



**STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT**

**ZOTA 2023-00007: AMENDMENT TO ARTICLES 1, 3, AND 8 TO UPDATE THE DEFINITIONS AND RESTRICTIONS REGARDING SECOND KITCHENS, ACCESSORY LIVING QUARTERS, AND ACCESSORY DWELLING UNITS (ADUs)**

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: See attached

(Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~through~~ indicates a deletion.)

**STAFF REVIEW:**

In response to staff's reporting related to the first year and a half of permitting accessory dwelling units, the Urban County Planning Commission initiated a text amendment. This proposed text amendment includes changes to portions of Articles 1, 3, and 8 of the Zoning Ordinance in order to further encourage the development of accessory dwelling units, as well as to better accommodate multigenerational and shared living arrangements for families within individual dwelling units in existing residential zones.

Since the adoption of *Imagine Lexington*, the 2018 Comprehensive Plan, staff has begun implementation efforts to update the Zoning Ordinance. The plan's adopted goals and objectives have a strong focus on expanding housing choices, enhancing existing neighborhoods and supporting infill efforts. These same goals and objectives have carried forward to the 2045 Comprehensive Plan.

During the *Imagine Lexington* planning process, the Senior Services Commission approached the Division of Planning regarding their interest in ADUs. The commission expressed concerns related to the high cost of new senior living and the dearth of options for affordable senior housing. Many of the city's residents exist in an economic gap of being too well off to qualify for subsidies, but not affluent enough to afford the new products and services coming to market. Further, many senior residents have expressed a desire to be able to stay in their homes or neighborhoods, but needing a smaller or more accessible unit that they could live in long-term. Lastly, others wished to be able to house caretakers or family on their property and provide more affordable care. Over the next 20 years, nearly 30,000 of the projected population increase of 80,000 will be seniors, highlighting an obligation to provide more housing options for aging-in-place.

Through the fall of 2018, members of a Senior Services Commission ADU committee began work to obtain a grant from AARP to develop an educational manual on ADUs that could be used in a public outreach process. From January through May of 2019, the project team met with the public and provided education on the benefits of ADUs. Along with a social media effort, over 1,000 television



commercials were aired that resulted in three well-attended public education sessions. Beginning in June through early August, planning staff started drafting a proposed Zoning Ordinance Text Amendment to allow ADUs to be constructed and conducted significant public outreach. After lengthy discussions, and modifications to the draft text, the Planning Commission recommended approval of the ZOTA allowing for ADUs ([PLN-ZOTA-19-00005](#)). The Urban County Council placed the ZOTA into committee and ultimately approved the text, with additional modifications, on October 28, 2021.

*Imagine Lexington* is a plan focused on adding housing options in varying formats. For Lexington to grow responsibly and equitably for both the current and future residents, the entire community must incorporate context-sensitive housing development into existing neighborhoods. Providing greater infill opportunities and increased housing options is not just for the downtown area or corridors. There is no better way to provide small, incremental, and context-sensitive avenues for growth than through an ADU ordinance which has been tailored to fit our community and is supported by national best practices. Throughout the nearly two years since ADU regulations were adopted, staff has provided regular updates to both the Planning Commission and Council regarding their implementation. To date, the current regulations have resulted in much fewer ADUs being developed than were projected.

Since October of 2021, Planning staff has conducted more than 35 pre-application conferences, and had hundreds of conversations with individuals interested in constructing or converting existing space into an ADU. To date, only 5 ADUs have been completed and 2 more are in progress. Four of the five that have been completed are conversions of existing detached accessory structures. One was for an attached unit that was originally constructed with BOA approval in the 1990s, for an adult child with disabilities to have an independent living space. The two applications in progress are also for detached conversions.

