

(O-14-20)

AMENDING THE ZONING CODE TO ADD A DEFINITION FOR SECONDARY DWELLING UNITS, MAKE SECONDARY DWELLING UNITS A CONDITIONAL USE IN THE R-1 AND RO-1 ZONES, MAKE SECONDARY DWELLING UNITS A PERMISSIVE USE IN THE R-G AND R-2 ZONES, AND ESTABLISH DESIGN, SIZE, PARKING AND OCCUPANCY REGULATIONS. (BENTON) (atw)

(Note: This writeup has been updated for the March 11 LUPZ hearing to include a description of a proposed Committee Substitute)

Summary: This Ordinance proposes text amendments to the Comprehensive Zoning Code to add a definition for “Secondary Dwelling Units” (SDUs) and make them a permissive use in the R-G and R-2 (apartment) zones and a conditional use in the RO-1 and R-1 (single family) zones. It would also add requirements regarding height, size, parking and design to ensure compatibility of new SDUs to the neighborhoods in which they are located. Currently, the Zoning Code allows “Accessory Living Quarters,” in a separate building which is prohibited from containing a kitchen, under similar circumstances (e.g. permissive in apartment zones, conditional in single family zones). These amendments would balance the addition of an entitlement (a kitchen) while providing additional requirements regarding height, size, design and parking. They would allow such units to be used as wholly separate living quarters, for family members or a tenant, but importantly, would require that the owner of the property live either in the primary residence or in the SDU. These amendments would not allow subdivision of an existing lot or duplexing of an existing structure. The SDU must separate from and on the same lot as the primary dwelling unit. These amendments were drafted by Council and Planning Staff at the request of the Sponsor with the following intention:

- They would allow a new housing option in response to shifting demographic patterns, such as retirees’ desire to “age-in-place” near their children and a trend of young adults living at home longer.
- They would offer the ability for homeowners with limited resources the opportunity to remain on their property by managing and renting the SDU or providing it to extended family members or caretakers.
- They would clarify what is currently a regulatory loophole – Code Enforcement has found it challenging to enforce the mandate that Accessory Living Quarters currently allowed do not have kitchens, and making them conditional uses in some zones would provide an opportunity for homeowners who have illegally converted or built Accessory Living Quarters with kitchens to make them legitimate SDUs.
- Some neighborhoods have specifically requested allowances for SDUs, and they have been made permissive in the residential zones of several Sector Development Plans, most recently the Downtown Neighborhood Area. Planning and Council Staff have received many spoken and e-mailed requests for this type of allowance in single-family zones.
- Additional infill housing capacity would be provided in some areas in which they are acceptable and deemed non-harmful within existing neighborhood fabric. This would place more housing

near services, as recommended by the Comprehensive Plan, and thus help revitalize older centers and corridors and support public transit.

Details: *(Note: please see “Proposed Committee Substitute,” below, for description of additional regulations proposed to strengthen the owner-occupancy rule and preserve Accessory Living Quarters as a use in the Zoning Code)* As currently proposed, these amendments would replace existing language regarding Accessory Living Quarters in the R-G, R-2, RO-1 and R-1 zone with regulations for Secondary Dwelling Units. These units would be regulated as follows:

- a. The Secondary Dwelling Unit is clearly secondary and incidental to the primary dwelling unit. In no case can the Secondary Dwelling Unit be larger than the primary dwelling unit.
- b. There shall be no more than either one Secondary Dwelling Unit or one Accessory Living Quarters per premise but not both.
- c. Occupancy: The property owner must occupy either the primary or secondary dwelling unit and shall so certify on an annual basis to the Planning Director
- d. Size:
 - i. Maximum 650 net square feet footprint for lots 5,000 square feet or less.
 - ii. Maximum 800 net square feet footprint for lots greater than 5,000 square feet but not greater than 10,000 square feet.
 - iii. Maximum 1,000 net square feet footprint for lots greater than 10,000 square feet.
 - v. A garage or shed attached to the Secondary Dwelling Unit shall not count towards the square feet limit.
- e. Setbacks: Secondary dwelling units shall be located to the rear of the primary dwelling unit. There shall be a minimum of ten feet separation between the primary dwelling unit and the secondary dwelling unit. In addition to the building separation requirement, the following minimum setbacks from the property line shall apply:
 - i. Side: 3 feet
 - ii. Rear: 5 feet, except at public alleys, where no setback is required.
 - iii. On corner lots, the street side setback shall be a minimum of 10 feet.
- f. Height: Secondary dwelling units shall not exceed 18 feet in height. Height shall be defined as the height measured at the highest point of the coping for a flat roof or from the ridge of a mansard, gambrel, shed, hip or gable roof.
- g. Parking: One off-street space per unit.

