

CITY PLANNING COMMISSION AGENDA
March 19, 2020

STAFF: HANNAH VAN NIMWEGEN

FILE NO:
CPC CA 20-00006 – LEGISLATIVE

PROJECT: ACCESSORY DWELLING UNITS (ADUs)

An ordinance amending Chapter 7 (Planning, Development and Building) of City Code defining and establishing standards for accessory dwelling units and introducing accessory family suites.

APPLICANT: CITY OF COLORADO SPRINGS - PLANNING AND DEVELOPMENT

PROJECT SUMMARY:

Code Change Description: The proposed ordinances adds and adjusts language to multiple sections of City Code Chapter 7 related to accessory dwelling units (ADU) and accessory family suites. Below are highlights of the proposed drafts:

What is new:

1. Creation of an ADU Overlay Zone as an optional application to new single-family residential development and a select commercial zones;
2. Defining an accessory family suite and allowing accessory family suites in all zone districts where a single-family detached residence is permitted;
3. Conditional Use requirement for allowance of integrated ADUs in single-family zones;
4. Updated definitions; and
5. Clear access paths.

What was carried forward from the previous draft reviewed by the Planning Commission:

1. Allowing ADUs in additional zone districts including OR (Office Residential) and OC (Office Complex);
2. Establishing two types of ADU's – detached and integrated;
3. Increasing the maximum square footage of an ADU;
4. Requiring owner occupancy in single-family zoning;
5. Restricting subdivision and separate sale of an ADU from the primary structure;
6. Reducing minimum lot size requirements for an ADU;
7. Increasing the maximum height; and
8. Removal the 20-foot minimum separation requirement between the principal dwelling and the detached ADU.

A more detailed summary of the language is found in the following sections of this report. The full language of the three ordinances are attached as **FIGURES 1, 2, and 3**. Added language is indicated in **BOLD** and language to be removed from the Code is indicated by a ~~STRIKETHROUGH~~.

Because the City Planning Commission and City Council have been briefed many times on ADUs, this report will not go into the details of the history of ADUs or the plans supporting the change. If interested in learning more on these topics, though, please reference the staff report

which was published as part of the March 21, 2019 City Planning Commission. Instead, this report will focus on the specifics of the proposed ordinances.

BACKGROUND

The City Planning Commission last heard ADUs on March 21, 2019. At that time, the City Planning Commission voted to recommend approval to the City Council. During the hearing, City Council voiced concerns with some of the proposed concepts. Primarily, there were concerns regarding expanding ADUs into single-family zones, specifically detached units. Since then, planning staff worked with the City Council to find a compromise between allowing detached ADUs in single-family zones and disallowing ADUs in single-family zones. To accomplish this, staff presented at several work sessions throughout 2019. On January 27, 2020, staff presented at a City Council Work Session and understood general concepts of what could be supported, and produced the subject drafts based on those comments.

International Residential Code (IRC) Requirements

Recognizing that detached units in single-family zones were not agreeable, City Planning staff set up a series of meetings with the Pikes Peak Regional Building Department (PPRBD) to understand the code requirements to install an integrated ADU within an existing single-family home. The IRC requires one-hour fire separation between dwelling units in addition to independent plumbing, mechanical, and air systems. PPRBD explained the level of retrofitting a single-family home would need to undergo in order to install an integrated dwelling unit. In response to these requirements, planning staff is proposing another unit type that does not currently exist within the City Code. "Accessory Family Suites" may contain a full kitchen with a permanent cooking appliance, however does not constitute a secondary dwelling unit and would not trigger extensive retrofitting of existing structures. Accessory family suites have specific requirements, though, discussed further in this report, including the need to maintain an internal access to the main living area.

