



PUBLIC MEETING NOTICE
FOR THE
WASHINGTON COUNTY PLANNING COMMISSION

CHARLES D. CAMERON PUBLIC SERVICES BUILDING – AUDITORIUM
155 N FIRST AVENUE, HILLSBORO, OR 97124

WEDNESDAY, AUGUST 21, 2019

PUBLIC MEETING 6:30 PM

Prior to scheduled public hearing items, the Planning Commission schedules time to receive briefings from County staff as work session items. These briefings provide the Planning Commission an opportunity to conduct informal communications with each other, review the agenda, and identify questions before taking action on agenda items during the public meeting. No public testimony is taken on work session items.

Following work session briefings, the Planning Commission considers items published in the agenda, including scheduled public hearing items and consideration of past meeting minutes. The public is welcome to speak during the public hearing portions of the meeting. The public may also speak on any item not on the agenda during the Oral Communications section of the agenda.

Upon request, the County will endeavor to arrange provision of the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. If you need a sign language interpreter, assistive listening device, or a language interpreter, please call 503- 846-3519 (or 7-1-1 for Telecommunications Relay Service) by 5:00 p.m. on the Monday before the meeting date.

A handwritten signature in black ink, appearing to read "Andy Back", is written over a horizontal line.

Andy Back

Planning and Development Services Division Manager

WASHINGTON COUNTY PLANNING COMMISSION

The Planning Commission welcomes your attendance at the Public Meeting. Please feel free to speak on a public hearing agenda item or during oral communications. Time is generally limited to five minutes for individuals and 10 minutes for an authorized representative of a Citizen Participation Organization (CPO). The Chair may adjust time limits. In fairness to others, we respectfully ask your cooperation on the following:

Please follow sign-in procedures located on the table by the entrance to the auditorium.

- When your name is announced, please be seated at the table in front of the Commission and state your name and home or business address for the record.
- Groups or organizations wishing to make a presentation are asked to designate one spokesperson in the interest of time and to avoid repetition.
- When more than one speaker is heard on any matter, please avoid repetition in your comments and be mindful of previous speakers' remarks.
- If you plan to submit written testimony at the hearing, please bring 15 copies for distribution to Commission members and County staff.

PUBLIC MEETING DATES

BOARD OF COMMISSIONERS WORK SESSIONS

8:30 a.m. 1st and 3rd Tuesdays

2 p.m. 4th Tuesday

BOARD OF COMMISSIONERS MEETINGS

10 a.m. 1st and 3rd Tuesdays

6:30 p.m. 4th Tuesday

PLANNING COMMISSION MEETINGS

1:30 p.m. 1st Wednesday

6:30 p.m. 3rd Wednesday

Note: Occasionally it may be necessary to cancel or add a meeting date.



**PUBLIC MEETINGS BEFORE THE PLANNING COMMISSION
CHARLES D. CAMERON PUBLIC SERVICES BUILDING – AUDITORIUM**

WEDNESDAY AUGUST 21, 2019 6:30 PM

AGENDA

CHAIR: A. RICHARD VIAL
VICE-CHAIR: JEFF PETRILLO
COMMISSIONERS: ED BARTHOLEMY, IAN BEATY, TEGAN ENLOE, DEBORAH LOCKWOOD,
ANTHONY MILLS, ERIC URSTADT, MATT WELLNER

PUBLIC MEETING

- 1. CALL TO ORDER – 6:30 PM**
- 2. ROLL CALL**
- 3. DIRECTOR'S REPORT**
- 4. ORAL COMMUNICATIONS (Limited to items not on the agenda)**
- 5. PUBLIC HEARING**
 - a. Ordinance No. 859 – Accessory Dwelling Unit (ADUs)**
An ordinance amending the Community Development Code relating to ADUs
- 6. CONSIDERATION OF MINUTES**
 - a. July 10, 2019**
- 7. ADJOURN**



August 14, 2019

To: Washington County Planning Commission

From: *for* Andy Back, Manager *Theresa C. Clark*
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 859 - An Ordinance Amending the Community Development Code, an Element of the Comprehensive Plan, to Implement Legislative Changes Related to Housing**

STAFF REPORT

For the August 21, 2019 Planning Commission Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing; recommend approval of Ordinance No. 859 to the Board of Commissioners (Board).

II. OVERVIEW

Ordinance No. 859 would amend the Community Development Code (CDC) with the goal of reducing barriers to the development of Accessory Dwelling Units (ADUs) in the urban unincorporated areas of the County. The proposed changes would implement provisions of Oregon Senate Bill (SB) 1051, House Bill (HB) 2001, and certain recommendations made by the Oregon Department of Land Conservation and Development (DLCD).

Proposed amendments include:

- Removing requirements for off-street parking and on-site owner occupancy, both of which are now unenforceable with the passage of HB 2001;
- Allowing one attached and one detached ADU per single-family dwelling consistent with 2018 DLCD recommendations to allow two ADUs; and
- Modifying certain siting and design requirements such as those addressing maximum height, floor area, front setback, and minimum rear yard area.

III. BACKGROUND

ADUs were first defined in the CDC in 1983 as “Second Dwelling Units,” and have been an allowed use in urban unincorporated Washington County for over 35 years. The CDC defines a Single-Family Accessory Dwelling Unit (SFADU) as “A *self-contained dwelling unit that may be allowed in conjunction with a detached single-family dwelling*” (Section 106).

