



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Kyle Collins, Associate Planner
Will Groves, Planning Manager

DATE: December 5, 2024

SUBJECT: Work Session: Clear and Objective Housing Text Amendments – Definitions, Dimensional Standards, and Accessory Uses

The Deschutes County Planning Commission (Commission) will conduct a work session on December 12, 2024 at 5:30 p.m. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms to consider text amendments establishing “clear and objective” housing development standards (file no. 247-24-000705-TA). This work session is in preparation for a public hearing scheduled for January 9, 2025. Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~. The public hearing will be conducted in-person, electronically, and by phone.¹

All record materials can be found on the project website:
<https://bit.ly/DeschutesClearAndObjective>

I. BACKGROUND

Beginning in 2017, the Oregon State Legislature passed a series of bills to encourage efforts to expand the supply of housing statewide. The passage of Senate Bill (SB) 1051 prohibited cities from denying applications for housing developments within urban growth boundaries, provided those applications complied with “clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.”²

The provisions of SB 1051, along with subsequent bills, modified Oregon Revised Statutes

¹ See Deschutes County Planning Commission August 22, 2024 Agenda for more information:
<https://www.deschutes.org/bc-pc/page/planning-commission-56>

² <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

(ORS) 197.286–197.314. Of relevance to the current project is ORS 197.307(4)³ which was modified to state:

(1) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

In 2023, ORS 197A.400⁴ (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197⁵. The newly established ORS 197A.400 will become effective on July 1, 2025, and states the following [emphasis added]:

*(1) Except as provided in subsection (3) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary, **unincorporated communities designated in a county's acknowledged comprehensive plan after December 5, 1994, nonresource lands and areas zoned for rural residential use as defined in ORS 215.501.** The standards, conditions and procedures:*

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay

...

(3) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in

³ https://oregon.public.law/statutes/ors_197.307

⁴ https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html

⁵ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3197/Enrolled>

subsection (1) of this section.

These provisions require local governments to apply only clear and objective standards, criteria, and procedures to applications for housing projects and may not discourage housing through unreasonable delay. Application of typical discretionary standards (e.g. “adequate public facilities,” “effective mitigation,” etc.) is prohibited. The statute is intended to address the concern that use of discretionary criteria leads to uncertainty, inconsistent administration, and delays that do not serve the goal of efficiently providing an adequate supply of housing stock.

II. OVERVIEW OF AMENDMENTS

Numerous sections and language in the Deschutes County Code (DCC) affecting the development of housing do not currently meet the identified thresholds for “clear and objective” standards outlined in HB 3197. The primary focus of the Clear and Objective Code Compliance Project is to ensure the DCC complies with state statute and the objectives of the Deschutes County Comprehensive Plan.

With the assistance of consultants from MIG, planning staff have identified areas of the DCC that are not in compliance with statute and drafted packages of text amendments to address each issue. These packages have been broken into distinct segments to provide the public, the Commission, and the Deschutes County Board of Commissioners (Board) the opportunity to review and vet the proposed changes in a more structured and confined way.

Where possible, planning staff have endeavored to draft amendments that are a policy-neutral conversion of existing discretionary language to non-discretionary language. This ensures the original intent and desired outcome is preserved. When not possible, in certain limited circumstances alternative standards or criteria have been proposed. Additionally, while not exclusively associated with housing development, as part of this process certain amendments have been proposed to broadly remove ambiguity from implementing sections of the DCC, maintain conformity across all development standards, and ensure review clarity for staff and members of the public.

The first amendment package proposed through this process will broadly cover the following areas of the DCC:

- Definitions for the Deschutes County Zoning Code (DCC Title 18) and the Bend Urban Growth Boundary Zoning Ordinance (Title 19)
- Dimensional standards (e.g. height, structural footprints, setbacks, etc.) for Titles 18 and 19
- Accessory structure standards for Titles 18 and 19

III. METHODOLOGY AND APPROACH

As noted above, staff has grouped the first proposed package of amendments to address the DCC definitions, dimensional or measurement standards, and the uses and standards associated with accessory structures. Each of these sections has been addressed as follows:

Definitions

Definitions are the foundational principle for all areas of the development code. Staff has modified the County's existing definitions in the following ways:

- 1) If an existing term has a definition through the ORS, that existing terminology has been adopted verbatim or by reference. Staff understands that ORS terminology may supersede the requirements for clear and objective standards, even if these definitions contain some non-objective language.
- 2) If an existing definition has subjective language (e.g. "adequate," "designed for," etc.) that could be replaced with measurable, quantitative standards, then those new standards have been used.
- 3) If an existing term has criteria which could reasonably be interpreted in multiple ways (e.g. How should the height of a structure be measured? etc.), then explicit directions on how to interpret the standard have been included within the definition itself or new terms have been added to further clarify inter-definition relationships.
- 4) If two or more existing terms provided conflicting interpretations (e.g. "lot width versus "lot depth," "yard" versus "setback," etc.), then these terms were simplified into a single term to remove unintentional conflicts.
- 5) If an existing term has language which has previously been deemed unconstitutional or otherwise unlawful (e.g. Defining a "dwelling unit" based on familial relationships, etc.), then those terms have been modified to remove the offending language.

