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Discussion Item: Land Development Code Language Change- Accessory Dwelling Units

At the May 2021 Planning and Zoning Board meeting, the Board discussed adding the definition of kitchen and wet bar to the Land Development Code as these terms are not currently defined in the Code.

These are the definitions that were discussed:

Proposed Kitchen definition: Kitchen shall mean the facilities and equipment or rough in facilities, used in the preparation and serving of food. This may include, but is not limited to, stoves, microwave ovens, hot plates, sinks, refrigerators, cabinets and/or pantry-like shelves, a 220 V outlet, or any gas lines (natural gas or propane), a dishwasher, or other food preparation equipment, or any combination thereof; this may not include wet bars, outside grilling facilities, outside sinks or refrigerators, or other items determined by the zoning division manager as not constituting a kitchen.

Proposed Wet Bar definition: Wet bar shall mean a hand sink and under-the-counter refrigerator with no overhead cabinet.

The Board did not take any action on these definitions but asked staff to come back with information on a broader focus of accessory dwelling units. These types of units are not currently allowed in Belle Isle in single-family zoning districts. The Code also prohibits more than one kitchen in single-family homes.

The Board discussed the possibility to amend the Code to allow for accessory dwelling units so that families may be able to care for family members in need in their own homes, while still maintaining some level of independence.

For the Board's review and discussion, attached is an example of accessory dwelling unit code language from the City of Miramar, Florida. Also included is an article regarding the use of accessory dwelling units as a growth management tool.

Staff is seeking direction from the Board as to whether they would like an ordinance prepared for formal consideration regarding accessory dwelling units.

Section 405. - Specific Use Regulations.

The specific conditions set out below shall be applied to each proposed use during site plan and/or conditional use review (if applicable).

405.1.1 Types. An Accessory Dwelling Unit (ADUs) is an ancillary or secondary living unit, that has a separate kitchen, bathroom(s), and sleeping area(s), existing either within the same structure, or on the same lot, as the primary dwelling unit.

405.1.2 Where Permitted. ADUs are allowed as an accessory use to a single-family detached dwelling, as per TABLE 402-1, Principal Use Table for Single-family and Multi-family zoning Districts, and providing that such structure meets the development and use standards as follows, and all other applicable standards of this Land Development Code, as amended from time to time.

405.1.3 Use. An ADU may be rented, or may be utilized by family members, guests and/or persons employed on site by the resident family of the principal dwelling;

405.1.4 Utilities. The ADU must share utilities with the primary residence and separate utility meters are not permitted.

405.1.5 Affidavit. The owner(s) of the parcel shall provide an affidavit attesting that the ADU will be in compliance with all applicable requirements of the City Code of Ordinances, the minimum housing standards of the Broward County Code of Ordinances, as well as the provision of Section 163.31771, FS, as amended from time to time.

405.1.6 Development Standards.

- (a) *Number.* No lot shall contain more than one accessory dwelling unit.
- (b) *Location.* Any proposed detached ADU must be located to the side or rear of the primary dwelling, to the best extent physically possible.
- (c) *Square Footage.* An ADU must not exceed 50% of the total square footage of the primary dwelling unit including unairconditioned areas, but in no case be greater than 1,200 square feet and in no case shall be less than 300 square feet in area.
- (d) *Plot Coverage.* Where applicable, any proposed ADU shall be within the plot coverage requirement of the zoning district where it is located.
- (e) *Height.* The maximum height of an ADU shall be two (2) stories. In no event, shall the height of the ADU exceed that of the primary dwelling.
- (f) *Architecture.* An ADU shall be architecturally compatible with the primary dwelling.
- (g) *Parking.* One (1) off-street parking space must be provided for a proposed ADU with two (2) sleeping areas or less. Two (2) off-street parking spaces must be provided for a proposed ADU with more than two (2) sleeping areas.
- (h) *Setbacks.*
 - Any proposed attached ADU shall be subject to the same front, side, side street and rear setbacks as the primary dwelling.
 - Any proposed detached ADU shall be subject to the following setback requirements:
 - Side and side street setbacks: same as the primary dwelling
 - Rear setback (detached): 10 feet for a one-story structure, and 15 feet for a two-story structure.
- (i) *Entrances.* An attached ADU may either share a common entrance with the primary dwelling unit and/or use a separate entrance, which shall be located only to the side or rear. A separate front entrance for an attached ADU shall be prohibited unless it is located within a personal courtyard area not visible from the right-of-way

- (j) *Easements*. Shall be located outside any dedicated easements. This may include but is not limited to a Lake Maintainer Easement, Drainage Easement, Utility Easement, and Landscape Easement.
- (k) *Nonconformity*. In no event shall the establishment of an ADU create a new nonconformity or expand an existing nonconformity. Conversion of detached garages or other accessory buildings and structures for the purpose of creating an accessory dwelling unit shall be permitted only if the newly created dwelling unit is permitted and all code requirements are satisfied.
- (l) *Impact Fees*. Impact fees shall be assessed for the police and fire protection, water and sewer capacity, and park and recreation fees that are created by the additional unit.

