



## Special Planning and Public Safety Committee Meeting

September 14, 2021

### Summary and Motions

---

Chair J. Brown called the meeting to order at 5:13 p.m. All Council Members were recognized as voting members. Vice-Mayor Kay, Council Members Moloney, Ellinger, McCurn, LeGris, Lamb, Sheehan, Kloiber, Worley, F. Brown, Baxter, Reynolds, and Plomin were in attendance. Council Member Bledsoe was absent.

#### **I. Accessory Dwelling Units (ADUs) Overview**

James Duncan, Director of Planning; Chris Woodall, Manager of Long Range Planning; and Chris Taylor, Administrative Officer in Long-Range Planning and Project Manager for Accessory Dwelling Units (ADUs) provided an overview of ADUs. Woodall began by saying this is an important housing option that provides flexibility for everyone in the community as family needs evolve and change and this is a small but critical piece of a comprehensive housing strategy. He reviewed the context for establishing the proposed ADU draft ordinance and said the Senior Services Commission asked for partnership on this initiative to implement ADUs as a viable housing option in Lexington. He explained that an ADU is a smaller unit on the same lot as a single family detached house and there are three types: new construction (detached unit), conversion of an existing space (detached structure or primary house) or addition (to detached structure or primary house). He spoke about the need for ADUs saying Lexington is expected to add 80,000 people by 2035 with an estimate of 30,000 who will be 65 years or older and around 87% of those seniors are looking to stay in their current home. Of all of the options available as long-term housing options for seniors, ADUs is the one most prefer. Taylor addressed some of the concerns expressed during community response and public input sessions. Some of those concerns include ADUs an option for student housing; ADUs will attract investors in single family neighborhoods; this would spur an increase of short-term rentals; integration with neighborhoods; detached structures as ADUs; Storm and Sanitary Sewers; and Parking. He continued the presentation with a review of comparable cities to illustrate how ADUs have impacted those communities.

#### **II. Public Input on Accessory Dwelling Units (ADUs)**

At this time, members of the public in attendance were recognized to speak. There were a total of 37 people who signed up for public comment, but several of those yielded their time to one speaker. While there were people who spoke in support of ADUs as well as in opposition, the majority of comments reflected support with some recommending a process for licensing, registration and inspection. The supportive comments centered on increased housing availability and affordability to address the growing population and the lack of affordable housing for the elderly, disabled and young professionals. ADUs provide a safe place for an elderly or disabled family member to live in close proximity of the caregiver and the elderly when there are not enough housing options for those wanting to age in place.

There were several people who spoke in opposition of ADUs and expressed their concerns of the impact these would have on the community. Many of those concerns were surrounding detached structures and how they would integrate in the neighborhood. Specifically, there were concerns about the size and scale and whether they should be allowed on any lot or if there should be a lot size requirement. Parking was another concern as there are specific neighborhoods in the community with minimal parking without ADUs so by allowing these, there will be even less parking. Another concern was the lack of enforcement

with the zoning ordinance and it will be necessary to have rental licensing, registration, and inspection to make this enforceable.

### **III. Council Discussion on Accessory Dwelling Units (ADUs)**

J. Brown asked for clarification on the definition of a single family detached unit. Taylor explained that a recent change to the definition makes it only applicable to any residential-zoned lot with a single family detached dwelling unit. J. Brown asked if staff is making the recommendation to correct the language so it states that it is only for single family detached homes which Taylor confirmed and clarified that this would not apply to townhouses or duplexes.

Moloney commented on basements and said if they aren't building outside the foundation, there should not be a limit on the size, as long as they have electrical and plumbing in compliance. Taylor stated that this is a fairly common provision and there is language ready to address this issue if Council would like to make an amendment.

Plomin asked for clarification as to why ADUs are not in zones in the rural area. Taylor stated that, for a while, there have been provisions for tenant housing in the rural area which are now commonly referred to as farm employee dwelling units and they are very similar to ADUs. He said they did not want to create any confusion since there is already something to address this issue in the rural area.

McCurn asked how property taxes would be assessed and Taylor said they are determined based on city regulations in the valuation process. McCurn asked if the owner would have to go through a private lender to get a loan and Taylor explained that they can still go through the normal mortgage application. The ADU does not make it an investment property, but it does change valuations and appraisals when there are restrictions on the property. He added that it makes lending for the full amount of the cost more complicated. McCurn asked how residency looks for owner occupancy and Taylor explained that it is the owner's permanent residence and we would work with PVA data to gather and report this information. McCurn expressed concern with selling the unit and keeping track of whether or not the buyer lives on the property and whether or not the ADU is rented out. Taylor stressed that the staff regularly reviews conditional use cases to ensure they are still being met.