STAKEHOLDER PROCESS AND INVOLVEMENT:

A significant stakeholder process was undertaken prior to bringing the first ordinance version to the City Planning Commission for consideration, which included: social media outreach; interviews with local radio and TV stations; attending various homeowner association and neighborhood organization meetings; and presenting to other boards and commissions including the Historic Preservation Board and the Commission on Aging. Additionally, an ADU steering committee was formed and included Councilmember Gaebler, Planning Commissioner Graham, CONO (Council of Neighbors and Organizations), and ONEN (Organization of North End Neighbors), in addition to a few skilled tradespeople and property owners who recently constructed accessory dwelling units. Many of the recommendations made by this committee have been carried forward to the ordinance under consideration currently.

Three public open houses were held: February 20, 2019 at Deerfield Hills Community Center (southeast); February 25, 2019 at Prairie Hills Elementary School (north) and February 26, 2019 at the City Auditorium (central). Approximately 120 – 140 citizens participated in the public open houses. Comment cards were passed out at each meeting and attendees were encouraged to write any questions, concerns, or thoughts about the proposal and for Staff's attention. Then, two town hall meetings were held on November 19, 2019 and December 4, 2019 where members of the City Council heard from Colorado Springs residents directly.

SUMMARY OF ORDINANCES:

The proposed draft ordinances are attached for consideration. As previously mentioned, the largest change is the introduction of secondary units to single-family districts and the concept of

the accessory family suite. Staff is also proposing alterations to other aspects of the zoning code related to residential land uses and ADUs. The new language is broken out into three ordinances outlining the three primary concepts:

- Ordinance 1.1 introduces “accessory family suites” and outlines requirements for such.
- Ordinance 1.2 contains alterations to existing definitions within the zoning code, introduces integrated and detached ADU development standards, and outlines a threshold of review.
- Ordinance 1.3 establishes an ADU Overlay Zone, which is an optional application to new residential development.

Ordinance 1.1 (FIGURE 1):

As proposed, accessory family suites will be permitted by right in all zone districts where a detached single-family home is an allowed use. These types of units are permitted as part of a detached single-family residence and would not be allowed as a detached structure. A position supported by the City Council is allowing additional units without increasing the number of individuals occupying a single property. Currently a single-family home can be occupied by a “family” as defined in the zoning ordinance. A family is defined in Code Section 7.2.201 as:

FAMILY: As used in this Zoning Code, an individual, two (2) or more persons related by blood, marriage, adoption, or similar legal relationship, or a group of not more than five (5) persons who need not be so related, plus domestic staff employed for services on the premises, living together as a single housekeeping unit in one dwelling unit. The definition of "family" shall apply regardless of whether any member of such group receives outside services for mental, emotional, or physical disability.

Staff is proposing the following definition for an accessory family suite:

ACCESSORY FAMILY SUITE: An accessory family suite may be made up of a room or group of rooms forming a single habitable area with facilities for one or more persons with provisions for living, sleeping, cooking, and sanitation, and is located within a principal single-family detached unit. An accessory family suite shall not be considered a separate dwelling unit for purposes of the Zoning Code provided all the requirements are met and the accessory family suite is in continual compliance.

As written, the addition of an accessory family suite would not allow a second family to occupy the property, because the accessory family suite does not constitute a second dwelling unit. The number of individuals who occupy the primary residence and the accessory family suite could not exceed one family as defined. This would be regulated through a notarized and recorded affidavit (**FIGURE 4**) assuring the property owner’s awareness of the restriction. The recorded affidavit would be submitted with a building permit. Building permits for these unit types would be reviewed by the Development Review Enterprise (DRE) of the City Planning department.

If a property owner were to violate the occupancy limitation, they would be liable for potential code enforcement actions as outlined in Code Sections 7.5.1001 through 7.5.1012. Staff is not proposing there be a requirement for owner occupancy of a single-family dwelling with presence of an accessory family suite, because the number of individuals allowed on the property is not changing from what is currently allowed and, currently, a single-family home may be rented out to a group of individuals meeting the same definition. Largely, this ordinance allows a single-

family home to add a second kitchen with a permanent cooking appliance. This could allow for a couple to rent their family suite or primary living quarters to another couple with a child, or for a live-in nurse to have a kitchen in the accessory family suite when assisting an elderly couple.

