



MEETING DATE: April 06, 2021

ITEM NUMBER: 6.B

SECOND READING:

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TYPE OF ITEM:

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SUBJECT/AGENDA TITLE:

Discussion and direction on Accessory Dwelling Units (ADUs)

EXECUTIVE SUMMARY:

Planning Staff presented information to City Council on accessory dwelling units (ADUs) at the October 20, 2020 Study Session. At that meeting, staff presented information on history and background, current code requirements, the development process, and general input from the community. Council directed staff to listen to Council's suggestions and bring back recommendations for changes.

This communication provides additional information and background on Council's suggestions, additional feedback from staff, and general input from the community obtained through a survey. Using all of this information, staff is putting forward the following recommendations for changes to the code related to ADUs in the areas of enforceability (specifically around tenancy requirements), size, and process.

1. Staff recommends two changes associated with the size requirement for ADUs, both associated with Section 15.04.040.C.1.b.ii (*Accessory dwellings shall not exceed one-half of the finished floor area of the principal dwelling unit*)
 - Staff recommends that ADU size should be tied to above ground floor area, rather than total floor area. Council and the community have indicated that scale and compatibility are primary considerations for ADUs to be successfully integrated into neighborhoods. Currently, ADUs cannot exceed one-half of the finished floor area of the principal dwelling, but there is no consideration for how to measure basement square footage, which is not visible. Staff proposes changing this to *ADUs cannot exceed one-half of the finished, **above ground** floor area of the principal dwelling*. This will reinforce the accessory relationship of ADUs and principal dwellings to increase compatibility within neighborhoods.
 - Staff also recommends adding an exemption for size for ADUs being established in existing basements. Planning and Building Services staff have identified this as an issue, especially for single story homes. In many cases a home owner is

required to commit to not using a portion of their basement to comply with ADU size requirements; in addition to being impractical, this can also create challenges with permitting and enforcement. Since basement ADUs are not visible from the street, the size of an ADU in a basement does not impact compatibility. Exempting basements may also ensure necessary permits are obtained, which will ensure life safety codes are met. Staff proposes adding the following: ***Accessory dwellings located in an existing basement shall be exempt from this requirement.***

2. Staff recommends Council consider removing 15.04.040.C.1.d.i.
 - This code provision requires that *the property owner shall occupy the principal or accessory dwelling unit*. While there continues to be interest from Council and the community in this code provision, Code Enforcement staff have continued to provide feedback that this is a standard that is difficult to enforce. In addition, this standard does not necessarily ensure neighborhood compatibility.
3. Modify the application and process, including noticing, for Accessory Dwelling Units review and approval.
 - Currently the review procedure identified for ADUs is the site plan waiver process. As staff mentioned previously, ADUs have recently been going through the full site plan process. While it likely makes sense for these to continue to be reviewed in detail, it could be beneficial to create a specific application for ADUs. This would likely require code updates to section 15.04.040.C.1.e *Review Procedures*, and potentially updates to 15.02.070.C *Site Plans*.
 - Notice, both written and posted, is currently provided when an application is submitted for ADUs, although this is not required by code. Staff recommends including noticing requirements specific to ADUs in the code. The recommendation is that mailed notice be sent to adjacent property owners. This would allow for notice to the abutting property owners and the owners directly across the street from the proposed ADU. Another option would be to send notices to property owners within 150 feet of the subject property, which is consistent with the requirement for other applications, not excepted from noticing requirements. Posting of the property could also be required if the process is modified specifically for ADUs. Staff would recommend that Council consider exempting ADUs not adding new square footage from noticing since there are more limited visual or compatibility impacts to the neighborhood with these types of units.
4. Modify section 15.10.010, *Use Definitions*, to modify the definition for accessory dwelling units.
 - There continues to be issues with what is considered an ADU and what is considered a basement finish or remodel. Staff suggests modifying the definition for ADUs to clarify that if specific elements are present in a certain



configuration (e.g. three or more of the following are present – separate entrance, cooking facilities, sanitary facilities, separate heat and ventilation etc.) this will be considered an ADU and be permitted as such.

5. Direct staff to investigate and make recommendations to Council, possible ways to enhance the architectural compatibility for new structures in the City’s historic districts and/or Original Town.
 - There is interest from the community, City Council, the Historic Preservation Commission (HPC), and staff to ensure architectural compatibility within historic areas of the City. While the code does contain compatibility requirements for residential, nonresidential, and mixed-use projects, there are likely ways that these compatibility requirements could be strengthened for the City’s historic districts.

