

# Too Restrictive?

## Scaling Back Zoning Regulations on Accessory Dwelling Units in Durango, Colorado

**Dan Armentano**

Master's of Applied Geospatial Sciences

Northern Arizona University

Applied Research Practicum

Advisor: R.D. Hawley, Professor

Mark Manone, Professor of Practice

Daniel Murray, AICP, Supervisor

## **Table of Contents**

<b>1. Introduction</b>	<b>Page 5</b>
1. Problem Statement	
2. Study Site	
3. Project Scope	
4. Justification	
5. History of ADUs in Durango	
<b>2. Literature Review</b>	<b>Page 16</b>
1. Overview	
2. Peer Reviewed Studies	
3. Case Studies	
1. Portland, Oregon	
2. Washington, DC	
3. Other Examples	
<b>3. Methodology</b>	<b>Page 22</b>
1. Overview	
2. Problem Identification	
3. Code Alignment Working Group	
4. Surveys	
5. Data & Spatial Analysis	
6. Legal Process	
<b>4. Results and Discussion</b>	<b>Page 32</b>
1. Data Analysis	
2. Survey Results	
1. ADU Owner Survey	
2. Community Survey	
3. Code Revisions	
4. Public Hearings and Adoption	
1. Public comments	
2. Planning Commission	
3. City Council	
<b>5. Findings and Lessons Learned</b>	<b>Page 56</b>
1. Overview	
2. Incentivizing ADUs	
3. Enforcement	
4. Program Monitoring and Future Amendments	

## **6. Appendices**

1. ADU Surveys
  1. Press Release
  2. ADU Owner Survey with Results
  3. Community Survey with Results
2. Code Amendment Iterations
3. Written public comment
4. Planning Commission Minutes
5. City Council Agenda Documentation

## **7. References**

## **List of Figures**

Figure 1: City of Durango Housing Plan Policy Goals.	Page 6
Figure 2: Context Map of Study Site.	Page 7
Figure 3: Residential Zones in Durango, CO.	Page 8
Figure 4: Established Neighborhood Zones in Durango, CO.	Page 10
Figure 5: ADU Protesters in 2013.	Page 12
Figure 6: Project Chronology.	Page 22
Figure 7: ArcMap Query for Minimum Lot Size.	Page 29
Figure 8: Map of All Legal ADUs by Zone.	Page 32
Figure 9: Distribution of ADUs by Zone.	Page 33
Figure 10: Map of Ineligible Parcels due to Lot Size.	Page 34
Figure 11: ADU Usage.	Page 35
Figure 12: ADU Rents Charged.	Page 36
Figure 13: Number of Vehicles per ADU.	Page 36
Figure 14: Community Perception- Are ADUs Legal in my Neighborhood.	Page 37
Figure 15: EN-4 & EN-5 Perception of ADU Types.	Page 38
Figure 16: Community Interest in Building an ADU.	Page 39
Figure 17: Community Concern about ADU Impacts.	Page 39
Figure 18: Community Support for Text Amendments.	Page 40
Figure 19: Community Identified Barriers to ADU Construction.	Page 41
Figure 20: Detached ADU versus Detached Duplex.	Page 51

## **List of Tables**

Table 1: Parcels Ineligible for ADUs Due to Lot Size.	Page 34
---	---------

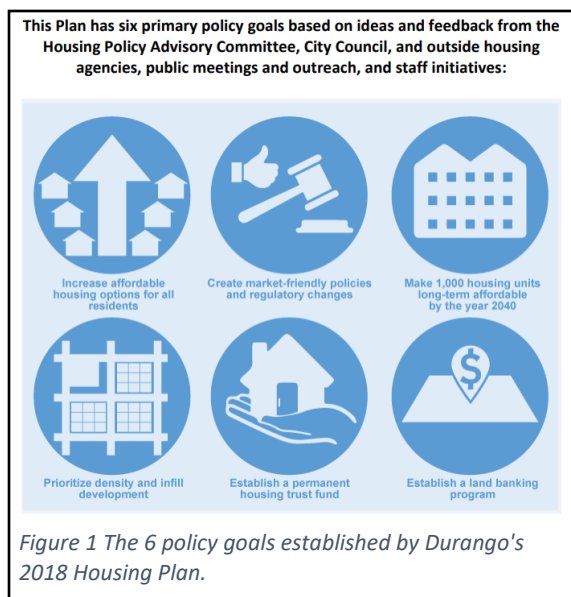
## **1. INTRODUCTION**

### **1.1 Problem Statement**

The City of Durango, Colorado is facing a shortage in available housing units, similar to many mountain communities across the state. Rising costs of home ownership and ever-increasing rental rates for residential units have led to financial struggles for many in Durango's workforce. While this issue has been prevalent in the community for decades, recent market changes since the onset of the pandemic have escalated the housing crunch to a near crisis level. Durango's housing market data for home sales through May of 2022 indicates the median sales price for a single-family home is \$697,500, and \$462,500 for a townhome or condominium. This represents a 12.5% increase and a 25.9 % increase for each housing type from 2021 data, respectively. (Durango Area Association of Realtors, 2022) These numbers are even more stark when compared to pre-pandemic levels, where the increases are 37.7% for single-family homes and 44.6% for townhomes and condominiums. Comparatively, median single-family home prices rose by 12.1% and townhome and condominium prices rose by 1.5% over the two-year period from 2017 to 2019 (Durango Area Association of Realtors, 2019). In response to such drastic market changes and the resulting impact on the local workforce, Durango's City Council has directed staff to elevate the focus on realigning the Land Use and Development Code to encourage the creation of additional housing units.

Many municipalities across the country (including Durango) have looked to ADUs as a reasonable option to create new housing units in areas that are already serviced by existing infrastructure. They are therefore a cost-effective means for homeowners to add new dwellings to the City's housing stock without the comparably high development costs incurred by large scale multifamily construction projects. In areas struggling with housing availability for residents, creating opportunities for homeowners to add ADUs may be a part of the solution. Rental income from ADUs helps to offset the rising costs of home ownership, and in some cases may be the only way that prospective buyers could afford a home. Based on their relatively small size, ADUs are typically offered at a more reasonable rental rate and may already be a source of affordable housing stock for Durango's workforce.

The City's 2018 Housing Plan outlines specific priorities and strategies for addressing Durango's housing needs. Since Durango's mountainous geography somewhat limits the



available lands for new residential development, one of the six primary goals of the Housing Plan is to “prioritize density and infill development.” This is an action that must be principally driven by reassessing existing Land Use and Development Code (LUDC) standards, identifying code language that may be unnecessarily restrictive or limiting of infill and density, and drafting amendments that correct the issue. Proposed amendments, if adopted, should permit property owners the opportunity to expand the number of residential

units that can be built on eligible lots as compared to current code standards.

Based on initial analysis of the code as well as conversations with members of the public, Durango's standards for Accessory Dwelling Units may be an area where code requirements discourage the construction of new units. Durango's ADU program has existed since 2014 and has since been expanded to nearly all residential zones. However, due to substantial public opposition to the initial proposal, the original code language includes significant restrictions and limitations on this use. The resulting numbers of new ADUs built since 2014 has therefore been very low- only 45 total units. The purpose of this practicum is to determine if reducing code restrictions on ADUs may be appropriate to encourage additional housing options in Durango. This practicum will explore how Durango's standards for ADUs should be amended, assess the feasibility of the changes based on public input, and propose any updates for City Council review and adoption.

