

NEVADA COUNTY PLANNING COMMISSION
STAFF REPORT

APPLICANT: Nevada County Planning Department

HEARING DATE: July 13, 2017

OWNER: N/A

FILE NO: PLN17-0026; ORD17-1

PROJECT: Recommendation to the Board of Supervisors regarding proposed text amendments to the Nevada County Zoning Ordinance to bring the Code into compliance with State housing laws for accessory dwelling units (ADUs), and transitional and supportive housing.

LOCATION: Unincorporated area of Nevada County

PROJECT PLANNER: Patrick Dobbs, Senior Planner

ATTACHMENT:

1. ~~Draft Ordinance amendments shown in track changes (ORD17-1)~~ Removed and reattached as a part of the Board Memo

RECOMMENDATION:

- I. Environmental Action: Recommend the Board of Supervisors find the project is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code 21080.17 and Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental Quality Act (CEQA) Guidelines.
 - II. Project Action: Recommend the Board of Supervisors adopt the attached Ordinance (ORD17-1) amending Chapter II of the Nevada Land Use and Development Code Allowable Land Uses Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F; and Sections L-II 3.19, 3.19.1, 3.19.2, 4.2.5, 4.2.9 and 6.1 (*Attachment I*).
-

PROJECT DESCRIPTION:

Recommendation to the Board of Supervisors regarding proposed text amendments to the Nevada County Zoning Ordinance (Land Use and Development Code Chapter II) to bring the Code into compliance with State housing laws for accessory dwelling units (ADUs), and transitional and supportive housing, including: 1) proposed amendments to Land Use and Development Code (LUDC) Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F of Article 2 related to consistent terminology for accessory dwelling units (ADUs) and transitional and supportive housing allowable land uses; 2) amend Section L-II 3.19 (Second Dwelling Units) of Article 3 by replacing the phrase “Second Dwelling Units” with “Accessory Dwelling Units” (ADUs) for consistency with State law; 3) amend Section 3.19.1 (Accessory-Second Dwelling Units) of Article 3 related to consistent ADU administration, terminology and development standards; 4) amend Section L-II 3.19.2 (Second Dwelling Units-Consistent with Allowed Density) of Article 3 related to development of second dwelling units within the medium density

multi-family residential (R2) zone district; 5) amend Section L-II 4.2.5 (Building Setbacks) of Article 4 related to ADU building setback exceptions; 6) amend Section L-II 4.2.9 (Parking) of Article 4 to clarify ADU parking requirements; and 7) amend Section L-II 6.1 (Definitions) of Article 6 related to revised definitions for transitional and supportive housing (ORD17-1).

BACKGROUND:

California's second-unit law (Gov. Code Section 65858.2) was first enacted in 1982 to encourage the creation of second dwelling units on parcels developed with an existing primary residence, while allowing local jurisdiction control and flexibility. Since that time the State has passed several laws to streamline and simplify issuance of building permits for second units that comply with established standards by limiting local government permitting discretion to allow most second units through a "by-right" process, and further removing physical and financial barriers to incentivize their construction. A local jurisdiction may still govern the placement, size, and setbacks applicable to most secondary units, but if the proposed second dwelling unit complies with all underlying zoning and land use regulations, a building permit must be issued. Unreasonably restricting the ability of homeowners to create a second dwelling unit on their parcel is contrary to the intent of State law.

California now refers to second units as accessory dwelling units (ADUs). Generally speaking, ADUs can take one of three forms:

- Detached: Unit is separated from the primary structure
- Attached: Unit is attached to the primary structure
- Re-purposed Existing: Space within an existing primary residence or accessory structure that is converted into an independent living unit

California has a well-documented undersupply and shortage of affordable and workforce housing and ADUs have been identified as providing an important housing option to both potential renters and homeowners. As a form of infill-development ADUs typically cost less than other types of housing, largely because they do not necessitate paying for land, or purchasing and installing major new infrastructure, and can provide homes at below market prices within existing neighborhoods. ADUs provide convenient housing for family members, students, elderly, in-home health care providers and the disabled, help to ease a severe rental housing deficit, maximize limited land resources and existing infrastructure, and assist homeowners with supplemental income. Pursuant to State law, ADUs cannot be intended for sale separate from the primary residence.

On September 27, 2016, California's Governor signed two new ADU bills into State law, Senate Bill (SB) 1069 and Assembly Bill (AB) 2299. The intention of the legislation is to streamline and simplify issuance of building permits for ADUs that comply with the standards established by the local jurisdiction. These laws make clear that local government ordinances which do not align with the new State laws shall be "null and void" beginning January 1, 2017, and that until which time a jurisdiction adopts its own ordinance in accordance with State law, the State standards specified in section 65852.2 shall be enforced.

