

Proposed ADU Ordinance

Fayette County Neighborhood Council

September 21, 2019

What is an ADU?

- ▶ An ADU is a separate small residence on a single family lot with a residence already present. As a separate residence, an ADU includes a living area, kitchen, sleeping and bathroom facilities, and has its own external access (house door). The maximum size is 800 square feet (sometimes only 650 if the main house is quite small).
- ▶ An ADU can be “attached” and be an attic or basement apartment or an addition connected to the main house.
- ▶ An ADU can be “detached” and can be in a detached garage or can be a backyard house.

Why ADUs in Lexington?

- ▶ Protect the Urban Services Boundary.
- ▶ Implement an Infill and Redevelopment Strategy.
- ▶ Address a housing shortage, especially for starter homes.
- ▶ Provide equity for seniors and people with disabilities hoping to live semi-independently.
- ▶ Promote affordable housing although the data on whether ADUs are “affordable” is conflicting.

The Proposed ADU Ordinance:

- ▶ One (1) ADU per single-family lot (or single family house)
- ▶ No minimum lot size
- ▶ Maximum ADU size—800 square feet (650 if a detached ADU with a small main house).
- ▶ Maximum FAR (floor to lot ratio) must meet the requirements of the underlying zone for the property.
- ▶ Detached ADU must be in the backyard.
- ▶ Maximum height for the detached structure must not exceed the height limit for the underlying zone.

Owner Occupancy

- ▶ While an owner must reside on one of the properties if it's used as a short-term rental; there is no owner occupancy requirement for long-term rentals meaning that both the principal residence and the ADU could be rental properties.
- ▶ The FCNC has a long-standing concern that there is a tipping point on rental percentage beyond which neighborhoods fail to be successful and even fail to survive. The definition of “owner-occupancy” would need to be carefully crafted if a requirement to prevent abuse.
- ▶ We believe that land speculation and rentals are increasing significantly, especially, but not exclusively, in the more urban parts of Fayette County and near the University of Kentucky and are spreading outward.
- ▶ Owner occupancy promotes home ownership and property maintenance and is good for Lexington.

Dwellings and Rental Occupancy

- ▶ The Draft Ordinance considers an ADU to be “accessory” even though it is separate, complete and independent of the principal residence.
- ▶ Each “single-family dwelling” if the draft ordinance passes may house as many as four (4) unrelated persons. The draft ordinance considers an ADU to be a separate dwelling.
- ▶ **Consequently, a principal dwelling with an attached ADU may house eight (8) unrelated renters.**
- ▶ That **increases** the number of unrelated renters who may live in an ADU-expanded residence by **100%** beyond current standards. LFUCG Planning has stated that most new ADUs will be attached rather than detached. Without licensing, inspection, and enforcement, no one knows or will know how many people actually live in individual rental properties.

Lack of Adequate Enforcement

- ▶ The 2018 Comprehensive Plan calls for the licensing and inspection of rental properties in Lexington. An LFUCG task force, including university, landlord, and neighborhood stakeholders, made rental licensing and inspection a top recommendation in 2009.
- ▶ Current enforcement is complaint-driven once a rental property is approved and built. That approach has not been successful. Many people are aware of current health, safety, and zoning violations as shown in a recent meeting of the Neighborhoods in Transition Task Force.
- ▶ Rental dwellings on an ADU property or otherwise would not be subject to licensing and annual inspections under the proposed ordinance.
- ▶ Zoning enforcement staff may not enter to inspect an occupied private dwelling except by going through a lengthy process to establish a reasonable belief that a zoning violation exists; if entrance is denied, staff needs a warrant from District Court (ZO 5-1(a)). An off-property “stakeout” is often necessary to establish belief in a probable violation, and that has been ineffective and inefficient.

Accessory Use

- ▶ An “Accessory Use” is subordinate and incidental to a principal use. Examples of an “Accessory Use” are a garage for a car or a shed to hold a lawn mower and tools. The FCNC does not consider an ADU to be “incidental” like a tool shed or “subordinate.” It’s simply smaller than the principal residence.
- ▶ If an ADU is a by right “Accessory Use” as proposed, like a garage or a shed, it can be built with no neighbor or neighborhood notice, engagement, or authority. Only if it is a “conditional” accessory use would it include a Board of Adjustment (BOA) permit and possible public participation.
- ▶ Neighborhoods in Lexington are extremely diverse and have differing concerns and needs. These are impossible to capture when an outside landlord wants to expand a rental property and occupancy by adding an ADU and does not want neighbor involvement.