ADUs have gained increasing attention in recent years due to the niche they occupy in the housing market. ADU development can improve housing supply and affordability by:

- Creating smaller units that translate into more affordable rents (ADUs are generally limited in size – a maximum of 800 square feet¹ is common among jurisdictions in Oregon)
- Enabling seniors or adult children on limited incomes to more easily live on-site with other family members
- Providing property owners with added income, thereby also assisting with the affordability of the primary dwelling
- Offering the potential to increase residential supply even in low-density districts to help reduce inflated housing costs that come from undersupply

In recent years, the Oregon legislature passed a series of bills that are part of an ongoing effort to remove barriers to ADU development. In 2017, the passage of SB 1051 expanded the definition of “needed housing” to include ADUs. Its intent was to ensure that communities across the state provide ample opportunities for affordable, safe and sanitary housing for all people, particularly persons of lower, middle and fixed incomes. With the bill’s passage, local jurisdictions above certain population thresholds are now required to allow ADUs in all districts that allow detached single-family dwellings. Furthermore, local jurisdictions cannot deny an application for an ADU located within the Urban Growth Boundary (UGB) if it complies with established clear and objective standards.

Following the passage of SB 1051 in 2018, DLCD issued implementation guidance and model code language to local jurisdictions to assist in complying with the law. Metro then convened a meeting with DLCD and local jurisdictions in April 2018 to review the new rules and present the results of its *Accessory Dwelling Unit Code Audit Report* (Code Audit Report) of local jurisdictions’ ADU standards². The review identified several areas in which Washington County did not meet the new rules, including siting and designs standards that weren’t clear and objective, and land use districts that allowed detached single-family dwellings that didn’t allow ADUs. Later that year, the Board adopted Ordinance No. 835, amending ADU standards to substantially comply with requirements of SB 1051.

¹ Current Washington County maximum except when built to Americans with Disabilities Act (ADA) standards

² *Guidance on Implementing the Accessory Dwelling Units (ADU) Requirement under Oregon Senate Bill 1051.*
https://www.oregon.gov/LCD/docs/ADU_Guidance_DLCD_Final.pdf

In addition to the implementation guidance it issued for SB 1051, DLCD also recommended other changes to local ADU standards that it believed “met the spirit of the law” and could further remove barriers to ADU development in a time when housing is expensive and in short supply. These recommendations included removing off-street parking and on-site owner occupancy requirements, allowing two ADUs per detached single-family dwelling, and reducing or eliminating system development charges (SDCs), among others. Since these recommendations weren’t required by law, County staff conducted additional research and analysis before proposing any discretionary changes to the ADU standards in the CDC.

While staff was preparing to file Ordinance No. 859, the State legislature passed House Bill 2001 prohibiting local jurisdictions from requiring on-site owner occupancy and off-street parking for ADUs. According to the bill, these requirements are not “reasonable local regulations to siting and design.” This bill has been signed by the Governor and the ADU-specific requirements become effective January 1, 2020. Ordinance No. 859 addresses these new requirements but also proposes additional changes to remove barriers to ADU development overall.

Ordinance Notification

Notice 2019-12 regarding proposed Ordinance No. 859 was mailed July 26, 2019 to parties on the General and Individual Notification Lists (community participation organizations, cities, special service districts and interested parties). A copy of the notice and ordinance was provided to the Planning Commission at that time. A display advertisement regarding the ordinance was published August 2, 2019 in *The Oregonian* newspaper.

IV. ANALYSIS

Despite growing interest in ADUs, the County has received fewer than 60 ADU applications in the last 20 years, though there is no record of how many ADUs may have been developed without benefit of permitting. Recent legislation has sent a clear signal to local jurisdictions that overly restrictive development standards for ADUs may play a role in discouraging their legal development.

The proposed amendments in Ordinance No. 859 are aimed at bringing Washington County into compliance with recent changes to state law, but also reducing barriers to ADU development by simplifying development standards. Proposed amendments also include some reorganization and non-substantive updates for clarity and readability. The proposed amendments are outlined below.

Proposed Amendments

A. General changes

Staff proposes relocating some content from CDC Special Use standards for ADU development (CDC Section 430) to the Definitions section (CDC Section 106), simplifying the definition of an ADU, and clarifying attached versus detached ADUs. Related figure drawings are also proposed to be moved to the Definitions section.

Staff also proposes renaming Single Family Accessory Dwelling Unit to simply “Accessory Dwelling Unit” as recommended by DLCD, to be consistent with nomenclature of other jurisdictions. Further, staff proposes moving the ADU development standards based on their name change and alphabetic organization of the Special Use standards in the CDC.

B. Allow one internal and one detached ADU per detached single-family dwelling.

DLCD’s implementation guidance for Senate Bill 1051 encouraged local jurisdictions to consider allowing two ADUs per single-family dwelling and included model code language to that effect.³ DLCD stated that allowing two ADUs meets the “spirit of [SB 1051]” which is to “create more housing in Oregon by removing barriers to development.” The example used in DLCD’s guidance suggested allowing one *internal* or *attached* ADU and one *detached* ADU, noting that ADUs blend in well with single family neighborhoods. Part of DLCD’s reasoning is that allowing two units in this way “can increase housing supply while not having a significant impact.”

ADU development supports equitable housing strategies by increasing and diversifying market-rate housing while stabilizing and potentially expanding access to homeownership. Metro identified jurisdictions that only allowed one ADU per dwelling as having additional opportunity to support ADU development based on DLCD’s recommendations and recommended local jurisdictions allow two ADUs per dwelling to encourage a more diverse and equitable housing supply.

Following the release of DLCD’s guidance on SB 1051 and the Metro code audit, County staff researched the ADU standards of 14 local jurisdictions in the Metro area. Since the legislation and guidance were still relatively new, very few local jurisdictions had moved to allow two ADUs. However, early in 2019 the City of Tigard adopted an ordinance allowing one internal and one detached ADU per detached single-family dwelling, along with several other code changes directed at improving housing choice and affordability.