## 1.2 Study Site

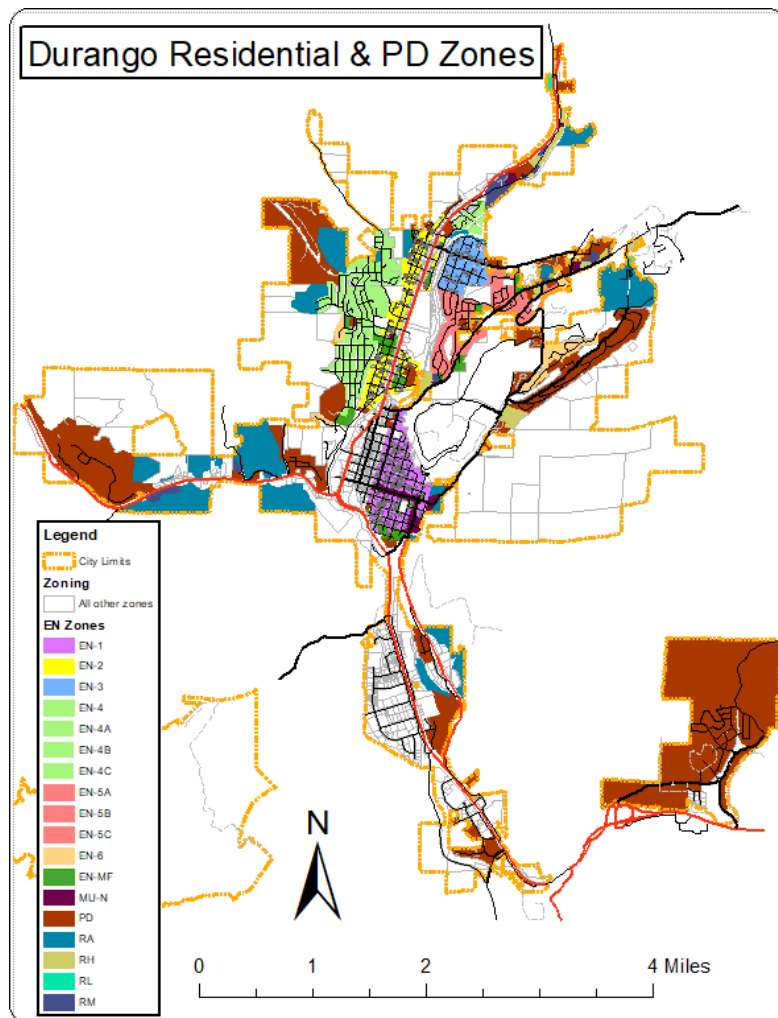
The study's site, broadly, is the City of Durango. Durango is a small city of just under 20,000 residents in the Four Corners region of southwest Colorado. The city is a regional hub for the

area and represents the largest community within La Plata County. Many of La Plata County's roughly 56,000 residents commute to Durango for work, school, or for commercial services.



Figure 2: The study site is Durango, Colorado, a City of just under 20,000 in the Four Corners region of the Southwest.

Durango has 10 different residential zoning designations, of which 9 currently allow for ADUs through a land use permitting process. There are three other zones where ADUs also may be permitted, which are the Mixed Use Neighborhood (MU-N) zone, the Rural/Agricultural (RA) zone, and select Planned Development (PD) zones. This practicum will focus on whether code changes could encourage more ADUs within these 9 residential zones, and also whether other areas should be opened up to this use. Based on anecdotal evidence for the location of existing ADUs, older established neighborhoods in Durango appear to be most readily poised for the construction of new units. These areas contain the majority of Durango's single-family housing, and zoning ordinances label these areas as Established Neighborhood (EN) residential zones.



These zones are more appropriate for increased housing density due to their proximity to urban areas and availability of existing utility connections. They are also, however, the most stable residential neighborhoods in Durango. Code changes that encourage the construction of new ADUs can therefore be seen as a threat to the existing character of these neighborhoods. Public input throughout this process is therefore crucial to determine if such code amendments are indeed supported by residents.

Figure 3 Residential and Planned Development Zones in Durango.

## Project Scope

The scope of this project is to identify, assess, and amend or remove language regulating new Accessory Dwelling Units that is believed to limit the ability of residents to pursue constructing these units. While the Land Use and Development Code only contains one section on ADUs, the existing language in this section is quite robust. The regulations list the zones in which ADUs may be permitted, outline specific restrictions on the use, provide qualifiers for parcel size, state the minimum parking requirements, and list very detailed design standards. Some of these standards, including lot sizes and parking requirements, vary based on zoning designations. This practicum will evaluate all of the standards for ADUs and identify the code requirements that may be the most restrictive. Specifically, the scope of this project will assess:



- Whether requirements that vary across zoning districts can be loosened and standardized to promote consistency;
- Whether the most restrictive requirements can be removed entirely; and
- Whether there is public support for code changes that may encourage the construction of more Accessory Dwelling Units, especially in Established Neighborhood zones.

### **Justification**

The City of Durango adopted a new Land Use and Development Code in 2014. Since this time, Community Development staff have consistently presented revisions of the code to City Council for their review and adoption as policies have shifted or as inconsistencies within the code have been discovered. To some degree, there are likely to be examples of overly restrictive land use regulations in nearly every municipality in the country. The process of reviewing a land use code for inconsistencies with the established policies and goals of a municipality is therefore broadly applicable to many communities, regardless of the types of land use issues these communities may face.

In this case, Durango's City Council has directed staff to pursue initiatives that encourage the creation of additional housing units to address a housing affordability and availability issue that has escalated substantially in recent years. By identifying overly restrictive standards for ADUs within the LUDC, the City may assess whether removing these barriers may lead to the creation of more of these housing units. This practicum does not seek to prove that removing code restrictions would indeed translate to more units on the ground. If proposed amendments are adopted, future monitoring and data analysis would be necessary to demonstrate whether the changes were successful in encouraging the construction of this type of housing.

### **History of ADUs in Durango**

In 2013, the City of Durango's Community Development staff began work on a new Land Use and Development Code. The existing code at the time was adopted in 1989 and needed a substantial overhaul to address newer issues and growth trends facing the City. As it is today,

housing availability was an issue at the time and inclusions for legal Accessory Dwelling Units were discussed as a possible option to help tackle the shortage. Planning staff were aware that a substantial number of ADUs or similar unpermitted residential apartment units existed in single family zones. These units existed in several configurations, both as detached ADUs located within converted garages and accessory structures and as integrated ADUs, which are those contained within or attached to the principal residence. Legalizing these units and creating a pathway to permit new ADUs was deemed to be a reasonable option to pursue, and a public process was initiated.

