

STAFF REPORT

DOCKET # UDO-267

STAFF: [Walter Farabee](#)

REQUEST

This UDO text amendment is proposed by City-County Planning and Development Services staff to amend Chapter B of the *Unified Development Ordinances* (UDO) concerning regulations for Accessory Dwelling Units.

BACKGROUND

Accessory dwelling units are structures that may be detached or attached to a principal structure on the same lot and are sometimes referred to as granny flats, in-law apartments, guest houses, carriage houses or laneway/alley housing. Accessory dwelling provisions have existed in the UDO for many years, and before that, were in the Winston-Salem Zoning Ordinance as early as 1930. Accessory dwellings are commonly allowed in single-family zoning districts in many cities under certain conditions.

Legacy 2030 highlights the importance of accessory dwelling. Allowing for accessory dwellings allows the integration of some of our future housing needs within existing neighborhoods making use of existing infrastructure while retaining the character of residential neighborhoods. Accessory dwellings provide creative housing options that can accommodate the growing population within municipal limits, and can offer a number of additional community benefits: they are likely smaller and more affordable than other housing options in the market, they utilize existing infrastructure, can generate income for the owner of the principal structure, and provide for aging in place for the elderly, sick or those on fixed-incomes.

Presently, the Unified Development Ordinances (UDO) sets forth regulations for accessory dwelling units which limits occupancy of these units to relatives, adopted persons, dependents or servants of the property owner. Existing provisions also extend occupancy rights to individuals over the age of fifty-five (55) and handicapped persons in attached dwellings only.

Based on recent North Carolina case law, the City Attorney's Office has identified concerns regarding the enforceability of these occupancy provisions of the UDO. While municipalities have the authority to regulate the use of property, case law suggests that they do not have the authority to limit the use of land based on the identity or status of the users of the property. The Attorney's Office has recommended revising our current ordinance provisions to prevent them from being challenged in court. When looking at other municipalities across the state, the large majority of cities both large and small currently allow accessory dwellings in single family neighborhoods.

ANALYSIS

Planning Staff agrees that revising the current accessory dwelling regulations is necessary. Staff is recommending that a number of new restrictions be included in the accessory dwelling

regulations to ensure the appropriate placement and design of units and to protect the character of single-family neighborhoods. These revisions to the regulations begin with refining the definition of attached and detached accessory dwellings. Attached accessory units would have to be completely contained within the same conditioned building structure as the principal residence or share at least 15 feet of an external wall with the principal residence. Detached accessory units could not be physically connected or attached to the principal structure and must be no less than 20 feet from the side or rear of the principal residence.

Several proposed ordinance revisions have been included for both attached and detached accessory units:

- Accessory dwellings are only permitted in association with single-family residential uses, and only one accessory unit is allowed per lot.
- The elimination of the kinship provisions, as suggested by recent case law.
- A requirement that no more than two adult individuals may inhabit an accessory dwelling, whether attached or detached, to limit the impact of noise, light, traffic and other measures on neighbors.
- Parking for the unit must be provided and served by the same driveway as the principal dwelling in most cases.
- One parking space per accessory unit bedroom shall be provided. Units without a bedroom must have one space provided. Given the size limitations further discussed, the number of spaces will remain low.

The following proposed revision applies only to attached accessory units:

- The accessory dwelling can't be more than 30% of the heated floor area of the principal building, not to exceed 1,000 square feet

Given the greater impact that detached accessory units pose to single-family neighborhoods, additional unique restrictions have been proposed for these units, which include:

- Detached accessory dwellings could only be placed on lots with a minimum lot size of 9,000 square feet and which have a principal structure that occupies no more than 30% of the lot area.
- The accessory unit would have to be located behind the front façade of the principal structure. If located on a corner lot then the detached unit must be located behind the building line of both street-facing facades.
- Unit limitations are based on the Growth Management Area (GMA) in which the accessory unit is located in:
 - In GMAs 1, 2 and 3 the detached accessory dwelling could not exceed 5% of the lot area with a maximum size of 1,000 square feet, except that lots in GMA 3 greater than 40,000 square feet in size allow units up to 1,500 square feet.
 - In GMAs 4 and 5, the square footage of the accessory dwelling could not be greater than that of the principal residential structure on site.
- Detached accessory dwellings in single-family residential districts would require a minimum rear setback equal to 50% of the required rear setback for the zoning district. The minimum side setback for the district remains and there must be 20 foot of spacing between the detached unit and the principal residence on the lot.

- Accessory dwellings in non-residential districts would require rear setbacks of at least 12.5 feet and side setbacks of at least 7 feet on one side and 20 feet combined.
- Maximum height would be increased to 24 feet to allow for the high-pitch rooflines found in the design of many homes today.
- A separate driveway for a detached accessory unit could only be created if the unit is located on a corner lot or served by an alley.