County staff expects several more communities in the region to adopt similar ordinances in the coming years. Oregon City is currently in the process of amending its code to allow one external ADU per single-family dwelling, and another accessory unit through an “Internal Conversion” of the primary dwelling. The Cities of Portland and Beaverton are also considering potential allowance of more than one ADU per primary dwelling.

Staff proposes adopting DLCD’s recommendation to allow two ADUs per single-family dwelling, with the requirement that one must be attached or internal to the primary dwelling and one must be detached. This recommendation is also supported by housing policies of the Comprehensive Framework Plan (CFP), as outlined below.

³ *Guidance on Implementing the Accessory Dwelling Units (ADU) Requirement under Oregon Senate Bill 1051.*
https://www.oregon.gov/LCD/docs/ADU_Guidance_DLCD_Final.pdf

County policies supporting the proposed change

The proposed allowance of two ADUs is supported by CFP Policy 21 – Housing Affordability, which states that the County will “Encourage the housing industry and both public and private housing agencies to build a sufficient number of new affordable housing units within unincorporated Washington County to meet Metro’s voluntary affordable housing production goal.” Furthermore, Policy 21 states that construction costs can be reduced by building smaller units. Since ADUs are limited in size they may be an affordable option for some households. The policy also states that County will “Encourage compatible development in partially developed residential areas to make optimal use of existing urban service facility capacities and maximize use of the supply of residential land.” Allowing two ADUs on a property optimizes use of existing residential land supply consistent with this provision.

Further, Policy 22 – Housing Choice states that it is the policy of Washington County to encourage the housing industry to make a variety of housing types available, in sufficient quantities, to the housing consumer. Consistent with this policy, allowing two ADUs per single-family dwelling could help to increase housing variety, particularly by increasing options for smaller, more affordable rental units in single-family neighborhoods that might not otherwise be easily accessible to the housing consumer.

Consideration of potential impacts and outcomes

Although allowing two ADUs per detached single-family dwelling is intended to facilitate development of more ADUs in the county overall and to help meet the County’s housing needs, staff does not anticipate such an allowance would cause the nature of neighborhoods to shift perceptibly. This is because other constraints to the development of two ADUs will continue to exist if the proposed change is adopted.

For example, land use districts with smaller lots may not have sufficient space to allow for the development of two ADUs given setbacks, minimum outdoor yard area, and other siting and design requirements of the underlying districts. Further, ADUs can be a significant financial investment for homeowners and financial considerations play a role in whether households can afford or might choose to construct two ADUs.

Though not a land use standard addressed by the CDC, SDCs remain a financial hurdle for homeowners wanting to build ADUs. For those wanting to build two, SDCs represent an even greater challenge. DLCD has listed SDCs as one of the most significant barriers to ADU development and this is likely a significant reason why the County has received fewer than 60 ADU applications in the last 20 years. No changes to SDCs are proposed with these code changes, though some discussions have occurred at the county and regional level on this issue.

Even in some places where SDCs have been waived and ADUs have increased in number, as a proportion of eligible lots the increase has been relatively modest. For example, the City of Portland issued 24 ADU permits in 2009. In 2010, having waived SDCs, the city issued 86 ADU permits and has since seen a steady increase each year, with 660 issued in

2018.⁴ While that rise in number is considerable, the current estimated total of about 2,900 ADUs in the city occupies less than two percent of eligible home lots. A comparable increase in existing legal ADU numbers is not expected to result in Washington County from Ordinance No. 859, in part because SDCs are not being waived. However, if the county did see a comparable increase, the percentage of eligible lots developed with ADUs would likely be similarly small, suggesting negligible disruption to the character of existing neighborhoods.

To protect community character, however, staff is recommending that where two ADUs are allowed, one ADU must be internal to the primary dwelling and the second must be detached. This requirement should reduce the visual impact of two ADUs on a property, as the internal unit is likely to be imperceptible.

Staff also considered alternate configurations to reduce visual impacts, such as allowing two ADUs internal or attached to the primary dwelling. However, per Plans Examination staff, such a structure would be required to meet commercial building codes for a triplex. ADUs are treated in CDC district standards as an allowed use distinct from other types of allowed attached and detached units – and ADUs are not counted toward minimum and maximum density while other types of dwelling units are. As such, when internal units become subject to commercial building standards as a triplex, it's possible that density considerations could come into question.

Taking into account the potential impacts and local housing policies, staff still recommends allowing up to two ADUs per detached single family dwelling when one is internal to, and the other is detached from, the primary dwelling.

- C. Remove owner-occupancy requirements for ADUs and primary dwellings with ADUs
Washington County currently requires either the primary dwelling or the ADU to be owner occupied unless the property is owned by a nonprofit serving a person with a developmental disability.

On-site owner-occupancy requirements were identified by both DLCD and Metro as major obstacles to ADU development, and potentially an ongoing enforcement problem for local governments. Staff agrees with this assessment. Metro's 2018 ADU code audit report of local jurisdictions' ADU standards identified owner-occupancy requirements as one of the most significant regulatory barriers to ADU development because such restrictions may reduce the assessed value of the primary dwelling, causing difficulty in obtaining construction financing. Additionally, owner-occupancy requirements could act as a deterrent to homeowners wanting to develop ADUs if there is any uncertainty about their long-term living arrangements. Requiring on-site owner occupancy also makes less housing available to the rental market, contributing to higher costs for existing rentals.

⁴ *ADU Permit Trends in Portland in 2017 and 2018*. <https://accessorydwellings.org/2019/01/14/adu-permit-trends-in-portland-in-2017-and-2018/>

Under HB 2001, on-site owner-occupancy requirements for properties with ADUs are no longer considered “reasonable local regulation to siting and design.”