Permitting ADUs in zones primed for future redevelopment, including the RA, RL, RM and MU-N zones, was an easy initial decision. Applying these regulations to the more stable Established Neighborhood zones, however, was more complex. While staff were aware of the presence of ADUs throughout nearly all Established Neighborhoods, the initial code language proposed to legalize ADUs as an accessory use in only two of these zones: Established Neighborhoods 1 and 2. These two zones are the most urban

residential zones in Durango and are also among the most historic. The EN-1 zone is Durango's original residential area with many homes dating back to the late 1800s, the early years of the City's existence. This area lies immediately east of Durango's downtown core and extends to a hillside that runs up to a broad mesa, where Fort Lewis College is currently located. The EN-2

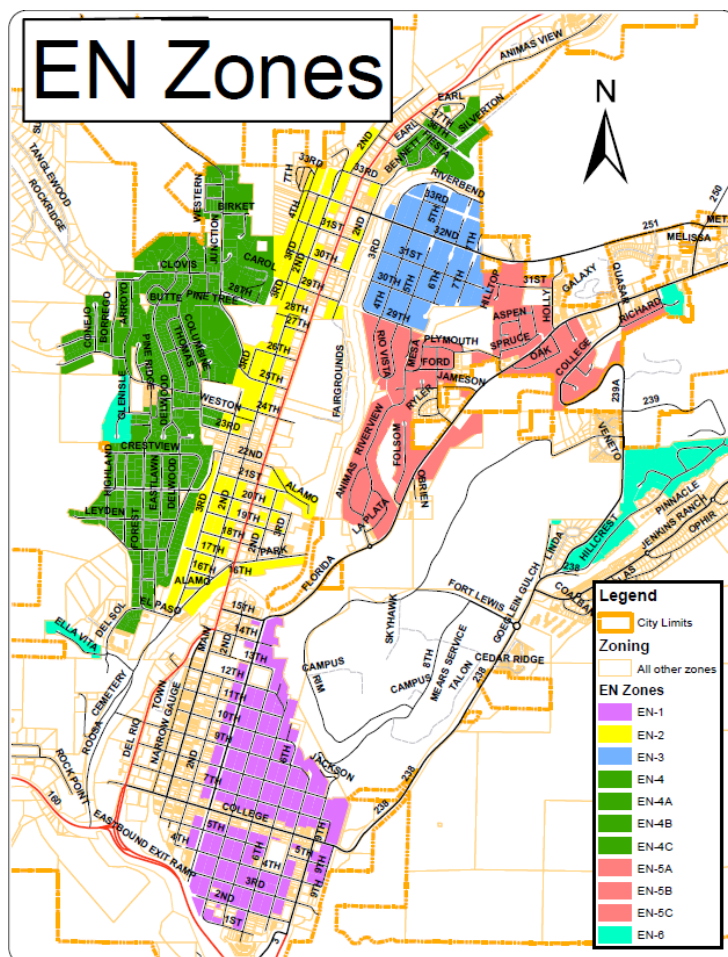


Figure 4: Established Neighborhood zones. Subcategories for EN-4 & 5 do not apply to ADU regulations.

zone runs parallel to the northern portion of Main Avenue, which is Durango's primary north-south arterial roadway. Main Avenue in this area is also US Highway 550 and is developed with a wide array of commercial uses. The EN-1 and EN-2 zones are characterized by smaller lot sizes which equate to roughly 6-12 units per acre and are both developed with gridded streets and alleys. The alley access provided to most lots was seen as a key component for ADU development, as detached structures along an alley are often the most popular and palatable areas for residents to add a secondary dwelling.

During the 2013 public process leading up to City Council's consideration to legalize ADUs, Staff held a number of neighborhood meetings to elicit feedback from residents of these two neighborhoods. A vocal contingent of opposed residents coalesced into an organized group, which called themselves Citizens for Healthy Established Neighborhoods, or CHEN. Members of the CHEN group were actively engaged throughout the process of drafting code standards for ADUs. The concerns most consistently expressed by CHEN revolved around the preservation of neighborhood character. Issues with parking availability, privacy intrusions, perceived conflicts related to increased density, and architectural design encapsulated the arguments consistently presented to staff by concerned citizens. In an attempt to appease this group, the code language that was ultimately drafted and presented to City Council for review included a number of limiting provisions for new ADUs:

- New ADUs required a Limited Use Permit, which is an administrative review requiring public notice to all properties within 300' of the property boundaries.
- A restriction on variances for properties with ADUs, which prevent any pathway to increase the enclosed space beyond code-defined maximums for either the principal home or the ADU on the property. This applies to all dimensional standards, including setbacks, building coverage, height, wall plane length, floor area ratio, and more. The only exceptions to the no variance provision were for a single-level detached garage of 450 square feet or less, a covered front porch, or a minor roof eave encroachment.
- An owner occupancy requirement, where the owner must permanently reside in either the principal residence or the ADU.

- The establishment of minimum lot sizes used to qualify whether a parcel is eligible to add an ADU.
- A 550 square foot maximum unit size, unless the ADU is contained entirely below grade.
- A requirement to provide at least one additional off-street parking space. If no off-street parking currently exists, two spaces needed to be added.
- Strict design requirements (including dimensional standards, privacy restrictions, and limits on certain architectural features), specific to both detached and integrated ADUs.

The inclusion of the restrictions described above did not completely satisfy the CHEN group.



Figure 5: Protesters outside Durango's Community Development Department on October 15, 2013. Credit: Durango Herald

The day of the final City Council hearing considering the amendments, protesters picketed outside of Durango's Community Development Department. The individuals shown in Figure 5 were paid by undisclosed opponents to hold their signs, which mislabeled ADUs as "alley dwelling units." The public hearing considering the proposed text

amendments lasted 3 hours and included lengthy testimony on both sides of the issue from members of the public. Comments from City Councilors acknowledged the extent of the proposed restrictions on the use, with Councilor Dean Brookie stating that an "accessory dwelling frenzy" was unlikely (Durango Herald, 2013). Ultimately, City Council approved the proposed changes unanimously.

The new Land Use and Development Code, which included the provisions described above allowing for new ADUs in EN-1 and 2, was formally adopted by City Council in early 2014. The codes went into effect in the summer of 2014. In 2015, staff proposed applying similar standards for new ADUs in Established Neighborhood 3. This neighborhood is similarly designed to EN-1 & 2 with gridded streets and alleys, though lot sizes are slightly larger on average.

Adopted standards for EN-3 reflected the larger lot sizes by imposing a minimum lot size of 7500 square feet for properties with new ADUs.

In 2019, in response to a directive established by the City's 2018 Housing Plan, a public process was initiated to extend allowances for ADUs to the remaining Established Neighborhoods. The EN 4, 5, & 6 areas, which are characterized by a post WWII era auto-urban design, have larger average lot sizes and do not contain alleys. Single family parcels are accessed almost exclusively via front driveways. Based on these somewhat differing neighborhood characteristics, City staff proposed some modified standards for ADUs in these areas. First, without alley access, allowing detached ADUs appeared to be problematic. Garages and similarly larger accessory structures were not typically located behind the principal structures in these areas, as there was no vehicle access to the rear of the lots. Granting the ability to place a 550 square foot detached living unit in the back yard of lots in these zones therefore seemed to be inappropriate, as preserving the visual contiguity of back yard space was important for neighborhood character. Staff ultimately concluded that only integrated ADUs should be allowed in these zones.

While this was an additional restriction, staff also proposed softening one of the more onerous requirements for ADUs in these areas. Based on the single point of access for the single-family homes in these zones and a desire to promote front yard open space, a provision allowing for the use of one street parking space for a new ADU was included. This allowed property owners to keep their front yards instead of paving or hard-surfacing a portion of the area for additional parking.

The 2019 amendments, following adoption, extended the allowances for ADUs to all residential zones aside from the Residential-High Density zone. In this area, a duplex is a use by-right. Since ADUs are, by Durango's definition, secondary units that are only accessory to single-family detached uses, extending the use to this zone did not appear to be beneficial. Any property owner that wanted to build a second unit could do so via a duplex classification, which carries substantially less restrictions than a new ADU: owner occupancy is not required, there is no restriction on the unit size, and the approval process is simpler and less expensive. However, not allowing the use in this zone may have ultimately been an oversight. The duplex

classification in Durango allows property owners to construct two detached single-family homes in the Established Neighborhood zones where they are allowed. The same standard broadly applies for the Mixed-Use Neighborhood zones. In the RH zone, however, duplexes are defined according to a different section of code called the Housing Palette. This code section, which prescribes housing types generally for new development rather than established neighborhood areas, does not include the “detached” duplex allowance described for other zones. Prohibiting ADUs in the RH zone therefore eliminates the option for a property owner to build a secondary, detached residential unit.

