City of Lafayette
486 Third Street, P.O. Box 55
Lafayette, Oregon 97127
Phone: (503) 864-2451 Fax: (503)864-4501

LAFAYETTE PLANNING COMMISSION

THURSDAY, MARCH 17, 2022, 7:00 p.m.
LAFAYETTE CITY HALL, 486 3RD STREET

AGENDA

1. CALL MEETING TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES: February 17, 2022
4. PUBLIC COMMENT ON ITEMS NOT ON THIS AGENDA:
5. WORK SESSION:
    a. Accessory Dwelling Unit Standards
6. NEW BUSINESS:
7. OLD BUSINESS:
8. NEXT MEETING: April 21, 2022
9. ADJOURNMENT

The Council Chambers is accessible. If you need an accommodation to attend or participate in a meeting, please notify the City at (503) 864-2451 at least 24 hours prior to the meeting. Any proposed ordinance is available for public inspection at City Hall

City of Lafayette
Planning Commission Meeting Minutes
February 17, 2022 at 7:00 p.m.

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1. **CALL TO ORDER:** Chair Ron Kerr called the meeting to order at 7:03 pm
2. **ROLL CALL:**
   - **a.** ***Present:*** Michael Karl, Ron Kerr, Jo Johnson, George Larsen, Doreen Vantyne (via Zoom)
   - **b.** ***Absent:*** Michel Shaw
   - **c.** ***City Staff Present:*** City Planner Jim Jacks, Assistant City Administrator Kevin Perkins
   - **d.** ***Others:*** Ian Stone

3. **APPROVAL OF MINUTES:**
   Michael Karl made a motion to approve the January 20, 2022 minutes. George Larsen seconded the motion, which passed unanimously.

4. **COMMENT ON ITEMS NOT ON THIS AGENDA:**
   None

5. **WORK SESSIONS:**
   - **a.** *Fence Standards for a side yard adjacent to a street (continued from January 20, 2022):*

   Ron Kerr gave a brief summary of what was discussed at the January 20, 2022 meeting.

   The Commission discussed different options for establishing clear language in the code for fencing on each the front yard, interior side yard, rear yard and side yard adjacent to the street. Discussion continued.

   Jim Jacks provided a detailed explanation of the fence code and setback requirements as it is currently written. Discussion ensued.

   Michael Karl suggested leaving the fence code as it is currently. Stating if homeowners would like to have a six-foot high fence on their property line adjacent to a street, they can apply for a variance. The commission discussed the difficult criteria a homeowner would have to meet to have a variance approved.

   Ron Kerr made a motion to initiate the legislative process to amend the Lafayette Zoning and Development Ordinance to allow a six (6) foot high fence on any property line except the front yard and clear vision area. Jo Johnson seconded the motion. Motion passed 3 to 2 (Michael Karl and Doreen Vantyne voting no).

   Jim Jacks explained that the hearing for this legislative change will take place during the April 2022 meeting, to allow time for the DLCD 35-day notice and other notices required.

6. **NEW BUSINESS:** None

7. **OLD BUSINESS:** None

8. **NEXT MEETING**: March 17, 2022

9. **ADJOURNMENT:**
   Jo Johnson made a motion to adjourn the meeting. Michael Karl seconded the motion, which passed unanimously. Meeting was adjourned at 9:11 pm.

Minutes approved on _____ day of _____, 2022.

CERTIFIED:

_____
Chairperson, Ron Kerr

ATTESTED:

_____
Community Development Clerk, Danielle Oliveira

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TO: LAFAYETTE PLANNING COMMISSION

FROM: JIM JACKS, CITY PLANNER

SUBJ: WORK SESSION: ACCESSORY DWELLING UNIT STANDARDS

DATE: MARCH 17, 2022

I. BACKGROUND – REVIEW THE ADU AMENDMENTS

On November 18, 2021 the Planning Commission conducted a public hearing to delete the ADU off-street parking and ownership requirements to bring the Lafayette Zoning and Development Ordinance (LZDO) into conformance with State law. The City Council conducted a hearing in December 2021 and passed an ordinance adopting the amendments.

At the Commission's hearing there appeared to be some interest in all the ADU standards and having the opportunity to review and discuss them. On November 18 it was agreed the Commission would discuss the standards at the January meeting which would provide 2 months for the Commissioners to review the standards which were shown in the November 18 staff report regarding the deletion of the parking and ownership standards.

