

MINUTES
Continuation of
Urban County Planning Commission Public Hearing

October 21, 2019

1:30 p.m.

Council Chamber, 2nd Floor Government Center

- I. **Call to Order** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Headley Bell; Anthony de Movellan; Larry Forester; Karen Mundy; Bruce Nicol; Mike Owens; Frank Penn; Carolyn Plumlee; and Graham Pohl. Absent were Patrick Brewer and Bill Wilson.

Planning staff members present: Jim Duncan, Director; Chris Woodall; Traci Wade; Chris Taylor; Hal Baillie; Samantha Castro; Valerie Friedman; Lauren Weaver; Grace Coy; and Stephanie Cunningham.

- II. **ZOTA 2019-5: AMENDMENT TO ARTICLES 1, 3, 8, 15, 22 and 23: ACCESSORY DWELLING UNITS** – continuation of the public hearing for a Zoning Ordinance text amendment to update Articles 1, 3, 8, 15, 22 and 23 of the LFUCG Zoning Ordinance to include general zoning provisions for the incorporation and regulation of Accessory Dwelling Units (ADU).

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **Approval.**

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

1. The proposed text amendment is in agreement with *Imagine Lexington*, the 2018 Comprehensive Plan Theme A, Goals 1 to provide additional housing choice. Accessory dwelling units will provide a needed affordable and accessible housing type that supports aging in place.
2. The proposed text amendment is in agreement with *Imagine Lexington*, the 2018 Comprehensive Plan Theme A, Goals 2 to support Infill and Redevelopment throughout the Urban Service Area as a strategic component of growth. Accessory dwelling units will provide an infill opportunity available throughout the Urban Service Boundary, offering equitable access to the entire community.
3. The proposed text amendment is in agreement with *Imagine Lexington*, the 2018 Comprehensive Plan Theme A, Goals 3.a to expand options for mixed-type housing throughout Lexington-Fayette County. Accessory Dwelling Units are a new housing product for Lexington that will provide greater flexibility to all residents.

Chairman Comments: Mr. Owens explained that the Planning Commission had voted to continue this hearing from September 26th; at that time, they closed public comments. This continuation would serve to allow the Commission members time to ask questions of the staff, make comments, and possibly vote on this item. Mr. Owens noted that he was not in attendance at the meeting on the 26th, but he had reviewed the meeting video and all materials presented, and he was prepared to participate in the remainder of the hearing.

Following the hearing on the 26th, Mr. Owens said, the staff had taken email and response form comments through October 7th; those comments were posted for Planning Commission review on October 15th. Since that time, an additional 15 emails had been received, which would be circulated to Commission member for their review during this hearing. Mr. Owens acknowledged the amount of work the staff put into reviewing and revising the proposed text up to this point, and noted that the hearing was closed and no additional public comment would be taken at this time.

Commission comment: Mr. Penn noted that he had been in contact with a citizen who spoke at the September 26th hearing. He said John Hackworth was listed in the draft minutes as being in support of this ZOTA; he is actually opposed, and would like for the minutes to be corrected.

Staff Presentation: Mr. Taylor stated that, after the September 26th hearing, the staff compiled and distributed a comment summary to the Planning Commission on October 2nd, followed by a revised staff recommendation and some

optional alternative text on October 14th. The staff and Planning Commission discussed the alternative text at their recent work session, seeking to build consensus. The result of that discussion was the final alternative text, which was provided to the Commission prior to today's hearing.

Referring to some recurring themes the staff found in the public input, Mr. Taylor clarified that there was no ordinance change in 2012 to permit accessory dwelling units. The staff did, however, make an interpretation of the existing language that would permit second kitchens in some instances. With regard to comments that the staff was using senior housing as a "smokescreen" for ADUs, Mr. Taylor stated that the Senior Services Commission first approached the staff with an ADU proposal in 2008; they brought the idea back approximately 18 months ago. Mr. Taylor explained that, while the Senior Services Commission and the need for additional senior housing options was the impetus for this proposed ZOTA, the text cannot and was never intended to specify that the housing would be exclusively for seniors. It was proposed as a means to provide additional affordable housing options in Lexington. Responding to concerns about the need for additional vetting of the ZOTA, Mr. Taylor said that the staff has been working with the Planning Commission and meeting with neighborhood groups to discuss this issue for the past 18 months, including a very robust public input process. It has been the staff's primary concern, throughout the process, to help the Planning Commission and public get to a place of being comfortable with the recommendations for accessory dwelling units.