SB 1069 made five (5) primary changes to address barriers to the development of ADUs and expanded capacity and potential for their development. The mandatory changes of the bill include: 1) reduced parking requirements for ADUs and prohibiting additional parking for ADUs when certain criteria is met (e.g., located within a half mile of public transportation); 2)

prohibition of local governments from requiring an ADU applicant to install a new or separate utility connection, or impose a related capacity charge for ADUs contained within an existing residence or accessory structure, and proportionate water and sewer fees for attached and detached ADUs; 3) clarification that fire sprinklers shall not be required in an ADU if they are not required in the primary residence; 4) a requirement that local governments approve an ADU within a single-family residential zone district “by right” if the unit is contained within an existing residence or accessory structure with independent exterior access, and existing rear and side setbacks that are sufficient for fire safety; and 5) a prohibition for local governments to adopt an ordinance that precludes development of ADUs.

AB 2299 modified ADU parking requirements, expanded the relative percentage for attached ADU floor area compared to the size of the primary residence, and provides additional flexibility related to the conversion of existing living area or accessory structures into an ADU. AB 2299 requires local governments to administratively (i.e., without discretion) approve ADUs if the following site development and building design standards are met:

- The lot is zoned for single-family or multifamily use and contains an existing single-family dwelling;
- The unit is either attached to an existing dwelling or located within the living area or the existing dwelling or detached structure and on the same lot;
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet;
- The total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet;
- No setback can be required from an existing garage that is converted to an ADU;
- Accessory structures with setbacks sufficient for fire safety may convert to an ADU provided they have their own exterior entrance;
- Compliance with local building code requirements; and
- Requires approval by the local health officer where private sewage disposal system is being used.

Based on the changes to ADU regulations resulting from SB1069 and AB 2299, staff is proposing the following Zoning Ordinance amendments to ensure the County’s ADU administration, terminology and development standards are consistent with current State laws.

Overview of Proposed ADU Ordinance Amendments:

1. Tables L-II 2.2.1.B, 2.2.2.B and 2.3.D:

- “Second Dwelling Units” are now called “Accessory Dwelling Units” by State law. Strike reference to “second” for consistent ADU terminology.

2. Section L-II 3.19 Second Dwelling Units:

- Replace the phrase “Second Dwelling Units” with “Accessory Dwelling Units” (ADUs) for consistency with State law and clarify that ADUs are most likely to provide an important source of affordable housing, and distinguish ADUs from “Second Dwelling Units-Consistent with Allowed Density” which generally do not provide affordable housing.

3. Section L-II 3.19.1 Accessory-Second Dwelling Units:

- Remove reference to “Second” dwelling unit for consistent terminology with State law.
- Update floor area limits of attached ADUs to 50% (currently 30% is allowed) of the existing residence floor area (up to 1,200 sq. ft. maximum size).
- Add language to clarify that ADUs cannot be sold separately from the primary dwelling unit.

4. Section L-II 4.2.5 Building Setbacks:

- No building setbacks are required for the conversion of a legally permitted, or legal non-conforming, garage or other accessory structure, to an accessory dwelling unit (ADU), provided they have their own exterior entrance and the existing setbacks are sufficient for fire safety.
- A minimum setback of five feet (5’) from the side and rear property lines is required for any new additions when an ADU is constructed above a legally existing garage or accessory structure.

5. Section L-II 4.2.9 Parking Requirements:

- Clarify ADU parking requirements are based on the number of bedrooms, with a maximum number of two (2) parking spaces required per ADU, except in the following circumstances where additional parking for ADUs shall not be required:
 - Located within ½ mile of public transportation;
 - Within an historic district;
 - ADUs located within a primary residence, except when an existing garage, carport or covered parking structure is converted or demolished in conjunction with the construction of an ADU, the replacement spaces may be located in any configuration on the same lot (e.g., covered, uncovered, tandem, mechanical vehicle parking lifts);
or
 - A car-share vehicle is located within ¼ mile.

Proposed Transitional Housing and Supportive Housing Amendments:

In addition to the proposed amendments related to ADUs, staff is proposing two housing related amendments for transitional and supportive housing to be consistent with the State Housing Accountability Act and internally consistent with County adopted housing plans and programs. Senate Bill (SB) 2, Chapter 633, Statutes of 2007 clarified and strengthened housing element law to ensure local zoning ordinances encourage and facilitate the development of emergency shelters, and transitional and supportive housing for homeless individuals and families.