Beyond these regulatory changes to the ordinance, accessory dwellings are still proposed to be permitted in the same fashion as they currently are. Attached dwelling units would continue to be permitted by right with the issuance of a zoning permit from staff, while detached dwelling units would continue to require a Special Use Permit from the Board of Adjustment (BOA). The Special Use Permit process requires a public hearing allowing neighbors the opportunity to share their concerns about the impact of such structures on their neighborhoods. To receive approval from the BOA, an accessory unit must meet all conditions and requirements of the ordinance, as well as four findings of fact. This deliberate process reflects the importance of protecting the character of single-family neighborhoods while continuing to allow this limited housing option.

Over the past months, staff has engaged the public in the revision process by giving presentations and holding public input sessions. Based on public input, several additional ordinance provisions were created to reduce the potential for negative impacts from accessory units.

Overall, the proposed regulations for accessory dwelling units balance the need for providing appropriately designed accessory dwellings that will benefit the greater community with preserving neighborhood character. Most of our peer cities in North Carolina already have similar provisions for accessory dwellings. However, the provisions of this proposed ordinance are more restrictive than most peer city ordinances and provide for better design and placement. The City Attorney's Office has reviewed the proposed amendments and has confirmed that the proposed language is within the bounds of the land use regulation authority granted municipalities by the State. This text amendment should promote new affordable housing options, encourage gentle density, and provide diverse housing options for a growing community while maintaining the character and appearance of single-family neighborhoods.

RECOMMENDATION

APPROVAL

UDO-267
AN ORDINANCE REVISING
CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO AMEND REGULATIONS FOR ACCESSORY DWELLINGS

Be it ordained by the _____, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article II of the *UDO* is amended as follows:

Chapter B - Zoning Ordinance
Article II – Zoning Districts, Official Zoning Maps, and Uses

2-6 ACCESSORY USES

2-6.4 USES WHICH MAY ONLY BE ACCESSORY TO PRINCIPAL USES

(B) Dwelling, Accessory (Attached). ~~.....The Zoning Officer shall issue a zoning permit if the following requirements are met:~~

(1) Occupancy Requirements. ~~.....A zoning permit for an attached accessory dwelling shall be conditioned upon the property owner signing a statement verifying that one of the occupancy requirements is being met. The zoning permit shall automatically terminate when the occupancy requirement is no longer met. No more than two (2) adult individuals shall be allowed to inhabit any attached accessory dwelling.~~

(a) At Least Fifty-Five (55) or Handicapped. ~~.....The principal or accessory dwelling unit shall be occupied by a person at least fifty-five (55) years of age or handicapped; or, [Reserved]~~

(b) Relation. ~~.....The principal dwelling unit or the attached accessory unit shall be occupied by the following categories of persons: [Reserved]~~

(i) Relative. ~~.....Any relative under the civil law of the first, second, or third degree of kinship to the head of the household owning and occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

(ii) Adopted Person. ~~.....A son or daughter by legal adoption, or the adoptive parents of the head of the household or such person's spouse, whether spouse is living or deceased; [Reserved]~~

(iii) Other Dependent. ~~.....A dependent of the head of the household or of such person's spouse as defined by the North Carolina Department of Revenue; or, [Reserved]~~

(iv) ~~Servant.A servant employed on the premises and the servant's family, but only if such servant receives more than one half of his/her annual gross income in return for services rendered on the premises. [Reserved]~~

(2) **Structure.**The principal building shall not be altered in any way so as to appear from a public street to be multiple family housing.

(a) **Prohibited Alterations.**Prohibited alterations include, but are not limited to: multiple entranceways, multiple mailboxes, or multiple nameplates.

(b) **Access.**Wherever feasible and consistent with the State Residential Building Code, access to the accessory dwelling unit shall be by means of existing doors.

(c) **Stairways.**No new stairways to upper floors are permitted on any side of a building which faces a public street.

(d) **Utilities.**Electric and/or gas utilities shall be supplied to both units through a single meter.

(e) An attached accessory dwelling must be completely contained within the same conditioned building structure as the principal residence on the lot or share an external wall of no less than 15 feet in length with the principal residence.

(3) **Size of Unit.**An attached accessory dwelling unit shall occupy no more than ~~forty percent (40%)~~ thirty percent (30%) of the heated floor area of the principal building, but in no case shall the accessory dwelling unit be greater than one thousand (1,000) square feet. The sum of all accessory uses, including home occupations, in a principal residential building shall not exceed ~~forty percent (40%)~~ thirty percent (30%) of the total floor area of the building.

