

2. **PLN-ZOTA-23-00007: AMENDMENT TO ARTICLE 1, 3, AND 8 FOR SECOND KITCHENS, ACCESSORY LIVING QUARTERS, AND ACCESSORY DWELLING UNITS (3/5/2024)\*** – a text amendment to update Articles 1, 3, and 8 of the LFUCG Zoning Ordinance 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: Copies are available from the staff.

The Zoning Committee Recommended: **Approval.**

The Staff Recommends: **Approval of the Staff Alternative,** 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.

Staff Text Amendment Presentation – Ms. Autumn Goderwis presented and summarized the staff report and recommendations for this text amendment. Ms. Goderwis began her presentation by stating that since regulations were adopted in 2021 there have been six ADU's permitted, and two are currently in progress. Since there has been so few in that time, Staff has been discussing what the commonly cited barriers to ADU construction have been. Some of the barriers include the restriction on new detached ADU's, the owner occupancy requirement, the cost due to building code requirements, labor and materials, and the desire for a shared living situation. Ms. Goderwis indicated that the three that Staff can do something about are the restriction on new detached ADU's, the owner occupancy requirement, and the desire for a shared living situation.

Ms. Goderwis highlighted the changes being proposed including modifying Article 3-12 to allow for detached ADU's, and modifying the use of an ADU to be more consistent with the new short term rental regulations. Additionally, Staff is recommending eliminating the requirements for owner occupancy, a deed restriction, and allowing for new detached ADU's. Ms. Goderwis indicated 50% of our community lives in rented spaces and excluding a whole category of people is against the policies of the adopted Comprehensive Plan.

Ms. Goderwis said that Staff is proposing a new definition of accessory living quarters, as well as modifying the kitchen facilities definition to delineate between what is an accessory dwelling unit and what is an accessory living quarter. Ms. Goderwis indicated that this will make it easier for applicants to do what they want if they have a multi-generational living situation.

Ms. Goderwis briefly touched on what is not changing in the ordinance, including the requirement for a pre-application conference, where ADU's are allowed, the lot size and other metric requirements, design standards, and the maximum occupancy limit.

Ms. Goderwis indicated that Staff is recommending approval of this text amendment, and stated that she could answer any questions from the Planning Commission.

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\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Commission Questions – Mr. Nicol asked in what section of the text included the owner occupancy issue. Ms. Goderwis indicated that was in Article 3-12 and it has been struck from the language. Additionally, Mr. Nicol stated it was his understanding that the current language might be illegal and was deferred to the Law Department on that question. Ms. Tracy Jones, Department of Law, indicated there was no case law that stated the current text is illegal, but there are jurisdictions that have reached that conclusion.

Mr. Owens stated that in this discussion on ADU's over the past 10 years, the owner occupancy has been a key component. Mr. Owens indicated that he thought that striking the owner occupancy language would open a can of worms that he was not comfortable with.

Ms. Worth asked if Ms. Goderwis could discuss the provision that an ADU could now be used as a short term rental and if the new regulations would make it an enforcement issue. Ms. Goderwis stated that currently, any ADU that is being used as a short term rental has to be a conditional use. The new text would allow for an ADU that is hosted to be used as a short term rental as an accessory use and would be enforced as such.

Mr. Davis stated he shared Mr. Owens' concern about owner occupancy and I he could not agree with the comparison about regulating duplexes the same way.

Mr. Nicol stated that since the beginning of this conversation on ADU's we have seen a housing crisis, and the idea of being able to create a new housing type is good. Additionally, Mr. Nicol asked about how this would affect gentrification and displacement. Mr. Chris Taylor indicated that there is extensive research that restrictive zoning is one of the primary drivers of affordability issues in cities which in turn causes displacement. Mr. Taylor also stated that ADU's are a mechanism for infill and increasing housing stock. Encouraging greater development is a bigger part of the solution.