The ordinance proposes removing owner-occupancy requirements for ADUs and the associated primary dwelling, consistent with HB 2001.

D. Remove off-street parking requirements for ADUs

Under current ADU Special Use rules in CDC Section 430-117.1(G), the County requires one off-street parking space for every ADU in addition to parking for the primary dwelling. Following the passage of HB 2001 this year, requiring off-street parking for ADUs is no longer considered a “reasonable local regulation to siting and design.”

Prior to the passage of HB 2001, Metro recommended jurisdictions avoid requiring off-street parking for ADUs altogether. Metro’s 2018 ADU code audit report, off-street parking requirements were labeled as one of the most significant barriers to ADU development, particularly if separate access is required and tandem parking is not allowed. Off-street parking requirements add cost and complicate siting of ADUs where space is limited.

Removing parking requirements may leave some primary dwelling and ADU residents without off-street parking and create more competition for on-street spaces in some cases, particularly where two ADUs are developed. Overall, however, urban unincorporated Washington County does not experience severe issues of inadequate parking supply. Further, the change would not preclude a homeowner from providing off-street parking if desired. Larger lots in the R-5 and R-6 districts, with more yard area and more space between driveways, are likely to better accommodate additional parking for ADUs both off-street and on. Without off-street parking requirements, however, some lots in slightly higher density districts may be able to accommodate two ADUs where they otherwise could not. In higher density districts with limited parking, transit access is generally available to offset parking needs.

The ordinance proposes removing off-street parking requirements for ADUs, consistent with the requirements of HB 2001.

E. Modify front setback requirements for ADUs

ADU Special Use Section 430-117 (E)(1) currently states that detached ADUs:

...shall be located behind or a minimum of 20 feet behind the front façade foundation of the primary dwelling and for all other types of accessory dwelling units, the minimum front yard setback shall be that of the underlying land use district;

This language is difficult to interpret consistently and staff recommends revising it for clarity. Current Planning has also raised concerns about ADU front setback requirements, requesting revisions to allow greater flexibility for homeowners who own corner lots. There have been several occasions recently when the current front setback requirements

precluded an applicant's ability to build an ADU or convert existing accessory buildings into ADUs. Clarifying front setback requirements for ADUs is consistent with CFP Policy 14, which states that the County will "establish clear and objective criteria for the issuance of all development permits."

The ordinance includes language that would allow a detached ADU to be located at or behind at least one street-facing wall of the primary dwelling. Additionally, staff proposes allowing owners of corner lots to choose either the front or side yard as the front setback for ADU purposes. This change is not expected to have a significant impact on existing neighbors or neighborhoods since ADUs would still be required to meet the setback standards of the underlying district.

F. Allow home occupations on properties with ADUs

Under ADU Special Use Section 430-117.1(I), home occupations are not currently allowed on properties with ADUs -- in either the ADU or the primary dwelling.

In 2018, County staff contacted 14 Metro Portland municipalities and found that none of them applied a similar restriction. Of those contacted, most did not address home occupations at all in their rules for ADUs. Portland and Tigard both limit the types of home occupations permitted with ADUs, but do not ban them outright. Allowing the same types of home occupations as the underlying district with the same level of review would be in line with most neighboring jurisdictions.

The final ADU code audit report issued by Metro recognized limiting home occupations on properties with ADUs as of "special concern." Per discussions with DLCD staff in 2018, prohibiting home occupations on properties with ADUs may run afoul of clear and objective standards for needed housing since the restriction is not similarly applied to other needed housing. Disallowing home occupations may also decrease housing options for those who work from home, or may unnecessarily prohibit income streams needed to make housing affordable.

The current restriction was intended to manage the potential for extra traffic and/or deliveries where more than one dwelling exists on a single family lot, to preserve the residential character of the neighborhood. Home occupations however, are limited to nine customer visits per day and two deliveries per week. Since the advent of online shopping and increases in associated deliveries to the average home, however, the difference between trips to and from homes with and without home occupations is likely to be negligible.

As such, staff proposes removing the restriction against home occupations on properties with ADUs.

G. Allow ADUs in FD-10 and FD-20 land use districts

As noted in the Background section, SB1051 required any county with a population greater than 15,000 to allow development of at least one ADU for each detached single-family dwelling in areas zoned for detached single-family dwellings. The Board adopted Ordinance No. 835 in 2018 to allow ADUs in most such districts, though the ordinance didn't address the FD-10 and FD-20 districts, where detached single-family dwellings are allowed under certain circumstances.

Future Development 20-Acre District (FD-20) applies to unincorporated urban lands added to the urban growth boundary by Metro through a Major or Legislative Amendment process after 1998. Future Development 10-Acre District (FD-10) applies to the unincorporated urban areas where cities are the only available source of urban services. Both FD-20 and FD-10 recognize the desirability of encouraging and retaining limited interim uses until comprehensive planning for future urban development of these areas is complete. FD-20 and FD-10 District standards allow a detached dwelling unit when a city's future comprehensive plan designation for the subject property is single-family residential. Staff proposes allowing ADUs in the FD-20 and FD-10 land use districts when district standards that allow for a new dwelling are met. This change is consistent with the requirements of SB 1051.

H. Change ADUs from a Type II to a Type I review in the R-6 NB land use district

R-6 NB is the only land use district in the CDC zoned for detached single-family residential that requires a Type II review for ADU applications.

In 2010, A-Engrossed Ordinance No. 730 adopted the bulk of the NB Subarea Plan (Plan) and NB Subarea Overlay (CDC 390) requirements. This includes the R-6 NB District requirements (CDC 390-8) and the R-9 NB requirements (CDC 390-9). The land use review processes for R-6 NB and R-9 NB were based upon the requirements for R-6 through R-9 districts in the remainder of the county as they existed in 2010, when A-Engrossed Ordinance No. 730 was adopted.