(4) **Parking.**Parking for the attached accessory dwelling shall be served by the same driveway as the principal dwelling. One parking space per accessory unit bedroom shall be provided. In no case shall less than one parking space be provided per accessory unit. It shall be demonstrated through a scaled site plan how parking will be provided.

(5) **Number of Accessory Dwellings.**No more than one accessory dwelling, whether attached or detached, shall be located on a lot.

(6) Accessory dwellings are only permitted on the same zoning lot as single-family residential uses.

(C) **Dwelling, Accessory (Detached).** A Special Use Permit shall be issued if the following conditions are met:

(1) **Occupancy Requirements.**~~A Special Use Permit for the detached accessory dwelling must be approved by the Board of Adjustment in accordance with the requirements of Section B.6-1.4. In addition, the applicant must submit a statement verifying that the occupancy requirements of this section are being met. The permit shall automatically terminate with the termination of occupancy by such persons. The principal dwelling unit or the detached accessory unit shall be occupied by the following categories of persons.~~

No more than two (2) adult individuals shall be allowed to inhabit any detached accessory dwelling.

(a) ~~Relative (F).Any relative under the civil law of the first, second, or third degree of consanguinity to the head of the household owning or occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

~~Relative (W). Any relative under the civil law of the first, second, or third degree of kinship to the head of the household owning or occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

(b) ~~Adopted Person.A son or daughter by legal adoption, or the adoptive parents of the head of the household or such person's spouse, whether spouse is living or deceased; [Reserved]~~

(c) ~~Other Dependent.A dependent of the head of the household or of such person's spouse as defined by the North Carolina Department of Revenue; or, [Reserved]~~

(d) ~~Servant.A servant employed on the premises and the servant's family, but only if such servant receives more than one-half of his/her annual gross income in return for services rendered on the premises. [Reserved]~~

(2) **Dimensional Requirements.**Any detached accessory dwelling shall occupy no more than five percent (5%) of the lot area and shall not be greater than one thousand (1,000) square feet. However, in GMA 3, accessory dwellings on lots greater than 40,000 square feet may have a maximum size of 1,500 square feet. In GMAs 4 and 5, the square footage of the accessory dwelling shall be no greater than the principal residential structure on the lot. Detached accessory dwellings shall comply with all dimensional requirements applicable to accessory structures in Sections B.3-1.2(F) and (G). Any proposed detached accessory dwelling exceeding the dimensional requirements of this section may be considered through the Special Use District Zoning process.

(3) **Building Requirements.**Any detached accessory dwelling shall comply with all building, plumbing, electrical, and other applicable codes, other than a manufactured housing unit.

(4) **Manufactured Home (F).**A Class A or B manufactured home may be used as a detached accessory dwelling; a Class C manufactured home may be used as a detached accessory dwelling in those zoning districts where a Class C manufactured home is permitted as a principal use according to Table B.2.6.

Manufactured Home (W). A Class A or B manufactured home may be used as a detached accessory dwelling.

(5) **Number of Accessory Dwellings.**No more than one accessory dwelling, whether attached or detached, shall be permitted on the same lot.

(6) **Parking.**Parking for the detached accessory dwelling shall be served by the same driveway as the principal dwelling. One parking space per accessory unit bedroom shall be provided. In no case shall less than one parking space be provided per accessory unit.

It shall be demonstrated how parking will be provided through the site plan submitted for the Special Use Permit process. If the detached accessory dwelling is located on a corner lot or served by an alley, a separate driveway may be provided from the side street or the alley.

- (7) **Location of Unit.**The detached accessory dwelling may not be physically connected or attached to the principal residence on the same lot. The detached accessory dwelling shall be located behind the front facade of the principal structure. For corner lots the detached accessory dwelling must be located behind the building line of both street-facing facades. The detached accessory dwelling must be set back no less than 20 feet from the side or rear of the principal residence.
- (8) **Setbacks.**An accessory structure must comply with all dimensional requirements applicable to accessory structures in Sections B.3-1.2(F) and (G), except as listed below:
 - (a) Accessory dwellings may be erected in any single-family residential district with a minimum rear setback equal to fifty percent (50%) of the required rear setback for the district. The minimum side setback for the district remains the same.
 - (b) Accessory dwellings in non-residential districts shall have rear setbacks of at least twelve and a half (12.5) feet and side setbacks of at least seven (7) feet on one side and twenty (20) feet combined.
- (9) Accessory dwellings are only permitted on the same zoning lot as single-family residential uses.
- (10) **Lot Requirements.**Accessory dwellings must meet the following conditions:
 - (a) A minimum lot size of 9,000 square feet exists.
 - (b) The principal dwelling structure on the lot occupies no more than 30% of the lot area.
 - (c) In GMA 3, accessory dwellings on lots greater than 40,000 square feet may have a maximum size of 1,500 square feet.
 - (d) In GMAs 4 and 5, the square footage of the accessory dwelling shall be no greater than the principal residential structure on the lot.