These recommendations are described in additional detail below. There are a number of additional suggestions discussed at the 2020 Study Session; although these have not been specifically included in the above recommendations, Council can direct staff to include additional changes. Any recommendations for specific code changes will also need to be vetted by the City Attorney’s Office. Planning, Building Service, and Code Enforcement staff will be available at the meeting to answer questions.

COUNCIL OPTIONS:

1. Direct staff to make recommended changes to the Land Development Code regarding Accessory Dwelling Units.
2. Direct staff to make other changes to the Land Development Code regarding Accessory Dwelling Units.
3. Do not direct staff to make changes to the Land Development Code.

RECOMMENDED OPTIONS:

Provide direction to staff on how to proceed.

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

None identified.

BACKGROUND AND ISSUE ANALYSIS:

In October 2020, Planning Staff presented information to Council on accessory dwelling units (ADUs). ADUs, defined as *“a second dwelling unit, either within or added to an existing single-family detached dwelling, or, in a separate accessory structure on the same lot as the main dwelling, for use as a complete, independent, living facility with provision for cooking, eating, sanitation and sleeping”*, have been a part of the City’s housing stock for some time. They have been formally allowed within the Land Development Code since 2001.

Since 2001, approximately 130 ADUs have been permitted within the City, with the majority (about 75%) being constructed as part of two Planned Neighborhoods – Prospect and Mill Village. City Council heard from some residents, especially within the City’s historic core, who expressed concerns about ADUs being permitted within the City. At the meeting in 2020, staff provided information on:

- History and background
- Code Requirements
- Development Review Process
- Input from the Community

At that meeting, Council directed staff to conduct general outreach and bring back options for consideration. This communication will present some initial recommendations for consideration based on Council’s feedback, staff recommendations (Planning, Building Services, and Code Enforcement), and input received from the community through a community wide survey conducted in February. In addition, one Council member asked staff to look at how other municipalities are regulating ADUs. Many municipalities, including Denver, are expanding allowance for ADUs. Staff has put some resources and articles on our Engage Longmont site (<https://engage.longmontcolorado.gov/community-feedback-on-accessory-dwelling-units>).

Recommendations for Council’s Consideration

At the October 20, 2020 Study Session, Council directed staff to listen to Council’s suggestions and bring back specific recommendations for potential code changes. At that meeting, Council made a variety of suggestions and provided thoughts on existing code requirements. Council also directed staff to gain additional input from the community. In order to develop the following recommendations, staff used Council’s feedback, input from city staff – including Planning, Code Enforcement, and Building Services, and information gathered from a community wide survey. The full survey results are available as Attachment 1.

The intent of the recommendations is to ensure a transparent process with appropriate notification, and a set of code requirements that are enforceable. In addition, updates to size requirements will promote increased neighborhood compatibility. Another consideration in striking a balance with regulations and process; staff wants to ensure homeowners are correctly permitting ADUs to ensure life safety codes are met – there is some concern from staff that if the requirements are made too difficult, people will not go through the process and may construct “illegal” ADUs that don’t meet building code.

Recommendation 1: Update Size Requirements for ADUs

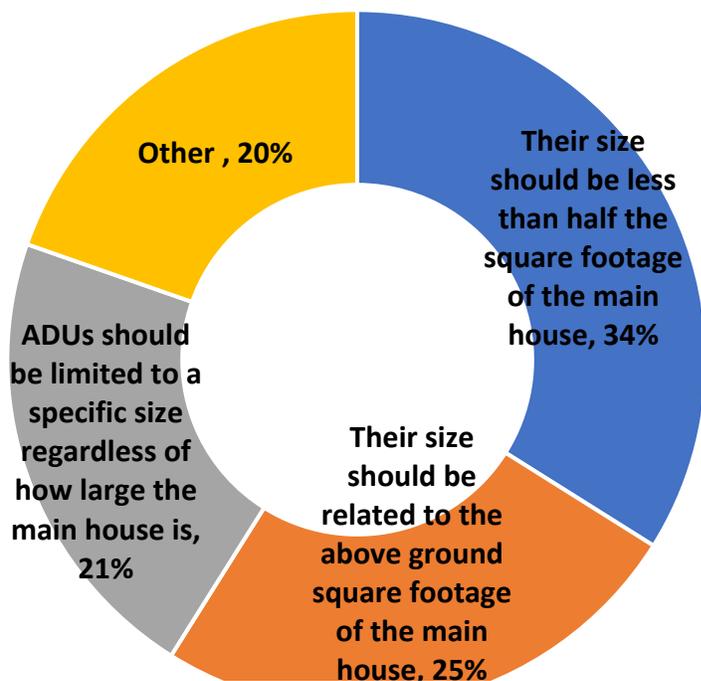


Staff recommends two changes associated with the size requirement for ADUs, both associated with Section 15.04.040.C.1.b.ii. Currently, the Land Development Code states that *Accessory dwellings shall not exceed one-half of the finished floor area of the principal dwelling unit.*