On January 20, 2022, an agenda item was the review of the LZDO ADU standards. A staff report was provided to the Commission which included all the ADU standards, but there was insufficient time to discuss the ADU standards.

The purpose of this staff report is to present to the Planning Commission information regarding the existing accessory dwelling unit (ADU) standards for the Commission to review and discuss. The standards start at the bottom of p. 6.

II. BACKGROUND – OREGON LEGISLATIVE ACTIONS

The 2017 Legislature passed Senate Bill 1051 which, among other things, required cities of 2,500 or greater population (105 cities in Oregon were over 2,500 and Lafayette was 4,095 as of 7/1/17) to allow ADU's in all residential zones (SB 1051, Section 6). Additionally, the Bill clarified that all housing is "needed housing" (SB 1051, Section 4).

"Needed housing" is a term in ORS 197.303 and 197.307(4). Prior to SB 1051 it appeared there may be one or more housing types that were not "needed housing." For example, some cities that had allowed ADU's prior to HB 1051 did not consider them to be "needed housing" and it appeared that ORS 197 did not consider them to be "needed housing." But SB 1051, Section 4, made it clear that all housing is "needed housing," whether it is ADU's or million dollar homes.

The issue with “needed housing” is, local development standards regarding “needed housing” must be clear and objective, therefore, post SB 1051, any regulations applying to ADU’s must be clear and objective.

Prior to SB 1051, ADU’s were not “needed housing” and therefore they were not affected by the requirement in ORS 197.307(4) that “needed housing” be subjected only to clear and objective standards. The cities that allowed ADU’s typically included subjective design standards. They were often worded similar to the following examples:

> *An ADU’s appearance, including siding, roofing, materials, and color shall coincide with that used on the primary dwelling unit, including roof pitch, eaves, window fenestration patterns, etc.*
>
> *OR*
>
> *An ADU’s siding and roofing materials shall be similar to the siding and roofing materials of the primary dwelling or to materials typical of single family construction in the city.*

The terms “coincide” and “similar” are subjective and require the exercise of judgment to determine if the ADU’s appearance, etc., meets the standard, or if an ADU’s siding, etc., meets the standard.

SB 1051, Section 4, prohibits subjective standards for ADU’s such as the above examples.

After SB 1051 was passed, the City’s process to amend the LZDO to allow ADU’s included three Commission work sessions and a public hearing to reach consensus on the ADU standards.

SB 1051 included several other sections that addressed Oregon’s housing shortage and especially the shortage of affordable housing, but they were not required to be addressed by the City of Lafayette.

III. ADU ISSUES

The following lists the type of information that was considered by the Commission in 2018 when the existing ADU standards were amended into the LZDO (LA 2018-01). They are covered below in this memo:

ADU’S – Basic Information.
ADU’S – Historical Setting.
ADU’S -- Issues.

The types of information listed here provide a basic understanding of the complexities presented by allowing ADU’s. The issues are not presented with the expectation that the review of the existing ADU standards will become a marathon exercise.

ADU’S – Basic Information

An ADU is habitable space that includes a kitchen, bathroom and living space. Even though an ADU has some characteristics of an “accessory structure” such as a garage, shop or storage shed, an ADU is its own separate use – it is not an “accessory structure” – it is an ADU.

In some cases an ADU is in a portion of a garage or on the second floor of a garage which can blur the line between ADU’s and accessory structures, but an ADU is an ADU and an accessory structure is an accessory structure. The standards for accessory structures do not apply to ADU’s and the standards for ADU’s do not apply to accessory structures.

The 2019 Legislature passed HB 2001 which slightly amended the State's ADU law adopted in SB 1051. Currently, ORS 197.312(5) and (6) are as follows.

Section 7 of HB 2001 amended ORS 197.312(5) and (6) to read:

> *(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single family dwellings the development of at least one accessory dwelling unit for each detached single family dwelling, subject to reasonable local regulations relating to siting and design.*
>
> *(b) As used in this subsection:*
>
> *(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.*
>
> *(B) "Reasonable local regulations relating to siting and design" does not include owner occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.*
>
> *(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking*.