Section 2. Chapter B, Article III of the *UDO* is amended as follows:

Chapter B – Zoning Ordinance

Article III – Other Development Standards

3-1 - DIMENSIONAL REQUIREMENTS

3-1.2 SUPPLEMENTARY DIMENSIONAL REQUIREMENTS

The following supplementary dimensional requirements shall apply to all buildings and structures not subject to the general dimensional requirements of Section B.3-1.1.

(F) Accessory Structures Permitted in Required Yards

- (1) Interior Lots.An accessory structure ~~seventeen (17)~~ twenty-four (24) feet or less in height and structurally detached from the principal structure on the zoning lot may be erected on any interior lot in either the required side or rear yards, if no part of said structure is less than seventy-five (75) feet from the front lot line nor less than three (3) feet from a side or rear lot line.
- (2) Corner Lot.An accessory structure less than ~~seventeen (17)~~ twenty-four (24) feet in height and structurally detached from the principal structure on the zoning lot may be erected on a corner lot, provided that:
 - (a) Said structure shall be erected in the required side yard not abutting the street, and no part of said structure is less than seventy-five (75) feet from the front line nor less than three (3) feet from a side or rear lot line; or,
 - (b) Said structure shall be erected in the required rear yard and shall not project beyond, or nearer to, the street than the front setback line of the district, as extended, of the adjacent lot whose front yard abuts the corner lot in question.
- (3) Height.For purposes of this section, the height shall be measured from the average grade of the midpoint of the front wall to the ridge of the roof of the accessory building.

(G) Size Limits for Accessory Structures

- (1) Maximum Area.The total area of all accessory structures on a lot ~~Accessory structure~~ may not exceed five percent (5%) of the actual size of the zoning lot or the minimum permitted lot size of the zoning district, whichever is larger. However, an accessory structure up to five hundred seventy-six (576) square feet in area shall be permitted in all districts.
- (2) Board of Adjustment.Requests for structures containing greater area than prescribed in Section B.3-1.2(G)(1) may be considered under the special use permit process through the Board of Adjustment.
- (3) Required Yard.Accessory structures may not occupy more than twenty-five percent (25%) of the area of the required yard.

(H) Accessory Structures Prohibited in Required YardsAn accessory structure any part of which is within three (3) feet of the principal building or which is more than ~~seventeen (17)~~ twenty-four (24) feet in height shall comply with all the zoning regulations applicable to the principal building.

(I) ~~Special Yard Requirements for Older Neighborhoods~~~~Alternative dimensional requirements are available for neighborhoods which were originally platted or developed prior to March 3, 1948, and where at least fifty percent (50%) of the other lots on the block in question are developed. See Section B.3-8.~~

Section 3. Chapter B, Article III of the *UDO* is amended as follows:

Chapter B – Zoning Ordinance

Article III – Other Development Standards

6-1 ADMINISTRATION

To accomplish the purposes of this Ordinance and to insure compliance with these regulations, the following administrative responsibilities are assigned:

6-1.4 BOARD OF ADJUSTMENT

(B) Variances

- (1) Authority.No provision of this Ordinance shall be interpreted as conferring upon the Board of Adjustment the authority to approve an application for a variance of the conditions of a permitted use except with respect to the specific waiving of requirements as to:
 - (a) General Dimension Requirements for Zoning Districts listed in Sections B.2-1.2, B.2-1.3, B.2-1.4 and B.2-1.5 and shall only include minimum zoning lot area and width, minimum setbacks, maximum impervious surface cover, or maximum height;
 - (b) Floodplain regulations as specified in Section C.2-2.7;
 - (c) Vehicular use landscaping requirements as specified in Section B.3-4;
 - (d) Bufferyard requirements as specified in Section B.3-5;
 - (e) Setback and landscaping requirements of the TO District as specified in Section B.2-1.6(B);
 - (f) Width of private access easements where such easement is for single family residential uses and where said private access easement was established prior to April 17, 1978;
 - (g) Off-street parking and loading as specified in Section B.3-3;
 - (h) Delay of building permits within designated Transportation Plan corridors as specified in Section B.3-7.1;
 - (i) Residential infill setback requirements as specified in Section B.3-8; (W); ~~and~~
 - (j) Conservation Standards for the NCO District as specified in Section B.2-1.6(A); and
 - (k) Accessory dwelling requirements as specified in Sections B.2-6.4 and B.3-1.2.