

Motion and
Statement of Consistency with Comprehensive Plan
UDO-267

I move that the following statement be adopted in support of a *Motion to Approve* the Planning Board version of Zoning Text Amendment UDO-267.

The zoning text amendment, proposed by Planning and Development Services staff to amend Chapter B, Article II of the Unified Development Ordinances (UDO), is in conformance with the recommendations of the Legacy Comprehensive Plan and is reasonable and in the public interest because:

The proposed text amendment updates the cited portions of the UDO relating to Accessory Dwelling Unit Regulations to make them consistent with State law.

Based on the foregoing Statement, I move adoption of the Planning Board version of UDO-267.

Second:

Vote:

Motion and
Statement of Consistency with Comprehensive Plan
UDO-267

I move that the following statement be adopted in support of a **Motion to Approve** the City Council version of Zoning Text Amendment UDO-267.

The zoning text amendment, proposed by Planning and Development Services staff to amend Chapter B, Article II of the Unified Development Ordinances (UDO), is in conformance with the recommendations of the Legacy Comprehensive Plan and is reasonable and in the public interest because:

The proposed text amendment updates the cited portions of the UDO relating to Accessory Dwelling Unit Regulations to make them consistent with State law.

Based on the foregoing Statement, I move adoption of the City Council version of UDO-267.

Second:

Vote:

TO: Forsyth County Board of Commissioners
FROM: A. Paul Norby, Director of Planning and Development Services
DATE: September 13, 2017
SUBJECT: UDO-267 – An Ordinance Amending Accessory Dwelling Unit Regulations

Bryce A. Stuart Municipal Building
100 E. First Street
P.O. Box 2511

Winston-Salem, NC 27103
CityLink 311 (336.727.8000)
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Accessory dwelling units (ADUs) are small residential units that may be either attached to or detached from principal residential structures. ADUs have existed in the zoning ordinance of Winston-Salem since the 1930s and Forsyth County since the original zoning ordinance of 1967, and are common in other communities across the country. In fact, all but four of North Carolina's 30 largest municipalities allow accessory dwelling units in single family neighborhoods. While many accessory units are found in neighborhoods close to downtown Winston-Salem, they can also be found on larger lots in more outlying areas of the city and Forsyth County.

Accessory units bring various benefits to the community (as detailed in *Legacy 2030*), including:

- Providing increased affordable housing options
- Allowing diverse housing options for a growing population
- Providing options for aging in place for the elderly or sick
- Generating additional income for property owners

The *Unified Development Ordinances* (UDO) currently limits who can occupy an accessory dwelling unit. The UDO only allows relatives, dependents, servants, or elderly or handicapped persons to occupy ADUs. Additionally, current regulations require freestanding, detached ADUs to receive approval from the Board of Adjustment through the Special Use Permit process – this process requires findings of fact and a public hearing allowing affected neighbors to give testimony on the proposed accessory unit. Attached ADUs are approved by Inspections staff if they meet applicable ordinance standards. Attached units must appear to be part of the main residence from the street, and the UDO prohibits new stairways to upper floors which are visible from the street, multiple entranceways, and multiple mailboxes and nameplates. Additionally, attached units must be served by the same driveway as the principal residence and may be no larger than 50% of the size of the principal residence or 1,000 square feet, whichever is less. Both attached and detached units must also meet setback, dimensional, and building code requirements.

The Winston-Salem City Attorney believes that recent North Carolina case law raises concerns regarding the enforceability of the existing ADU occupancy provisions, however. The City Board of Adjustment has not been enforcing these conditions since 2013 based on her legal advice. Current NC case law indicates that governments do not have the authority to limit the

City Council: Mayor Allen Joines; Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; John C. Larson, South Ward; Jeff MacIntosh, Northwest Ward; Derwin L. Montgomery, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garrity

County Commissioners: David R. Plyler, Chairman; Don Martin, Vice Chair; Fleming El-Amin; Ted Kaplan; Richard V. Linville; Gloria D. Whisenhunt; Everette Witherspoon; County Manager: Dudley Watts, Jr.

City-County Planning Board: Arnold G. King, Chair; Allan Younger, Vice-Chair; George M. Bryan, Jr.; Melynda Dunigan; Jason Grubbs; Tommy Hicks; Clarence R. Lambe, Jr.; Chris Leak; Brenda J. Smith

use of land based on the relationship of users or owners of the property. As a result, the Attorney advised Planning and Development staff in 2015 that a revision to the ADU standards was necessary. Since that time, staff has been working with the Planning Board and the Winston-Salem City Council on revising ADU standards.

Planning staff held two public meetings on potential revised accessory dwelling standards in September 2015 to discuss possible changes and seek citizen feedback. A number of neighborhood residents and tiny home advocates attended these meetings and voiced interest or concern related to setback requirements, unit size limitations, design considerations, and the impact of the ordinance on the tiny house movement.