Staff is proposing the following regulations for accessory family suites:

1. At least one additional off-street parking space must be present;
2. An accessory family suite may have an exterior access, but that access point cannot be located at the front of the primary residence. If an exterior access point is present, a 36-inch wide clear access path from the front property line must also be present;
3. An internal connection between the primary residence and the accessory family suite is required, but that internal connection may be locked;
4. The accessory family suite cannot be more than 50% of the gross floor area of the primary residence; and
5. Architectural design requirements.

Because the accessory family suite would not allow an additional family to occupy the property, and because of the internal connection requirement, PPRBD would not require the extensive renovations to an existing home between the main living area and the living area designated as the accessory family suite.

Additionally, the ordinance proposes a restriction to prohibit the subdivision and sale of an accessory family suite from the principal dwelling unit. This would be enforced through a notarized and recorded covenant held by the City (**FIGURE 5**). Similar to above, if a violation of this requirement were to occur, actions outlined in the zoning enforcement code section would be triggered.

Accessory family suites would be permitted in Planned Unit Development (PUD) zone districts as well, as long as single-family detached residential is an allowed use and the accessory family suite is located within a single-family detached home. Because the presence of an accessory family suite does not constitute a separate dwelling unit (and therefore an accessory family suite would not allow a second family to occupy the property), it is staff's judgement that the presence of an accessory family suite does not increase the density within a PUD which has a density cap.

The proposed architectural design requirements are as follows: an accessory family suite shall not involve design modifications to the exterior of the principal structure that indicates their presence from the front of the principal structure. Building additions shall be architecturally compatible with the principal structure. External stairs are not allowed to provide access to a second-story accessory family suite unless it is from a second-story deck.

Ordinance 1.2 – Definitions & Accessory Dwelling Units (FIGURE 2):

A step beyond accessory family suites are accessory dwelling units. Accessory dwelling units would allow a second family, as defined in the zoning code, to occupy the property. Depending on the zone district, an ADU may be integrated into the primary home or be detached. A position supported by the City Council is potentially allowing an integrated ADU in single-family zones as long as there is a public notification process and the property owner continues to occupy one of the two dwelling units. City Planning is proposing to allow integrated ADUs in single-family zones through the Conditional Use process with an owner-occupancy requirement. This ordinance also expands the allowance for ADUs in two-family and multi-family zone districts and reduces restrictions in those zones.

Definitions:

Ordinance 1.2 adjusts existing definitions found in Code Sections 7.2.201 and 7.2.302. These definition adjustments help clarify and align with definitions found in the International Residential Building Code. Notably, staff is proposing to remove the 220-volt, gas, or propane connection delineation for kitchens to close the “loophole” between extra living space and accessory dwelling units. With the addition of accessory family suites, properties would continue to be allowed flexibility for an additional living space and/or kitchen with limitations. The proposed definition of a kitchen comes directly from the IRC:

Kitchen: An area used, or designated to be used, for the preparation of food.

Further, definitions for integrated and detached ADUs are created, and a clarification between a single-family home with an integrated ADU and a two-family structure such as a duplex.

ADUs in Single-Family Zones:

In the R (Estate Residential), R-1 9000 (Single-family Residential), and R-1 6000 (Single-family Residential) zone districts, a homeowner would be required to receive approval of a Conditional Use from the City Planning Commission in order to construct an integrated ADU. In single-family zones, only integrated ADUs would be permitted through the Conditional Use process. However, if a detached ADU is desired, a homeowner could seek approval of a Use Variance, also granted by the City Planning Commission.