Although the above appears to be clear, Statutory language can be difficult to sort out due to terminology and run-on sentences. The following is a list of the ORS 197.312(5) and (6) requirements:

1. Cities with a population greater than 2,500 in the city limits must allow ADU's.

2. ADU's can be attached (part of the primary dwelling or an addition to the primary dwelling) or can be in a detached structure from the primary dwelling (or an addition to a detached structure).

3. Where a zoning district allows a detached single-family dwelling, that district must allow at least 1 ADU on a property where a detached single-family dwelling is located on the property.

   Prior to the 2018 ADU amendments, the LZDO allowed ADU's in the Residential – Commercial District (RC). The 2018 ADU amendments allowed ADU's in the Residential Acreage District (RA), Low Density Residential District (R-1) and the Medium Density Residential District (R-2).

4. ADU standards adopted by a city must be "reasonable" and related to "siting and design" (SB 1051, Section 6(5)(a)).

Prior to SB 1051 the Oregon Revised Statutes did not require cities and counties to allow ADU's, but some cities and counties had amended their development codes over the years to allow them. A 2016 list prepared by the Oregon Department of Land Conservation and Development (DLCD) indicated 82 of Oregon's 242 cities responded to a survey stating they allowed ADU's. More cities may have allowed them, but those cities did not respond to the survey.

In 2016, of the 10 cities in Yamhill County, seven responded saying they did not allow ADU's: Amity, Carlton, Dundee, Lafayette (the survey was prior to Lafayette allowing ADU's in the RC District), Sheridan, Willamina, and Yamhill. Three cities responded saying they allowed ADU's: Dayton, McMinnville, Newberg.

ADU'S – Historical Setting

In the past, occasionally, a house would include what came to be called a "mother-in-law apartment" or a "granny flat." Typically, a portion of the house was converted for use by a grandmother or grandfather in their later years. In some cases an addition to the house was constructed or a detached garage or other structure was converted.

Typically, the "granny flat" was a bedroom and if available, additional space was used. In some cases the "granny flat" included a bathroom and/or a small kitchen. In some cases the house was remodeled to create a semi-independent living area to afford privacy and independence for the elderly relative, but at the same time have direct access to the family.

In some cases the occupant was a longtime friend of the family or an aunt or uncle.

In some cases a portion of a basement, or the entire basement, became the "granny flat." Often the basement had a bathroom.

In some cases the "granny flat" was on the first floor of a converted garage, or over the garage in a converted space, or in a separate structure in a side or back yard.

Over the years some "granny flats" were occupied by younger people that were related to the family or were friends of the family. In college towns some portions of residences were occupied by students. In some cities they were occupied by young workers who needed housing.

ADU's have come up through the land use regulatory system where development codes included low density residential zones with firm regulations limiting residential uses to one detached single-family dwelling on a property. Two or more dwelling units on a property were not allowed. The detached single-family zone was where a family's "dream home" existed and where the occupants were ensured "quiet enjoyment" of their home.

As time passed, the detached single-family zone changed and now some cities allow a range of residential uses such as duplexes on corner lots and "Residential Care Homes," and non-residential uses such as Home Occupations and Day Care Facilities, Bed and Breakfast and Vacation Home Rentals.

Prior to SB 1051, most Oregon cities did not allow ADU's, but some allowed them with only a few standards and some allowed them with many standards.

Although not as applicable now due to SB 1051, some reasons ADU's are supported are:

1. Housing is tight throughout Oregon and ADU's provide more housing.

2. The additional income can help the property owner remain the owner and pay off the mortgage, thus maintaining home ownership and neighborhood viability.

3. Adult children have an affordable, or free, place to live.

4. Others have access to affordable housing.

5. The land is used more efficiently with an ADU on the property.

6. The increased density means more neighborly activity in the neighborhood.

Some reasons ADU's are not supported are:

1. A tight housing market is not sufficient reason to increase density in existing single family neighborhoods.

2. The increased density results in additional activity, thus reducing the ability of next door residents to achieve "quiet enjoyment" of their residences.

3. The increased density results in more vehicle trips in the neighborhood making the neighborhood less safe.

4. The increased density results in more vehicles parking on the street thereby congesting neighborhood streets.

5. Where neighborhood streets have narrow travel lanes with no curbs or gutters or sidewalks and the undeveloped portion of the right-of-way is dirt or grass, the increased parking on the dirt or grass creates mud in the winter and dust in the summer.