The final residential zone district that has not been addressed is the Planned Development, or PD, designation. The Planned Development is Durango’s take on the more commonly used “Planned Urban Development” term, also known as a PUD. Each Planned Development is essentially a custom zone, with basic standards for the built environment drafted by the developer with input from City Staff. Planned Developments are approved by City Council via an executed agreement which outlines these standards and is signed by the original project developer. There are many examples of Planned Developments in Durango, most of which are residential, and some of these areas have established regulatory approaches for ADUs. Some Planned Developments are extensive in both geographic size and number of units: Three Springs, which is a mixed use PD, contains over 800 dwellings in varying configurations in the first phase alone. While this area does provide for new ADUs, they are permitted under an entirely different set of standards to those described by the City’s LUDC. These standards, while not considered as part of this project, may also be overly restrictive since there has only been one ADU ever proposed in this area, which was never actually built.

Several of the larger Planned Development areas were approved before ADUs became a popular housing option and do not contain provisions for this use. Because the process for amending existing Planned Developments is onerous, allowing for new ADUs in these areas is all but impossible. Amending a PD agreement requires the written approval of a proposed change from a minimum of two-thirds of the property owners within the development before a public review process through the Community Development Department can even be initiated. In larger Planned Developments with lots numbering in the hundreds, this is an insurmountable

hurdle. Unfortunately, this fact has eliminated the option for property owners to add ADUs on hundreds of single-family parcels within the City. Changes to Colorado state law mandating eligibility for ADUs on all single-family lots, similar to those adopted in California and Oregon, are likely to be the only recourse to reverse the regulations in these areas.

In more recently proposed or approved Planned Developments, however, ADUs are often woven into the fabric of the initial proposals. At least one such PD was recently approved with integrated ADUs allowed as a use by-right. The Rosemary Lane Homes project, which contains 16 single-family homes, includes ADU-ready spaces located on the ground level behind the garage. These spaces come in two different floor plans and will be built out by the developer with all amenities aside from kitchen appliances. New owners will simply need to purchase and install the appliances, apply for a building permit for the ADU, and pay any applicable impact fees. Since these are integrated units, separate connections to utility mains are not required, which saves the developer (and by default, the future property owners) thousands. Following building permit issuance, the City's Building Official will inspect the units and issue a Certificate of Occupancy. Some of the basic standards for all ADUs within the City, such as owner occupancy and a prohibition on short-term rentals, do still apply.

In the case of Rosemary Lane, the developer's stated reason for including these ADU-ready units was to help prospective buyers offset the cost of homeownership by having a rentable space ready-made as soon as they move into the home. The design effectively isolates the ADU from the main living space, all but eliminating the privacy concerns that many have with integrated units. As the spaces are entirely accessed and located at ground level, they also represent a reasonable option for families caring for an aging parent or disabled adult child. This Planned Development, as well as others which provide for the option to build ADUs, suggest that developers believe in the marketability of denser neighborhoods designed to include these units.

## **2. LITERATURE REVIEW**

### **2.1 Overview**

The single-family zoning paradigm has been the dominant force guiding residential development in the United States since the post-war era. This type of development has contributed to a built environment that can be classified as perhaps “the lowest density settlements in the history of the world,” as described by Sonia Hirt in her 2014 book, *Zoned in the USA*. While many local and state governments have begun adopting more drastic measures to combat this historic trend, a simpler approach that may preserve the character of single-family neighborhoods is legalizing Accessory Dwelling Units on single-family properties. Current conventional wisdom in the field of urban planning suggests that the creation of ADUs can help to densify single-family neighborhoods and play a substantial role in solving issues related to housing availability and affordability. Because these units can be built on an existing single-family properties, they do not require new investments in land or new infrastructure systems to provide water, sewer or streets. Compared to larger multifamily structures, construction of ADUs can use traditional inexpensive building materials (Urban Institute, 2020). In addition to these economic benefits, ADUs are also desirable from a social standpoint. Many ADUs are used to house aging family members- hence the nickname, “granny flats”- or are offered for rent at more affordable rates based on their smaller size (Ramsey-Musolf, 2018). Despite their potential benefits, provisions allowing for the construction of ADUs often face uphill battles in municipalities. These units are perceived as threatening to single-family zoning designations based on impacts to the availability of public services, privacy, and perhaps social concerns stemming from classist or racist perspectives (Davidoff, Pavlov, & Somerville, 2021). This literature review will explore conclusions from peer-reviewed studies on ADUs, describe case studies where municipalities have had varying degrees of success with ADU regulations, and consider an example of a State’s intervention in ADU regulation.

### **2.2 Peer Reviewed Studies**

Several studies have explored the negative impacts that ADUs can have on communities. Perhaps the most emotionally driven claim that ADU opponents express is the



notion that allowing ADUs in a neighborhood will drive down property values. In their study, “Not in My Neighbour’s back yard? Laneway Homes and Neighbors’ property values,” Davidoff, Pavlov, and Somerville explored whether the presence of an alley ADU (or laneway home) resulted in a reduced sales price for an adjacent single-family home. This study considered residential property sales in Vancouver, British Columbia over a 12-year timeframe from 2005 through 2017. Interestingly, this study did find a correlated loss in property value when an ADU was present on a neighbor’s property. This conclusion came with a substantial caveat, however: impacts to property value were substantial in the wealthiest neighborhoods but were non-existent in areas of median incomes. Davidoff, Pavlov, and Somerville found that wealthy individuals were willing to pay a higher price for properties that were unlikely to be impacted by a neighboring ADU. The assumed impacts listed in this article include less privacy and views as well as a reduction in available public services in the immediate vicinity of the ADU, which most commonly boils down to traffic congestion and reduced on-street parking availability. This conclusion was not, however, directly connected to evidence of true externalities created by the ADU, so the likely impacts may have been purely perception on behalf of the purchasing party. On the surface, this study’s findings may not be consistent with market trends in Durango. The EN-1 zone, which contains the most significant percentage of Durango’s ADUs, is also among the most desirable places to live with some of the highest property values.

A study by Volker and Thigpen took a closer look at the realities of one of the more popularly highlighted externalities associated with ADUs: on-street parking availability. This study, which was conducted in Sacramento, California, explored whether the presence of ADUs resulted in a reduced capacity of on-street parking. Sacramento, crucially, does not require any off-street parking for new ADUs, making it an appropriate study site. Volker and Thigpen examined both on and off-street parking and produced findings that may be particularly applicable to Durango. First, they examined the extent to which off-street parking within a garage was used for its intended purpose, parking, versus for storage. Similar to what City staff assume in Durango, most Sacramento residents use their garage spaces for storage rather than for parking, though some serve a dual purpose. As for off-street parking supply, the study found that a majority of properties had ample space to provide for the number of vehicles owned by

residents, even if low estimates were used for garage parking spaces. Volker and Thigpen concluded that single-family property owners in Sacramento had, on average, at least “1.6... more parking spaces than their household has vehicles.” (2022) This finding implies that single-family homes in Sacramento have the parking available either on or off-street to accommodate an extra vehicle belonging to an ADU occupant. Therefore, ADUs may have a lesser impact on parking availability than may be perceived.