LeGris commented on not being able to address current illegal ADUs that exist, but said now we have an option to create a system that maps and tracks ADUs and potentially generates more controls. She would like to ensure that we create something that is enforceable while also providing incremental housing. She wants to make sure we have the proper regulatory structures and personnel in place so the proposed rules around ADUs can be enforced consistently and fairly. She expressed concern that the current rules and regulations surrounding ADUs lack teeth for enforcement. She asked what needs to change to allow the city to oversee and implement ADUs as part of the Comprehensive Plan. Duncan stated that there are administrative regulations that support ADUs and that will make enforcement easier for the staff and it will make it easier for people to know how compliance is being handled. With ADUs, he said, the most significant level of administration is the deed restriction and the purchaser of a property with an ADU on it will be informed of the deed restriction on the property. He said the deed restriction will state the maximum occupancy and it will state the conditions under which the ADU may be used for a short-term rental which requires a process through the Board of Adjustment (BOA), a public hearing, notification to people within 500 ft., and the opportunity for people to address the BOA. Duncan stated that these are all part of the deed restriction which makes it easier to enforce than any other tool that has been given to a new rule in the zoning ordinance. He stressed that they concur with the need for a rental registry

and licensing program which has been needed in the community for a long time. Duncan stated that they would provide a report out on a pilot program to show how ADUs are working in the community - highlighting both problems and successes and providing recommendations. LeGris asked if this ZOTA would create a system of registration, licensing, and inspection for ADUs and Taylor clarified that it would not create an inspection program (that would be done through the Building Inspection process), but it would create a registry.

Reynolds asked if it is correct to say that currently people can use an extra unit as a short-term rental. Taylor explained that there is not a legal process for an accessory unit at this time so if there is one being rented as a short-term rental, it is in an illegal ADU and we don't know where those are unless there is a complaint. Reynolds asked if materials used to build ADUs can be regulated without being too cumbersome and Taylor stated that we have never regulated materials used in construction and homebuilders would oppose this because it would be stepping over the line and this is not something we want to do. He added that the owner living on the property would have incentive to make it look attractive. Reynolds asked Taylor to speak to the stormwater and sewage issues and Taylor stated that they have spoken with Division of Water Quality and they feel that these units would not generate enough sewage to cause a capacity issue. He said Division of Water Quality feels it will be a chance to modernize some of the older pipes/sump pumps when permits are pulled for construction of the ADU.

Sheehan asked for an explanation of the short-term rental clause as it relates to a bed and breakfast. Taylor said they have a process in the zoning ordinance for a regular bed and breakfast which specifies requirements and they are comfortable applying the same restrictions of a bed and breakfast to short term rentals. He added that it is an onerous process and will sometimes reduce applications for a bed and breakfast, but he feels that this is one of the easier things for them to enforce. Sheehan spoke about the limit of bed and breakfasts in a certain area and she asked if that is part of the consideration and Taylor said the BOA can consider those factors as part of their deliberation. He said this is something the staff typically reports on to explain what other permitted bed and breakfasts are in the area and the BOA could use this same process for granting the approval of short term rentals, but he emphasized this is all done on a case-by-case basis and subject to the BOA findings.

Baxter asked if a minimum lot was ever discussed and Taylor said it was not because all it would do is eliminate lots that could potentially have one. Baxter asked what the negative impact would be if a setback was to differ from any current setbacks we have. Taylor explained that changing a detached structure's setback for an ADU means an existing detached structure could not be converted. He added that if you apply the setback to all detached structures, it would make all existing garages and detached structures in the community non-conforming which will make it difficult to do enhancements over time. Baxter asked why we would propose a whole new ordinance as opposed to amending the regulation currently on the books to add a full kitchen. Taylor said it was because they want to encourage ADUs and legalize them because they are small and they are incremental density and development in areas that may need it. Baxter asked if existing illegal ADU structures will be required to conform if this ordinance is passed. Taylor said it will be a slow process for existing illegal ADUs to come into compliance and there may be some that were built in such a way that they can never be compliant. He thinks that over the years, as properties turn over, people will want to become compliant.

Kay said this is a very difficult issue for the community and people see this issue differently for a variety of reasons. On balance, he said, we need to be moving in this direction but he also believes that we have

already amended what has been proposed a couple of times and moved it in a direction that is more palatable to a broad constituency. He said he is interested in making some motions to amend.

Kloiber asked how this ordinance would fit into the idea of context sensitivity to ensure that these fit the "look" of the neighborhood. Taylor said they cannot control architecture but they tried to create design standards so that it would not be terribly visible when you are walking down the street (size cap, set back, etc.). He said the design standards are broad enough to apply everywhere and specific enough that wherever they are placed, they will remain contextual. Kloiber asked if they will be provided design guidelines but they will not be required to submit drawings and Taylor confirmed that they would have to document compliance with these standards and, in most cases, this will include a site plan.

