

ACTION REQUEST FORM

DATE: January 24, 2018
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, Director of Planning and Development Services

COUNCIL ACTION REQUEST:

Request for Public Hearing on an ordinance amendment proposed by Planning and Development Services

SUMMARY OF INFORMATION:

- A. Public hearing on an ordinance amendment proposed by Planning and Development Services revising Chapter B of the *Unified Development Ordinances* (UDO) concerning regulations for accessory dwelling units which were previously approved by the Board of Adjustment (UDO-285).
- B. Approval of Ordinance.

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET # UDO-285
STAFF: Kirk Ericson

REQUEST

This UDO text amendment is proposed by City-County Planning and Development Services staff at the request of the City Council's Community Development/Housing/General Government Committee to amend Chapter B of the *Unified Development Ordinances* (UDO) concerning regulations for accessory dwelling units which were previously approved by the Board of Adjustment.

BACKGROUND

On September 5, 2017 City Council adopted revised standards for accessory dwelling units (ADUs) in Winston-Salem (UDO-267). Accessory dwellings are small residential units that may be either attached to or detached from principal residential structures. Such units have been allowed by our zoning ordinance for several decades. For many years, attached ADUs were allowed with staff approval as long as those attached units met certain limitations, while detached units were permitted via the Board of Adjustment (BOA) Special Use Permit process.

In many cases, permits issued by the BOA did not allow units to be approved in perpetuity - most approved units had expiration dates, after which point the unit would no longer be allowed unless a permit renewal was issued. This permit renewal process includes a new public hearing and adjacent property owner notification.

Following approval of UDO-267, all new ADUs in Winston-Salem (both attached and detached) must be approved through the City Council Special Use District rezoning process. Approval of UDO-267 was the result of many months of discussions by Council on how ADUs should fit in neighborhoods, and how they should be reviewed and approved. One aspect of ADU regulation which was not discussed when Council adopted UDO-267, however, was what should happen to the existing ADUs which were previously approved by the BOA with permit expiration dates.

In the currently adopted ADU regulations, the only option for BOA-approved units with expiring permits is to require owners of these units to request rezoning from City Council. However, such a requirement adds difficulty and expense for property owners, especially if Council chose to deny a rezoning request for an already existing ADU. The owners of such units who applied for and were granted accessory dwelling status under one set of rules would be subject to a much more expensive and elaborate process under the current rules to keep their previously granted property rights.

ANALYSIS

This text amendment is proposed in order to allow existing ADUs which were previously approved by the BOA, and have expiring terms, to continue to be reviewed by the Board of Adjustment (rather than by City Council).

In preparing this amendment, staff researched the number of detached ADUs previously approved by the Board of Adjustment. Our records show a total of 79 units approved from 1975 to 2017, with the vast majority (over 70%) of these units being manufactured homes. Sixty-four of the units approved by the BOA include permit expiration dates which have yet to pass – these units could take advantage of the provisions proposed in this amendment.

As an added measure of protection for neighborhoods, this amendment would require the BOA to grant renewal terms of no more than 10 years to these 64 units – in other words, the Board could not grant permanent approval to any of these units (however, renewable 10 year terms could be perpetually granted as long as conditions of approval were being met). Staff believes this provision will promote better integration of ADUs into neighborhoods by giving citizens an opportunity to periodically testify on the upkeep and appropriateness of these units through the Special Use Permit public hearing process. If the BOA finds that an ADU has not been meeting the conditions which it was approved under, the Board could revoke its Special Use Permit and potentially order removal or demolition of the unit.

RECOMMENDATION

APPROVAL

CITY-COUNTY PLANNING BOARD PUBLIC HEARING MINUTES FOR UDO-285 JANUARY 11, 2018

Kirk Ericson presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

During discussion by the Planning Board, questions were asked concerning:

- What happens if the units become illegal.
- The amendment states the Board of Adjustment grants renewal terms of no more than ten years. How does that compare with the typical periods the Board of Adjustment uses in these cases.
- When the Board of Adjustment is approving so many units at one time, there's typically some that need improvements. What percentage is that, or are they so rare that ten years isn't going to matter?

In response to questions by the Board, the following staff responses were provided:

- If the unit became illegal, they will have to cease operations. If we found out they were operating illegally, we could start work on citing them with fines and things of that nature. And if it was a mobile home or something like that, it would not be out of the realm of consideration that the Board could request they remove that unit from the property.
- Mr. Leak was on the Board of Adjustment when we started a transition from shorter renewal periods to ten years. We had some discussions with Council members and the Manager's Office a couple of years ago about potentially getting away from having shorter time limit caps on Special Use Permits. Through that discussion it was felt that doing away with the time limit totally was not something that could be supported but we could look at doubling that. Generally, a renewal was required every five years and over the last two and a half years we have gone up to ten years. It is not always ten years. If there is a concern noted at a public hearing it can be shorter but we haven't granted any with a status longer than ten years.
- The housing units coming to the Board of Adjustment for renewal are not necessarily secondary. You have manufactured homes as principal uses and you have the secondary uses. There are only 64 secondary units and not all of those are manufactured homes. There is a general provision in the UDO that requires manufactured homes to be

maintained. There are also minimum housing code issues that are addressed by Community Development. So if there is an issue with maintenance on a manufactured home or a stick built dwelling, whether it be secondary or primary, there is a specific department that can handle that.

MOTION: Chris Leak moved approval of the amendment.

SECOND: Clarence Lambe

VOTE:

FOR: George Bryan, Melynda Dunigan, Jason Grubbs, Tommy Hicks Arnold King, Clarence Lambe, Chris Leak, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

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

UDO-285

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).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) [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

NOTE: Items to be deleted are indicated with a ~~strikeout~~; items to be added are indicated with an underscore.
UDO-285 January 2018

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 detached 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.** [Reserved]

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) [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.

- (6) **Existing Accessory Dwellings Approved by the Board of Adjustment With an Expiring Term**.....Existing detached accessory dwellings approved by the Board of Adjustment, through the Special Use Permit process, with an expiring term shall continue to be reviewed and decided upon by the Board of Adjustment. When renewing the Special Use Permit for said accessory units, the Board must grant an expiring approval term, not to exceed ten years, with permit renewal required at the end of said term. Detached accessory dwelling units with a Special Use Permit that has a term that: (i) expired before September 5, 2017, or (ii) is not renewed before the expiration date shall be reviewed and decided upon through the Special Use District Rezoning process described in Section B.6-2.2.

Section 2. This ordinance shall be effective upon adoption. However, any SUP that expires between September 5, 2017 and the date of adoption of this text amendment shall be subject to the renewal process before the Board of Adjustment provided the renewal application is submitted to the City within 60 days of the adoption of this text amendment.