly all land use and zoning codes include minimum lot size requirements for zone districts. For example, the Town of Blue River's Land Use Code (LUC) sets a minimum lot size of 80,000 square feet in the R-1 Zone District. This standard prevents lots larger than 80,000 square feet from being subdivided into smaller lots and prevents existing lots that are smaller than 80,000 square feet from being further subdivided into smaller lots.

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[1] " . . . [F]or the purpose of promoting health, safety, morals, or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the height and location of trees and other vegetation, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes." C.R.S. § 31-23-301.

Minimum lot size requirements help control the density of housing in a neighborhood and preserve view and open space. Reasonable minimum lot size requirements are valid.[2]

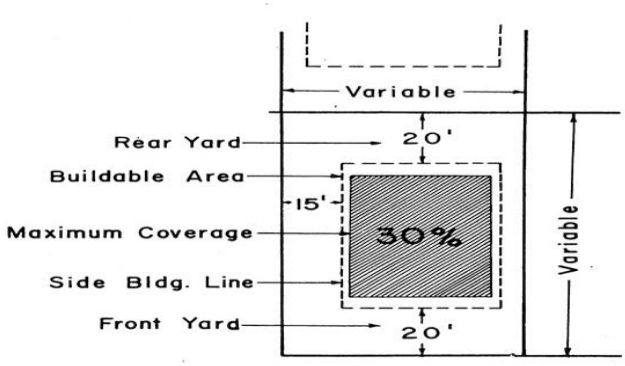
Setbacks

An ordinance may mandate building location by requiring minimum front, side and rear yards in residential districts.[3] Setbacks are universally common in land use codes in order to prevent certain areas of a lot from development and, in turn, limiting the area of a lot that can be developed.

> IMPORTANT NOTE: Blue River's LUC uses both *minimum lot size* and *setbacks* to define the "Buildable Area" of a lot. However, where a lot is larger in size and the setbacks are relatively short, the Buildable Area can potentially accommodate a significantly large residential structure. For example, a 40,000 square foot lot that is accompanied by front and rear yard setbacks of 25 feet and size yard setbacks of 15 feet, creates a potential Buildable Area as great as **25,500** square feet (assuming the lot is relatively flat and not encumbered by undevelopable slopes or easements). Even where the owner limits the footprint of the structure to 10,000 square feet, a one-, two-, or three-story residence will dwarf most homes in the neighborhood. Granted, not all owners will construct a residence of such size, but the potential will remain.

Maximum Lot Coverage

A zoning ordinance can specify a <u>percent</u> of lot coverage in a residential zone to prevent building to the maximum bulk permitted by lot area, setback and height dimensions alone. For example:



[2] *Di Salle v Giggal*, 128 Colo 208, 261 P2d 499 (1953)
[3] In *Gorieb v. Fox*, 274 U.S. 603, 47 S. Ct. 675, 71 L. Ed. 1228, 53 A.L.R. 1210 (1927), the United States Supreme Court upheld the general validity of setbacks to further the general goals of open space, light and air, and safety from fire; *see also Flinn v Treadwell*, 120 Colo 117, 207 P2d 967 (1949).

Maximum Building Size

The Town could set minimum and maximum size for residential buildings, generally based on aesthetic and community character concerns. Limits on the size of residential structures have been upheld by many courts. As an example, the Town can limit all homes in the R-1 Zone District to a maximum of 4,500 square feet (regardless of the size of the lot).

Maximum Building Footprint (First Story)

The Town could set a maximum building footprint (or the maximum size of the first story of the residential structure on a lot). Such a limitation, together with the zone district's maximum building *height*, will effectively limit the total size or bulk of the lot's residential structure. For example, a maximum first story building footprint of 2,000 square feet (regardless of the size of the lot) will limit the lot to a one-story residential home to 2,000 square feet and, depending on the maximum building height allowed, a two-story home of 4,000 square feet or three-story home of 6,000 square feet could theoretically be constructed (assuming no overhang of higher floors.

Floor Area Ratio (FAR)