Members of the community, staff and Council have identified a potential issue with total square footage being considered. At the meeting in 2020, Council specifically mentioned the following:

- The 50% size allowance shall not include finished floor area of basements when calculating the allowable 50% area for a detached ADU. (Mayor Bagley)
- Add language to regulations that only allows existing above-ground space to be counted toward the 50% maximum size allowance (i.e. cannot count basement floor area) (Martin & Rodriguez)
- Concern with larger units in Old Town (Bagley)

The community feedback on this recommendation varied. In the survey that was conducted, staff posed the following question: *Currently ADUs must be less than half the size of the floor area of the main house. For example, if your house is 1,600 square feet, your ADU cannot be larger than 800 square feet. What do you think an appropriate size is for ADUs?* The pie chart below represents what staff heard.



The majority of survey respondents (66%) support leaving the size requirement as it is today or only considering above ground square footage. Several respondents suggested tying ADU size

to lot size, while some respondents did not think there should be a size limit at all. The full list of other responses to this question is included on pages 25 – 28 of the full survey results.

Considering this feedback and thinking about how best to administer the code, staff recommends that ADU size should be tied to above ground floor area, rather than total floor area. Council and the community have indicated that scale and compatibility are primary considerations for ADUs to be successfully integrated into neighborhoods. Currently, ADUs cannot exceed one-half of the finished floor area of the principal dwelling, but there is no consideration for how to measure basement square footage, which is not visible. Staff proposes changing this section of the LDC to *ADUs cannot exceed one-half of the finished, above ground floor area of the principal dwelling*. This will reinforce the accessory relationship of detached ADUs and principal dwellings to increase compatibility within neighborhoods.

Staff also recommends adding an exemption for size for ADUs being established in existing basements. Planning and Building Services staff have identified this as an issue, especially for single story homes. In many cases a home owner is required to commit to not using a portion of their basement to comply with ADU size requirements. Building Services also raised an enforceability issue with this, as this could set up a situation where people are later converting portions of their basement back to living space.

Since basement ADUs are not visible from the street, the size of an ADU in a basement has more limited impacts on neighborhood compatibility. Staff proposes adding the following: ***Accessory dwellings located in existing basement shall be exempt from this requirement.***

A specific survey question was not included on this recommendation; however, 71% of survey respondents think basements are an appropriate location for ADUs. Some general responses indicated basement ADUs are working well, while other respondents expressed concerns related to other impacts like parking and noise.

Recommendation 2: Consider removing Owner Tenancy Requirement for ADUs

This is a recommendation that staff is putting forward based on enforceability. At the meeting in 2020, numerous Council members expressed interest in ensuring the code we have is enforceable. Nearly 60% of survey respondents indicated that this requirement was important or extremely important; however, in follow up conversations with Code Enforcement, staff has indicated that this type of requirement is difficult to enforce. Staff were not able to identify methods to improve our regulations for greater enforceability.

Consequently, staff is recommending Council evaluate if 15.04.040.C.1.d.i should be removed. This is likely an area Council may want to focus on for conversation since this recommendation is not necessarily consistent with the feedback we've received from the

public; however, this recommendation is consistent with the direction that LDC regulations are enforceable.

Recommendation 3: Create a specific application and process, including noticing, for Accessory Dwelling Units review and approval

Currently the code specifies that ADUs should be reviewed through the site plan waiver process. As staff mentioned at the 2020 Study Session, ADUs have recently been going through the full site plan process. While it likely makes sense for these to continue to be reviewed in detail, it could be beneficial to create a specific application for ADUs. This would likely require code updates to section 15.04.040.C.1.e *Review Procedures*, and potentially updates to 15.02.070.C *Site Plans*. Staff thinks there may be an opportunity to process ADUs depending on their configuration – for example, an ADU being integrated into a primary residence with no exterior changes (e.g. in a basement or as part of the primary home), may have different requirements than a new ADU being constructed on a property.

