

Issue Outline No. 3: Business Use of the Home; Accessory Dwelling Units; and “Supplemental Standards”

Purpose of this Outline

Generally

This issue outline is intended to provide background material to organize and stimulate discussion for the Advisory Committee meeting that is scheduled for May 17, 2018. It addresses several key “accessory uses” of residential property that may have material impacts on neighborhoods. It also addresses the “supplemental standards” that apply to both residential and nonresidential property, such as the height, location, and design of fences and walls; the design and location of storage sheds and trash and recycling enclosures; and the location of unattended donation drop-off boxes.

Relationship to the Comprehensive Plan

BUSINESS USE OF THE HOME. The Comprehensive Plan does not address business uses of the home directly, but it suggests that low-impact business uses of the home may be an appropriate part of the economic mix:

City economic development programs, zoning, signage and permitting processes must encourage business development while protecting the integrity of the community.

ACCESSORY DWELLING UNITS. Goal N-1 of the Comprehensive Plan says that the City should “Plan for a range of neighborhoods and accessible housing of different tenure types to accommodate diverse incomes and all ages and abilities.”

Policy N-4.5 of the Comprehensive Plan addresses affordable senior housing. It says:

Affordable senior housing in close proximity to services and transit should be promoted by exploring a variety of programs, including but not limited to: allowing higher densities in appropriate locations, land banking, increased awareness of reverse mortgage programs, changes to zoning regulations to allow accessory dwelling units, infrastructure incentives, and reduced parking requirements.

SUPPLEMENTAL STANDARDS. As to supplemental standards, the Comprehensive Plan generally addresses community character and development quality. For example, Policy CC-1.2 says that the City “will promote integration and a sense of place within districts of the City through the context-sensitive design of new development.” Policy CC-1.3 says the City:

will encourage new infill development to consider and be sensitive to the character of existing neighborhoods. Considerations shall include building scale, placement, size, height transitions, landscape, streetscape, and other design measures.

Policy CC-2.2 says that the “City will promote high quality architecture, site planning, landscaping, signage, and lighting for new residential and commercial developments.”

Business Use of the Home

Generally

Home-based businesses are an important component of economic development. With regard to regulation, the idea is to ensure that one person's business use of the home is not another person's nuisance. As such, regulation of home-based businesses typically focus in on ways to minimize the impact of the business on neighborhood character (physically) and function (operationally).

There are several ways that homes are typically used for business purposes: (1) home offices, studios, or workshops; (2) home day care centers; and (3) short-term rentals. More intensive business uses of the home, such as bed-and-breakfast uses and live-work arrangements, are considered "land uses" in their own right.

Currently, Arvada allows:

1. Home occupations as an accessory to a residential use, provided that:
 - a. The business is conducted entirely within the dwelling and not in any accessory building (or accessory dwelling unit)
 - b. The business is carried on only by residents of the home.
 - c. The entrance to the space devoted to the business is from within the dwelling, unless otherwise required by state law or regulation.
 - d. The business does not require internal or external alteration or involve construction features or use of mechanical equipment not customary in a dwelling.
 - e. No stock in trade is kept or commodities sold except such as are made in the home. This does not include the storage of stock or commodities which are sold off the premises.
 - f. The business is limited to electric motors for power, with a total limitation of three horsepower.
 - g. The business does not create any offensive noise, vibration, smoke, dust, odors, heat, or glare noticeable at or beyond the property line.
 - h. The business does not change the character of the home or create outside the home any external evidence, either on the property or on the street, of the operation of the business, except for one non-illuminated sign, having an area of not more than one square foot, which shall be attached flat against the home.
 - i. Exterior/outside storage of material or equipment used as part of the home occupation is not allowed on the premises.
 - j. The business does not create any significant traffic burden within the immediate area.
 - k. All parking needs created by all home occupations shall be accommodated by off-street parking and shall not exceed the parking capacity of the existing and available parking facilities located on the property. No more than two vehicles that are associated with the home occupations at the dwelling may be parked on-site at any one time.