The ADU Manual

- ▶ The ADU Manual, “*Homeowner’s Guide to Accessory Dwelling Units*,” from the University of Kentucky College of Design, AARP, and the LFUCG, includes some useful suggestions for building an ADU including such things as design, neighbor involvement, site layout, context, infrastructure, and sustainability.
- ▶ The same Manual in the draft ordinance will only provide “guidance.” That means that an ADU developer will not have to abide by it. Some landlords do not comply with Ordinances, so there is little to no chance they will comply with “guidance.”

Environmental Concerns

- ▶ Staff has indicated that ADUs will present an “opportunity” to see if storm water lines are connected to lateral sanitary sewer lines contrary to current regulations. That’s completely correct. However, will an inspection of sanitary lines be a requirement for ADUs? If so, the requirement should be in place at the same time as any ADU Ordinance. Doing so would help Lexington meet capacity assurance requirements.
- ▶ Similarly, lateral sanitary sewer lines in older neighborhoods with Orangeburg and cast iron pipes have failed or soon will fail in Lexington. ADUs in such neighborhoods should require a camera study from a licensed plumber to assure they are functional before adding more residents. Doing so would help reduce E. coli counts in all of Lexington’s watersheds.
- ▶ LFUCG Water Quality would need to establish standards for either of these benefits to come to fruition.

Tree Canopy

- ▶ If Lexington wants cleaner air and water, higher property values and a more livable city, it needs more trees over the next 20 years, according to a 2014 report from Davey Resource Group. Lexington's tree canopy covered 25% of its urban core in 2014, below the national average of 27%.
- ▶ Lexington's tree canopy provided \$30.7 million in benefits annually in 2014, from carbon capture, to reduced stormwater runoff, to savings on homeowners' air-conditioning bills.
- ▶ The draft ordinance does not explicitly address tree and greenspace requirements but includes no minimum lot size for an ADU. Added impermeable surface is an issue in a number of neighborhoods.

Flexible Housing Options for Seniors and Individuals with Disabilities

- ▶ Lexington's Senior Services Commission supports ADUs to enhance flexibility in housing for seniors, people with disabilities, and their families. Broadening the options for aging in place is important, especially as our senior population increases.
- ▶ Lexington's single-family zoning already allows for certain home extensions convenient for seniors within the definition and use of a "single-family dwelling unit."
- ▶ Currently a person may get permission for an attached, semi-independent dwelling area within a single-family home, including a full second kitchen, a bathroom, and living and sleeping space, through a "second kitchen review" process. Staff grants a permit on condition the area is not rented, and open access to the second kitchen is maintained throughout the house (a staircase or hallway, for example).
- ▶ Public meetings did not divulge this option existed.

No Public Notice and Hearing Required for Shared “2nd Kitchen” Not for Rent

- ▶ The “second kitchen” review is a staff process that preserves the privacy and dignity of seniors, people with disabilities, and their families. Without public notice and a BOA hearing, households may get a zoning compliance and building permit to allow living arrangements that provide individuals a significant degree of independence and self-determination-- their own complete living facilities-- within the single-family home.
- ▶ A recent staff presentation to the Planning Commission noted that about 75-80% of all ADUs are attached dwellings, in great part because of their lower cost. Seniors and persons with disabilities and their families may use this permitting process to adapt their homes to changing needs.
- ▶ Only households choosing a detached semi-independent living arrangement need Board of Adjustment approval under current practices.

Process and Conclusion

- ▶ In well attended General Meeting of the Fayette County Neighborhood Council on September 9, only one neighborhood leader favored the draft ADU Ordinance as written. The ADU housing provision has lost support since the details of the draft Ordinance became available.
- ▶ FCNC members have expressed a significant lack of confidence in the information presented on ADUs at the public meetings in the Senior Center.
- ▶ In very simple terms the draft Ordinance increases rental dwellings and occupancy in single family residential neighborhoods without adequate safeguards, including but not limited to rental licensing and inspection, reasonable occupancy limits, owner occupancy, environmental protection, local neighborhood and neighbor engagement in the approval process, and adequate enforcement and enforcement authority.
- ▶ The FCNC finds the Ordinance as drafted not acceptable and asks that the Planning Commission continue to work on it.