The process for a Conditional Use application includes public notice upon submittal of the application and with the scheduling of the public hearing at City Planning Commission. An aggrieved neighbor would have the ability to contact the staff Planner as well as attend the public hearing and speak to the City Planning Commission. A decision made by the City Planning Commission could be appealed to the City Council for further consideration. Approvals of a Conditional Use apply to a land use on a specific property and can transfer to future property owners upon sale of the property. As stated in Code Section 7.5.708, “A conditional use is not affected by changes in tenancy, ownership, or management of the property. The approved conditional use shall be attached to, and run with the land for which it is granted, unless otherwise conditioned.” Approvals may also be conditioned if appropriate for the request, and those conditions could include time limits and periodic reviews of the Conditional Use. In order to be granted a Conditional Use, an applicant will need to justify the request against the following review criteria found in Code Section 7.5.704:

- A. Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.
- B. Intent Of Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.
- C. Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.

In addition to the requirement to receive approval of a Conditional Use Permit, properties in single-family zones are required to be owner occupied. This would be regulated through a notarized and recorded covenant (**FIGURE 6**) assuring the property owner’s awareness of the restriction and responsibility to comply. This restrictive covenant would transfer from one property owner to the next. The recorded covenant would be a required document to be submitted with a building permit. Building permits for these unit types would be reviewed by the Development Review Enterprise (DRE) of the City Planning Department. A definition for owner

occupancy was established with the latest short-term rental ordinance (Ord. 19-101), and the same definition would apply here:

OWNER OCCUPIED: the property is actually occupied by the owner for not less than one hundred and eighty-five (185) days each year.

However, understanding that life happens, the ordinance does allow for waivers to the owner occupancy requirement for the following qualifying situations:

1. The property is listed and actively marketed for sale;
2. Temporary relocation by the owner for employment (including temporary relocation for active duty military service members) or medical treatment, death of the owner, divorce or legal separation of the owner and a non-owner spouse or similar circumstances; or
3. Other circumstance that creates an unreasonable economic hardship.

Similar to accessory family suites, integrated ADUs would also be prohibited from subdivision and/or sold separately from the primary dwelling unit. The same restrictive covenant would be required to be notarized and recorded against the deed of the property and would transfer from one property owner to the next.

If a property owner were to violate any of the requirements (owner occupancy, a condition of approval, subdivision, etc.), they would be liable for potential code enforcement actions as outlined in Code Sections 7.5.1001 through 7.5.1012. Code Section 7.5.707 states, "If a conditional use is not in compliance with the terms of the approval, the conditional use shall be subject to enforcement pursuant to part 10 of this article." As written in the ordinance, enforcement actions could not be brought against a tenant for the property owner's failure to occupy one of the two dwelling units.

ADUs in Two-Family, Multi-family, and Commercial Zones:

Currently, detached ADUs are allowed in the A (Agriculture), R-2 (Two-family Residential), R-4 (Multi-family Residential), R-5 (Multi-family Residential), SU (Special Use), TND (Traditional Neighborhood Design), and C-5 (General Business) zone districts. This ordinance continues to allow detached ADUs in these districts, but also expands them into the OR (Office-Residential) and OC (Office Complex) zone districts because they currently allow single-family detached and two-family land uses by right. Detached and integrated ADUs are proposed to be conditionally permitted (require approval of a Conditional Use) in the PBC (Planned Business Center), C-6 (General Business), and M-1 (Light Industrial) zone district, because single-family detached and two-family residential land uses also require approval of a Conditional Use. The minimum lot size was reduced to be equivalent to the minimum size for a single-family home for each respective zone district.

Integrated ADUs were not expanded into the R-2, R-4, R-5, SU, TND, and C-5 zone districts because of their existing allowance for a two-family structure such as a duplex. Please see the residential land use progression chart (**FIGURE 7**) to help illustrate the natural progression from accessory family suites to integrated ADUs to two-family structures.

Because ADUs or two-family structures are already allowed in these zone districts, staff has not placed owner occupancy requirements, limitations to one family on the property (though, no more than two), or restrictions on subdivision.

