

Fayette County Neighborhood Council Statement
Chief Points on the Accessory Dwelling Unit (ADU) Ordinance

August 16, 2021

We all share the high aims of the Accessory Dwelling Unit ordinance, ZOTA 2019-5: increasing opportunity for affordable housing to meet a wide spectrum of needs in our community, especially those of seniors, people with disabilities and extended families. We have little confidence, however, in the outcome it promises: a gradual and widely scattered increase in small-scale housing at moderate rates. We believe Lexington stands to lose far more than it gains if the Council adopts this ordinance as proposed.

At FCNC's July 2021 general membership meeting, the concerns and objections to the proposed ADU ordinance were as varied as our Lexington neighborhoods. The ideas that found the broadest agreement are distilled in the eight points given here. The realistic safeguards and improvements they advise are needed before an Accessory Dwelling Ordinance can be considered for Lexington.

1. Granny flats are here already, on the increase, and we welcome them. City staff streamlined a process in 2012 to grant a permit for a dwelling area with complete facilities for living, including a second kitchen, within the single-family home—without a public hearing. These “home extension” suites have shared access with the larger home, and cannot be separately rented. Often less expensive and more flexible than a garage apartment or backyard cottage, they meet the needs of many households caring for loved ones better than ADUs. We believe this streamlined permitting process can and should be improved and better publicized, to accommodate more. At the same time, the city's energies should turn toward [developing a much wider spectrum of options](#) to meet seniors' needs affordably, including regulatory and other incentives for co-ops and condos, cottage courts, co-housing, group houses, senior villages, and independent-living houses with supportive services like meals and transportation.

2. Enforcement comes first: institute rental licensing and inspection. Our most vulnerable neighborhoods have sought it for decades. Complaint-driven enforcement doesn't work, fruitlessly burdening tenant and neighborhood advocates and even—in areas apt for intensive redevelopment—leaving the very residents it aims to protect fearful of displacement. It was a top-priority recommendation of the *Student Housing Task Force Report* September 2009. It is now Neighborhoods/Equity policy 5 of our [2018 Comprehensive Plan](#) (p. 49, digital 64). It is recommendation B.5 (p. 11, digital 4) of the [Neighborhoods in Transition Task Force Report](#) adopted June 2021. Before ADUs introduce a highly flexible new opportunity for unplanned redevelopment at the heart of our older city, we need this regular and effective oversight: to protect lower-income neighborhoods from degradation and displacement of long-term residents, and to

prevent rental overcrowding where student and tourist demand is high. ADU standards like occupancy limits and owner residency are meaningless without enforcement. They are promises made to be broken. Clearly enforcement is not now a budget priority: Planning Division staff since 2019 have lost a Manager and two Officers in enforcement. Short-term rentals like Airbnb—literally here today, gone tomorrow—already pose extraordinary challenges to zoning enforcement without adding ADUs. Unlike other transient lodging, short-term rentals have no state licensing and oversight.

3. A citywide ZOTA, altering virtually all the residential zones together, is not the right course: map the ADU option only where it fits, using our regular zone change process

with mailed notice to those most directly impacted and an open public hearing. The proposed ADUs can double the density on any or every single-family lot: citizens and neighbors deserve a say in this through a place-based process, a map amendment to a different zone. A garage apartment, permitted a foot and a half from the property boundary, could actually be nearer the neighbor's residence than to the property owner's. People have invested in their single-family homes and neighborhoods and improved them for single-family use: is it fair and legal for the government to take that away, fundamentally changing both the use and density without the direct involvement of each impacted neighborhood and resident in the duly established zone-change process?

4. The “accessory” label is misleading: if the second dwelling is a complete and independent unit, it does not belong in a single-family zone, because it is counter to its intent. Single-family zoning already includes many accessory options for *sharing* one dwelling unit, including accommodations for guests and extended family and also renting rooms. A second unit, separate and not *shared*, requires a two-family zone: it is not “subordinate and incidental.” Create a flexible, less-intensive new duplex zone R-2A for this housing option (or special zones allowing ADUs for unique places like North Limestone CDC's [Luigart area](#)).

5. Provide for balanced distribution, so ADUs don't crowd in the older, affordable neighborhoods where student and tourist demand drives rents and housing prices high. Homeowners' Associations (HOAs) in the newer suburbs can make private deed restrictions to avoid ADU impact, although at significant cost. The older central-city neighborhoods already vulnerable to rental overcrowding and displacement will bear the brunt. (Campus [room rates](#) currently run about \$1,000 monthly per person and more, with the new, near-campus commercial complexes not far behind. While UK's [housing program 2012-2017](#) developed 6,850 new beds for students on campus, in the

process it demolished most of the 6,000-odd [older, affordable rooms](#).) Set a spacing requirement for ADUs to spread them across the urban area.

6. Set ADU zoning standards to apply flexibly, through a conditional use permit with local input. Require public review to safeguard community welfare and compatibility: street safety and parking; flooding and sewers; tree canopy and privacy; lot size, setbacks and buildable area or FAR; and spacing between ADU properties. A conditional use can control zoning compliance, the resident-owner requirement, and neighborhood compatibility more effectively than an applicant's reviewing largely voluntary guidelines in an ADU manual, without public input, and recording a deed restriction. The recorded land use restrictions set by the Board of Adjustment provide for regular inspection and enforcement, and the use can be revoked if conditions are not followed.

7. Do not allow an ADU in a structure that does not meet current zoning standards. A backyard cottage is far [more intensive](#) than a garage or storage shed: the enlarged use in a substandard structure should not be legal. The accessory building and use should meet both the general standards and the ADU requirements established, including setbacks and size limits.

8. ADU developers should pay their fair share of taxes and infrastructure fees, to ensure adequate public facilities and services for all. ADU owners are establishing an independent dwelling unit that may prove a source of significant income. The dwelling will claim more from the city than an extra room or storage area might.

In sum, FCNC sees a real disconnect between the high aims and likely outcomes of the ADU Ordinance. Abuse of current zoning provisions for "single-family" dwellings is rampant through much of the older city. In certain areas, small yards and narrow streets are crowded past capacity with vehicles, while in others, houses are bought on speculation and held vacant for years together. Affordable homes for long-term residents are repurposed for tourist accommodation. Safe routes for commuters without cars are intermittent at best, especially in the suburbs. Code enforcement is slow to ensure basic maintenance and safety; a good many rules are simply unenforceable. At this juncture, an ordinance to stimulate everywhere without distinction the unplanned redevelopment of established subdivisions for double their present density—however well-intended—is not a tool we can use in the toolbox to build a better community. Lexington's zoning ordinance should serve and protect us better; the proposed Accessory Dwelling Unit amendment bids fair to make it worse. We urge the Council turn Lexington's energies at once to more promising avenues to meet our varied housing needs.