

**Planning Commission**

Staff Report

April 20, 2021



<b>Case No:</b>	21-LDC-0004
<b>Project Name:</b>	LDC Reform Amendments Phase I – Accessory Dwelling Unit
<b>Applicant:</b>	Louisville Metro
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	All Council Districts
<b>Case Manager:</b>	Chris French, AICP, Planning and Design Supervisor

**REQUEST**

An amendment to Chapter 1, Part 2 Definitions, Chapter 4, Part 2 Conditional Use Permits, and Chapter 4, Part 3 Permitted Uses With Special Standards to create provisions for accessory dwelling units.

**SUMMARY/BACKGROUND**

The LDC Reform Report associated with this text amendment is attached to this agenda item for reference. This report outlines the equity review to this amendment and background research conducted. This amendment was developed based on recommendations from the LDC Diagnosis Report created by Opticos Design and from comments received during the LDC Reform public engagement process.

The purpose of this amendment is to create the accessory dwelling unit use and allow it as a permitted use with special standards.

**PLANNING COMMITTEE MEETING**

The Planning Committee held two meetings regarding the LDC Reform Phase 1 amendments; the first on February 8, 2021 and the second on March 22, 2021.

**STAFF ANALYSIS**

Significant changes were made to this proposed text amendment since the release of the LDC Reform Report. These changes are based on comments received during the public comment period. These comments reflect several main points:

1. Concerns over eliminating the conditional use permit (CUP) process that currently exists for accessory apartments and replacing it with accessory dwelling units as a permitted use with standards.
2. The lack of a requirement that the owner live on the property within either the accessory dwelling unit or the principal dwelling unit.

3. Language within the proposed permitted use with special standards to allow certain design criteria like location, access, and height to be varied through the LDC waiver or variance process.
4. Concerns regarding the allowance of accessory dwelling units in areas with environmental constraints.
5. Concerns regarding absentee landlords and their ability to develop accessory dwelling units.

The original draft of this amendment associated with the LDC Reform Report deleted the accessory apartment CUP and replaced it with the accessory dwelling unit permitted use with special standards provision. The reason for the removal of the CUP and use of the permitted use with special standards provision is to provide greater opportunities for property owners in single family zoning districts to develop accessory dwelling units as an additional form of housing. Accessory dwelling units can be used to house elderly relatives and disabled relatives in close proximity to their family and care givers. In addition, they are typically a means to allow the elderly and disabled individuals to remain within neighborhoods and to allow older children to live nearby their parents in a more independent form of housing. Lastly, accessory dwelling units can be leased to provide supplemental income to property owners to help those owners more easily afford the principal home and associated property. It should be noted that between 2010 and 2020 only 36 accessory apartment CUPs were applied for, which provides evidence that the CUP process is a deterrent to the development of accessory dwelling units. In addition, housing advocates oppose the use of the CUP for accessory dwelling units.

Another concern expressed related to the removal of the CUP requirement was the inclusion of the ability to apply for a waiver or variance to certain design criteria listed within the accessory dwelling unit permitted use with special standards provision. To address this concern and the lack of a CUP concern staff revised the proposed amendment to retain the CUP provision but rename it as an accessory dwelling unit. In order to address the concerns regarding the CUP expressed by housing advocates the proposed permitted use with standards would remain but any provisions to allow waivers or variances to design criteria were removed. Therefore, any accessory dwelling unit that did not meet one of the listed special standards would be required to obtain a conditional permit. Such CUP process would include a justification by the applicant on why a standard could not be met and how any relief from those would affect the accessory nature of the dwelling unit. It should be noted that the current accessory apartment CUP does allow the Board of Zoning Adjustment to grant relief to specific CUP standards, for example, the Board has granted relief to the current size restriction listed in Chapter 4, Part 2.