ADU Issues

The following ADU issues were reviewed and discussed by the Planning Commission. Their discussion and consensus resulted in the existing list of ADU standards shown below on pp. 7 and 8.

1. Type of Structure: ORS 197.312 requires local regulations to allow an ADU as a detached structure and as a space in the primary single-family dwelling (in a basement or a floor of the house). An addition to the primary structure or to a detached accessory structure is allowed.

2. Manufactured Home: A manufactured home can be allowed or prohibited as an ADU.

3. ADU Size: The name "Accessory Dwelling Unit" indicates the dwelling unit is "accessory" and is subordinate, secondary or ancillary to the primary dwelling on the property. Thus, many cities require the ADU to be significantly smaller than the primary dwelling on the property. A maximum size can be required or the size can be a percentage of the area of the primary dwelling.

4. Parking: Per HB 2001, local regulations can no longer require off-street parking for an ADU because the Legislature determined requiring off-street parking is not a "reasonable" standard.

5. Garages: The LZCO requires single family dwellings to have an attached or detached garage. Per HB 2001, local regulations can no longer require off-street parking for an ADU whether it would be in a garage or a carport or uncovered. The Legislature determined requiring off-street parking is not a "reasonable" standard.

6. Garage Conversions: In Lafayette where a parking space(s) in a garage is converted to an ADU, the required garage for the primary dwelling must be replaced with a new garage.

7. Driveway: Off-street parking cannot be required, but where the ADU developer wants to provide off-street parking, the issue is, should the ADU parking area share the driveway with the primary dwelling or should a separate driveway be required or allowed.

8. Entrances: To not deviate too far from the traditional elements of a detached single-family neighborhood, some cities require the ADU entrance to not face the street. The appearance of a single family dwelling is retained, rather than the appearance of a duplex with two doors facing the street.

9. Owner Occupancy: Per HB 2001, local regulations can no longer require the owner to occupy the primary dwelling or the ADU because the Legislature determined such a requirement is not a "reasonable" standard. Where the owner is not required to occupy either, the absentee owner could rent one or both units. Where it is rented on a daily or weekly basis, it would, in effect, be a vacation rental (VR) or short term rentals (STR) which could have its own negative effects on the neighborhood and could constitute an on-going enforcement issue. Where a city allows VR's or STR's, their standards often do not allow an ADU to be a VR or STR.

10. Vacation Rental/Short Term Rental Interface: Either the ADU or the primary dwelling have the potential of becoming a vacation rental. A city may want to consider addressing the issue of vacation rentals outside of this ADU process.

11. Building Coverage: Many cities have a lot coverage standard in their residential zones. For example, no more than 65% of the lot's area can be covered with buildings and paved driveways. ADU regulations should be clear whether an ADU must comply with the lot coverage standard.

12. Location: To maintain the appearance of a detached single-family neighborhood, some ADU regulations do not allow ADU's in the front yard, and instead allow them in a side or rear yard.

13. Setbacks: To maintain the appearance of a detached single-family neighborhood, ADU regulations typically require they comply with the setbacks for the main dwelling. Some cities require they be 1 or more feet back from the front line of the main dwelling to provide architectural relief and reduce their visibility.

14. Building Separation: Where the ADU is detached, an issue is, should there be a minimum distance between the main dwelling and the ADU. It appears most ADU regulations do not require a separation between the primary dwelling and a detached ADU, and instead rely on any separation standard in the Building Code to apply. This writer's understanding is, the Oregon Residential Specialty Code does not require a minimum separation between habitable buildings, but if they are closer than X feet then the wall s must be 2-hour rated fire walls – this writer thinks it is 3 feet.

15. Height: Where the primary dwelling is 1-story, should a detached ADU be limited to 1-story.

16. Lot Size: Because allowing an ADU means there are two dwellings on a property, some cities require a property with an ADU to be larger than the minimum lot size for a single family dwelling. This is consistent with typical development codes where a district that allows a duplex includes a requirement for the property to be larger compared to a property occupied by a single family dwelling. For example, in the R-2 District (minimum lot size 5,000 sq. ft.) the Lafayette Development Code requires a lot with a duplex to be at least 8,000 square feet. The R-1 District does not allow duplexes, thus the R-1 District was not used as the example.