In 2010, the R-6 district required a Type II review for ADUs and the R-9 District required a Type I review for ADUs – and these process requirements were duplicated in North Bethany for R-6 NB and R-9 NB. Ordinance 774 (2013) changed the ADU review process in the R-6 District from a Type II to a Type I but failed to update R-6 NB accordingly.

Metro released guidance in September 2018 recommending a Type I land use review for ADUs, stating “Assuming that ADU standards are indeed ‘clear and objective’ as required by state law, a nondiscretionary Type I review should be the appropriate review type and there should not be any need for a discretionary Type II process or conditional use review.” Furthermore, Policy 14 of the CFP states that the County will “Establish clear and objective criteria for the issuance of all development permits.”

Staff proposes allowing ADUs through a Type I review in the R-6 NB District. This change would make the review type for ADUs consistent across all districts that allow detached single-family dwellings.

I. Revise accessibility requirements for ADUs seeking additional square footage

Current standards allow for an increase in maximum ADU square footage from 800 square feet to 920 square feet when designed to meet Americans with Disabilities Act (ADA) Standards of the Oregon Residential Specialty Code (ORSC). The intent of this provision is to encourage the production of accessible dwelling units for people with disabilities.

Currently, Section 430-117 is the only place in the CDC that refers to the ADA standards. Staff has found no ADA standards for detached single-family dwellings, however. This has caused difficulties for staff reviewing these applications.

The authority on accessibility standards is the United States Access Board (USAB) and federally funded buildings and transportation facilities are required to meet these standards. However, they were not developed with residential buildings in mind. Alternatively, the USAB has approved the use of the Uniform Federal Accessibility Standards (UFAS) for residential projects, which is the current standard being utilized by the U.S. Department of Housing and Urban Development. As it is the more appropriate accessibility standard for housing development, staff proposes adopting UFAS for use by homeowners wishing to build accessible ADUs with the larger floor area allowance of up to 920 square feet.

J. Clearly exempt ADUs from maximum square footage cap on Accessory Uses (430-1)

ADUs are defined and addressed separately from Accessory Uses and Structures and do not count toward maximum Accessory Structure square footage outlined in Section 430-1.1.B(2). Staff proposes clarifying this in the ADU standards to reduce confusion for both staff and applicants.

K. Allow occupancy of an ADU prior to the primary dwelling

Metro's ADU code audit report asks local jurisdictions to "consider explicitly permitting simultaneous construction of primary dwellings and ADUs, and permitting occupation of the ADU earlier than the primary dwelling to better support ADU development in communities with significant new construction."

The CDC allows the construction of an ADU at the same time or after the construction of a new single-family dwelling, but currently prohibits occupancy of an ADU prior to occupancy of the primary dwelling (430-117.1(H)).

In consideration of Metro's recommendation, staff proposes allowing an ADU to be occupied prior to the primary dwelling. However, if not proposed and approved concurrently, for purposes of System Development Charge and Transportation Development Tax collection, filed standards treat the first occupied unit as the primary dwelling since it may function indefinitely as the primary dwelling.

L. Allow internal ADUs to occupy up to 800 square feet of floor area within the primary dwelling, or occupy an entire floor regardless of floor area

The CDC currently allows *internal* ADUs to occupy up to 50% of the primary dwelling's floor area. This precludes use of an entire floor of a dwelling as an ADU when that floor comprises more than 50% of the home's total square footage. This standard can also result in a requirement for areas of a larger floor to be walled off from the ADU conversion to comply with the maximum allowable square footage.

Restricting the floor area of an internal ADU by percentage of the primary dwelling also severely limits the maximum square footage achievable for an ADU in a relatively small primary dwelling. Under the current standard, a homeowner would need to have at least a 1600 square foot home to build an 800 square foot attached or internal ADU, the maximum size allowable for detached ADUs.

DLCD's model code language for ADUs uses square footage maximums for floor area as opposed to a percentage of the primary dwelling's floor area while providing the flexibility to convert an entire floor into an ADU even if it exceeds the standard square foot maximum. This methodology is more equitable as it would allow all homeowners to build an internal or attached ADU of at least 800 square feet, regardless of the size of their primary dwelling. It also would allow an entire level of a multi-story dwelling to be converted into an ADU even if greater than 800 square feet.

Staff proposes adopting DLCD's methodology for maximum floor area, allowing internal or attached ADUs to be either 800 square feet or occupy an entire level or floor of a multi-story primary dwelling. The proposed change is likely to be imperceptible from the exterior of the dwelling, and setbacks and height restrictions will continue to limit the size of the overall structure.

M. Allow ADUs to be the same height as the primary dwelling

Currently, ADU standards do not allow detached ADUs to be built to two stories. The intent of this standard is to maintain the look of ADUs as accessory to the primary dwelling. This intent could still be met if ADUs were allowed to be two stories but with a height limit not to exceed that of the primary dwelling.

Current ADU standards also prohibit ADUs above garages if the primary dwelling is one story. The character of an ADU as subordinate to the primary dwelling could still be maintained if a two-story detached ADU or an ADU above a garage were allowed, provided in both cases that the height of the overall structure did not exceed that of the primary dwelling.

Staff proposes allowing ADUs to match the height of the primary dwelling, whether detached or above a garage.

N. Allow an ADU's entrance to face the front property line

Current standards prohibit placement of an ADU's door so that it faces the front property line. The rationale for this standard was likely to maintain the look of an ADU as being subordinate to the primary dwelling and so that the dwelling gave little visual indication of a second residence from the front of the property line.