Mr. Taylor explained that the alternative text includes a revision to the language in Article 3-12 to cap occupancy of an ADU at two persons, plus their children. In cities with ADUs, most units are studio or one bedroom, so they are unlikely to be occupied by more than two people. In response to concerns about the use of ADUs as short-term rentals, the staff proposed two alternatives at the recent work session: 1) make the short-term rental of an ADU a conditional use; or 2) disallow short-term rentals in ADUs. The staff is comfortable with either proposal, since they would both reinforce the use of ADUs as a long-term housing option. Mr. Taylor said that, to address concerns that the ADU manual was not codified in the Zoning Ordinance, the staff wanted to strengthen the manual without making it regulatory; they are proposing a required pre-application conference for any property owner who wishes to construct an ADU. At that meeting, the staff can go through the manual with the property owner prior to any permit application. The proposed language to Articles 3-12 and 5-4 would clarify the Zoning Compliance Permit process for ADUs, making it very similar to the language that requires a pre-application conference for every zone change request. In response to questions about what would happen to an accessory dwelling unit should the property change hands, the staff is proposing a deed restriction for the property, in favor of LFUCG, notifying property buyers of ADU regulations and providing a method of release for the ADU. Staff has drafted alternative text that responds to concerns about owner occupancy. The alternative language would require the property owner to occupy one of the two units on the property. Mr. Taylor noted that the staff believes that an owner occupancy requirement would limit the number of ADUs. For this reason, it would not be the best public policy, and therefore the staff not recommending it. However, the staff acknowledges that it would address concerns expressed by many of those who provided public input.

Commission Questions: Ms. Plumlee asked Mr. Taylor to clarify the text on page 6 of the provided draft, which refers to alterations of existing structures. Mr. Taylor responded that the language was in the current Ordinance, and would grandfather in any existing ADUs. It would also allow conversion of an existing nonconforming structure. Mr. Owens asked if the structure could be made more nonconforming, to which Mr. Taylor replied that the conversion of a nonconforming accessory structure to an ADU would not increase the nonconformity of the structure, because the nonconformity of a structure is different from a nonconforming use.

Mr. Penn asked if the proposed language would require a pre-application conference for a property owner who wished to convert an existing house to an ADU; Mr. Taylor confirmed that it would, for an attached or detached unit.

Mr. Nicol asked if the proposed owner occupancy requirement would severely limit the number of ADUs, and if staff could provide an estimate of how many units could be expected with and without the requirement. Mr. Taylor estimated that, without an owner occupancy requirement, 20 to 100 ADUs could be expected within the first year; with required owner occupancy, 20 units in the first year would likely be a high estimate. Mr. Nicol opined that "20 units would be better than none."

Commission Discussion: Ms. Plumlee thanked the staff for their hard work, noting that she had concerns, including a lack of confidence in Code Enforcement and unintended consequences. She asked that, should the proposed text amendment advance to Council, a rental registration license program could first be enacted in order to provide security to neighborhoods. She added that she believed that concerns had been sufficiently addressed to move this text amendment forward to Council.

Mr. Penn stated that the key purpose of the 2018 Comprehensive Plan is to create places, and that it is necessary for those places to evolve over time. He said that neighborhoods are the "dough for the pizza" that is Lexington, providing structure to the city, and he believes that ADUs can be one small part of the pizza. The point of the Placebuilder, which is a crucial component of the Comprehensive Plan, is to allow staff and developers to be proactive, rather than

reactive, at the time of a zone change. Mr. Penn said that the staff and the public have worked to define what ADUs would look like for Lexington, and he believed that there was enough flexibility in the proposed language that he could support it fully.

Mr. Pohl stated that he agreed with Mr. Penn's comments.

Ms. Mundy thanked the staff for their patience in working with the Planning Commission on this issue, and the citizens for coming forward and expressing their concerns. She said that she did not believe that ADUs would fix Lexington's housing shortage, but she was trying to view this ZOTA as a progressive way to add a new housing type, so she would support the draft with the proposed changes.

Mr. Owens thanked the staff, Planning Commission, and citizens for their input and participation in this process. He opined that this was one of the most difficult text amendments the Commission had worked on during his tenure, but he believed that the proposed ZOTA reflected the best possible alternative.

Action: A motion was made by Mr. Pohl, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve ZOTA 2019-5, with the alternative text as provided by staff.

- III. **Other Business** – Mr. Duncan thanked the Planning Commission members for attending this special meeting, noting that the Commission's October 24th zoning hearing would be conducted in its entirety in the Phoenix Building 3rd floor conference room. He added that the hearing would be televised until 6 pm, at which the Council meeting would pre-empt it.
- IV. **Adjourn** – There being no further business, the Chair declared the meeting adjourned at 2:05 pm.