Subsequently, the Planning Board began discussing specific ordinance revisions in October 2015, including various use conditions related to minimum lot size for accessory units, maximum unit size, unit setbacks, parking requirements, and other considerations. After three months of detailed discussions with staff, the Planning Board held a public hearing on a draft ordinance in February 2016 – this ordinance included a variety of use conditions. After hearing citizen concerns, the Board considered a modified draft ordinance that was even more restrictive in March 2016. However, after a lengthy discussion, the Planning Board ultimately recommended that the elected bodies retain the current UDO standards and simply remove the legally questionable occupancy provisions.

After receiving the Planning Board's recommendation in spring 2016, the Community Development/Housing/General Government Committee of the Winston-Salem City Council spent more than a year discussing UDO-267. The Committee discussed various approaches for allowing, prohibiting, or restricting ADUs. The Committee initially discussed an approach where several different use conditions were placed on ADUs. These conditions related to factors such as minimum lot size, maximum ADU size, maximum unit height, minimum setbacks from adjoining properties, and minimum parking requirements. The Committee also discussed the approval process and review authority for ADUs.

On September 5, 2017, the City Council held a public hearing on two versions of UDO-267. The first version was the version of the ordinance recommended by the Planning Board in 2016 (retaining current UDO standards but removing legally questionable "kinship" provisions). The second version also retained current UDO standards and eliminated "kinship" provisions, but changed the review process for both attached and detached ADUs to the Special Use District rezoning process. Under this scenario, every new accessory dwelling unit in Winston-Salem would be subject to a rezoning public hearing and approval by City Council. This is the version of the ordinance which was ultimately adopted by Council.

Staff is forwarding both of these ordinance versions to the County Commissioners for consideration.

Also attached is the original staff report presented to the Planning Board in 2016 along with minutes from the Board's public hearings. Staff will brief the Commissioners on UDO-267 at an upcoming meeting.

**PLANNING BOARD RECOMMENDED PROPOSAL
TO ELIMINATE KINSHIP PROVISIONS
FROM CURRENT UDO REQUIREMENTS**

**AN ORDINANCE REVISING
CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO AMEND REGULATIONS FOR ACCESSORY DWELLINGS**

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article II of the *UDO* is amended as follows:

**Chapter B - Zoning Ordinance
Article II – Zoning Districts, Official Zoning Maps, and
Uses**

2-6 ACCESSORY USES

2-6.4 USES WHICH MAY ONLY BE ACCESSORY TO PRINCIPAL USES

(B) Dwelling, Accessory (Attached). ~~.....The Zoning Officer shall issue a zoning permit if the following requirements are met:~~

- ~~(1) **Occupancy Requirements.**A zoning permit for an attached accessory dwelling shall be conditioned upon the property owner signing a statement verifying that one of the occupancy requirements is being met. The zoning permit shall automatically terminate when the occupancy requirement is no longer met. [Reserved]~~
 - ~~(a) **At Least Fifty Five (55) or Handicapped.**The principal or accessory dwelling unit shall be occupied by a person at least fifty five (55) years of age or handicapped; or, [Reserved]~~
 - ~~(b) **Relation.**The principal dwelling unit or the attached accessory unit shall be occupied by the following categories of persons: [Reserved]~~
 - ~~(i) **Relative.**Any relative under the civil law of the first, second, or third degree of kinship to the head of the household owning and occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~
 - ~~(ii) **Adopted Person.**A son or daughter by legal adoption, or the adoptive parents of the head of the household or such person's spouse, whether spouse is living or deceased; [Reserved]~~

- (iii) ~~Other Dependent.A dependent of the head of the household or of such person's spouse as defined by the North Carolina Department of Revenue; or, [Reserved]~~
 - (iv) ~~Servant.A servant employed on the premises and the servant's family, but only if such servant receives more than one-half of his/her annual gross income in return for services rendered on the premises. [Reserved]~~
- (2) **Structure.**The principal building shall not be altered in any way so as to appear from a public street to be multiple family housing.
- (a) **Prohibited Alterations.**Prohibited alterations include, but are not limited to: multiple entranceways, multiple mailboxes, or multiple nameplates.
 - (b) **Access.**Wherever feasible and consistent with the State Residential Building Code, access to the accessory dwelling unit shall be by means of existing doors.
 - (c) **Stairways.**No new stairways to upper floors are permitted on any side of a building which faces a public street.
 - (d) **Utilities.**Electric and/or gas utilities shall be supplied to both units through a single meter.
- (3) **Size of Unit.**An attached accessory dwelling unit shall occupy no more than fifty percent (50%) of the heated floor area of the principal building, but in no case be greater than one thousand (1,000) square feet. The sum of all accessory uses, including home occupations, in a principal residential building shall not exceed fifty percent (50%) of the total floor area of the building.
- (4) **Parking.**Parking for the attached accessory dwelling shall be served by the same driveway as the principal dwelling.
- (5) **Number of Accessory Dwellings.**No more than one accessory dwelling, whether attached or detached, shall be located on a lot.