The relative affordability of ADUs to tenants is an assumption that planners and policy makers use to encourage the adoption of codes permitting these units. Based on their relatively small size, evidence suggests that accessory units tend to be offered at lower rental rates than an average sized apartment (Coppage, 2017). In California, the state has allowed ADUs to be counted as low-income housing since 2003, (Ramsey-Musolf, 2018) though this may be a somewhat dubious designation. Many cities in the state rely on these units to make up a portion of their affordable housing stock, despite the lack of evidence confirming that the ADUs are verifiably low-income housing. The main issue in Ramsey-Musolf’s study appeared to be the ability of municipalities to mandate and enforce the affordability of these units. Regulating rental rates may not paint the entire picture, however, as case studies have suggested that ADUs broadly impact housing costs in a positive manner. For example, in Portland, Oregon, while most ADUs are rented at similar rates to multifamily development, around 15% of ADUs are occupied at a very low or even zero rent (Coppage, 2017). Factoring in the scenarios where family members or close friends live in these units at low costs is an important consideration in assessing the affordability of ADUs.

## **2.3 Case Studies**

### **2.3.1 Portland, Oregon**

The city that has led the charge on ADU regulations over the past several decades is Portland, Oregon. While this is a large city compared to Durango, their approach towards regulating ADUs provides perhaps the best example of a success story that can be emulated to help encourage ADU construction. Portland’s regulations on ADUs originally came into existence as a policy in the early 1980s that granted some homeowners the ability to convert

portions of a single-family home into an accessory dwelling. From this baseline, incremental updates to regulations on ADUs over a more than 30-year timeline has led to Portland's status as the city leading the charge in permitting accessory units (Lo, Noble, Levy, & Pendall, 2020).

Portland's process of reducing restrictions on ADUs was driven by housing policies and goals at both the state and local level which intended to account for future population growth, promote density, and encourage sustainable development. By viewing zoning regulations and permit fee structures through the lens of these policy goals, Portland's city officials consistently refined their standards until nearly all of the barriers to ADU construction were removed. The following list includes the most substantial changes:

1998: Portland City Commissioners eliminated owner occupancy requirements in most areas of the City and established detached ADUs as a use by-right. Owner occupancy was eliminated entirely 5 years later after compliance with this requirement was shown to be minimal.

2004: Design and dimensional standards, including setbacks, were reduced significantly for new ADUs.

2010: Minimum lot size requirements were relaxed to the point where ADUs could be permitted on lots less than 2000 square feet in size. Waivers offered for impact fees, which typically were in the range of \$20,000.

As shown, Portland's incremental approach to encouraging ADUs began initially by reducing zoning and regulatory restrictions and eventually transitioning to financial incentives. These regulatory updates, particularly the fee waivers, were coupled with an advocacy and outreach program that helped to generate a substantial wave in the construction of new ADUs. The eight-year period from 2010 through 2018 showed a 600% increase in the number of new units annually added to the City's housing stock. Nearly 1 in 10 new housing units were ADUs in 2019 (Lo, Noble, Levy, & Pendall, 2020).

### 2.3.2 Washington, DC

The story of Washington, DC's ADU legalization process describes a decade long struggle to work through public feedback from both advocates and opponents. During a ten-year period from 2007 through 2016, policy makers in Washington, DC endeavored to refine zoning codes through what became a lengthy public process. Based on a desire to promote housing opportunities and affordability in the city, the proposed changes suggested the inclusion of provisions for new ADUs with significantly reduced standards from historical regulations. This initial effort triggered substantial public input from nearly all wards within the City. Based on an ineffective outreach campaign coupled with organized community opposition, these early steps took years longer than intended. After years of stalled progress, housing advocates organized supporters of the proposed updates in 2014. Public hearings on proposed code changes included much broader support for ADUs, though objections were still noted, including from members within the local government. Ultimately, the city's Zoning Commission adopted regulations allowing attached ADUs as a use by-right in most scenarios, though specific standards including owner occupancy and minimum lot sizes were applicable (Lo et al. 2020).

While the eventual adoption of codes legalizing ADUs presumably represented a win for housing advocates, ADU construction lagged. From 2017 through 2019, only 68 new ADUs were permitted within the city (Lo et al. 2020). Restrictions that were kept in place for owner occupancy, as well as confusing building code requirements and difficulty obtaining financing, were seen as the most substantial roadblocks to ADU construction. Costly requirements for utility connections and the lack of financial incentives may have also contributed the low rate at which new ADUs have been built.

As the evidence suggests in Portland, the most significant factor contributing to new ADU construction was the financial incentive provided by the fee waiver. Compared to Portland, Washington, DC's process focused heavily on code revisions rather than financial incentives. The evidence from these two cases suggests that code revisions should be coupled with fee reductions or comparable incentives in order to most effectively promote ADU construction (Lo et al. 2020).

### 2.3.3 Other Examples

Many municipalities across the country have had similar experiences to what has occurred in Washington, DC and Durango. Cities have recognized that the initial code language adopted to legalize ADUs has been too restrictive to actually result in the creation of these housing units. This has happened on a variety of scales: Seattle has seen ADU construction increase substantially following their efforts to legalize and expand the use, but not nearly at the level of their two closest metropolises, Vancouver, BC and Portland, Oregon (Fesler, 2019). Ann Arbor, Michigan, on the opposite end of the spectrum, had zero ADUs built in the first two years after their ordinance was adopted (Slagter, 2018). While comparing the regulations from a larger city to a smaller one or perhaps a suburban county can seem like apples to oranges, many of the themes are the same. For example, Seattle, Ann Arbor, and Montgomery County, Maryland, all looked to reducing minimum lot sizes for ADUs in order to encourage more units. Financial incentives emulating Portland's model are also popular options. These incentives can be either direct, such as reducing or eliminating impact fees, or indirect, like providing pre-approved building plans for residents. What is not often considered as a preferred option for encouraging ADU growth is removing restrictions like owner occupancy requirements and prohibitions on short-term rentals. Both of these options may appeal more to investors but are likely to have greater neighborhood impacts, and in the case of short-term rentals, do not result in a net gain of housing stock. These examples may help to provide a template for modifications to Durango's ADU standards.

### 3. METHODOLOGY

#### 3.1 Overview

The process for amending Durango's Land Use and Development Code, at a minimum, requires internal discussion and consensus among Planning staff, followed by the drafting of the



Figure 6: Project chronology and dates.

amendments and finally public hearings with reviews and decisions by the Planning Commission and City Council. The timeline for the review of text amendments entails a minimum of about 3 months, but this is substantially dependent on the complexity of the proposed updates. The 3-month timeline assumes little to no public outreach and usually only applies to the most basic of amendments.

In this case, a more iterative

process was required to ensure that concerns from the community and board members were heard. Figure 6, above, outlines the complete chronology of this practicum, from initial problem identification through to the required public hearings before Planning Commission and City Council. Dates provided are generalized, with the exception of specific meetings held with various reviewing bodies.

#### 3.2 Problem Identification

While Durango's Community Development staff assumed for years that extensive and complex ADU standards were a roadblock to the creation of these units within the community, the initial catalyst that triggered the review of ADU standards ironically had nothing to do with adding a new accessory unit. An owner of a property with an ADU attempted to submit a

building permit application for an addition to the principal residence on the property. The home, though it was constructed years before current codes were adopted, was located on a corner lot and encroached substantially into the street side setback. The proposed addition was a minor expansion of the second story within this setback, which therefore required a variance. While this scenario would have been a relatively simple administrative variance approval in another case, the presence of the ADU precluded the property owner from the option of pursuing a variance. When the property owner was informed that building the addition was not possible without a variance and that a variance was not possible because of the ADU, the code restriction prohibiting variances came under scrutiny. As disgruntled members of the public will do, a complaint was submitted to the Community Development Director. Given that this was not the first time this issue had arisen, the directive to review ADU standards was passed down to Planning staff. The author of this practicum willingly accepted the responsibility to spearhead this process.