h. Design: The design of the secondary dwelling unit shall relate to the design of the primary dwelling unit by use of similar exterior wall materials or finishes, architectural style and elements, including but not limited to roofing materials and roof pitch.

Proposed Committee Substitute: A draft Committee Substitute has been provided for the LUPZ Committee's consideration that seeks to address Code Enforcement Division and neighborhood concerns about the enforceability of the requirement that the owner of the property live in either the primary or secondary dwelling unit. The proposed updated regulations would require that the owner:

- Shall provide proof of occupancy upon request of the City; and
- Shall record the terms of the approved Conditional Use Permit with the County Clerk, prior to occupancy of the SDU, so that it is noted on property records and will be known by a potential purchaser of the property.

The updated regulations would also clarify the definition of occupancy to mean the property owner or beneficiary of an ownership trust, allow for a SDU to be located on top of a garage that is accessed by an alley in some cases, limit garages attached to SDUs to 50% of the size of that SDU, and make other clarifications and cleanups to the language that was originally proposed, including addressing recommendations from Planning staff made during the Environmental Planning Commission process.

Agency and Planning Staff comments: Secondary Dwelling Units are common in the denser core of the City, such as the Huning Highland Addition, Barelans and Wells Park. However, with the exception of a handful of Sector Plan areas near Downtown and on the West Side (Volcano Heights), Secondary Dwelling Units are currently not permitted under any circumstances in most single-family residential zones (e.g. R-1 which comprises most of the City's lowest-density residential areas). This leaves homeowners with only the option to request a zone change to a more intensive zone, such as RT, at the Environmental Planning Commission. The construction or conversion of some units prior to establishment of zoning or without necessary permits, has long been a challenge for Code Enforcement. Neighbors frequently complain to Code Enforcement about the use on adjacent properties, especially as rentals.

The Planning Department's Long-Range Planning Division recommended approval of amendments creating a legitimate process for building an SDU, highlighting the reasons detailed above. Additionally, staff noted, allowing SDUs would expand on zoning options created to comply with multigenerational housing regulations in the New Mexico state zoning statute (3-21-1), which sets forth recommendations and rules for municipalities as they develop land use regulations. That statute states that: "Zoning authorities, including zoning authorities of home rule municipalities, shall accommodate multigenerational housing by creating a mechanism to allow up to two kitchens within a single-family zoning district, such as conditional use permits." Currently, the Zoning Code does allow a conditional use in single-family zones for a second kitchen in an existing home. However, not unlike Accessory Living Quarters, this language sets up an enforcement gray area, especially when an owner who received the conditional use permit sells the home. Staff from the Mid-Region Council of Governments also supported the amendments as a way to encourage infill and density in developed areas of the City,

where necessary infrastructure already exists and where additional residents can help support redevelopment of nearby commercial corridors and increase transit ridership.

EPC process: At its October 9 hearing, the Environmental Planning Commission heard from several representatives of neighborhood associations. Two commenters representing 1950s- and 60s-era residential neighborhoods in the Near Northeast Heights (La Mesa) and Uptown (Inez) strongly opposed the amendments because of concerns over increased density and, in the case of the commenter from Inez, an influx of renters to a neighborhood comprised mostly of homeowners. A representative for the Near North Valley Neighborhood spoke in support of the amendments. The EPC generally agreed with the concerns about enforcement and unintended consequences raised by staff, and with the neighborhood representatives who opposed increases in the density of predominately single-family neighborhoods. The Commission voted to recommend denial of the proposed amendments, finding, among other things, that a one-size-fits-all approach to allowing SDUs citywide would not account for the wide variations in neighborhood design and function.