2. Home day care uses as an accessory to a residential use, provided that the day care is licensed by the state and operated in accordance with the “Minimum Rules and Regulations of Children’s Day Care Homes,” issued by the Colorado Department of Social Services, Division of Public Welfare.

Short-term rentals of residential property are not specifically addressed in the Land Development Code. However, by definition the term “dwelling” in the LDC does not include “structures designed or used primarily for temporary or transient occupancy.” As such, the City does not allow the use of homes for short-term rental if the short-term rental is the primary use of the home.

Accessory Dwelling Units

Generally

Accessory dwelling units (“ADUs”) are self-contained dwelling units (*i.e.*, with living space, bedroom, kitchen, and bathroom) that are subordinate to a “primary dwelling unit” on the same property. They come in different physical forms:

- Free-standing “backyard cottages”;
- Units located above or integrated into free-standing garages or workshops;
- Conversions of attached garages;
- Conversions of basements;
- Conversions of other parts of a home; or
- Additions onto a home that change the exterior of the building.

The key differences between a duplex and a single-family home with an ADU are set out in the matrix below:

Key Differences Between Duplexes and Single-Family Homes with ADU		
	Single-Family Home with ADU	Duplex
Number of Families ¹ Allowed	2 ²	2
Further Limitation on Number of Occupants	Yes, for ADU	No
Limitation on Floor Area	Yes, for ADU	No
Attached or Detached Configurations	Attached or Detached	Attached
¹ In the LDC, the word “Family” means: <ul style="list-style-type: none"> • One or more persons related by blood, marriage, or adoption, living together as a single household unit; or • A group of not more than 5 persons not related by blood, marriage, or adoption, living together as a single household unit. • A family foster home, licensed by the State of Colorado, or certified by the Jefferson County Department of Human Services or Adams County Department of Social Services, or a state-licensed child placement agency, and having no more than 4 foster children, shall also be considered a “family.” • A “family” shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, Colorado Revised Statutes, as amended, unless related by blood, marriage, or adoption. ² In the LDC, accessory dwelling units are defined as “A secondary dwelling unit either within or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the main dwelling, for use as a dwelling unit, as defined by the Land Development Code.” Since a dwelling unit is designed for a family, a lot with a principal dwelling and an accessory dwelling unit would allow for occupancy by two families. Some municipalities define ADU such that only one “family” could occupy the residential lot, split between the principal and accessory dwelling units.		

Current Standards

Currently, ADUs are allowed in all residential zoning districts in Arvada, as an accessory use to a single-family dwelling unit, subject to extensive standards regarding their design and use. The applicable regulations are summarized below:

1. ADUs may have a floor area between 200 sf. and 800 sf., depending upon the size of the principal unit, except that an ADU may occupy up to 50 percent of an existing building (including its basement);
2. One ADU is allowed per property, provided that a principal dwelling unit also exists on the property;
3. One parking space is required for the ADU;
4. A garage for an ADU can't exceed 250 sf.;
5. Not more than two people are allowed to occupy an ADU that is 600 sf. or less, and not more than three people are allowed to occupy an ADU that is more than 600 sf.;
6. The property owner has to live in the principal unit or the ADU;
7. The ADU must be designed to be "compatible" with the design of the principal dwelling unit;
8. The ADU can't be a mobile home, travel trailer, or RV;
9. A home occupation is allowed in the principal dwelling unit, but not in the ADU; and
10. The property owner must record a deed restriction that says, among other things:
 - a. The property owner must live in the principal unit or the ADU;
 - b. The ADU will not be sold separately or subdivided (unless the subdivision is code-compliant);
 - c. The ADU will be restricted to its approved size; and
 - d. The certificate of occupancy for the ADU will be in effect only for so long as the owner of the property lives in the principal dwelling unit or the ADU.