Initiating the City of Durango's text amendment process requires a specific set of legally required procedural steps outlined by the code. However, it is prudent to go above and beyond these steps before initiating the formal process for amendments that may invoke a degree of controversy. Based on the public's reaction to the initial text amendments that legalized ADUs, a negative response to changes that would loosen restrictions on new ADUs was anticipated from a contingent of the community- in particular, the CHEN group. Assessing and updating Land Use and Development Code standards to reduce the restrictions on Accessory Dwelling Units therefore required a substantial degree of justification, including research into comparable communities, geospatial analysis, public outreach, and input from community development staff, board members, and local agencies. The qualitative and quantitative information that came out of these steps led to the crafting of the proposed updates to the code.

The initial steps of this process involved a somewhat subjective review of the existing code, identifying the most likely barriers to ADU construction based on the input of experienced staff members within Durango's Community Development Department. Since the program's inception in 2014, staff planners have discussed ADU options with residents

interested in pursuing this use on many occasions. Anecdotally, many of these conversations did not result in the construction of a new unit, and the planners that were involved understood the most common reasons as to why these projects never came to fruition. This institutional knowledge provided the initial basis for detecting the most restrictive code standards.

### **3.3 Code Alignment Working Group**

The City of Durango's Planning Division, in response to an acknowledged need to update standards of the LUDC, created an informal group of various planning board members to serve as an unofficial sounding board for proposed edits to the code. This group, which includes 2 members from the Planning Commission, 2 members of the Design Review Board, 1 member of the Board of Adjustments, and 1 member of the public at large, was formed in 2019 and designated as the Code Alignment Working Group (CAWG). The CAWG's meetings are closed to the public, formal meeting minutes are not taken, and recommendations to staff are off the record. Despite the informality, the CAWG has successfully reviewed and provided valuable feedback to staff on a wide array of standards within the LUDC on multiple occasions since its creation. Some of the more substantial updates that have been reviewed by this group include adjustments to parking standards, updates to vacation rental requirements, revisions to auto-oriented uses in Mixed-Use zones, and increases to density standards in multifamily zones. Staff typically prefers to have a consensus that proposed code changes are deemed appropriate by the Code Alignment Working Group before initiating the legal review process.

The topic of ADU text amendments was reviewed by the Code Alignment Working Group during three informal meetings between the Fall of 2021 and April of 2022. The group was charged with providing initial feedback on ADU standards during a kickoff meeting in October of 2021. During this first discussion, the code language identified by staff as likely to be most restrictive was described in detail. Broadly, this language included the provision preventing the option to pursue a variance, parking requirements, and minimum lot sizes. Code alignment members immediately responded to staff's suggestion to allowing Alternative Compliance, an administrative variance process, on a limited basis for new ADUs. Alternative



Compliance is a design-based review which allows for flexibility to dimensional standards including bulk and intensity, setbacks, and building heights, for example. This process has been used effectively in Established Neighborhood zones since its initial creation in 2005 and is one of the most popular programs offered by the Community Development Department. Several of the more outspoken members of this group are architects, and these individuals railed against the limited dimensional standards for ADUs. While allowing for Alternative Compliance was broadly supported, there were also calls to increase maximum allowable wall plate and overall heights for detached ADUs. After some minor disagreement from staff on some of the stated perspectives, the group's chair suggested that public input should be a crucial aspect of the process to identify which code language was important to preserve and which standards should be removed or softened.

### **3.4 Surveys**

Determining public perception and support for code updates that may encourage the construction of new ADUs was always anticipated to be a crucial aspect of this project. Durango is fortunate to have a well engaged citizenry, as indicated by the effectiveness of and attendance to the public meetings held as part of the processes for prior ADU code updates. Unlike prior changes, however, feedback on ADU standards now needed to be sought during a global pandemic. Public meetings were therefore deemed inappropriate due to the risk of exposure to the virus and ineffective due to low attendance. The best alternative tool available for generating public comment was determined to be online surveys.

Fortunately, residents in the community have proven to be quite responsive to online data collection methods in recent years. City staff have used public surveys to solicit valuable feedback on a wide variety of issues, from financial responsibility to redesigns for our downtown corridor. The surveys, which are provided through the Virtual City Hall platform, are promoted by City staff through press releases and social media posts on varying platforms, including Facebook, Twitter, and Instagram. In most cases, total survey responses number in the hundreds, with select topics approaching or even exceeding one thousand. For a topic like

ADU regulations, which is both controversial and related to the desperate need for additional housing opportunities, public participation was expected to yield useful data.

Crafting the questions and answers for a multiple-choice, online survey can be challenging, especially given that the nuances of the subject matter may not always be easily understood by those surveyed. Discussions amongst staff concluded that two surveys should be produced: one for individuals who owned properties with ADUs, and another for the public at large. While the community survey was seen as a way to gauge broad public perception of ADUs, the owner survey was expected to yield more specific data regarding how these units were actually utilized. For example, the owner survey could be used to determine the percentage of ADUs that were rented on a long-term basis, occupied by a family member, or often sitting vacant in between uses by family members. Owners could also provide feedback about the number of occupants, the rental rates, the number of vehicles, and even the complexity of the approval process. While the potential for quality data provided by ADU owners was immense, reaching these 143 individuals or entities was understood to be somewhat difficult. Contact information for the original property owners that built or legalized an ADU was available on file, but many of the properties were likely to have changed ownership in the years following the City's review and approval. The City's original ADU standards required a biannual recertification of owner occupancy for properties containing ADUs, which feasibly should have resulted in an accurate list of contact information of ADU owners. However, the enforcement of this standard has proved to be incredibly tedious and time consuming for staff, and unfortunately had not been prioritized. Outreach to this most informed group of the public, therefore, was reliant on the accuracy of the contact information that existed on file.

The Community Survey, by contrast, was expected to yield much broader results showing how members of the community viewed this housing type. Community Development staff intended to gain an understanding of the public's awareness of the City's standards for this use, learn whether there was support for removing restrictions on ADUs, and identify both the perceived concerns and most likely barriers to ADU construction. There was also a desire to understand if residents would be interested in adding an ADU to their property if they owned a qualifying lot. Based on an interest from the City's Housing Innovation Manager, an assessment

of public support for a financial incentive program for the creation of new ADUs was included. Both surveys also provided an option for respondents to submit written feedback on the topic. After drafting survey questions, the Code Alignment Working Group was consulted on the survey content. Preambles to each survey were drafted and intended to be included for background on the topic.

The final survey questions and preambles were provided to Durango's Public Information Office (PIO), which manages the City's website and Virtual City Hall survey platform. The PIO staff uploaded both surveys, which are included in Appendix 1, and Planning staff were allowed a test run to confirm that they were presented as intended. The list of ADU owner emails was compiled, which required pulling the files for every permitted unit on record, as the link to the owner survey needed to be only accessible to these individuals. Both surveys were announced via a press release and were promoted through Facebook, Twitter, and Instagram posts following their opening on March 2nd. The surveys ran for a 15-day timeline and closed on March 16th. Durango's Public Information Office staff were able to extract the data from Virtual City Hall shortly after the close of the survey. Data was provided in both a .pdf format and as an excel spreadsheet. The .pdf data provided a useful snapshot of the responses, while the spreadsheet created an opportunity for more detailed analysis.