There are several reasons that individuals do not proceed past a pre-application conference, or more often, a phone call to Planning staff. The most common barriers for individuals who wish to construct an ADU include the existing prohibition on new detached ADUs, the requirement for owner occupancy, and the cost and availability of materials and labor for construction. Interior conversions are more difficult than new or converted detached units due to Building Code requirements which apply the same standards to an attached ADU as they would a duplex. This makes basement and attic conversions especially difficult and expensive, due to the need to separate HVAC systems and provide fire separation between the two units.

Staff is proposing several changes to the existing ADU regulations in order to make ADUs a more feasible option for property owners. Most of these changes are in Article 3-12, which contains general regulations for ADUs. First, staff is proposing removal of the prohibition on new detached ADUs. Additionally, modular or manufactured homes may be utilized as an ADU, provided they are attached to a permanent foundation. ADUs would still be limited to one (1) per lot, with an absolute maximum of 800 square feet. Further size and locational restrictions on accessory structures are already in place in Article 15 and would apply to accessory structures used for ADUs.

Staff is also recommending that the provisions requiring owner occupancy and the filing of a deed restriction be struck. These provisions make ADUs far more heavily regulated than other residential uses. If a property owner owns a single family dwelling, a duplex, or a multi-family unit, they are not required to live on-site and may rent out each unit. More than 50% of the population of the Urban



County rents their home and excluding this group because a particular housing type exists on a parcel is in opposition to the Comprehensive Plan and other community goals to expand mixed housing types and create gentle density in neighborhoods. Additionally, this requirement is more onerous than those included in the recently enacted regulations for short term rentals, wherein a hosted short term rental only requires a permanent resident on a property, not a property owner.

Proposed changes to Articles 3-12 and 3-13 related to the use of ADUs as short-term rentals are included in order to remove conflicts that currently exist between the two sections. The short term rental provisions in Article 3-12 were placed as an interim regulation while the Urban County Council further discussed and completed a more comprehensive short term rental Ordinance. The short term rental regulations were adopted on July 11, 2023.

In evaluating the trajectory of ADU construction following the 2021 adoption of ADU regulations, staff found that questions related to second kitchens and accessory living quarters (ALQs) often accompany conversations about ADUs. As such staff has identified a separate, but closely related use, that is not quite as intense as an ADU, but is not currently explicitly allowed by the Zoning Ordinance.

Staff has found that not every applicant is seeking a full additional dwelling unit, and the more stringent requirements for ADUs, including the requirement to meet the residential building code standards for a duplex mean that they are not always a viable option to meet the applicant's needs. In situations where an applicant is wanting to create a semi-private space that still communicates with the rest of the dwelling, the existing lack of clarity around second kitchens and ALQs creates barriers.

While nothing in the existing Zoning Ordinance states that second kitchen are not allowed within a dwelling unit, the presence of a second kitchen can be an indication that an additional dwelling unit is or could be created. The Zoning Ordinance defines kitchen facilities quite broadly, with only two appliances (including small kitchen appliances, like microwaves) qualifying as a kitchen. Single family dwelling units are not typically evaluated by the Division of Planning and typically only have to seek a building permit. However, because there is not a clearly defined situation in which additional kitchens are allowed versus when they are likely to result in an additional dwelling, permit applications in which additional appliances, cabinetry or labels indicating "wet bar," "kitchenette," or "entertainment kitchen" are directed to the Division of Planning for additional review. In reviewing such requests, the Zoning Compliance Planner requests that the applicant answer a list of somewhat subjective questions in order to ascertain whether the kitchen is really accessory to one family's use of a single dwelling, or if the intent is to provide an additional dwelling.

Adding to the confusion, the Zoning Ordinance currently allows for accessory living quarters (ALQs) which do not have a kitchen and cannot be rented. The Zoning Ordinance does not specify whether accessory living quarters must be attached or detached. Unfortunately, this results in an appealing opportunity for the circumvention of the provisions for ADUs. By applying for a building permit for a new detached structure with finished and conditioned accessory living quarters without kitchen facilities, applicants do not have to abide by the regulations for ADUs. If a kitchen is constructed later, without a permit, and it becomes known to the Division of Planning or Building Inspection, enforcement action is required. Unpermitted dwellings that may not be compliant with Building Codes represent a public safety concern.



