

City Council
Agenda Memo



City Council
Meeting Date: 2/10/2011

TO: Larry D. Gilley, City Manager
FROM: Jon James, AICP
Director of Planning and Development Services
SUBJECT: Final Reading and Public Hearing on an ordinance to amend the Land Development Code, Sections 1.4.4.1 (Special Exceptions) and 2.4.4 (Accessory Uses and Structures) regarding Accessory Dwelling Units.

GENERAL INFORMATION

With approval of the Land Development Code (LDC) earlier this year, accessory dwellings are now allowed on all residential property. Accessory dwellings are separate from the house and allow rental opportunities. In addition, accessory dwellings are subordinate to the primary dwelling, have maximum square footage restrictions, require similar construction to the primary dwelling and only allow 1 bathroom.

At the November P&Z Commission meeting, staff presented minor amendments to clarify these regulations, specifically to address the maximum size, location, and access to the accessory dwelling. At their December 2 meeting, the City Council tabled the item and remanded it back to the P&Z Commission for further review. Specifically, the City Council asked for further review on the size of accessory dwellings for properties with acreage.

Staff has reviewed the LDC again and finds that the amendment as initially proposed is most favorable. This would insure proper placement and scale to the existing residence. It would also insure the ability to subdivide the property in the future. However, in line with City Council's interest to permit allowances for properties with acreage, staff is also proposing an option to allow large properties to have a bigger accessory dwelling through approval of a Special Exception by the Board of Adjustment. This would require a review for compatibility and proper placement for future subdivision. Additionally, notification to potentially affected property owners would be made inviting them to participate in the public hearing process required for the Board of Adjustment.

At the P&Z Commission meeting, several modifications were recommended. The modifications included allowing less restrictive regulations for properties 2 acres or larger. Specifically, accessory dwellings could be as large as 2.5% of the lot area, accessory dwellings would be exempt from access, restroom and building material requirements, and accessory dwellings would be allowed to be located in the front yard (normal front yard setbacks would still apply).

Staff finds that these modifications are too accommodating and could result in enforcement issues in the future. A better option would be to require the Special Exception, as described above, with the opportunity for the Board of Adjustment to grant waivers to these regulations based on a case-by-case review, which would also allow for input from neighbors. The modifications as recommended by the P&Z Commission would allow for 2 homes per lot which could allow for double the density in areas with larger lots and would basically eliminate the concept of "single-family" zoning that generally allows only one home per lot.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, PROVIDING FOR THE APPROVAL OF A CONDITIONAL USE PERMIT AS PROVIDED FOR IN CHAPTER 23, SUBPART B, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH CONDITIONAL USE PERMIT; CALLING A PUBLIC HEARING; AND PROVIDING A PENALTY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That the following Conditional Use Permit, as described on Exhibit "A," attached hereto and made a part of this ordinance for all purposes, be approved subject to conditions as stated in Exhibit "A."

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 27th day of January A.D. 2011.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15th day of December, 2010, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 10th day of February, 2011 to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 10th day of February, A.D. 2011.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

7.1 pg. 3

Existing Ordinance Regulations

Division 4 – Accessory Uses & Structures

Section 2.4.4.1 Description and Regulations by District Type

- (b) Residential Districts.
- (4) Accessory Dwelling Units.
 - a. No accessory dwelling unit shall be sold separately from the primary structure.
 - b. An accessory building or dwelling unit may have a maximum of one (1) bathroom.
 - c. An accessory dwelling unit shall be constructed in a manner in keeping with the general architecture and building material of the main or primary dwelling.
 - d. An accessory dwelling unit must be located to the rear of the primary dwelling.
 - e. An accessory dwelling unit shall be constructed only with the issuance of a building permit and with the same minimum building standards as the primary dwelling.
 - f. Any required additional parking for the accessory dwelling unit shall be provided with the required parking for the primary dwelling.
 - g. Any wall of the secondary dwelling must be placed no closer than six feet (6') from the primary dwelling and/or any other structure existing or under construction on the same lot.

Proposed Option #1 (previously presented)

Division 4 – Accessory Uses & Structures

Section 2.4.4.1 Description and Regulations by District Type

- (b) Residential Districts.
- (4) Accessory Dwelling Units.
 - a. An accessory dwelling unit shall not be larger than fifty percent (50%) of the primary structure.
 - b. No accessory dwelling unit shall be sold separately from the primary structure.
 - c. An accessory building or dwelling unit may have a maximum of one (1) bathroom.
 - d. An accessory dwelling unit shall be constructed in a manner in keeping with the general architecture and building material of the main or primary dwelling.
 - e. ~~An accessory dwelling unit must be located to the rear of the primary dwelling.~~ No accessory dwelling unit shall have a front facing door unless located to the rear of the primary dwelling.
 - f. An accessory dwelling unit shall be constructed only with the issuance of a building permit and with the same minimum building standards as the primary dwelling.
 - g. Any required additional parking for the accessory dwelling unit shall be provided with the required parking for the primary dwelling.
 - h. If detached, any wall of the secondary dwelling must be placed no closer than six feet (6') from the primary dwelling and/or any other structure existing or under construction on the same lot.