### **3.5 Data & Spatial Analysis**

Staff used relatively simple spatial analysis methods through ArcMap to demonstrate where all the ADUs within the community are located, both new and pre-existing. As standards for new ADUs vary across the zones where they are permitted, being able to visualize where new units have been permitted versus where they have not may help to indicate which standards are more restrictive. ArcMap was also used to help identify the number of properties that may be unable to pursue the option of building an ADU based on a non-qualifying factor such as minimum lot size. Both of the resulting data sets produced through ArcMap allowed for the creation of maps, which can provide a useful visual for decision makers, including City Council.

City of Durango Community Development staff have maintained a list of new and pre-existing Accessory Dwelling Units since the program's inception. This list currently contains 143 legal ADUs, with 99 of these being legalized pre-existing units and 44 as newly constructed. This data is managed as an excel spreadsheet with a number of fields for each ADU, including Address, Owner Name, Assessor's Parcel Number (APN), project file number, approval type, and contact information. The spatial analysis through GIS demonstrating where these ADUs exists requires linking this database to a base parcel layer created by Durango's GIS staff. Joining the ADU database to the parcel layer is possible using two different fields: the Assessor's Parcel Number or the property address. Both of these fields are unique identifiers for each property. However, since the ADU database is an excel spreadsheet where planners have at times manually entered the data for newly approved ADUs, some of the address fields are not consistent with the standardized format used within the GIS parcel layer. Joining the datasets by the address field, therefore, was not successful for all lines of ADU data. The APN field, by contrast, is a 12 digit numerical value and is therefore standardized in both datasets. This field was used to join the ADU database with the parcel layer.

The parcel layer contains a vast array of data, including the zoning designation, for every property within the city limits. Joining the ADU database with this layer allowed for the creation of a map demonstrating which parcels and zones contain these units. The symbology of the parcel layer was classified by zoning designation. Using the Select by Attributes tool within the attribute table for the parcel layer, properties with ADUs were selected. A new layer was created using the selected parcels and was titled "ADU Locations." Address points within this layer were symbolized differently for pre-existing and newly built ADUs, and were then plotted on the map. Finally, a streets layer was added and labeled to provide context for a viewer not versed in the specific locations of city zones. The resulting map depicted the location of all legal ADUs within the city limits by their zone. This proved to be an important spatial demonstration of not only where these units were concentrated, but also how relatively few ADUs existed in certain areas.

Since parcels must meet a minimum lot size to qualify for a new ADU in several zones, quantifying and visualizing the number of lots that are ineligible was a necessary exercise in

evaluating which code provisions are prohibitive. This exercise was quite simple to complete in ArcMap using the same parcel dataset. This layer includes a field called Land SQFT, which is the

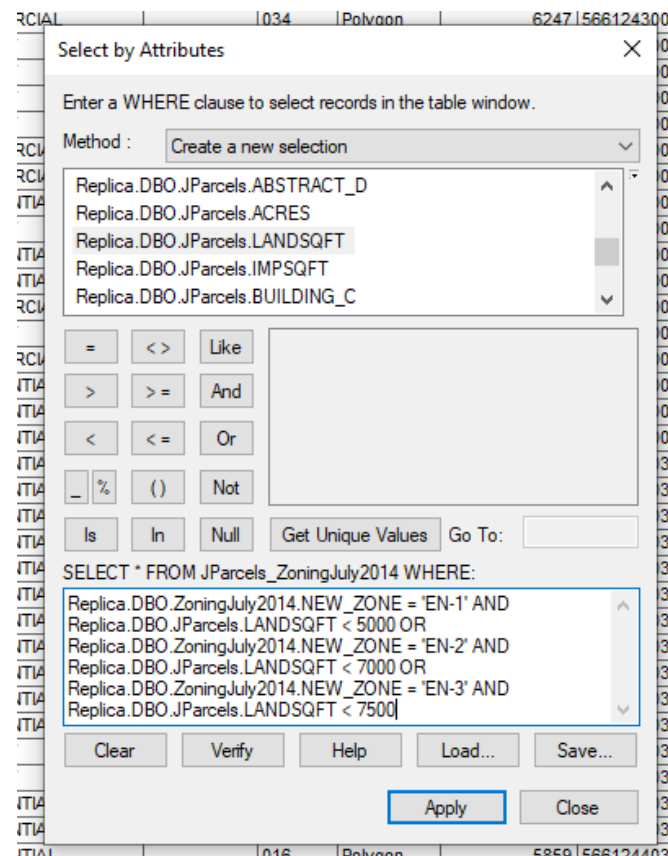


Figure 7: ArcMap query used to determine EN parcels currently ineligible for ADUs.

total square footage of a parcel. The LUDC uses square footage of a lot as the qualifying factor for ADUs in EN-1, EN-2, and EN-3, though the minimum lot sizes are not consistent. Within the attribute table for the parcel layer, the select by attributes tool was used to create a query that would select all parcels in each zone that did not qualify for the applicable lot size. The query was built as follows, with simplified names for each data field:

Select by Attributes where:

ZONING = EN-1 AND LANDSQFT < 5000 OR  
ZONING = EN-2 AND LANDSQFT < 7000 OR  
ZONING = EN-3 AND LANDSQFT < 7500.

The resulting selection was used to create a new layer, titled Parcels Ineligible for

ADUs. This layer was symbolized with a red color to contrast against the remaining parcels. The attribute data clearly demonstrated the total number of ineligible parcels in each zone.

### 3.6 Legal Process

Durango's Land Use and Development Code outlines the specific legal process that all proposed text amendments must follow. This process outlines public noticing requirements, public commenting timelines, review criteria, and hearing procedures. There are typically two public hearings required: an initial review by the Planning Commission before a final decision from the City Council. In response to the COVID-19 pandemic, the Planning Commission transitioned to a strictly virtual meeting setting through the Zoom platform. Virtual meetings

have since been deemed the preferred option for both Commissioners and staff, and this also often helps to facilitate ease of public comment. All Planning Commission meetings are thus now held virtually.

The role of the Planning Commission is to determine whether the amendments are appropriate, comply with City plans and policies, and are likely to provide a community benefit. The review of the amendments will begin with a staff presentation. This will consist of a detailed history, a description of the proposal, a summary of the data supporting the need for the changes, an analysis of the alignment with code requirements, and public comment, if applicable. Commissioners will follow the staff presentation with any clarifying questions before opening a public hearing. Any community members in attendance are offered the opportunity to provide their testimony for the benefit of the commissioners and the record. Following presentations and public comment, the commissioners discuss, deliberate, and perhaps suggest modifications to the proposed changes. As required by the LUDC, the Planning Commissioners must find that the following criteria are met in order to make a decision affirming the proposal:

1. *The proposed amendment supports adopted plans and policies.*
2. *The proposed amendment is consistent with the purposes, requirements, limitations, standards, and criteria of the Article being amended and/or other Articles, Divisions, or Sections within the LUDC.*
3. *The proposed amendment furthers the health, safety, or general welfare of the community.*
4. *The proposed amendment provides for community benefits, such as improved social or economic conditions or opportunities.*

After discussions are complete, the Planning Commissioners vote on whether to recommend that the City Council adopt the amendments as proposed, adopt the amendments with modifications, or deny the amendments and keep the current regulations in place. Planning Commission's recommendation is not binding and does not automatically imply that the City Council will come to the same conclusion.