Another concern expressed was the lack of an owner occupancy requirement, meaning that the owner lives in the principal dwelling unit or in the accessory dwelling unit. One option staff explored was the inclusion of an owner occupancy requirement such as the following:

*The owner of the property shall reside within either the principal dwelling or the accessory dwelling unit.*

Based on comments from housing advocates and research obtained from AARP, the American Planning Association, and the Urban Institute it was determined that such an owner occupancy requirement would limit the number of accessory dwelling units that would be constructed. Therefore, at this time staff did not include that provision as one of the special standards associated with the accessory dwelling unit based on the number of comments received on both sides of this issue. The potential addition of this standard should be reviewed closely by the

Planning Commission based on public comments and research conducted by staff. The Planning Commission can review and determine whether this provision should be added as special standard J.

Staff received a concern regarding development of accessory dwelling units in areas with environmental constraints. Therefore, staff added a provision to the special standards for the accessory dwelling unit that prohibited an accessory dwelling unit from being built on the area of a property that contained environmental constraints.

Lastly, staff received concerns regarding absentee landlords and their ability to develop accessory dwelling units. One suggested way to address this concern was to include a provision that no more than two accessory dwelling units could be constructed (one on each property) under the same ownership. However, staff believes based on the nature of ownership it would be difficult to apply but also has many potential loopholes. Therefore, to address this concern staff added a provision to the special standards that required all violations related to building, property maintenance, and zoning on a property be resolved prior to approval of an accessory dwelling unit. In addition to this requirement staff revised the original draft to clarify that this permitted use with special standards is only eligible within single family zoning districts, the height restriction was slightly revised to conform with form district provisions within Chapter 5 of the LDC, and that accessory dwelling units approved through the permitted use with special standards process could not be used as a short term rental. These changes were discussed at the last Planning Committee meeting.

### **APPLICABLE PLANS AND POLICIES**

This amendment to the LDC text is consistent with the following policy of Plan 2040:

Housing Policy 1.1 - Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and cohousing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.

Housing Policy 1.2 - Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.

Housing Policy 3.3 - Encourage the use of innovative methods such as clustering, mixed use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.

### **NOTIFICATION**

Notice was published in accordance with KRS 100. In addition, email notice through the GovDelivery system was provided plus notifications through public and group meetings held by or attended by the staff of Planning and Design Services.

### **STAFF CONCLUSIONS**

The proposed amendment, as set forth in a Resolution (Attachment 1); staff recommends based on the most recent changes to the proposal that the Planning Commission approve this

resolution and forward it to the Louisville Metro Council and all other jurisdictions with zoning authority within Jefferson County.

### **ATTACHMENTS**

1. LDC Reform Accessory Dwelling Unit Resolution

**PLANNING COMMISSION RESOLUTION 21-LDC-0004**

**A RESOLUTION BY THE PLANNING COMMISSION RECOMMENDING APPROVAL OF LAND DEVELOPMENT CODE TEXT AMENDMENTS TO CHAPTER 1, PART 2, CHAPTER 4, PART 2, AND CHAPTER 4, PART 3 FOR ACCESSORY DWELLING UNIT TO THE LOUISVILLE METRO COUNCIL AND OTHER JURISDICTIONS WITH ZONING AUTHORITY.**

**WHEREAS**, the Louisville Metro Council adopted a resolution on August 20, 2020 directing the Planning Commission to review the Land Development Code (LDC) and develop recommendations for more equitable and inclusive development; and

**WHEREAS**, the Louisville Metro Planning Commission adopted a resolution on August 25, 2020 directing Planning and Design Services staff review the LDC and develop recommendations for more equitable and inclusive development; and

**WHEREAS**, Planning and Design Services staff received multiple comments during the LDC Reform public engagement process regarding urban agriculture and the current barriers that exist within the LDC; and

**WHEREAS**, the comprehensive plan, Plan 2040, includes Housing Policy 1.1 which encourages a variety of housing types such as accessory residential structures; this proposed amendment would provide an administrative process for the development of an accessory dwelling unit; and

**WHEREAS**, Plan 2040, includes Housing Policy 1.2 that encourages the development of housing for the elderly and the disable; this text amendment would provide another housing option for both the elderly and disable people; and

**WHEREAS**, Plan 2040, includes Housing 3.3, encourages more innovative methods of housing such as accessory units; this text amendment provides greater flexibility in the approval process for accessory dwelling unit development; and

**WHEREAS**, the Planning Commission finds that the proposed text amendments to the LDC meet the goals, objectives, and policies of the comprehensive plan, Plan 2040.