Moloney spoke about the setback and asked if the Fire Department had been consulted. Taylor said the main concern of the Fire Department was that the proper addressing procedures were in place and they felt the Fire Code and Building Code would resolve other issues.

J. Brown mentioned that ADUs are a way to address housing affordability in the community, but they are not an ultimate solution. He said there are amendments that can be made to the ordinance as it exists that could give us the opportunity to move this item forward. For clarity, he said, this is just a committee meeting and any decisions made today will be reported out to full Council at a future Work Session.

Motion by Kay to amend the definition for clarification in Article 1 to add the phrase "single family detached" as described by staff. Seconded by Baxter. Motion passed without dissent.

Lamb asked for additional explanation on the motion. Taylor explained that the original text created ADUs as an accessory use in single family residential zones and because there are single family detached homes in R1-T and R3 zones, we needed to clarify the definition so this is only allowed for a single family detached dwelling.

Motion by Kay to amend Article 3-12(e) regarding the maximum ADU size of 800 sq. ft. to add language "except conversion: there is no limit on size for the conversion of existing basement to an ADU, so long as the conversion remains within the footprint of the structure". Seconded by Moloney. Motion passed without dissent.

Lamb asked for additional detail on the motion. Taylor explained that the original text was for a maximum of 800 sq. ft. across the board to avoid confusion and this amendment allows for a conversion of an existing basement to an ADU with no limit on the size for the conversion as long as it stays within the original footprint of the structure.

Kay said there is an interest in making ADUs possible and there are concerns with how the implementation would roll out. He proposed a pilot program which would be a slower version starting with limits on the ability to have an ADU and eliminating detached structures as an option leaving the remaining options: an addition to the existing structure, conversion of a garage, or conversion of a basement. He said this would allow us to see if the implementation of ADUs creates difficulties some people have expressed concerns about. He said removing "detached unit" takes away some of the objections to these and it is much less of an impact on any piece of property.

Motion by Kay to amend Article 1 and Article 3, eliminating all language that allows for the [new] construction of detached structures to be used as ADUs. Seconded by Plomin. Motion passed 10-4 (yes: Kay, Ellinger, J. Brown, LeGris, Lamb, Sheehan, Kloiber, F. Brown, Reynolds, and Plomin, no: Moloney, McCurn, Worley, Baxter).

Taylor explained how this change would impact the language in the ordinance. He said this would remove the “detached” reference and move the “attached” language to the regular text of the definition in Article 1. In Article 3-12 “detached ADU” will be removed so anywhere in 3-12 where it creates separate standards for a “detached ADU” and specifies an “attached” would be clarified to show that there is only one type.

McCurn asked if this would include a garage as a detached structure and Taylor confirmed that there could be no conversion of an existing detached structure. Kay clarified that the motion he was intending make would still allow for a conversion, but would remove a “new” detached structure. McCurn asked if a new garage with an ADU on top of it would be permitted and Kay said that a new garage with setups for an ADU would not be allowed. To clarify, J. Brown asked if only conversions on existing garages would be permitted and Taylor confirmed.

Lamb asked if this motion would allow us to go back and look at existing illegal or non-compliant ADUs and Taylor said he does not believe so. Because this motion allows for the conversion of existing detached structures, he said, there will be incentive for people to come into compliance or make changes and modify existing detached structures.

LeGris spoke the pilot program and asked if it would be possible to revisit this to analyze the data collected and potentially add in the option we just removed and Kay confirmed this would be possible.

Worley expressed concern that this presents an equity issue for those who have a garage versus those who do not have a garage to convert. The property owners with no garage would not be able to take advantage of what we are trying to do here. He said this also creates a problem for administrative staff when it comes to compliance and enforcement because someone could build a garage this year and have it permitted and ready to convert. He has concerns with denying this option for some people and giving it to others based on whether there is an existing old structure on the property. Taylor said he is concerned with the language brought forward today for removal of any detached unit, but they will tweak the language to make sure it still allows for the conversion of an existing detached structure.

Reynolds asked if making an addition to her house with a full kitchen would be allowed under this amendment and Taylor confirmed that this is legal now under the proposed ordinance. Reynolds asked if it would still be legal with this amendment and Taylor said it would be legal because the amendment pertains to detached structures and what was described was an attachment to the principal structure which will still be allowed.

Baxter said this might create loopholes and said the proposed ordinance seems to be clearer on intent and it is a nice compromise between what the neighborhoods’ concerns are and what we are proposing.