(C) Dwelling, Accessory (Detached). A Board of Adjustment Special Use Permit shall be issued if the following conditions are met:

- (1) **Occupancy Requirements.**~~A Special Use Permit for the detached accessory dwelling must be approved by the Board of Adjustment in accordance with the requirements of Section B.6-1.4. In addition, the applicant must submit a statement verifying that the occupancy requirements of this section are being met. The permit shall automatically terminate with the termination of occupancy by such persons. The principal dwelling unit or the detached accessory unit shall be occupied by the following categories of persons. [Reserved]~~
- (a) **Relative (F).**~~Any relative under the civil law of the first, second, or third degree of consanguinity to the head of the household owning or occupying the principal~~

~~dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

~~Relative (W). Any relative under the civil law of the first, second, or third degree of kinship to the head of the household owning or occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

- ~~(b) Adopted Person.A son or daughter by legal adoption, or the adoptive parents of the head of the household or such person's spouse, whether spouse is living or deceased; [Reserved]~~
- ~~(c) Other Dependent.A dependent of the head of the household or of such person's spouse as defined by the North Carolina Department of Revenue; or, [Reserved]~~
- ~~(d) Servant.A servant employed on the premises and the servant's family, but only if such servant receives more than one half of his/her annual gross income in return for services rendered on the premises. [Reserved]~~

(2) Dimensional Requirements.Any detached accessory dwelling shall comply with all dimensional requirements applicable to accessory structures in Sections B.3-1.2(F) and (G).

(3) Building Requirements.Any detached accessory dwelling shall comply with all building, plumbing, electrical, and other applicable codes, other than a manufactured housing unit.

(4) Manufactured Home (F).A Class A or B manufactured home may be used as a detached accessory dwelling; a Class C manufactured home may be used as a detached accessory dwelling in those zoning districts where a Class C manufactured home is permitted as a principal use according to Table B.2.6.

Manufactured Home (W). A Class A or B manufactured home may be used as a detached accessory dwelling.

(5) Number of Accessory Dwellings.No more than one accessory dwelling, whether attached or detached, shall be permitted on the same lot.

Section 2. This ordinance shall be effective upon adoption.

**ORDINANCE APPROVED BY CITY COUNCIL
TO ELIMINATE KINSHIP PROVISIONS AND REQUIRE
SPECIAL USE DISTRICT REZONING APPROVAL
FOR ALL ACCESSORY DWELLINGS**

**AN ORDINANCE REVISING
CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO AMEND REGULATIONS FOR ACCESSORY DWELLINGS**

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article II of the *UDO* is amended as follows:

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Uses**

2-6 ACCESSORY USES

2-6.4 USES WHICH MAY ONLY BE ACCESSORY TO PRINCIPAL USES

(B) Dwelling, Accessory (Attached). ~~.....An attached accessory dwelling unit may be permitted through the Special Use District Rezoning process described in Section B.6-2.2 where the following requirements are met:~~

- ~~(1) **Occupancy Requirements.**A zoning permit for an attached accessory dwelling shall be conditioned upon the property owner signing a statement verifying that one of the occupancy requirements is being met. The zoning permit shall automatically terminate when the occupancy requirement is no longer met. [Reserved]~~
 - ~~(a) **At Least Fifty Five (55) or Handicapped.**The principal or accessory dwelling unit shall be occupied by a person at least fifty five (55) years of age or handicapped; or, [Reserved]~~
 - ~~(b) **Relation.**The principal dwelling unit or the attached accessory unit shall be occupied by the following categories of persons: [Reserved]~~
 - ~~(i) **Relative.**Any relative under the civil law of the first, second, or third degree of kinship to the head of the household owning and occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~
 - ~~(ii) **Adopted Person.**A son or daughter by legal adoption, or the adoptive parents of the head of the household or such person's spouse, whether spouse is living or deceased; [Reserved]~~