Accessory Dwelling Unit Development Standards:

Code Section 7.3.105.M will continue to stipulate required off-street parking minimums, one accessory dwelling unit per lot, and that mobile homes and travel trailers (RV) cannot be used as accessory dwellings. In addition, specific size, height and setback requirements for each type are outlined within this same section.

A detached ADU would be permitted to be a size not to exceed 50% of the floor area of the principal structure up to a maximum of 1,250 square feet. This ratio to determine size with a cap will help preserve scale of the structures on the property. When the principal structure is 1,500 square feet or smaller, the detached ADU will retain a right to build up to 750 square feet in size. The floor area of a detached ADU, which may be located above a detached garage, may exceed the footprint of the principal structure but may not exceed the gross floor area of the principal structure.

The maximum detached ADU height is dependent on the roof pitch of the structure. If the detached structure has a roof pitch of 6:12 or steeper, the maximum height will be increased to 28 feet. If the roof pitch is shallower than 6:12 including flat roofs, the maximum height will be maintained at 25 feet. A detached ADU will need to meet the same setbacks established for accessory structures. Meaning, an ADU must be at least five feet (5') from the side or rear property line, unless it is part of a detached garage in which case the structure would need to be setback ten feet (10') from the rear property line if the garage doors face an alley. City Planning staff decided to strike the requirement to have a twenty foot (20') separation between a detached ADU and the primary structure as well as the requirement for a detached ADU to be located "behind the rear corners" of the primary unit.

Integrated ADUs will be permitted at a maximum size of 50% of the floor area of the principal structure. There is no maximum size cap proposed for integrated ADUs as scale of separate structures is not an issue with the integrated unit. The height and setbacks for the integrated unit are determined by the zone district and the existing structure. An integrated ADU may have an exterior access point, but that access point must be located to the side or rear of the primary residence with a 36-inch wide clear access path from the front property line.

In the R, R-1 6000, and R-1 9000 zone districts, integrated accessory dwelling units shall not involve design modifications to the exterior of the principal structure that indicates their presence from the front of the principal structure. Building additions shall be architecturally compatible with the primary dwelling unit, and external stairs are not allowed to provide access to a second-story accessory dwelling unit unless it is from a second-story deck. In zone districts where detached ADUs or two-family structures are already permitted, there are not any architectural design standards.

Language is incorporated to stress the fact that the provisions proposed do not supersede private covenants and that it is the obligation of the property owner to comply with private covenants. Covenant compliance is the obligation of the property owner. Likewise, enforcement of private covenants is the responsibility of formal/informal organizations (such as HOAs) or property owners if there is organized association.

Ordinance 1.3 – Accessory Dwelling Unit Overlay Zone (FIGURE 3):

The purpose of the accessory dwelling unit overlay zone is to provide flexible housing options in a neighborhood while ensuring the overall character of the development is consistent with the base zone. The ADU overlay may be used in conjunction with the zoning of new residential development or a development containing a mix of residential and other land uses. The intent of

creating an ADU overlay zone is to provide a developer an additional avenue for allowing accessory dwelling units without zoning a development PUD (Planned Unit Development) or R-2 (Two-Family Residential).

All ADU development standards outlined in Ordinance 1.2 shall be met unless otherwise established within a Planned Unit Development (PUD) zone. The PUD should establish whether integrated and/or detached ADUs are permitted in addition to other development standards if more or less restrictive than what is outlined. ADUs within the overlay zone shall be considered permitted by right and shall not be subject to the conditional use process as outlined in Ordinance B. Additionally, properties zoned with the overlay shall not be subject to the owner occupancy requirement or the limitation to one family occupying the entire property unless otherwise stated in a PUD zone.

STAFF RECOMMENDATION:

CPC CA 20-00006 - CODE AMENDMENT

Recommend to the City Council adoption of ordinances amending Chapter 7 (Planning, Development and Building) City Code defining and establishing standards for accessory dwelling units, accessory family suites, and an accessory dwelling unit overlay zone.