Moloney asked if, in a year from now, someone could add the setups for an ADU in a garage that already exists. Kay clarified that the amendment does not restrict conversion of existing garages.

Kay stated that the amendment removes some of the major objectives that people have about ADUs and it is permissive about the rest. He said this removes one option and while there may be loopholes, he said, he would argue it is worth taking the risk in order to move forward and begin to have a community where some types of ADUs are permissible.

Lamb said she could support this motion if, included in the ordinance, there was a review of the pilot program one year from the time it is created with an update or an overview of how the program has worked.

Motion by Lamb to amend the amendment and add language to the ordinance “this will be brought back and reviewed before the Planning and Public Safety Committee within a year after it is created”. Seconded by Reynolds. Motion passed 12-2 (yes: Kay, Ellinger, J. Brown, McCurn, LeGris, Lamb, Sheehan, Kloiber, Worley, Baxter, Reynolds, and Plomin, no: Moloney and F. Brown).

Discussion on Lamb’s motion:

Kloiber asked if Lamb’s motion is only meant to bring this back for a review, but has no bearing on the ordinance itself. Lamb confirmed that it has no bearing on the ordinance, but it is intended to show that a year from the time it is created it will be reviewed to determine how it is doing. She added that a review would allow time to have the conversation about adding detached structures as an option if it appears to be something requested during the year.

F. Brown said he does not think we need to put a timeline in the ordinance for bringing this back and said that could be done as part of the record from this meeting. He expressed concern that reviewing this a year from now could present challenges for those who might be in the middle of construction should we make additional changes at that time.

Reynolds emphasized that in doing this, we need to be accountable by saying that we are going to review this in a year and make any necessary changes or improvements.

Kay said he appreciates the intent and said if the majority does not feel this belongs in the ordinance, he will make a motion, prior to adjourning, to place this in committee for review in one year.

LeGris said it is important that we revisit this in one year if we are going to move forward with VM Kay’s proposed amendment. She said she agrees with Worley that people should not be penalized because they do not have a garage or want one, but might want a detached structure. At the same time, she said, she hears concerns from the 3<sup>rd</sup> District neighborhoods. She said she will support the motion, but she feels strongly that this should be revisited to review the option of bringing in a detached structure should this move forward.

Lamb said there are sections in ordinances that are not codified to spell out things which are followed and there are instructions set forth in ordinances and resolutions so this is not new. In her experience, she said, if something is stated in an ordinance it will be easier to track especially if there is a change in council members. Without her amendment, she will be unable to support Vice Mayor Kay’s amendment.

[At this time, the vote was taken on Lamb’s amendment.]

Additional discussion:

Director Duncan expressed concern about enforcing a split responsibility like this. He envisions a loophole where you have a building permit issued in September to build a garage and in November you seek a permit to make the garage an ADU. He is concerned about enforcement, but understands the sentiment. He recommends that if there is a concern with detached structures, he suggests removing them altogether rather than trying to split that.

McCurn agreed that this could potentially cause an enforcement issue. He said he would like to see that a new garage could have the ability to convert to an ADU. McCurn is supportive of removing standalone ADU as an option, but would like to allow a new garage or an existing garage the ability to convert to an ADU. J. Brown suggested grandfathering existing structures in to meet the sentiment of Kay's motion.

As a way eliminate loopholes, Kloiber suggested putting a date certain for permits or construction of pre-existing detached structures that will be grandfathered in and after the specified date, the detached ADU would not be permitted.

Motion by Kloiber to amend the amendment (to put a date certain) for "grandfathered in" convertible units. Seconded by F. Brown. Motion passed 13-1 (yes: Kay, Moloney, Ellinger, J. Brown, McCurn, LeGris, Lamb, Sheehan, Kloiber, F. Brown, Baxter, Reynolds, and Plomin, no: Worley).

Worley expressed concern that this does not address the issue that many homes do not have a garage regardless of condition so he cannot support the motion.

Moloney spoke about the cost involved for building a garage when it could be less to build a standalone ADU. He asked why this is something that should not be included and how we explain to people that we are not allowing standalone ADUs, but we are allowing garages that can be converted to an ADU.

[At this time, a vote was taken on Kloiber's motion to amend and following this vote, a vote was taken on Kay's original motion]

Motion by F. Brown to report this item out to the full Council at the November 2, 2021 Council Work Session (as a Planning and Public Safety Committee report-out). Seconded by Kay. Motion passed without dissent.

Motion by Lamb to amend the previous motion and have the item reported out at the October 12, 2021 Council Work Session. Seconded by F. Brown. Motion passed without dissent.

Motion by Baxter to adjourn at 9:14 p.m. Seconded by Ellinger. Motion passed without dissent.