Proposed amendments, however, would remove the prohibition against front-facing entrances on ADUs since restricting door placement may provide a design obstacle for homeowners wishing to construct an ADU. Removing the restriction on door placement should have little impact on the neighborhood, particularly for detached ADUs located in the backyard of a property, where the entryway is unlikely to be seen at all from the front lot line. Though an internal ADU's doorway, in some cases, might also face the front property line, setback requirements and its location at or behind the primary dwelling's street-facing façade will help maintain single-family character of the lot and surroundings.

Staff proposes removing the restriction against ADU entrances that face the front property line.

O. Remove minimum contiguous rear or side yard outdoor area requirements

Currently, ADU standards require a minimum contiguous rear or side yard outdoor area of 450 square feet on the lot, with no dimension less than ten feet. The intent of this standard, as stated in the staff report for Ordinance 553, was to make sure a lot retains "sufficient open area if the applicant proposes the addition of an accessory unit which would convert open area on the lot to additional floor area." What is not stated in the ordinance's rationale for the rule is how its dimensions and yard area requirements were determined to be "sufficient open space." When considering rear setbacks of up to 15 feet along with existing side yard setbacks, requiring such a large amount of open space could eliminate detached ADUs as an option for some homeowners, particularly those in higher density districts.

In lower density districts, fairly large standard setbacks of the district ensure open space within lots. In denser areas, district standards require a minimum open space of at least 400 square feet, though not particular to the rear or side yard. Removing the additional yard area requirement from ADU standards is therefore expected to have little to no impact on existing neighborhoods while increasing opportunities for ADU development.

Staff recommends removing this ADU open space requirement in favor of allowing district setback and open space standards to suffice. This will allow property owners to determine whether they need more rear or side yard open space than that created by district standards.

Public Comment

At the time of this report, staff had received two written comments in response to public notice for proposed Ordinance No. 859. Key concerns related to: 1) oversized lots with ADUs and lack of requirement for a future development plan to show feasible future development of the subject lot to minimum density; 2) not requiring dedication of right-of-way for future sidewalk development; and 3) not requiring off-street parking. Copies of these comments are provided as attachments to this staff report.

Parking issues are addressed above in this report. Currently CDC standards for ADUs do not require dedication of right-of-way or a future development plan. Further, a future development plan, applicable to a new primary dwelling on an oversized lot, is subject to a Type II review while the state recommends a Type I review for ADU applications. Staff believes that addition of requirements related to above concerns would therefore add complexity and cost to ADU development, somewhat counter to state and county efforts to facilitate their development.

Summary of Proposed Changes

Ordinance No. 859 proposes changes related to ADU development in the urban unincorporated areas of the County. The intent of these changes is to bring local land use regulations into compliance with recent changes to state law while also reducing barriers to ADU development overall. These changes include:

- Allowing one attached and one detached ADU per detached single-family dwelling
- Removing off-street parking and owner-occupancy requirements
- Modifying siting and design requirements, including front setback, maximum floor area, height limits and minimum outdoor yard area requirements
- Changing home occupation standards to that of the underlying district
- Changing the review procedure for ADUs in R-6 North Bethany from Type II to Type I
- Allowing ADUs in the FD-10 and FD-20 land use districts in circumstances where a new primary dwelling would be allowed

List of Attachments

The following attachments identified in this staff report are provided below:

Attachment A: Public Comments received as of 8/13/19



August 11, 2019

Washington County Planning Commission
155 N First Avenue
Hillsboro, OR 97124

RE: Ordinance 859 Accessory Dwelling Units

Dear Chair Vial and Commissioners,

We have reviewed proposed Ordinance 859, Accessory Dwelling Units (ADUs), and have two concerns with existing ADU standards we feel should be addressed with Ordinance 859.

1. ADUs are exempt from both maximum and minimum density requirements. Consideration should be given to include provisions similar to those found in CDC 430-55 for Guest Houses that would require the placement of the ADU on an oversized lot to ensure future division of the lot can meet minimum density of the underlying zone. Additionally, although it is clear that ADUs do not count toward maximum density requirements, it is not clear whether ADUs can be used to meet minimum density requirements. Clarification is needed to understand whether an ADU will count toward minimum density requirements.
2. ADUs are exempt from meeting the Public Facility Standards found in CDC 501. Dedication of right-of-way to current standards is a CDC 501 requirement. With the addition of a requirement to dedicate right-of-way to current standards for ADUs, no additional costs are added to providing ADUs, but the county could be one step closer to eliminating sidewalk gaps.

Please consider recommending engrossment of Ordinance 859 to include changes addressing minimum density and dedication of right-of-way for ADUs.

Sincerely,

A handwritten signature in black ink that reads "Kathy Stallkamp".

Kathy Stallkamp
CCI Chair

Vote: 9 Ayes, 3 Nays

Attachment A



From: steveg46@aol.com [mailto:steveg46@aol.com]

Sent: Monday, August 12, 2019 6:29 PM

To: Bryan Robb

Subject: land use ordinance No. 859

Hi Bryan, I am a long time Washington County resident who is very concerned about changes to the ADU requirements. I am particularly concerned about removing off-street parking requirements. Has the decision already been made, or is this a provision that remains to be worked out? I really do not want to see more cars parked on our fairly narrow streets that have no sidewalks. Adding two ADUs per lot could greatly change the character of our neighborhood. Quantity of neighborhood residents should not trump neighborhood quality when planning these changes. Also, will the neighborhood infrastructure, sewer-water-gas, be robust enough to support more people? Thanks, Steve Gysel, 8115 SW Birchwood Road, Portland, OR



WASHINGTON COUNTY PLANNING COMMISSION MINUTES OF WEDNESDAY, JULY 10 2019

ALL PUBLIC MEETINGS ARE RECORDED

1. CALL TO ORDER: 1:30 P.M. Charles D. Cameron Public Services Building - Auditorium

The meeting was called to order by Chair Vial.