Since what is and is not allowed under the current regulations is subjective and not easily understood by residents seeking to do construction to their property, or to buyers of property with something that looks like an ADU, but may have never been permitted as such, the proposed text amendment is intended to better delineate between what constitutes a separate dwelling unit and what is an allowable use of a single family dwelling unit.

The proposed text provides a new definition for an Accessory Living Quarters in Article 1:

*Accessory Living Quarters* means a portion of a dwelling unit designed for the purpose of shared or intergenerational living that may contain a second kitchen and other components of a dwelling, such as an independent means of egress. A non-separated, continuous, and open access shall exist between the accessory living quarters and the remainder of the dwelling unit. Total occupancy of a dwelling unit containing Accessory Living Quarters shall be limited to one family or housekeeping unit.

It also includes a modification of the existing definition of Kitchen Facilities with the addition of a second paragraph to add clarity:

*Kitchen Facilities* means equipment arranged in a room or some other space in a structure which facilitates the preparation of food, including, but not limited to, a combination of two (2) or more of the following: a range, microwave oven, dishwasher, kitchen sink, or refrigerator.

Detached accessory structures shall not be permitted to contain kitchen facilities unless that structure is an accessory dwelling unit. A wet bar, including a single sink with a waste drain and a refrigerator may be installed in an accessory structure, provided there are no bathroom facilities, unless such facilities are separated and independently accessed. A wet bar may not include provisions for cooking, other than a microwave oven.

Changes to Article 8 include striking language that would conflict with the proposed definition of accessory living quarters above.

These changes should make it easier for staff and applicants to evaluate applications where second kitchens are present to determine if a new dwelling is likely to be established, or if the purpose of the kitchen is for use by one family occupying the dwelling, for entertainment, convenience, or multigenerational living purposes.

While the continued inclusion of ADUs in the community will not provide a solution to all of Lexington's housing problems, they can serve as an incremental means to provide opportunities for aging in place, while also creating additional housing units that fit within the context of neighborhoods. Clarity related to ALQs will provide opportunities for families to adapt their homes more effectively for multigenerational and shared familial living situations. The proposed text should provide clarity to residents, as well as staff within the Divisions of Planning and Building Inspection, reducing subjective review above and beyond what is typical for single-family dwelling units and making enforcement more effective.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment is in agreement with the *Imagine Lexington 2045 Goals and Objectives*, Theme A, Goal 1, Objective b to accommodate the demand for housing in Lexington



responsibly, prioritizing higher-density, and a mixture of housing types. Accessory dwelling units provide opportunities for gentle density in established neighborhoods.

2. The proposed text amendment is in agreement with the *Imagine Lexington 2045 Goals and Objectives*, Theme A, Goal 1, Objective c to plan for safe, affordable, and accessible housing to meet the needs of Lexington's aging population and residents with disabilities. Accessory dwelling units and accessory living quarters will support needs for affordable and accessible housing types that accommodate aging in place.
3. The proposed text amendment is in agreement with the *Imagine Lexington 2045 Goals and Objectives*, Theme A, Goal 2 to Support Infill and Redevelopment throughout the Urban Service Area as a strategic component of growth. Accessory dwelling units can provide an infill opportunity available throughout the Urban Service Area, offering equitable access to the entire community.
4. The proposed text amendment is in agreement with *Imagine Lexington 2045 Goals and Objectives*, Theme A, Goal 3, Objective a, to enable existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expand options for mixed-use and mixed-type housing throughout Lexington-Fayette County. Making Accessory Dwelling Units a more feasible option will provide greater flexibility to all residents to create and utilize additional dwellings of a modest and compatible scale within a neighborhood context.

AG/CT/TLW

10/04/23

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