In addition, staff recommends that the notice process be formalized within the code. Although not required by code, notice is currently provided when an application is submitted for ADUs. Staff recommends adding noticing requirements, specific to ADUs, in the code. This was brought up by several Council members during the 2020 Study Session. Staff included a question about what information should be included with notices in the survey. Numerous survey respondents provided feedback that staff will evaluate if this recommendation moves forward; this information is contained on pages 32 – 39 of Attachment 1.

Staff would recommend that notice be sent to property owners abutting the property on which the ADU is proposed. Another option would be to send notices to property owners within 150 feet of the subject property, which is consistent with the requirement for other applications, not excepted from noticing requirements. Posting of the property could also be required if the process is modified specifically for ADUs. Staff would also recommend that Council consider exempting ADUs not adding additional square footage from the notice requirement since there are more limited visual or compatibility impacts to the neighborhood with these types of units.

Recommendation 4: Add a specific definition for ADUs in the Land Development Code Definitions.

Modify section 15.10.010, *Use Definitions*, to clarify the definition for accessory dwelling units. The code currently defines ADUs as: *a second dwelling unit either within or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the main dwelling, for use as a complete, independent living facility with provision for cooking, eating, sanitation, and sleeping.*

Although this is relatively straight forward, there continues to be issues with what is considered an ADU and what is considered a basement finish or remodel. Staff suggests modifying the specific definition for ADUs to clarify that if specific elements are present in a certain configuration (e.g. three or more of the following are present – separate entrance, cooking facilities, sanitary facilities, separate heat and ventilation etc.) this will be considered an ADU and be permitted as such. If directed to modify the definition, staff would work with Building Services to identify what specific elements should be included in the definition.

Recommendation 5: Direct staff to investigate and make recommendations to Council, possible ways to enhance the architectural compatibility for new structures in the City’s historic districts and/or Original Town

The LDC currently specifies computability requirements for residential, mix-use, and non-residential development projects; there are not separate standards for historic areas of the City. This is something that has been brought up by residents and the HPC; architectural compatibility with the neighborhood and with the main house were identified as being important by some survey respondents. At the meeting last year, several Council members also suggested that there should be compatibility and noticing considerations for the City’s historic neighborhoods when evaluating ADUs. Staff suggests that Council direct staff to identify additional modifications to the development standards (and possibly the development process) to address architectural compatibility for new structures in the City’s designated historic districts or possibly all of Original Town. Staff recommends that this be broadened to include more than ADU applications.

Additional Suggestions by Council

At the Study Session in 2020, Council made a number of additional suggestions that staff has not included in the above recommendations for a variety of reasons. Additional explanation is provided below. Staff is interested in specific feedback from Council on if any of these additional suggestions should be explored.

Additional changes to dimension standards

Several Council members brought up a few additional suggestions around setbacks, size, and height, including:

- *A new ADU must be smaller than the adjacent property’s home when constructing a detached ADU that is less than 10-feet from any side or rear property line (Mayor Bagley). This is a standard that could be included, however, it would be challenging from a code implementation perspective. It is challenging to provide information on requirements when standards are dependent on adjacent properties. In addition, adjacent properties can change; additions and modifications on adjacent properties are allowed under current code.*

- *Setbacks:* Several Council members indicated larger setbacks be considered; however, staff is not recommending changes to the current code. The current code outlines setbacks for new, detached ADUs; those located in existing structures are not required to meet setbacks unless there is an expansion associated with the structure. The standards are:
 - 10 feet from the rear property line
 - 5 feet from the side property line
 - 20 feet from the front property line

This is generally consistent with setbacks for units in the Residential Single-Family zoning district (rear 6 – 20', side 5', front 10 – 20').

Setbacks were previously tied to building height; 1' of setback was required for every 2 ½' of building height. In some cases, this resulted deeper side yard setbacks, which proved difficult on the narrower residential lots (like many of those in Original Town). This resulted in processing a large number of variance applications for ADUs, which was required significant staff time. The current approach, using uniform setbacks, is more straightforward and has minimized the number of variance applications.

- There should be space left on the lot (Martin). The current accessory use regulations already address lot coverage.
- Add a requirement that ADU's cannot exceed 1-story (Peck). This would not allow ADUs above detached garages, which is one of the most common configurations for ADUs. Not allowing two-story ADUs could create a number of non-conformities within the City, since many structures have been constructed in this manner. Almost 77% of survey respondents indicated that ADUs above a detached garage was an appropriate configuration for ADUs. As a reminder, the current development regulations require ADUs cannot be taller than the primary dwelling.