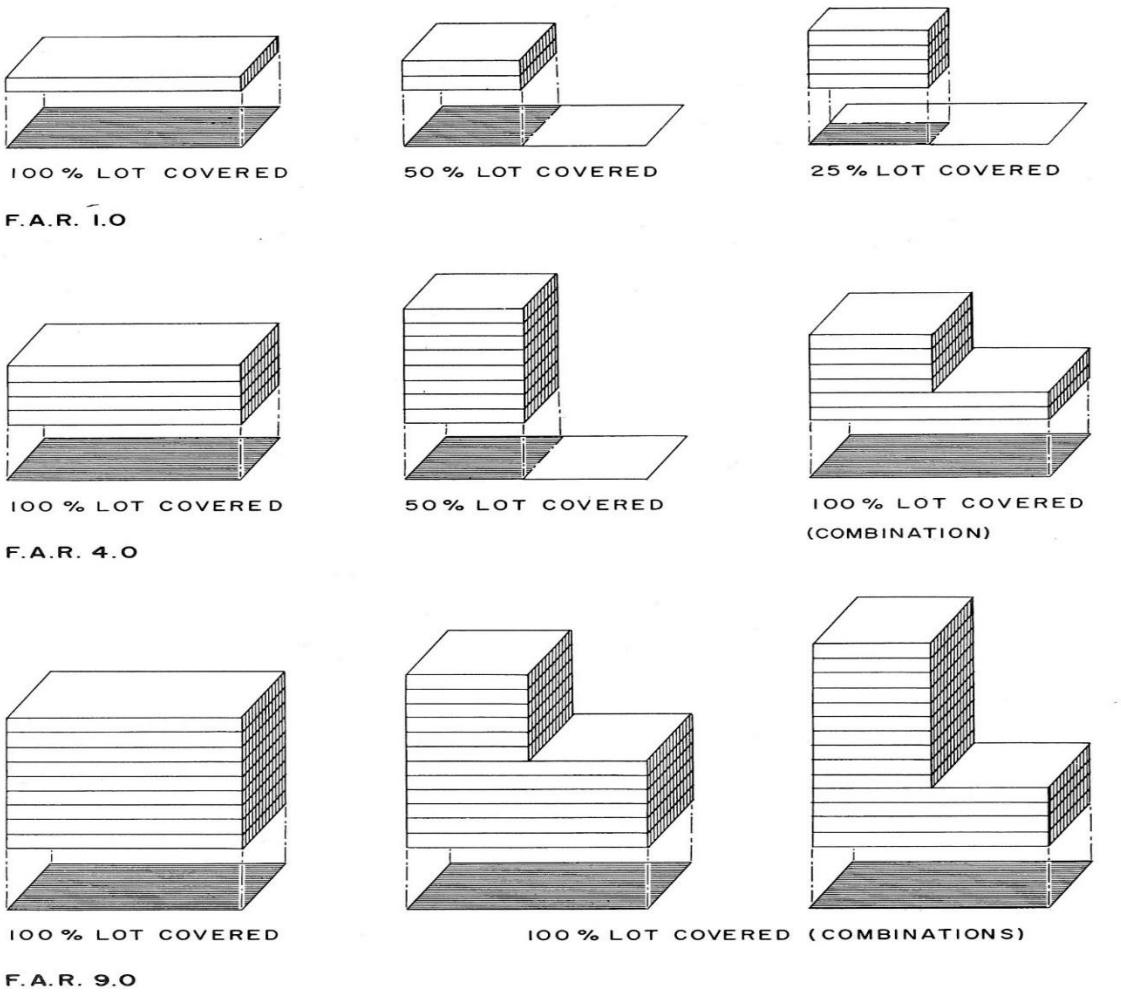
Floor area ratio or "FAR" is a metric used to measure how large a building on a lot is relative to the lot's size and is another device that permits variable dimensions within an over-all volume limit. Most of the ordinances that employ it also retain some if not all of the ordinary size limiting controls (e.g., minimum lot size, setbacks, and height). However, it does not in any way control the placement of that volume on the land. Therefore, if placement is a factor to be regulated, other bulk controls are required.

In nearly every ordinance in which it is used, a floor area ratio is obtained by the following simple formula:

FAR = floor area / lot area

In practice, this ratio is constant for a zone. For example, on a 10,000 square foot lot, a FAR of 0.5, allows a maximum 5,000 square foot building. A floor area ratio of 1.0 means that floor area may equal the lot area (10,000 square feet).

Although setting a floor area ratio affects volume, shape, and spacing of buildings on the lot, it does not determine a particular shape or spacing. Rather, it permits a choice. The following diagram (Figure 1) shows three of many possibilities under FAR 1.0, 4.0, and 9.0 and demonstrates that shape, height, and arrangement on a lot may vary widely.



Illustrations of Floor Area Ratios. Source: *A New Zoning Plan for the District of Columbia*. Harold M. Lewis, 1956.

Bulk Plane Requirements

Bulk plane standards lower the permitted height of development near front, side and/or rear property lines by establishing an inclined plane over which buildings may not protrude. By pushing taller building elements towards the center of a lot, a bulk plane may be used to reduce looming impacts on neighboring properties and promote access to light and air.

Bulk plane standards are best suited to larger municipalities with planning staff due to the complexity of the tool and its application. If more information is desired about this method of controlling building size, bulk, and mass, please contact me.

As always, please let us know of any questions or concerns.