2. ROLL CALL

Planning Commission (PC) members present: A. Richard Vial, Jeff Petrillo, Ed Bartholemy, Tegan Enloe (participated by phone), Deborah Lockwood, Anthony Mills, Eric Urstadt, and Matt Wellner.
PC members absent: Ian Beaty.

Staff present: Andy Back, Theresa Cherniak, Kim Armstrong, Stephen Shane, Carine Arendes, Todd Borkowitz, and Susan Aguilar, Long Range Planning (LRP); Jacquilyn Saito-Moore, and Courtney Duke-Driessen, County Counsel.

2. DIRECTOR'S REPORT

Andy Back, Manager for the Planning and Development Services Division, provided the PC with updates:

July

- July 24: Hearings on two ordinances: Baker Rock Quarry Expansion and Aloha Tomorrow

August

- Aug. 7: Hearing on an Omnibus ordinance and any other ordinances carried forward
- Aug. 21: Hearings on two ordinances: Accessory Dwelling Units (ADUs) and Density Bonuses

September

- Sept. 4: Ordinance hearing - Tektronix Development Agreement

3. ORAL COMMUNICATIONS

None

4. PUBLIC HEARING (the PC voted to change the order of agenda items)

a. Ordinance No. 856 – Telecommunication Facilities

Theresa Cherniak, principal planner and Carine Arendes, associate planner with the Community Planning section of Long Range Planning gave a Power Point presentation. The ordinance amends the Community Development Code (CDC) relating to telecommunications facilities in the right-of-way (ROW) and on private property to accommodate federally required small cell facilities in all land use districts, and updates definitions to ensure consistency with federal provisions.

Staff presented an overview of the ordinance (content, background and intent), federal provisions that limit local regulations, recommended changes proposed for engrossment, and suggested changes to the proposed ordinance proposed by others but not recommended by staff.

Recommendations

- Conduct the public hearing.
- Engrossment of Ordinance No. 856, as shown in pages 11 and 12 of the staff report.

Verbal testimony

- Kim Allen and A. Deshazer, Wireless Policy Group - Verizon, 1420 NW Gilliam Blvd, Ste 90, Issaquah, WA.
- Meridee Pabst, Wireless Policy Group - AT&T, 2728 NW L St, Washougal, WA.
- Alan Galloway, Attorney representing T-Mobile, 1300 SW 5th Ave, Ste 2400, Portland, OR.
Industry providers were given the opportunity to do a combined presentation. They provided information on how cell networks have evolved over time, the increasing demand for service, and distinctions between small cell and macro cell facilities. They then presented examples of small cell wireless facility designs, light standards, and utility poles. These providers advocated to make County-owned poles available for small cell attachments, and that pole-mounted equipment up to 28 cubic feet be allowed.
- Ezra Hammer, Homebuilders Association (HBA) of Metro Portland, 15555 SW Bangy Road, Ste 301, Lake Oswego, OR. Mr. Hammer indicated that the 1,400 member HBA is advocating the County pass both the ordinance and revise Resolution and Order (R&O) 77-76 relating to ROW permits to define responsibility for relocation costs. Mr. Hammer suggested that utilities absorb relocation costs. Currently, developers are charged relocation costs, which Mr. Hammer estimated could be up to \$250,000. Mr. Hammer stated there are no existing regulations requiring that costs be reasonable. If the developers bear the costs, increased housing costs will be passed onto future home buyers.
- Mary Manseau, 5230 NW 137th Ave, Portland, OR.
Ms. Manseau expressed concern about maintenance costs to the County if telecommunication facilities are allowed on County assets. She supported written testimony expressing desire to limit colocations to omni-directional antennas, canisters, and equipment screening. In addition, Ms. Manseau also supports changes to state law to allow the County to recoup permit costs, and strengthening franchising rights.

Written testimony

- A letter received June 25, 2019 and two emails received July 10, 2019 from Luke Leifeld.
- PowerPoint presentation submitted July 10, 2019 by industry providers.

PC comments and concerns

- Concerns about safety and who should bear the cost burden of relocations.
- Discussion regarding postponing the proposed ordinance until 2020, and potential implications if no telecommunication facilities regulations are in place prior to then.
- Discussion regarding whether industry providers should be allowed to use County-owned poles for small cell attachments.
- Concerns regarding macro cell facilities on utility poles.
- Concerns that costs for relocation and who should pay are policy issues outside of the PC scope.
- Concerns with other policy questions being raised that are outside PCs purview (e.g., franchise fees, county allowances under state law).
- Discussion of use of County-owned street furniture (including street lights) for wireless antennas.
- Concerns about any increase to the number of facilities in the ROW and potential for relocation prior to resolving questions of responsibility.

Final vote:

Commissioner Wellner moved to forward the ordinance to the Board of Commissioners without a recommendation on adoption or engrossment of Ordinance No. 856, highlighting the desire to resolve facility relocation cost burden before adopting the ordinance. Commissioner Petrillo seconded. **Vote: 8 – 0. Motion passed.**

Yes: Bartholemy, Enloe, Lockwood, Mills, Petrillo, Urstadt, Vial, and Wellner; **No:** (None); **Abstained:** (None); **Absent:** Beaty

b. Ordinance No. 853 – Planned Development (PD) Updates (continued from June 19, 2019)

Theresa Cherniak, principal planner and Kim Armstrong, senior planner with Community Planning of the Long Range Planning section provided a PowerPoint presentation.