Notification and Community Engagement

There were additional suggestions on noticing and engaging the community; several Council members requested ways to involve the neighborhood more in the process. Neighborhood residents and other stakeholders can currently provide input related to the review criteria, so staff can identify ways to provide information to the neighborhood on how to provide constructive feedback. If staff creates a separate application process with specific noticing requirements, there may be an opportunity to include additional information on the notices provided, consistent with some of the feedback received through the survey.

Applications for ADUs are approved by the Planning Director and are not appealable; however, the Director can send these to the Planning & Zoning Commission for a public

hearing and decision. Staff does not recommend making changes to the decision making process.

There was also a specific suggestion to add a requirement that ADU applications on both sides of Old Town (east and west) be required to go to HPC for review to determine architectural compatibility (Peck). There are not currently design standards specifically for the historic districts, so there are not code requirements that HPC would evaluate ADUs against. If directed to move forward with Recommendation 5 above, this is something that could be looked at in greater detail.

Other Items

There were other suggestions discussed by Council , including:

- Want to understand amount of resources the city will need to make the new regulations work (Peck). Once Council directs staff to make specific updates to the code, staff can include information about what additional resources, if any, will be required. Staff does not anticipate additional resources being required with the recommendations included above.
- Plan for rental licensing (Martin) with annual inspections (Christiansen). Wants to better understand how rental licensing will address issues (Bagley). Council spent time discussing rental licensing, but this is a separate discussion. Staff did not consider rental licensing as part of the ADU conversation, as this is a much larger conversation. Staff continues to work with Council on this topic.
- This should be a cottage guest space, i.e. not rental (Christiansen). This is challenging standard to enforce and staff would not recommend including a provision stating ADUs cannot be rented. Council also talked about ADUs as a tool for increasing affordability and housing diversity; limiting ADUs to only guest space would not support these additional goals.
- Consider regulation that ADU cannot take sunlight from a neighbor (Christiansen). The Land Development Code does not currently have requirements for sun/shade analysis for any development project. This can add considerable complexity to submittal requirements and project reviews.

Community Feedback

Staff has received feedback from residents, particularly in the historic neighborhoods about the impacts of ADUs; these have been primarily related to a few ADUs that have been recently constructed.

A survey of the broader community was conducted to get additional feedback. The full results are included as Attachment 1. 574 responses were received from all areas of the City

and approximately 9% of responses (52 respondents) were received from residents living within the historic core of the City. The majority of responses were from home owners, although 15% of respondents indicated they rent their home. Highlights from the survey are included below; there were many written comments provided by residents talking about some of the impacts, as well as the benefits of ADUs.

- 5% of survey respondents currently have an ADU on the property they own or live on.
- There is some interest from respondents in constructing ADUs in the future (4% would like to pursue within a year and 16% would consider at some point in the future); however, 44% have no interest in this.
- 66% of respondents think that a residential area is appropriate for ADUs, while 7% think that no area is appropriate. Other responses included non-historic areas (10%), planned neighborhoods (20%), and other responses (see comments on page 19 – 20).
- Generally, respondents supported the current configurations allowed within the code. 78% support ADUs above a detached garage, 75% support ADUs in a separate single-story structure, 73% support ADUs integrated into the principal house, and 71% support basement ADUs.
- Approximately 26% of survey respondents are aware of ADUs within their neighborhood.
- For respondents that are aware of ADUs in their neighborhood:
 - 74% reported they are completed or somewhat compatible, while 20% reported they were not compatible at all or were somewhat incompatible (6% were neutral)
 - 58% reported no noticeable impacts from ADUs; however, 34% reported increased vehicles parking in the street, 18% reported increased traffic, 13% noted more noise, and 18% reported visual impacts – i.e. being able to see the ADU. Other comments on positive and negative impacts are included on page 17 of Attachment 1
- In evaluating the importance of what is currently regulated within the code, the following items were ranked from most to least important: occupancy, on-site parking, architectural compatibility of the house, density of the neighborhood, architectural compatibility of the neighborhood, setbacks, location/type of ADU, height, and historic use of the property.

As stated previously, there are numerous comments related to specific survey questions. There are also nearly 200 open-ended comments provided by respondents; these are contained on pages 44 – 54. The remaining pages of the survey contain specific respondent contact information and have not been included in Attachment 1.

Planning, Code Enforcement, and Building Services staff will be available at the meeting on April 6th to provide additional information and respond to other Council suggestions.

CITY COUNCIL COMMUNICATION



ATTACHMENTS:

1. Survey Results