An Oregon Land Use Board of Appeals (LUBA) case (Kamps v. City of Eugene, 2019) that was appealed to the Oregon Court of Appeals (Kamps v. City of Eugene, 2020) determined that requiring a larger lot size for an ADU was not a *"Reasonable local regulations relating to siting and design."* Therefore, a larger minimum lot size cannot be required for a property with an ADU.

17. Second Story Windows: Where a detached ADU is in a rear yard and is 2-stories, some cities require any 2nd story window to be privacy glass to prevent the ADU occupant from observing activities in the rear yard of the abutting property.

18. Nonconforming Structures Becoming ADUs: Some existing dwellings are nonconforming as to height or setbacks or some other requirement. Some detached structures such as a garage or a shop are nonconforming as to height or setbacks or some other requirement. The issue is, should nonconforming structures be allowed to become ADU's? Where the primary dwelling is nonconforming, an option is to allow a portion of it to be converted to an ADU provided the nonconformity is not increased. Similarly, where the primary dwelling is nonconforming, an option is to allow an addition for an ADU provided the addition conforms to the current requirements, e.g., height, setbacks.

IV. EXISTING ADU STANDARDS

The following are the LZCO ADU standards. They reflect the 2021 text amendment that deleted the required off-street parking and the ownership requirement.

2.312 ACCESSORY DWELLING UNITS (ADUs)

2.312.02 ADU Standards

Where allowed, ADUs shall conform to the following standards:

A. An ADU may be detached from the primary dwelling, an addition to the primary dwelling or the conversion of a portion of the primary dwelling, but an attached or detached garage may not be converted to an ADU.

B. Number of Units. A maximum of one (1) ADU is allowed per detached single family dwelling on a legal lot of record.

C. Floor Area. An ADU shall not exceed 800 square feet of gross floor area, or 40 percent of the primary dwelling's gross floor area, whichever is smaller. The floor area of a garage attached to the primary dwelling shall not be included in the calculation of the maximum floor area. An ADU's minimum floor area shall comply with the requirements of the Oregon Building Code Division.

D. Building Construction. An ADU shall comply with applicable Oregon Building Code requirements.

E. Building Height. A detached ADU shall not exceed the height of the primary dwelling.

F. Parking. Off-street parking is not required for an ADU. Where the developer chooses to provide off-street parking for an ADU, the ADU parking space(s) is not required to be in a carport or garage, but the driveway and parking space surface shall be paved or concrete. The ADU parking space shall be accessed via an existing driveway. Where no existing driveway serves the property, a new driveway shall be installed in accordance with the Public Works Design Standards.

G. Any ADU shall comply with the development standards of the underlying zoning district.

H. An ADU shall not be a mobile home, a manufactured home or a storage container. A modular dwelling is permitted.

I. Existing legal non-conforming dwellings may be converted to an ADU. Where the conversion expands the dwelling, the expansion shall comply with the requirements of the residential zoning districts.

J. The ADU front door shall not be on a building elevation facing a public or private street.

K. An ADU shall not be located in a front yard or a side yard adjacent to a street.

L. A detached ADU shall be separated from the primary dwelling at least 6 feet.

M. Architectural Standards. An ADU shall:

1. Provide a pitched roof at least “3 in 12” pitch;

2 Provide eaves extending from the wall at least 6 inches;

3. Be recessed back at least 1 foot behind the building elevation of the primary dwelling facing a public or private street; and

4. Provide at least 3 of the following design elements in the elevation facing a public or private street, except a side yard or a rear yard adjacent to a public or private street:

   a. Dormer window(s) or gable window(s) at least 2 feet by 2 feet;
   b. Cupola(s);
   c. Bay or bow window(s);
   d. Exterior shutters on each window;
   e. Covered or uncovered porch at least 25 square feet in area;
   f. At least 2 pillars or posts associated with a covered porch.

5. Each of 4, a – f, counts as one design element. For example, 2 dormers count as one element and 2 shutters on a window count as one element.

VII. STAFF RECOMMENDATION

Staff recommends the Commission review the staff report and consider whether to initiate an amendment to the LZDO.

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