Issues

1. **Categories of ADUs.**
 - a. Currently, the LDC categorizes ADUs into three types:
 - i. Detached (Type A);
 - ii. Integrated into the principal building but separated from the principal dwelling unit, separately accessed, and rented out (Type B); and
 - iii. Integrated into the principal building but not separated from the principal dwelling unit, such that residents of the principal unit and the ADU are a single household unit (Type C).
 - b. It is not clear whether a Type C ADU is actually an ADU at all, but instead, simply a second kitchen in a home that is used by a single-family, unless the City allows two families to live in the building that includes the Type C ADU.
2. **Ownership Requirements.**
 - a. On the one hand, ownership requirements are a popular rule that is intended to leverage "pride of ownership" to ensure that the property does not fall into disrepair, or

to ensure that the property does not become a “party house” that is disruptive to the neighborhood.

b. On the other hand:

- i. Even with the current allowance for “temporary absences” of the owner for periods of less than a year under certain circumstances, the ownership requirements do not take into account that people often move for reasons beyond their control, and they are not always able to sell their homes on acceptable terms within a year;
- ii. If ADUs are a strategy to increase the supply and diversity of housing, then the owner-occupancy requirement is a policy that runs counter to the strategy;
- iii. Poor property maintenance and nuisance activities are not limited to renters, and there are more direct ways to enforce minimum standards (see, e.g., Chapter 38, Arvada Municipal Code), even if the property owners are “absentees”; and
- iv. Ownership requirements are very difficult to enforce.

3. Deed Restrictions.

a. On the one hand, deed restrictions are another relatively popular rule that is intended to put subsequent purchasers on notice that there are special rules that apply to their ADUs.

b. On the other hand:

- i. Alarming few people read their title work when they purchase their homes, so having record notice will not likely have a material effect on the need to enforce the code against a new owner; and
- ii. Deed restrictions are a part of the permanent record of property, and will not (as currently formulated) “keep up” with changes in zoning; that is, if Arvada eliminates some of the restrictions from the LDC, the existing deed restrictions will still be of record.

Supplemental Standards

Supplemental standards are the standards that apply to buildings and structures that are subordinate to the principal building on a lot, for example: accessory buildings (like storage sheds or detached garages), accessory dwelling units, other accessory structures (like noncommercial greenhouses, barns, loafing sheds, or stables), apiaries, fences, garden walls, hedges, retaining walls, “mini structures,” outdoor retail display areas, outdoor storage areas, dumpster enclosures, shopping cart storage, swimming pools, hot tubs, unattended donation drop-off boxes, mechanical equipment, noncommercial renewable energy systems, amateur radio antennae, or vending or reverse-vending machines. Fences, garden walls, hedges, and retaining walls may be addressed in a landscaping section instead of a supplemental standards section.

In Arvada, most of the “supplemental standards” are set out in Section 5.3 (Apiaries are addressed in Chapter 38 of the municipal code, and not in the LDC), which is available online at https://library.municode.com/co/arvada/codes/code_of_ordinances?nodeId=PTIILADECO_ART5USRE_5.3ACUSSTINHOOC. In Section 5.3, accessory structures are mashed up with accessory uses in a way that tends to blur the line between structure and use. Moreover, Section 5.3.3 (which sets out uses and structures that are accessory to principal residential uses) appears to include both on-lot (accessory to a single residential lot) and common area (accessory to a residential subdivision) accessory structures / uses, such as private stables and guard houses, respectively. By definition, structures in common areas are not “accessory buildings or structures,” because such buildings or structures are defined as “clearly incidental and subordinate to the principal building or use, and located on the same lot”

Arvada’s supplemental standards would benefit from reorganization that separates accessory use from accessory structure (and on-lot structures from common area structures) and focuses in on the physical requirements for the different types of structures.

This outline further suggests that some of the supplemental standards are also probably unnecessarily complicated or restrictive. For example, “meeting rooms, banquet halls, and similar group gathering spaces” are allowed as “accessory to a principal visitors accommodations use (not including a bed and breakfast establishment), provided that “such use shall be located inside the same building housing the principal use.” It is not clear what planning policy is advanced by this restriction. There are a number of prominent, high-quality hotel / conference facilities that separate meeting room space from lodging facilities (e.g., Gaylord Rockies Hotel and Conference Center in Aurora, Broadmoor Hotel in Colorado Springs, and Beaver Run Conference Center in Breckenridge).