SB 2 recognizes transitional and supportive housing as a type of residential occupancy that may only be subject to those restrictions that apply to other residential uses of the same type in the same zone. For example, if the transitional housing is a multi-family apartment building proposed in a multifamily zone, then zoning should treat the transitional unit the same as other multifamily uses proposed in the zone. The County’s current adopted Housing Element (2014-2019) includes a number of Goals, Policies and Programs that address the County’s strategy for meeting the housing development needs of its existing and future residents including providing a variety of affordable housing types and equal opportunities in all residential areas to facilitate the establishment of transitional housing for the homeless. The scope for the proposed Transitional and Supportive Housing Amendment is driven by the following program in the 2014-2019 Housing Element:

Program EO-8.5.4: To encourage transitional and supportive housing, the County will amend its zoning ordinance in accordance with Government Code Section 65583(a)(5) to permit transitional housing and supportive housing as a residential use, subject only to those regulations that apply to other residential dwellings (e.g., single family, duplex, condominiums, apartments) of the same type in the same zone.

In addition, the County shall review and if necessary amend the zoning ordinance definitions of “transitional housing” and “supportive housing” to be consistent with Government Code Section 65582.

The proposal responds to the Housing Element programs in accordance with California Senate Bill (SB) 2, to allow transitional and supportive housing as a residential use of property subject to the same restrictions and permitting requirements that apply to other residential dwellings of the same type in the same zoning district, and amend the current definitions for transitional housing and supportive housing.

Currently, the County’s Community Commercial (C2) Zoning District requires a Use Permit approval for construction of residential dwelling units that are part of a mixed-use development, however, the Zoning Ordinance permits transitional and supportive housing as an allowed “by-right” in the C2 zone. A strict interpretation of SB 2 would therefore suggest that the permitting requirements for transitional and supportive housing in the C2 Zoning District be changed from an allowed use to instead require approval of a Use Permit, as is the case for other residential units in the C2 zone. However, because the intent of SB 2 is to remove constraints for transitional and supportive housing and not allow local governments to hold those housing types to a higher standard than other residential uses, staff is proposing to leave transitional and supportive housing in the C2 zone permissible as a “by-right” use in an effort to continue to make those housing types more feasible to construct, above and beyond what SB2 requires.

Overview of Proposed Transitional and Supportive Housing Amendments:

6. Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, 2.5.D, 2.6.F:

- Amend Allowable Land Use Tables for all base zoning districts to allow transitional and supportive housing as a residential use of property subject to the same regulations and permitting requirements that apply to other residential dwellings of the same type in the same zoning district to facilitate the establishment of transitional and supportive housing for the homeless.

7. Section L-II 6.1. Definitions:

- Amend the definitions for Transitional Housing and Supportive Housing, to be consistent with Government Code Section 65582 and the California Health and Safety Code (Sections 50675.2 and 50675.14, respectively), as defined below:
 - ~~TRANSITIONAL HOUSING - Shelter provided to the homeless for an extended period, often as long as 18 months, and generally integrated with other social services and counseling programs to assist in the transition to self-sufficiency through acquisition of stable income and permanent housing. Transitional housing facilities must be operated by, or under contract with, a governmental entity, non-profit organization, or church. Buildings configured as rental housing developments, but~~

operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance. Transitional Housing can take the form of a single-family or multi-family residential unit(s) and shall be permitted in the same manner applied to the same single or multi-family residential use type in the same zone.

- **SUPPORTIVE HOUSING** - Housing with no limit on the length of stay, that is occupied by the target population (persons with disabilities or families who are homeless), and that is linked to onsite and offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible work in the community. Supportive Housing can take the form of a single family or multi-family residential unit(s) and shall be permitted in the same manner applied to the same single or multi-family residential use type in the same zone.

Other Housing-Related “Clean-up” Amendment:

During analysis and review of the proposed amendments a housing-related inconsistency in the Zoning Ordinance was discovered related to whether “Second Dwelling Units-Consistent with Allowed Density” was permissible within the multi-family Medium Density residential zone district (R2). Second Dwelling Units-Consistent with Allowed Density are different than ADUs in that they must be located on properties that are at least twice their Zoning District’s minimum parcel size (i.e., have acreage to be subdivided), and because of their potential to be located on a stand-alone parcel Second Dwelling Units do not have the same size restrictions as ADUs (i.e., may exceed 1,200 square feet). Table L-II 2.2.2.B of the Zoning Ordinance lists Second Dwelling Units-Consistent with Allowed Density as an allowed “by-right” use within the R2 Zone District, however, under the associated specific land uses Code Section L-II 3.19.2 (Second Dwelling Units-Consistent with Allowed Density) the R2 Zone is not listed as one of the Districts allowing for second dwelling units. For efficiency and consistency staff is proposing to bundle this correction with the other proposed housing-related amendments as summarized below:

8. Section L-II 3.19.2 Second Dwelling Units-Consistent with Allowed Density:

- Include the multi-family Medium Density (R2) residential zoning district as a permissible zone for Second Dwelling Units-Consistent with Allowed Density, to be consistent with the R2 Allowable Land Use Table 2.2.2.B.