- (iii) ~~Other Dependent.A dependent of the head of the household or of such person's spouse as defined by the North Carolina Department of Revenue; or, [Reserved]~~
 - (iv) ~~Servant.A servant employed on the premises and the servant's family, but only if such servant receives more than one-half of his/her annual gross income in return for services rendered on the premises. [Reserved]~~
- (2) **Structure.**The principal building shall not be altered in any way so as to appear from a public street to be multiple family housing.
- (a) **Prohibited Alterations.**Prohibited alterations include, but are not limited to: multiple entranceways, multiple mailboxes, or multiple nameplates.
 - (b) **Access.**Wherever feasible and consistent with the State Residential Building Code, access to the accessory dwelling unit shall be by means of existing doors.
 - (c) **Stairways.**No new stairways to upper floors are permitted on any side of a building which faces a public street.
 - (d) **Utilities.**Electric and/or gas utilities shall be supplied to both units through a single meter.
- (3) **Size of Unit.**An attached accessory dwelling unit shall occupy no more than fifty percent (50%) of the heated floor area of the principal building, but in no case be greater than one thousand (1,000) square feet. The sum of all accessory uses, including home occupations, in a principal residential building shall not exceed fifty percent (50%) of the total floor area of the building.
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- (1) **Occupancy Requirements.**~~A Special Use Permit for the detached accessory dwelling must be approved by the Board of Adjustment in accordance with the requirements of Section B.6-1.4. In addition, the applicant must submit a statement verifying that the occupancy requirements of this section are being met. The permit shall automatically terminate with the termination of occupancy by such persons. The principal dwelling unit or the detached accessory unit shall be occupied by the following categories of persons. [Reserved]~~
- (a) ~~Relative (F).~~~~Any relative under the civil law of the first, second, or third degree of consanguinity to the head of the household owning or occupying the principal~~

~~dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

~~Relative (W). Any relative under the civil law of the first, second, or third degree of kinship to the head of the household owning or occupying the principal dwelling on the lot, or to the spouse (whether living or deceased) of the head of the household; [Reserved]~~

- ~~(b) Adopted Person.A son or daughter by legal adoption, or the adoptive parents of the head of the household or such person's spouse, whether spouse is living or deceased; [Reserved]~~
- ~~(c) Other Dependent.A dependent of the head of the household or of such person's spouse as defined by the North Carolina Department of Revenue; or, [Reserved]~~
- ~~(d) Servant.A servant employed on the premises and the servant's family, but only if such servant receives more than one-half of his/her annual gross income in return for services rendered on the premises. [Reserved]~~

(2) Dimensional Requirements.Any detached accessory dwelling shall comply with all dimensional requirements applicable to accessory structures in Sections B.3-1.2(F) and (G).

(3) Building Requirements.Any detached accessory dwelling shall comply with all building, plumbing, electrical, and other applicable codes, other than a manufactured housing unit.

(4) Manufactured Home (F).A Class A or B manufactured home may be used as a detached accessory dwelling; a Class C manufactured home may be used as a detached accessory dwelling in those zoning districts where a Class C manufactured home is permitted as a principal use according to Table B.2.6.

Manufactured Home (W). A Class A or B manufactured home may be used as a detached accessory dwelling.

(5) Number of Accessory Dwellings.No more than one accessory dwelling, whether attached or detached, shall be permitted on the same lot.

Section 2. This ordinance shall be effective upon adoption.

STAFF REPORT

DOCKET # UDO-267
STAFF: [Walter Farabee](#)

REQUEST

This UDO text amendment is proposed by City-County Planning and Development Services staff to amend Chapter B of the *Unified Development Ordinances* (UDO) concerning regulations for accessory dwelling units.

BACKGROUND

Accessory dwelling units are structures that may be detached or attached to a principal structure on the same lot and are sometimes referred to as granny flats, in-law apartments, guest houses, carriage houses or laneway/alley housing. Accessory dwelling provisions have existed in the UDO for many years, and before that, were in the Winston-Salem Zoning Ordinance as early as 1930. Accessory dwellings are commonly allowed in single-family zoning districts in many cities under certain conditions.

Legacy 2030 highlights the importance of accessory dwelling. Allowing for accessory dwellings allows the integration of some of our future housing needs within existing neighborhoods making use of existing infrastructure while retaining the character of residential neighborhoods. Accessory dwellings provide creative housing options that can accommodate the growing population within municipal limits, and can offer a number of additional community benefits: they are likely smaller and more affordable than other housing options in the market, they utilize existing infrastructure, can generate income for the owner of the principal structure, and provide for aging in place for the elderly, sick or those on fixed-incomes.

Presently, the *Unified Development Ordinances* (UDO) sets forth regulations for accessory dwelling units which limits occupancy of these units to relatives, adopted persons, dependents or servants of the property owner. Existing provisions also extend occupancy rights to individuals over the age of fifty-five (55) and handicapped persons in attached dwellings only.

Based on recent North Carolina case law, the City Attorney's Office has identified concerns regarding the enforceability of these occupancy provisions of the UDO. While municipalities have the authority to regulate the use of property, case law suggests that they do not have the authority to limit the use of land based on the identity or status of the users of the property. The Attorney's Office has recommended revising our current ordinance provisions to prevent them from being challenged in court. When looking at other municipalities across the state, the large majority of cities both large and small currently allow accessory dwellings in single family neighborhoods.