Additionally, certain terms within the existing code have been subject to numerous interpretive challenges over many years (e.g. What types of development constitute "structures"?), and where possible staff has attempted to provide these terms with the broadest possible interpretation and/or align these terms with previous Hearings Officer or Board decisions which have clarified the matter at hand.

Finally, as modified definitions could potentially have cascading effects throughout the remaining portion of the DCC, staff has attempted to align all uses of these terms with the new proposed definitions, while maintaining the original intent as much as possible within each corresponding code section.

Dimensional Standards

Dimensional standards can be categorized as any criteria which require a specific quantitative measurement (e.g. height, setbacks, lot coverage, floor area, etc.). As dimensional standards are another foundational principle for administering the development code, staff has modified several areas of the code dealing with these standards to remove ambiguity and provide explicit directions in how the measurements should be evaluated.

To provide specific examples:

- 1) Nearly all zones have specific height limitations on structures. However, the current DCC is ambiguous in how to evaluate structural height on properties with sloping or irregular topography. This ambiguity can produce varying height calculations depending on where a specific measurement is taken. Staff has proposed a new definition for "height" which explicitly defines how the height of all structures should be evaluated, regardless of topography or other variables. This new "height" definition necessitated the inclusion of other terms which did not previously exist in the DCC to provide clarity for applicants and staff, such as "average grade," "existing grade," and "finished grade."
- 2) All zones have specific setback standards which outline the distance required between structures and lot lines or other designated features such as the Ordinary High Water Mark of rivers and streams. However, certain features which interact with setback standards such as "front lot lines" are difficult to identify under the current code in certain circumstances. "Front lot line" is currently defined as:

"...the lot line separating a lot from a street other than an alley. In the case of a lot that does not front directly on any street, the front lot line shall be that lot line parallel to and facing the same direction as the front lot lines of the majority of other properties in the immediate area."

The application of "the majority of other properties in the immediate area," is a subjective standard and could make setback standards for a property difficult or impossible to evaluate. As such, "front lot line" and the corresponding setback standards have been modified to state:

"...In the case of a lot or parcel that does not have street frontage, a front lot line shall be any lot line through which driveway access to the property is provided."

- 3) Most zones have specific standards for lot coverage, which is the amount of area within an individual property which can be developed with structures. However, the existing DCC remained ambiguous on which structures should be counted towards lot coverage requirements, and which structures should be provided an exemption given the general intent of the standards. The proposed amendments clarify that only those structures which exceed 18 inches above finished grade shall be counted

toward lot coverage measurements, allowing for structures such as at-grade patios a minor exemption.

Accessory Uses

Finally, given that clear and objective standards are now required for all housing development, it is important to distinguish between what constitutes a dwelling unit and structures which may be accessory to a dwelling unit or another use on a property. Distinguishing between these various structures and uses requires an explicit set of standards governing what features or uses are allowed within a particular structure.

Community Development Department (CDD) staff continually face challenges in implementing the development code when reviewing applications which appear to fall within a definitional transition between dwelling units and accessory structures such as detached garages, storage buildings, shops, etc. Most zones in Deschutes County only allow the establishment of a single (1) dwelling-unit on a particular property (notwithstanding developments such as Accessory Dwelling Units). Applicants commonly propose establishing accessory structures which contain numerous elements which could be construed to allow residential dwelling use, such as kitchens, full bathrooms, and/or laundry facilities. Historically, staff have attempted to limit these uses through land use decisions or recording legal documents for the property warning future owners that such structures cannot be utilized as secondary dwelling units without adequate land use approval.

To remove ambiguity for both applicants and CDD staff, portions of the code dealing with accessory structures and uses have been modified in the following ways:

- 1) Outlining specifically which components, when taken together, constitute a “dwelling unit.” As proposed, structures will be considered dwellings when they contain the following:
 - One or more persons living together as a housekeeping unit
 - Provisions for sleeping, cooking, and sanitation
 - One kitchen (“kitchen” has been further defined in the proposed amendments)
 - At least one full bath (“baths,” including “full baths,” have been further defined in the proposed amendments)

- 2) Outlining which components may be allowed within accessory structures, and codifying a formal process to ensure accessory structures are not unlawfully converted to, or otherwise use for, dwelling purposes.

These proposed changes codify longstanding policies from CDD and provide clear direction for the development of housing and accessory structures, while removing legal risk and uncertainty for future property owners in the County.

IV. FUTURE AMENDMENTS

As noted above, the proposed amendments presented herein are the first of several code modifications which will be proposed over the coming months. Upcoming text amendment proposals will address the following areas, subject to modifications as the process unfolds:

- Deschutes County Subdivision and Partition Standards (DCC Title 12 and 17)
- Deschutes County Goal 5 Resources – Natural Resources (Landscape Management Combining Zones, Wildlife Area Combining Zones, Wetlands and Riparian Resources, etc.)
- Cluster and Planned Development Standards
- Additional Sections Most Pertinent to the Development of Housing

V. NEXT STEPS

The Planning Commission will ultimately provide a recommendation to the Board of County Commissioners on the proposed amendments. The Commission could choose to approve the amendments as drafted, revise the amendments, or deny the amendments.

A public hearing with the Planning Commission is scheduled for January 9, 2025.

Attachments:

- 1) Staff Report & Proposed Text Amendments