STAFF COMMENT:

Accessory Dwelling Units (ADUs) are a source of affordable housing that may count towards the County’s Regional Housing Needs Allocation (RHNA), as well as generate additional income for homeowners. ADUs provide a diversified form of affordable housing to many groups, including the local workforce, seniors, caregivers, college students and multi-generational households (e.g., parents, adult children, grandchildren). Second units are a valuable component of the County’s housing stock and are generally well-integrated into existing neighborhoods. They may be considered as an ideal form of sustainable affordable housing because they are compact in size and situated on existing developed lots. Accessory units require no additional land or government funding as a source of affordable housing because they use existing

structures or new small structures and most components and infrastructure (e.g., water, sewer, roads) are in place. Second units add flexibility, affordability, and diversity.

SB2 clarified and strengthened housing element law to ensure local zoning ordinances encourage and facilitate the development of transitional and supportive housing. The law limits the ability of local jurisdictions to deny these types of facilities under the Housing Accountability Act and requires transitional and supportive housing be subject to the same restrictions that apply to the same housing types in the same zone.

Public Responses to the Project's Initial Distribution:

On March 23, 2017, a project description and initial distribution request for the proposed zoning text amendments was solicited to applicable County Departments, other agencies and stakeholders. Comments were received from the Tahoe-Sierra Meadows Community Association (TSMCA) regarding their governing documents (CC&Rs) prohibit second dwelling units within the TSMCA community, however, the County's Community Development Agency is not responsible to enforce neighborhood-level CC&Rs.

Comments were also received from local affordable housing advocate, Mr. Greg Zaller. Mr. Zaller's comments focused on three suggested changes to the current regulations. The first suggestion was to change the regulations to allow non-owner-occupied property owners to build ADUs by recording a deed restriction that the unit is to be managed by a professional property management company. The second change Mr. Zaller requested was that the current requirement for detached ADUs have their own septic tank, be replaced with more cost-effective and innovative methods such as grey water recycling, low-flow appliances, and increased frequency of pumping the existing septic tank. Mr. Zaller's third suggested change is to reduce or eliminate mitigation fees.

Staff has since spoken with Mr. Zaller and explained the focus of the Planning Department's proposal is to comply with mandates required by state law. Some other jurisdictions have updated their ADU ordinances to be more flexible when the units are deed restricted for affordable housing (less than 80% median County income). The practice of requiring a separate septic tank for new detached ADUs is most appropriate in the majority of situations and reduces the likelihood of over-stressing an existing tank. Finally, a typical residential building permit costs approximately \$20,000 in user fees (i.e., plan review time and building inspections) and impact fees (e.g., County road fee, School Dist., Park Dist., and Fire Dist.). Fees are charged for both service and mitigation and a number of mitigation fees the county has no control over. Fee exemptions could create a shortfall in the respective budgets of the Planning and Building Departments and Department of Public Works, and may require General Fund money to offset the program costs.

ENVIRONMENTAL REVIEW:

The proposed Zoning Ordinance amendments are statutorily exempt pursuant to Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental Quality Act (CEQA) Guidelines. The text changes are covered by the general rule (15061(b)(3)) that CEQA applies only to projects, and exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. The proposed ADU, and Transitional and Supportive housing amendments, would not allow any new uses and would not change the amount of potential development that is currently allowed.

Additionally, CEQA Guidelines Section 15268 exempts ministerial projects, which is appropriate because most ADUs, and Transitional and Supportive housing in residentially zoned districts are non-discretionary and allowed “by right”, subject to zoning compliance. Also, Section 15282(h) is an appropriate exemption from CEQA review for the adoption of an ordinance regarding accessory dwelling units to implement the provisions of Section 65852.2, which is the primary purpose of this project.

In summary, the proposed amendments are a result of State housing law mandates and would not create any public health or safety hazards and would not have a significant impact on the resources or services within this area, such as water, sanitary services, surrounding roadways and intersections, schools, and existing agricultural uses, therefore there is no possibility the project may have a significant effect on the environment.

SUMMARY:

Based on AB 2299 and SB 1069, as well as SB 2 and Housing Element Program EO-8.5.4, staff is proposing zoning text amendments to implement changes to be consistent state laws that support efforts to establish a greater amount of affordable housing and residential care facilities, and bring the County’s Zoning Ordinance into compliance with current legislation for ADUs, and transitional and supportive housing.

RECOMMENDATION:

- I. Environmental Action: Recommend the Board of Supervisors find the project is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code 21080.17 and Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental Quality Act (CEQA) Guidelines.

- II. Project Action: Recommend the Board of Supervisors adopt the attached Ordinance (ORD17-1) amending Chapter II of the Nevada Land Use and Development Code Allowable Land Uses Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F; and Sections L-II 3.19, 3.19.1, 3.19.2, 4.2.5, 4.2.9 and 6.1 (*Attachment 1*).

Respectfully submitted,

Brian Foss
Director of Planning