**NOW, THEREFORE, BE IT RESOLVED BY THE LOUISVILLE METRO PLANNING COMMISSION AS FOLLOWS:**

Additions

Deletions

**SECTION I:** Chapter 1, Part 2 of the LDC, Section 1.2.2 Definitions, is amended to delete the accessory apartment definition and replace with the following:

...

Dwelling Unit, Accessory (ADU) – A smaller, secondary dwelling unit located on the same lot as a principal dwelling. ADUs provide complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking and sanitation which are accessed independently). The ADU shall not constitute a dwelling unit for purposes of

calculating permissible density. There are two types of ADUs:

- (a) Attached ADUs which are connected to or part of the principal dwelling. Examples include converted living space, attached garages, basements or attics; additions; or a combination thereof.
- (b) Detached ADUs which are separate accessory structures from the principal dwelling. Examples include converted garages or new construction.

**SECTION II:** Chapter 4, Part 2 of the LDC, Section 4.2.3 Accessory Apartment, is amended to delete the accessory apartment section and replace with the following:

#### **4.2.3 Accessory Dwelling Unit (ADU)**

Accessory dwelling units that do not meet the provisions of Section 4.3.25 may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, and U-N districts upon the granting of a conditional use permit and compliance with the listed requirements.

- A. All special standards outlined within Section 4.3.25 are met unless relief is granted by the Board. Applications requesting relief from special standards in 4.3.25 shall provide written justification demonstrating the reasons why relief should be granted and how such relief would retain the accessory nature of the dwelling unit.

**SECTION III:** Chapter 4, Part 3 of the LDC, is amended to add Section 4.3.25 Accessory Dwelling Unit, as follows:

#### **4.3.25 Accessory Dwelling Unit (ADU)**

Accessory dwelling units may be permitted in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, and U-N zoning districts that permit residential use in accordance with the following special standards:

- A. One ADU, either attached or detached is permitted per single family dwelling per lot.
- B. Maximum ADU Size: 800 square feet or 30 percent of the gross floor area of the principal structure, whichever is greater.
- C. Location Requirements:
  - 1. For an attached ADU, the yard or setback requirements of the principal structure shall be met. The attached ADU shall be located either to the side or behind the principal structure.
  - 2. For a detached ADU, the yard or setback requirements of an accessory structure shall be met. The detached ADU shall be located either to the side or behind the principal structure.
- D. ADU Access:
  - 1. For an attached ADU, an exterior stair case used to access a second story or higher ADU shall not be located on the front façade of the structure.
  - 2. For a detached ADU, the exterior pedestrian entrance to the ADU shall be located facing the principal structure or side yard.
- E. Maximum Height:
  - 1. For an attached ADU, the maximum height shall not exceed the height of the principal structure.

2. For a detached ADU, the maximum height shall not exceed the maximum height permitted for an accessory structure in accordance with Chapter 5 of the LDC. The maximum height shall not exceed the height of the principal structure.
  
- F. ADUs approved under this provision shall not be used as a short term rental.
- G. Any property that has been subject to a zoning, property maintenance, or building code violation(s) in the 12 months prior to application shall be reviewed and approved by the directors of Planning & Design Services and Codes & Regulations, or their designees. Any violations shall be resolved prior to approval.
- H. Off-street parking shall meet the requirements of Chapter 9 of the LDC.
- I. ADUs that include new construction that results in habitable floor area (for example, additions to principal structures or new accessory structures) shall not be allowed on any areas of lots that contain environmental constraints (LDC Section 4.6.2.A).

**SECTION IV:** This resolution shall take effect upon its passage and approval.

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Chair