ANALYSIS

Planning Staff agrees that revising the current accessory dwelling regulations is necessary. Staff is recommending that a number of new restrictions be included in the accessory dwelling regulations to ensure the appropriate placement and design of units and to protect the character of single-family neighborhoods. These revisions to the regulations begin with refining the definition of attached and detached accessory dwellings. Attached accessory units would have to be completely contained within the same conditioned building structure as the principal residence or share at least 15 feet of an external wall with the principal residence. Detached accessory units could not be physically connected or attached to the principal structure and must be no less than 20 feet from the side or rear of the principal residence.

Several proposed ordinance revisions have been included for both attached and detached accessory units:

- Accessory dwellings are only permitted in association with single-family residential uses, and only one accessory unit is allowed per lot.
- The elimination of the kinship provisions, as suggested by recent case law.
- A requirement that no more than two adult individuals may inhabit an accessory dwelling, whether attached or detached, to limit the impact of noise, light, traffic and other measures on neighbors.
- Parking for the unit must be provided and served by the same driveway as the principal dwelling in most cases.
- One parking space per accessory unit bedroom shall be provided. Units without a bedroom must have one space provided. Given the size limitations further discussed, the number of spaces will remain low.

The following proposed revision applies only to attached accessory units:

- The accessory dwelling can't be more than 30% of the heated floor area of the principal building, not to exceed 1,000 square feet

Given the greater impact that detached accessory units pose to single-family neighborhoods, additional unique restrictions have been proposed for these units, which include:

- Detached accessory dwellings could only be placed on lots with a minimum lot size of 9,000 square feet and which have a principal structure that occupies no more than 30% of the lot area.
- The accessory unit would have to be located behind the front façade of the principal structure. If located on a corner lot then the detached unit must be located behind the building line of both street-facing facades.
- Unit limitations are based on the Growth Management Area (GMA) in which the accessory unit is located in:
 - In GMAs 1, 2 and 3 the detached accessory dwelling could not exceed 5% of the lot area with a maximum size of 1,000 square feet, except that lots in GMA 3 greater than 40,000 square feet in size allow units up to 1,500 square feet.
 - In GMAs 4 and 5, the square footage of the accessory dwelling could not be greater than that of the principal residential structure on site.

- Detached accessory dwellings in single-family residential districts would require a minimum rear setback equal to 50% of the required rear setback for the zoning district. The minimum side setback for the district remains and there must be 20 foot of spacing between the detached unit and the principal residence on the lot.
- Accessory dwellings in non-residential districts would require rear setbacks of at least 12.5 feet and side setbacks of at least 7 feet on one side and 20 feet combined.
- Maximum height would be increased to 24 feet to allow for the high-pitch rooflines found in the design of many homes today.
- A separate driveway for a detached accessory unit could only be created if the unit is located on a corner lot or served by an alley.

Beyond these regulatory changes to the ordinance, accessory dwellings are still proposed to be permitted in the same fashion as they currently are. Attached dwelling units would continue to be permitted by right with the issuance of a zoning permit from staff, while detached dwelling units would continue to require a Special Use Permit from the Board of Adjustment (BOA). The Special Use Permit process requires a public hearing allowing neighbors the opportunity to share their concerns about the impact of such structures on their neighborhoods. To receive approval from the BOA, an accessory unit must meet all conditions and requirements of the ordinance, as well as four findings of fact. This deliberate process reflects the importance of protecting the character of single-family neighborhoods while continuing to allow this limited housing option.

Over the past months, staff has engaged the public in the revision process by giving presentations and holding public input sessions. Based on public input, several additional ordinance provisions were created to reduce the potential for negative impacts from accessory units.

Overall, the proposed regulations for accessory dwelling units balance the need for providing appropriately designed accessory dwellings that will benefit the greater community with preserving neighborhood character. Most of our peer cities in North Carolina already have similar provisions for accessory dwellings. However, the provisions of this proposed ordinance are more restrictive than most peer city ordinances and provide for better design and placement. The City Attorney's Office has reviewed the proposed amendments and has confirmed that the proposed language is within the bounds of the land use regulation authority granted municipalities by the State. This text amendment should promote new affordable housing options, encourage gentle density, and provide diverse housing options for a growing community while maintaining the character and appearance of single-family neighborhoods.

RECOMMENDATION

APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-267
FEBRUARY 11, 2016**

Walter Farabee presented the staff report. Kirk Ericson addressed concerns expressed in an email received earlier today from Carolyn Highsmith with the Konnoak Hills Community Association.