405.2. Adult Entertainment Uses and Establishments.

405.2.1. Intent. This subsection shall be liberally construed to accomplish its purpose to regulate and provide proper and adequate locations that would be compatible for proposed adult entertainment uses and establishments while keeping consistent with the city's comprehensive plan and vision. Adult entertainment uses as defined in section 201 shall be a permitted use within the PID district, subject to distance separation requirements as noted below.

It is the intent of the city commission, in adopting this subsection, to establish reasonable and uniform regulations that will reduce the adverse secondary effects that adult entertainment establishments have upon the residents of the city and protect the health, safety, aesthetics, morals and general welfare of the people of the city. It is further intended to provide for the proper location of adult entertainment uses in the city; to require a separation between such uses to avoid clustering; and to require separation from and thereby protect the integrity of incompatible uses in nearby neighborhoods, including residences, schools, places of worship, public parks and other commercial enterprises. Proper separation of adult entertainment uses prevents the creation of skid row areas in the city, which otherwise result from the concentration of these establishments and their patrons. This subsection has neither the purpose, nor the effect, of limiting or restricting access by adults to sexually-oriented, non-obscene materials protected by the First Amendment to the U.S. Constitution, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is instead the intent to limit the secondary effects of regulated uses through content-neutral regulation as set out in this subsection. Furthermore, the commission has found that the location of residential uses within viable, un-blighted and desirable areas supports the preservation of property values and promotes the health, safety, aesthetics, and welfare of the city and the public at large.

405.2.2. Conflicts with Other Laws. Whenever the regulations and requirements are in conflict or at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances or laws, the most restrictive shall apply.

405.2.3. Penalty for Violation of Subsection. Any person violating the provisions shall, upon conviction by a court of competent jurisdiction of any offense involving moral turpitude in connection with the operation of such adult entertainment establishment, be subject to the penalties of the LDC, city code, or by any other means authorized by law including, but not limited to, the revocation of a zoning certificate of use. The city code compliance officer shall immediately issue a written notice of intent to revoke the local business licenses and permits.

405.2.4. District and Distance Separation Regulations. See Tables 405-1 and 405-2.

TABLE 405-1
DISTRICT REGULATIONS*.

District Type	
All Residential Zoning Districts as described in section 401.1	Not Permitted

Accessory Dwelling Units:

A Smart Growth Tool for Providing Affordable Housing

By Jaimie Ross, President & CEO of the Florida Housing Coalition

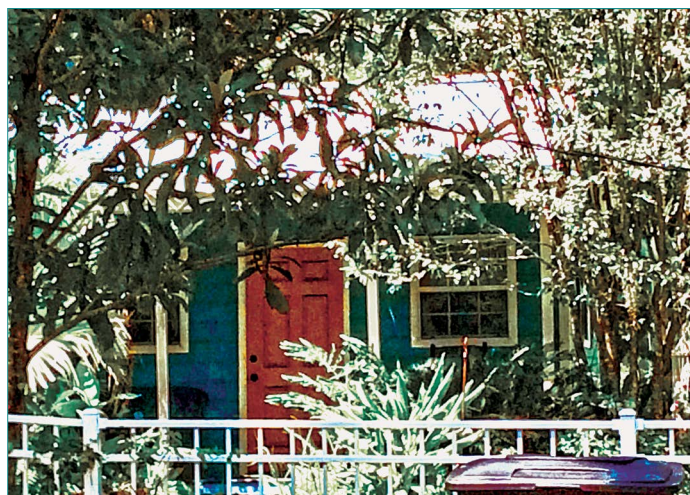
An accessory dwelling unit (ADU) is a residential unit that is secondary to the primary residence of the homeowner. It can be an apartment within the primary residence or it can be an attached or freestanding home on the same lot as the primary residence. The concept of an accessory dwelling unit is to have an additional complete residence, meaning a place for sleeping, bathing, and eating independent of the primary home. An ADU is a tool for providing affordable rental housing and promoting smart growth. These smaller housing units are typically infill units built where there is existing infrastructure, making greater use of the already developed land.

The Value of an Accessory Dwelling Unit

An accessory dwelling unit creates affordable housing in two ways: the secondary (accessory) dwelling is a small rental unit that will ordinarily rent at a price within the means of lower income persons; at the same time, the rental income from the accessory dwelling unit can render the primary residence more affordable by virtue of the income it generates for the resident owner of the primary residence.