Proposed Option #2 (Special Exception)

Division 4 – Board of Adjustment (BOA) Procedures Section 1.4.4.1 Special Exceptions

(d) Special Exceptions Outlined

(13) To allow an accessory dwelling larger than what would otherwise be allowed for properties being 2 acres or larger.

Division 4 – Accessory Uses & Structures

Section 2.4.4.1 Description and Regulations by District Type

(b) Residential Districts.

(4) Accessory Dwelling Units.

- a. An accessory dwelling unit shall not be larger than fifty percent (50%) of the primary structure.
- b. An accessory building or dwelling unit may have a maximum of one (1) bathroom.
- c. An accessory dwelling unit shall be constructed in a manner in keeping with the general architecture and building material of the main or primary dwelling.
- d. ~~An accessory dwelling unit must be located to the rear of the primary dwelling. No accessory dwelling unit shall have a front facing door unless located to the rear of the primary dwelling.~~
- e. No accessory dwelling unit shall be sold separately from the primary structure.
- f. An accessory dwelling unit shall be constructed only with the issuance of a building permit and with the same minimum building standards as the primary dwelling.
- g. Any required additional parking for the accessory dwelling unit shall be provided with the required parking for the primary dwelling.
- h. If detached, any wall of the secondary dwelling must be placed no closer than six feet (6') from the primary dwelling and/or any other structure existing or under construction on the same lot.
- i. For properties 2 acres or larger, a Special Exception may be approved by the Board of Adjustment for accessory dwellings larger than permitted by this Land Development Code. As part of the Special Exception, only items 'a' through 'd' above may be modified in addition to the size of the accessory dwelling.

P&Z Recommended Option #3

Division 4 – Board of Adjustment (BOA) Procedures

Section 1.4.4.1 Special Exceptions

(d) Special Exceptions Outlined

(13) To allow an accessory dwelling larger than what would otherwise be allowed.

Division 4 – Accessory Uses & Structures

Section 2.4.4.1 Description and Regulations by District Type

(a) All Districts.

(1) c. Accessory dwellings shall be exempt from this requirement on parcels or tracts of land that are two (2) acres or greater in size.

(b) Residential Districts.

(4) Accessory Dwelling Units.

- a. Except for properties 2 acres or larger, an accessory dwelling unit shall not be larger than fifty percent (50%) of the primary structure. For properties 2 acres or larger, an accessory dwelling unit shall not be larger than fifty percent (50%) of the primary structure or 2.5% of the total lot size, which ever is larger.
- b. No accessory dwelling unit shall be sold separately from the primary structure.
- c. An accessory building or dwelling unit may have a maximum of one (1) bathroom.
- d. An accessory dwelling unit shall be constructed in a manner in keeping with the general architecture and building material of the main or primary dwelling.
- e. An accessory dwelling unit must be located to the rear of the primary dwelling. No accessory dwelling unit shall have a front facing door unless located to the rear of the primary dwelling.
- f. An accessory dwelling unit shall be constructed only with the issuance of a building permit and with the same minimum building standards as the primary dwelling.
- g. Any required additional parking for the accessory dwelling unit shall be provided with the required parking for the primary dwelling.
- h. If detached, any wall of the secondary dwelling must be placed no closer than six feet (6') from the primary dwelling and/or any other structure existing or under construction on the same lot.
- i. For properties 2 acres or larger, accessory dwellings shall be exempt from items 'c', 'd', & 'e'.
- j. A Special Exception may be approved by the Board of Adjustment for accessory dwellings larger than permitted by this Land Development Code. As part of the Special Exception, only items 'a', 'c', 'd', & 'e' above may be modified in addition to the size of the accessory dwelling.

TABLE 2-13: MAX SQUARE FOOTAGE FOR ACCESSORY BUILDINGS/DWELLINGS IN RESIDENTIAL DISTRICTS

<i>Zoning District or Lot Size</i>	<i>Maximum Square Footage</i>
Accessory Buildings	
AO	None
RS-6, RS-8, RS-12	Ten percent (10%) of the entire lot area
MF	One-half of the square footage of the principle building(s)
Accessory Dwelling Units	
AO, RR, and RS	<u>800 sq.ft. Lots <2 acres in size: 1,200 sq. ft.</u> <u>Lots >2 acres in size: 50% of the primary structure or 2.5% of the total lot size, whichever is greater</u>