PUBLIC HEARING

FOR: None

AGAINST:

Bonnie Crouse, 2001 Boone Avenue, Winston-Salem, NC 27103

- My concern is with off-street parking in the Ardmore area. Some homes in Ardmore already have to have parking permits to park and that is in large part due to the pressure put on them by businesses and the medical complex. The potential exists for all of Ardmore to become duplexes which would generate phenomenal parking issues. A lot of homes already have no off street parking, so I request that you consider requiring any home that wants to put in an accessory building to first provide off street parking for the primary residence and then provide additional off street parking for the accessory building.
- One of the charms of Ardmore is the quiet of our backyards. Under this proposal people could build close to our homes on all sides of our yards destroying that atmosphere.
- The setback requirements should be increased. Why should a nonresidential area have more rigorous setback requirements than a residential neighborhood?
- Manufactured homes would be appalling. Please prohibit them or at the least put very tight restrictions on them.

Carol Eickmeyer, 500 Magnolia Street, Winston-Salem, NC 27103

- I appreciate the need for quality gentle density increase in our urban areas.
- However, I share the same concerns about parking and setbacks.
- There needs to be an off-street parking space for each driving age resident of the accessory dwelling. Stacked parking should not be counted since people will park on the street rather than use stacked parking.
- The 50% setback for a new dwelling is inappropriate. Anyone wishing to add a new accessory dwelling should have to go to the Zoning Board of Adjustment to get a variance because they should have to meet the same setback requirement.

- Our ordinance has greater setback requirements for a chicken coop than for accessory dwellings. Having lived next door to a rental unit for over 20 years, sometimes I would rather live next door to chickens than to people.

Eric Bushnell, 2113 Walker Rd, Winston-Salem, NC 27106

- I represent the Winston-Salem Neighborhood Alliance (WSNA).
- These are significant, sweeping changes.
- A number of our members are concerned about the stability of their neighborhoods and unintended consequences.
- This proposal replaces something we felt we understood with something which is rather complicated and which is untested and unproven.
- This version of the proposal only came out a couple of days ago and WSNA members are just beginning to try to understand how these changes would apply to their neighborhoods. Ardmore has followed this more closely for a longer time and studied it more.
- Most of our members are far from ready to endorse this. They aren't comfortable that it can achieve the benefits it is supposed to achieve and that it can safely prevent unintended consequences.
- Without the previous kinship provision, limiting the number of adults living in accessory dwellings is crucial.
- They are concerned about such unintended consequences as drastic increases in the number of people and cars so I am very pleased to see that there is something to address that in this latest version.
- When accessory dwellings were proposed during the *Legacy 2030* preparation the concept was not embraced by everyone. Many neighborhoods were not comfortable with it.
- Combining an increase in accessory dwellings with the aftermath of the owner-occupancy court case makes this more difficult for the neighborhoods to accept, not easier.
- Setbacks are an issue we hear over and over. Preserving those setback requirements is a point of contention for many of our neighborhoods.
- Short-term rentals needs to be addressed somehow. Otherwise this proposal has the potential to bring back some previous problems associated with short-term rentals.
- There is a lot here. It will require neighborhood associations to spend a lot of time to figure out what is here, what the changes are, and how those changes will apply to them.

Sunny Stewart, 106 Gloria Avenue, Winston-Salem, NC 27127

- We share all the concerns which have already been expressed, especially about setbacks and parking because Washington Park, like Ardmore, has issues with in-street parking already.
- We would like to suggest that temporary structures be prohibited and that structures be placed on permanent foundations so that we don't have tiny homes on wheels.
- My neighbors are concerned about enforceability and how the owners are using it especially when you are dealing with rentals.
- We are even more concerned with the use of units for short-term rentals such as one-night and B&Bs. How will that be enforced? We don't feel that is addressed currently.

WORK SESSION

During discussion by the Planning Board, the following points were made:

Melynda Dunigan: Manufactured housing is already in the ordinance. It isn't new. If someone wants a manufactured home, is it allowed by right? Staff responded that it would require a Board of Adjustment (BOA) Special Use Permit unless it was located in a manufactured home park or if the property is already zoned MH. Both would include consideration of whether it blended in with the neighborhood including whether or not there were any other manufactured homes in the area.

Currently the draft ordinance specifies one parking space per bedroom with one space minimum for an accessory dwelling unit. Off street parking is not a requirement. Chris Murphy explained that if you have road frontage sufficient to park the required number of cars but don't have off-street parking, a Special Use Permit could still be granted.

In response to comments about the appearance of manufactured homes, Kirk Ericson stated that particularly with some of the 2015 State Enabling Legislation, unless a structure is in a locally designated historic overlay district or a designated historic district, materials and things of that nature cannot be regulated.

Chris Murphy explained that a lot of manufactured homes would a) be too large to meet the required setbacks or b) be too large to meet the size of the secondary dwelling which could be placed on the lot.