Ordinarily, the accessory dwelling unit is smaller than the primary residence of the homeowner. But, if permitted by the local government, the owner may choose to live in the smaller unit and rent out what was the primary residence. At first blush this arrangement may seem odd, but in the case of a family that now has a single elderly member living on a fixed income, this arrangement can provide the perfect affordable living solution; a more appropriately sized living space and a higher rental income.

AARP engaged the American Planning Association (see resources sidebar on page 20) to develop a model state act and local ordinance as a resource for meeting the affordable needs of elder Americans. ADUs are particularly well suited for lower income elderly because in addition to increasing affordability, the elderly homeowner may also obtain companionship and needed services from the tenant in the ADU. The use of ADUs can assist the elderly to “age in place”. An example of this cited in the Public Policy Institute publication is from Daly City, California:



This cottage is an example of a detached accessory dwelling unit built in the side/backyard with roof lines, colors, and architectural design that matches the larger primary home.

“One homeowner with Alzheimer’s was able to trade ADU quarters for medical services from an ADU tenant, a nurse, who was also delighted by the arrangements.”

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars. Removing the land use barriers which prevent accessory dwelling units from being built may be all that local government needs to do for affordable accessory dwelling units to be built. This is an example of how regulatory reform can increase the supply of affordable housing.

However, if the purpose in permitting accessory dwelling units is to increase the supply of affordable housing, local governments need to be thoughtful about the manner in which ADUs are permitted. Without conditions placed upon the use of ADUs, the garage apartment in an expensive or desirable area could end up an “illegal use” such as a Bed and Breakfast. If local governments want to encourage the production of ADUs for affordable housing, a loan program to assist the homeowner in developing the unit is an effective way of providing an incentive for development together with an assurance of affordability through a recorded land use restriction agreement made in conjunction with the loan.

Obstacles to Accessory Dwelling Units

Traditional “Euclidian” zoning separates land uses in a way that prohibits more than one single residence on a platted lot, regardless of the acreage. If two or more residences are situated on a single lot, they would need to be in a more intensive residential zone, such as one that permits duplexes or multi-family housing.

Some single family zoning may permit an accessory dwelling unit, but require that special circumstances be shown to warrant the use, such as a unit limited to use as a “granny

flat” or “mother-in law” suite to accommodate immediate family members. The local zoning code may also limit the accessory dwelling use by proscribing separate metering of the accessory dwelling unit. In short, there may be a number of land use regulations to overcome. Another obstacle to ADUs may be neighborhood or community resistance. The owners of single family homes may object to having renters in their neighborhood; they may fear increased traffic and parking, or perceive a threat to their property value.

Promotion of ADUs as an Affordable Housing Strategy

When the SHIP Legislation was adopted in 1992*, included in the list of regulatory reform items for consideration by all SHIP jurisdictions (all counties and entitlement cities in Florida), was permitting accessory dwelling units in all residential areas. Most jurisdictions did not opt to include this incentive, but a number of jurisdictions in Florida do make some provision for accessory dwelling units.

In 2004, Chapter 163 Florida Statutes, was amended to include Section 163.31771 entitled “Accessory dwelling units.” The law encourages local governments in Florida, especially those in urban areas, to permit accessory dwelling units in all areas zoned for single-

family residential use. The purpose of this legislation is to increase the production of affordable rental housing. To that end, the statute provides that “an application to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to extremely low income, very low income, low income or moderate income person or persons.” The statute also states that each affordable accessory dwelling unit shall apply toward satisfying the affordable housing component of the housing element in the local government’s comprehensive plan. Local governments in Florida are, of course, empowered to permit accessory dwelling units without this statute, but the statute brings this underutilized tool to the fore and makes

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars.

explicit the connection to local government comprehensive planning obligations.

Considerations for ADU Ordinances

Accessory dwelling units could be permitted without adoption of a separate ordinance by simply having accessory dwelling units enumerated as a permitted use within the single family residential use category. It is unlikely, however, that this will be the chosen vehicle, as it fails to provide the parameters for the development and use of accessory dwelling units, which are key to successfully balancing the production of affordable rental housing with the concerns of the existing single family homeowners.

Virtually all ADU ordinances require that the owner reside in either the primary or the secondary unit. But there are a number of issues that can be decided differently depending upon community needs. All programs for the development of ADUs should consider the following:

- **Conditional use or “by right”** – If the ADU is a conditional use, a public hearing would be required – this makes the process more difficult for the applicant, but provides a forum for input from the neighborhood. If the ADU is “by right” it is a permitted use and, provided the application meets the requirements in the ordinance, it will be approved administratively, without public hearing.
- **Permitting process** – To encourage the development of ADUs, local government can create a user friendly process for construction which includes expedited processing (a requirement under the SHIP program), a manual to help the homeowner, and a staff person charged with overseeing the program.