Mr. Pohl asked if there was any research on eliminating owner occupancy and an increased frequency of rental creation and Mr. Taylor stated there was no research on if it creates rental units. Instead, Mr. Taylor stated that this would not be a force for displacement and creates housing stock.

Mr. Pohl also asked how many ADU's that Mr. Taylor would anticipate in the next year and Mr. Taylor stated that he thought we might see 10. Mr. Taylor emphasized it was important that we get the regulations right so that we can begin to work on other important things like grant incentive programs for low-income housing. Additionally, Mr. Taylor stated that the owner occupancy rule is exclusionary and creates a different class of person and restricts them, and that Staff was not comfortable with that. However, if the community is not ready for that, then the community is not ready for that.

Mr. Wilson stated that he thought the owner occupancy provision was important to have and there was a difference between how renters and owners keep up the property.

Mr. Michler asked about the data coming out of Louisville when it comes to owner occupancy and ADU's. Mr. Taylor stated that Louisville does have an owner occupancy requirement, but they do not have the detached restriction and that is why their numbers are similar, but a little better. Additionally, Mr. Taylor indicated that the owner occupancy rule makes it more difficult for an owner to go get a loan to do an ADU.

Mr. Nicol asked Mr. Taylor to explain how Staff made such a thoughtful effort regarding to renters vs owners when it comes to this. Mr. Taylor stated that Staff just did not think it was appropriate for the insinuation that a renter needs an owner to oversee a property was not something the Staff is comfortable with.

Mr. Davis wanted to make it clear that was not an insinuation that anyone on the Planning Commission would make and he thinks everyone should be treated equal too.

Ms. Barksdale stated that Mr. Taylor's point was taken and makes sense because she was a little confused before, but is still a little torn.

Mr. Forester asked Mr. Nicol how much he would anticipate an ADU to cost to build and Mr. Nicol stated he anticipated it would cost about \$120,000.

Citizen Comments – Patty Drouse, Joyland Neighborhood, asked to require owner occupancy for any ADU

Ginny Dailey, 136 Burly Avenue, stated she was this text amendment would undermine the growth of healthy neighborhoods.

Walt Gaffield, 2001 Bamboo Drive, stated he thought that Staff should be registering any and all ADU's.

Amy Clark, 628 Kastle Road, stated that she thought that owner occupancy was essential for ADU's.

Staff Comment – Mr. Taylor showcased examples of manufactured ADU's and highlighted they are not on a trailer, or different than any other house.

Commission Questions – Mr. Pohl asked if Mr. Taylor could speak to what the current status of the city's efforts to regulate short term rentals. Mr. Taylor stated that he was aware of additional software that is coming online to track them through revenue which will make enforcement a lot easier. Ms. Goderwis also stated that zoning compliance permits are required to have a short term rental.

Ms. Worth asked about making ADU's a conditional use as opposed to an accessory use and how that would affect the process and number of applications. Mr. Taylor indicated that if there were six in two years, this would make it go down to about one.

Citizen Rebuttal – Amy Clark, 628 Kastle Road, stated that a conditional use permit makes it easier to enforce ADU's and it should be possible for an applicant to say it will be for family use only.

Commission Comments – Mr. Pohl stated that if Lexington were to get ten ADU applications in the next year, only one would be a rental unit based on statistics presented by Staff. Mr. Pohl stated it was a fear based argument that were going to have several rental units and that short term rentals and ADU's are not the same thing. Additionally, Mr. Pohl stated that he agrees there is a real danger right now about stigmatizing renters.

Action – A motion was made by Mr. Nicol, seconded by Mr. Pohl and carried 7-3 (Wilson, Davis, and Owens voted nay) to approve PLN-ZOTA-23-00007: AMENDMENT TO ARTICLE 1, 3, AND 8 FOR SECOND KITCHENS, ACCESSORY LIVING QUARTERS, AND ACCESSORY DWELLING UNITS, for reasons provided by Staff.