Property owners in GMA3, GMA4, and GMA5 could potentially subdivide their lots to facilitate an additional dwelling. However in the more rural areas sewer may not be available and subdividing lots would then require room for septic and repair areas which may prohibit dividing the land. In addition, accessory dwellings in the County are often used for aging relatives and it is easier to have all expenses such as taxes on one bill. Paul Norby reminded the Board that the ordinance is written to accommodate both urban and rural situations which are very different.

George Bryan: Mr. Bushnell, there are so many neighborhoods that haven't shown up to speak about this. What kind of penetration has occurred to the neighborhoods about a text amendment which will impact their property? Eric Bushnell: We've tried to keep our member neighborhoods up to date with what's happening but the ordinance has been fluid and some changes have only occurred recently. So as I said in my presentation, neighborhoods are only now beginning to be able to figure out what this means to them.

Discussion was held about ways to convey information about upcoming text amendments to potentially impacted parties. Paul Norby noted that text amendments are listed on our web site with the same information about getting more information concerning them as the zoning items. We held two community/stakeholder meetings on this particular text amendment in the fall. If someone will provide staff with a list of contacts we will be glad to send a draft of an amendment out to them. However the faster way is probably by email to those folks who know who each other are as Mr. Bushnell was talking about.

Paul Norby reminded everybody that accessory dwellings are allowed now and have been since 1930. The difference is that State case law has caused cities to look at accessory dwellings differently about who is allowed to live there. Also, allowing accessory dwellings in single family districts is a typical thing even in smaller communities. Each time we've discussed accessory dwellings we've added more and more restrictions. We are getting close to being the most restrictive community in the State other than prohibiting accessory dwellings altogether.

Adjusting the height restriction for accessory structures from a 17' maximum to a 24' maximum is primarily for things like garages which may have apartments above them or have space which is to be used for storage. This is for the RS Districts which have a height limit of 40'. Also, modern buildings have steeper pitched roofs which are reflected in these calculations. So even with this height change from 17' to 24', it's still preserving the relationship with the principal structure being the larger, more impactful.

Melynda Dunigan asked if a lot which was too small to meet the minimum lot size requirement would be eligible for a variance? Due to some vague language in the variance section of the UDO, staff will confer with the City Attorney's office and have that answer at the work session.

Kirk Ericson noted that when we were looking into this, in the urban area zoning districts lot sizes primarily ranged from 6,000 square feet to 15,000 square feet. RS9 was seen as a standard single family lot, which would probably have enough room to accommodate an accessory structure, meet setback requirements, and not negatively impact neighbors. We also didn't want to encourage smaller lots in older neighborhoods to add accessory structures feeling that neighbors in those circumstances would be too negatively impacted, so RS9 seemed like a good compromise. Paul Norby: That's not to say that any lot of 9,000 square feet or more would automatically be okay - it's still up to the BOA and there could be a compatibility problem.

Arnold King: The plan is to work on this at work session and have what we hope is a finished document at the March 10th meeting.

Neighborhoods can still write comments which we will consider at work session or the next meeting on March 10th. The Board can decide to incorporate some of those, even deciding to continue the amendment at that point if desired.

MOTION: Clarence Lambe moved continuance of the text amendment to March 10, 2016.

SECOND: Brenda Smith

VOTE:

FOR: George Bryan, Melynda Dunigan, Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-267
MARCH 10, 2016**

Kirk Ericson summarized the history of this item.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

During discussion by the Planning Board, the following points were made:

George Bryan asked about the process for placing a manufactured home on a lot and whether that would involve a separate hearing or be done at the same time as the approval for the accessory dwelling. Chris Murphy responded that the request would be processed as a Special Use Permit through the Board of Adjustment and not require a separate hearing unless it also required a variance. It would not go on to the Elected Body.

George Bryan asked about off-street parking, notably variances, parking on front lawns and stackability. Staff responded that parking could not be considered for a variance, the site plan would define the parking area and explain what the parking surface material would be, and if there were concerns with issues such as the design of the proposed parking that could certainly be considered as part of the Special Use Permit approval. Staff further noted that the Board of Adjustment is going to consider the site plan holistically and any aspect of the site plan that could cause a problem would have to be worked out before a Special Use Permit would be granted.

Melynda Dunigan asked for clarification about which structures would not be eligible for a variance. Staff explained that any structure, whether it was or was not used as an accessory dwelling at the time of adoption of this ordinance, would be eligible for a variance. Any structure constructed after the adoption of this ordinance would not be eligible for a variance.

Clarence Lambe asked if it is likely that more accessory dwellings would be developed under this proposed ordinance than under the existing ordinance? Kirk Ericson responded that more accessory dwellings could potentially be developed with the removal of the kinship situation currently mentioned in the UDO. However the additional restrictions would result in more thoughtful development.