At the first hearing for the proposed ordinance, the PC requested that staff develop options for PC consideration to further increase flexibility in PD open space standards, including options for:

- A further reduction in overall PD open space.
- Allowing natural areas to count towards a greater percentage of PD open space.
- Reducing or eliminating the requirement for active recreational uses, especially for smaller PDs.
- Allowing an exemption to some PD open space standards for sites located near existing parks or recreational facilities.

Staff's presentation included proposed updates, PC feedback, and additional recommendations.

Recommendation

- Conduct the public hearing.
- Evaluate options for additional amendments.
- Engrossment of Ordinance No. 853 to include staff recommended changes.

Verbal testimony

- Mary Manseau, 5230 NW 137th Ave, Portland, OR. Ms. Manseau was present to testify, but was unable to remain for the duration of the hearing. She submitted written testimony.
- Chari Schier, Tualatin Hills Park and Recreation District (THPRD), 15707 SW Walker Rd, Beaverton, OR. Ms. Schier spoke on behalf of THPRD. She noted that THPRD provided a letter of support for the ordinance as proposed, which indicated that THPRD does not support reducing open space allowance beyond what staff originally proposed and that THPRD supports allowing accessible natural areas to be included as a percentage of required PD open space. Ms. Schier indicated that accessible and usable open space is a THPRD priority.

Written testimony

Written testimony included the following:

- Received on July 10, 2019 from Mary Manseau.
- Received on July 10, 2019 from THPRD.
- Received on July 10, 2019 from Committee for Community Involvement (CCI). CCI requested more time for evaluating Ordinance No. 853.

PC discussion

The PC had a substantial discussion about various aspects of the proposed ordinance. The PC expressed a desire to maximize flexibility to encourage more development using the PD option.

During discussion, the PC:

- Emphasized the value of natural space.

- Encouraged increasing the ability to count natural areas as PD open space, including natural areas that are not accessible to PD residents (such as inaccessible wetlands).
- Reiterated concerns that requiring active recreational uses would require homeowner associations (HOAs) to provide regular maintenance.
- Expressed a belief that smaller PDs may not maintain shared facilities over time.
- Discussed allowing smaller PDs to have active or passive recreational facilities.
- Discussed adding a stepped maximum building height.

After lengthy discussion, the PC took a straw poll on changes to various aspects of the ordinance in order to clarify the PC recommendation below. The PC also noted the CCI's concern about the need for more time to assess options. Two members abstained from voting in recognition of CCI's testimony.

Final vote

Commissioner Mills moved to recommend the Board engross Ordinance No. 853 to reflect the following PC recommendations:

- Allow individual yards, patios, balconies, etc. to count toward up to 100% of PD open space in the Office Commercial (OC) and Community Business District (CBD), and up to 50% of PD open space in all other land use districts that allow PDs
- Allow accessible natural areas to count toward up to 100% of PD open space and allow non-accessible natural areas to count toward up to 50% of PD open space
- Modify recreational facility requirements for PDs less than 10 acres to require at least 2 recreational facilities (active and/or passive features), and at least 3 recreation facilities (at least one of which must be an active use) for PDs 10 acres or more
- Add a 45' maximum building height limit for PDs in R-5 and R-6, and retain the 100' maximum building height in all other land use districts
- Make additional updates recommended by staff

Commissioner Wellner seconded the motion. **Vote: 5-1-2. Motion passed.**

Yes: Bartholemey, Enloe, Mills, Vial, and Wellner; **No:** Urstadt; **Abstain:** Lockwood and Petrillo; and **Absent:** Beaty

c. Ordinance No. 855 – Technical Code Changes

Stephen Shane, senior planner with Current Planning delivered a PowerPoint presentation. Tom Harry, principal planner with Current Planning assisted with questions. Staff indicated that the Board, as part of the 2019 – 2020 LRP Work Program, authorized this ordinance. Ordinance No. 855 consists of 12 amendments to multiple sections of the CDC to add clarification and consistency.

PC questions and discussion

- What is the nature of complaints regarding in-home day care facilities?
- Why does there need to be a standard and consistent width dimension for private streets?
- Who enforces parking in unincorporated Washington County?
- Are the recommendations consistent with provisions in House Bill (HB) 2001?
- Discussion about minimum garage dimensions, and interest in changing garage dimensions to 18' x 18'. PC noted their belief this would be the standard width for two cars.

Final vote

Commissioner Mills moved to recommend adoption of Ordinance No. 855 to the Board of Commissioners with engrossment to CDC Section 413 – New minimum interior garage dimension to be 18 feet by 18 feet. Commissioner Wellner seconded motion. **Vote: 7 – 0. Motion passed.**

Yes: Bartholemy, Lockwood, Mills, Petrillo, Urstadt, Vial, and Wellner; **No:** (None); **Abstain:** (None); and **Absent:** Beaty and Enloe (Commissioner Enloe ended her phone call and left the meeting due to a prior engagement).

5. CONSIDERATION OF MINUTES

Commissioner Mills moved to approve the June 5, 2019_PC meeting minutes. Commissioner Wellner seconded motion. **Vote: 5 – 0 – 3. Motion passed.**

Yes: Lockwood, Mills, Petrillo, Urstadt, and Wellner; **Abstained:** Enloe, Bartholemy; Vial; and **Absent:** Beaty

6. ADJOURN: 6:15 P.M.

There being no further business to come before the Planning Commission, the meeting was adjourned.

A. Richard Vial
Chairman, Washington County
Planning Commission

Stephen Roberts
Secretary, Washington County
Planning Commission

Minutes approved this _____ day of _____, 2019

Submitted by LRP Staff