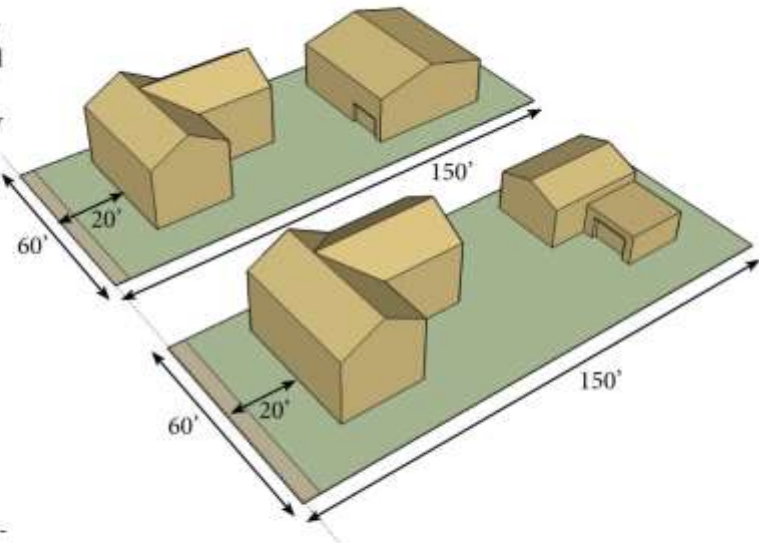
Comments: It should be noted that the issue of variation in neighborhood types is accounted for to some degree by the size and design regulations, especially as they relate to lot size. Moreover, the EPC gave consideration to neighborhood commenters, but did not discuss at length any of the amendments proposed by Planning Staff, which directly address many of the issue raised (enforcement, unintended consequences, etc.).

In addition to the above caveats regarding the EPC process, Planning and Council staff also notes that SDUs that would be allowed under these proposed amendments, especially with the garage size amendment proposed in the Committee Substitute, would actually be smaller than accessory structures (garages, sheds, accessory living quarters, etc.) currently allowed, and thus would have less impact on surrounding properties. The following illustration shows a comparison between what could currently be built on an average-sized lot in R-1 (based on area and height requirements for Accessory Structures established by Section 14-16-3-3 of the Zoning Code) vs. what could be constructed by a property owner that received Zoning Hearing Examiner approval for an SDU. The only use difference between these two accessory structures is that the SDU built under a conditional use permit would be permitted to have a kitchen, while any structure built under current R-1 permissive uses would not be permitted to have a kitchen.

Current Regulation: Provides for an Accessory Building or Accessory Living Quarters (with a Conditional Use Permit), footprint up to 25% of rear and side yard, or approximately 1,500 square feet in this case. Maximum height is 18', minimum side setbacks are 5' and minimum rear setback is 15'. Minimum building separation of 10'

Proposed Regulation: Would provide for a Secondary Dwelling Unit (with a Conditional Use Permit) of up to 800 square feet on a lot this size. Maximum height for the SDU would be 18', minimum side and rear setbacks: 5'. Shown with optional garage, permitted to up to 50% of SDU size.

Assumptions: Lots and primary dwelling units are identical. Example is a 9,000-square-foot medium sized residential lot (60' by 150') with a 2,000-square-foot primary dwelling unit. Drawings are to scale.



Finally, staff and observers have noted that not having a process to allow SDUs may only increase the enforcement problem, as homeowners will continue to illegally build SDUs with kitchens to meet family, rental or other demands. Having this process for legitimately constructing or converting an SDU, and a path to legitimacy for existing units, would go some distance toward solving the enforcement issues the City currently faces.