Chairman King asked how this proposed ordinance compares with those of other communities? Kirk Ericson responded that with all the latest restrictions this is probably the most restrictive ordinance other than those which completely prohibit accessory dwellings altogether. Chairman King then asked if that is where we want to be? Paul Norby answered that from a Planning perspective you want to have the right balance.

Melynda Dunigan expressed concern about allowing accessory dwellings to be as large as 1,500 square feet in lots of 40,000 square feet in GMA 3. Staff explained that this ordinance applies to City and County jurisdictions and needs for both urban and outlying environments must be addressed.

Melynda Dunigan also asked about short-term rentals of accessory dwellings and how those could be controlled. She expressed concern that they could be used in a similar manner to a Bed and Breakfast and shared the opinion that they should go through a separate approval process from accessory dwellings. Chris Murphy reminded the Board that we don't currently regulate short-term rentals, either in an existing single family house or accessory dwelling or a multifamily condo. Melynda Dunigan stated she would like us to find a mechanism by which we might address the issue. Paul Norby stated that the really tough part is to find an effective way of enforcing any type of short term rental mechanism, since an alleged violation may not be in existence by the time it is reported to zoning enforcement staff and they have the opportunity to investigate it. Melynda Dunigan stated that she finds it very difficult to make a decision on this ordinance with that big gaping hole about whether or not or how we might regulate the short term rentals.

Paul Mullican noted that short-term rentals are not regulated now and passing this ordinance would not change anything.

Melynda Dunigan objected to the comparison being made repeatedly between the existing ordinance that we can't enforce and what we are proposing now. There is a third possibility which is to not allow accessory dwellings at all. We are not even looking at that option. The existing ordinance is moot. We have to do something else. We have to change it. Clarence Lambe responded that we don't have to change it.

MOTION: Clarence Lambe moved approval of the text amendment.

SECOND: Paul Mullican

George Bryan: We're just not close enough at this point to approve this item. We're just a few modifications away from making this a lot more sellable. It's got a long ways to go in front of the governing bodies and I think we have some necessity to pursue those elements so that those kinds of issues will be already worked out as it moves to the County Commissioners and to others. I think when we're talking to neighbors and saying in single family neighborhoods that we're going to make it fairly clear in a very delineated way so that instead of having a single family dwelling next to you, you will have a two-family dwelling next to you is a radical change in what the expectation is of people who elected to go to a single family neighborhood and make a purchase. On the other hand, I feel that we haven't engendered as a Board enough discussion from low-income neighborhoods about how this might benefit or not benefit them and I would love to hear that discussion because it may be totally different dynamics than I've been hearing from the other neighborhoods.

Melynda Dunigan: We've made a lot of positive changes but I think it's just out of balance, tilted too far against the concerns of neighbors.

Arnold King: If I understand Ms. Dunigan and Mr. Bryan, you're opposed to this where it is right now. I'm going to agree with you. I'm going to vote against it because I think it goes too far.

VOTE:

FOR: None

AGAINST: George Bryan, Melynda Dunigan, Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican, Brenda Smith

EXCUSED: None

MOTION FAILED.

Discussion ensued that simply leaving the current UDO language in place creates a conflict with current case law, which does not allow regulation of accessory dwellings based on who owns, or occupies the property.

MOTION: Clarence Lambe moved to deny the ordinance as proposed but to approve a revised version of the proposed ordinance with the only change being to modify or eliminate the kinship and other relational requirements to come into compliance with current case law (eliminating subsections (B)(1) and (C)(1) from the current ordinance).

SECOND: Paul Mullican seconded the motion.

Melynda Dunigan: I don't agree with striking the kinship requirement and leaving it at that. The ordinance obviously needs to be changed, but striking the kinship requirement does not go far enough.

Chairman King noted that the Planning Board could place this on next year's work program and begin again and get input from the communities which may not have been involved so far so we can still work on this, but for right now this would bring us into compliance with case law.

Clarence Lambe: And that addresses the initial issue. We've not come up with a satisfactory accessory dwellings ordinance but we've addressed the initial issue.

Staff explained how the proposed motion would relate to the language in staff's draft ordinance.

SUBSTITUTE MOTION: Melynda Dunigan moved to approve an ordinance amendment with the elimination of Accessory Dwellings altogether (Sections B.2-6.4(B) and (C) to the end).

SECOND: George Bryan

VOTE:

FOR: George Bryan, Melynda Dunigan

AGAINST: Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican, Brenda Smith

EXCUSED: None

SUBSTITUTE MOTION FAILED.

VOTE ON MAIN MOTION by Clarence Lambe to approve a revised version of the proposed ordinance with the only change being to modify or eliminate the kinship and other relational requirements:

FOR: Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican,
Brenda Smith

AGAINST: George Bryan, Melynda Dunigan

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning and Development Services