This is an example of an attached accessory apartment in the back of this single family home. Neither the accessory apartment or the off-street parking are visible from the front of the house.

- **Size regulations** – ADU ordinances commonly have a minimum lot size for the total parcel and a maximum ADU size. The goal is to maintain the aesthetic integrity of the single family neighborhood. Performance standards rather than arbitrary size limitations may better address neighborhood concerns.
- **Design requirements** – To ensure compatibility and maintain the aesthetic character of the neighborhood, an ADU ordinance may set forth minimum design standards and have architectural review requirements.
- **Parking requirements** – To avoid parking problems in an urban area, the ordinance may require that there be sufficient on-street parking or off-street parking, or may require that parking be at the back of the residence.
- **Type of unit** – Different considerations may apply if the ADUs are within the primary residence, such as a basement apartment; attached to the primary residence, such as a garage apartment; or detached from the primary residence, such as a cottage.
- **Occupancy restrictions**
 - Some ordinances may prescribe the maximum number of people who can live in the ADU or the type of renters, such as limiting the rental to relatives or the elderly.
- **Incentives to produce ADUs** – Loans for the production of the ADU may make it easier to monitor for affordability and assist the local government in directing applicants on its rental waiting lists to affordable ADUs.
- **Monitoring** – Some ADU programs have an annual affidavit requirement or other means for monitoring whether the ADU continues to be used in accordance with the local ADU requirements.



ADUs do not have to be an afterthought. New construction of single-family homes could also include construction of an ADU. "Carriage houses" accessible from alleys are commonly found in the "New Urbanism" or Traditional Neighborhood Design. But without an ADU ordinance requirement that these units be affordable, the carriage houses in this "new urbanism" community exceed affordable rents, as the desirability of the traditional neighborhood design development drives housing prices out of the affordable range.

One of the keys to a successful program is the information and technical assistance provided to the community and the prospective developer/owner of an ADU. To ensure the success of its program, Montgomery County, Maryland has a guidebook to assist applicants through the permitting process for accessory apartments. The County also assists the applicant by having a staff person assigned to help applicants through the process.

In 2004, the Environmental Protection Agency gave the city of Santa Cruz California the National Award for Smart Growth Achievement for its Accessory Dwelling Unit Policies and Regulations, which includes a manual for developing ADUs, including architectural designs. You can access the Santa Cruz manual and ADU prototypes on line at: <http://www.cityofsantacruz.com/home/showdocument?id=8875>

If your local government would like technical assistance to help develop an accessory dwelling unit ordinance or navigate the issues to be addressed with accessory dwelling unit ordinances, contact the Florida Housing Coalition at (850) 878-4219, or Jaimie Ross at ross@flhousing.org **HNN**

*Florida Statute 420.9076 (4) "At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas: (e) the allowance of affordable accessory residential unit in residential zoning districts.



JAIMIE ROSS

Jaimie A. Ross is the President & CEO of the Florida Housing Coalition. Ms. Ross served as the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991-2015. Prior to her tenure at 1000 Friends of Florida, Ross was a land use and real property lawyer representing for profit and nonprofit developers and financial institutions with a law firm in Orlando. Nationally, she serves on the Boards of Grounded Solutions Network and the Innovative Housing Institute. Ross is the past Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

Resources for ADU Models

"Accessory Dwelling Units: Model State Act and Local Ordinance," Public Policy Institute, Rodney L. Cobb & Scott Dvorak, American Planning Association
http://assets.aarp.org/rgcenter/consume/d17158_dwll.pdf

Examples:

Massachusetts Smart Growth Toolkit Bylaws
<http://www.horsleywitten.com/services/planning/smart-growth-low-impact-development/>

Santa Cruz California ADU Manual
<http://www.cityofsantacruz.com/home/showdocument?id=8875>

State of Georgia (Department of Community Affairs)
http://www.dca.state.ga.us/intra_nonpub/Toolkit/ModelOrdinances/TND_ModOrd.pdf

Municipal Research & Service Center of Washington "Accessory Dwelling Units Issues and Options"
<http://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/ADU30.pdf.aspx>

Vermont "Accessory Dwelling Units: A Guide for Homeowners"
http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/2013Edition_Accessory_Apts_Brochure.pdf

Accessory Dwelling Units: Model State Act and Local Ordinance
<http://www.docdatabase.net/more-accessory-dwelling-units-model-state-act-and-local-ordinance-577683.html>

Accessory Dwelling Units Report to the Florida Legislature
<http://landuselaw.wustl.edu/Articles/ADU.Report.pdf>

City of Santa Cruz Accessory Dwelling Unit Development Program
<http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>