The final step for proposed code amendments is, therefore, the review of the City Council in a subsequent public hearing. The procedure is nearly identical to what occurs before the Planning Commission, with a staff presentation and opportunity for public comment prior to deliberation and ultimately, a decision to approve or deny the amendments. Despite the procedural similarity, a slightly different approach will be required when presenting the subject matter to City Councilors. When controversial changes to the City's Land Use and Development Code are proposed, public participation is often more substantial during the public hearing before City Council. Planning Commissioners are more likely to be experts on the subject matter and less prone to being swayed by public comments from the "not in my backyard" or NIMBY crowds, as they are appointed members rather than elected officials. City Councilors, however, can be more mercurial. Highlighting the amount of staff time, public participation, and board member feedback that has gone into the process of drafting the amendments helps to demonstrate to the Councilors that the updates are well thought out. This helps to discount the often emotional appeals of so-called neighborhood advocates like the CHEN group. Tying the proposed changes to the broader housing goals outlined by the policy directives established by City Councilors in their annually updated Strategic Plan will also be a critical aspect of the presentation.

## 4. RESULTS AND DISCUSSION

### 4.1 Data Analysis

Linking the ADU database with GIS parcel data and plotting both new and existing units based on zoning demonstrated that most ADUs are located in the older, more urban neighborhoods of Durango, specifically ENs 1, 2, and 3. These zones are the first areas where ADUs were permitted, and also were the initially targeted areas of the City for the pre-existing 2<sup>nd</sup> unit registration program. Therefore, it was not surprising to learn that the vast majority of legal ADUs, over 91%, were

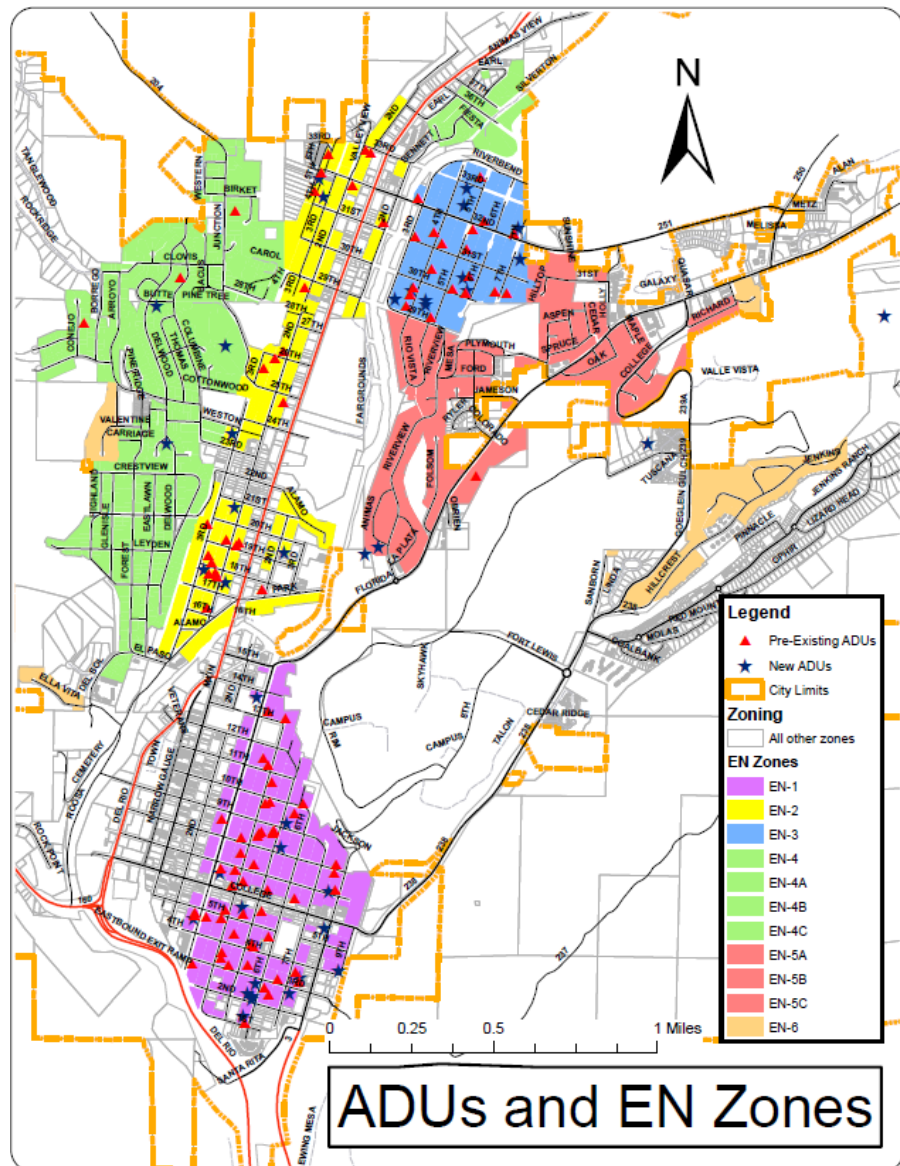


Figure 8: Locations of pre-existing and new ADUs in EN Zones. Approved ADUs outside of these zones are also shown but are far less numerous.

located in these zones. Over 84% of new ADUs are also concentrated in these areas. By contrast, the zones where ADUs were more recently legalized, ENs 4, 5, and 6, only contain 7 units, and 4 of these are pre-existing. Very few ADUs have been permitted in PD zones and other residential areas. Comparing new ADUs to pre-existing units was also an interesting exercise, as pre-existing or “grandfathered in” ADUs outnumber new ADUs by more than



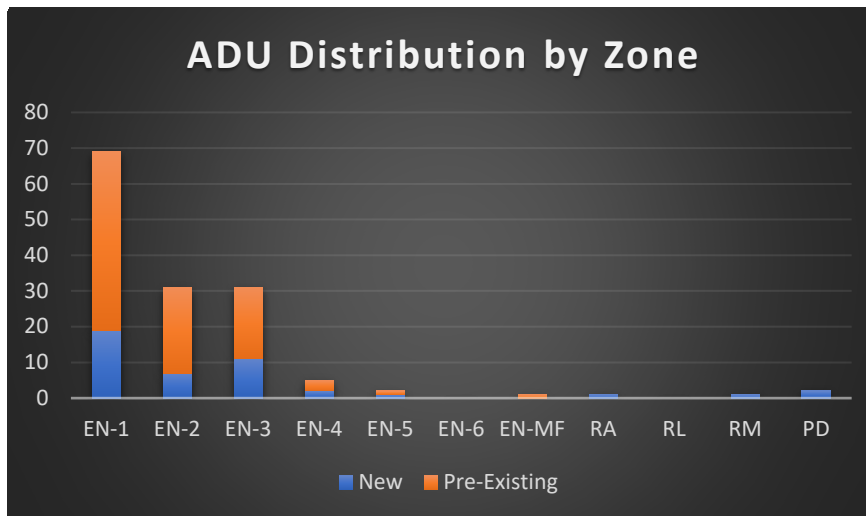


Figure 9: Distribution of pre-existing and new ADUs by zone.

double in nearly Established Neighborhood zones. As these units have been legalized through a process providing a substantial degree of flexibility, the exact age of these units is often unknown. Anecdotally, the limited number of new

ADUs as compared to the pre-existing units, which presumably were created illegally, leads one to question whether illegal ADUs were created more frequently before the restrictive code requirements were put in place than legal units have been built since. The answer to this question is probably no, but it may be somewhat close.

Staff also decided to determine what percentage of the total dwelling units in Durango were Accessory Dwelling Units, in the hopes of gaining some perspective to be shared with the public and local decision makers. According to the State of Colorado's Department of Local Affairs, the total number of housing units in Durango was 9,187 in 2020. ADUs, therefore, comprise about 1.6% of these dwellings. New ADUs are an even smaller fraction, coming in at less than 0.5%. By comparison, the number of units that have been issued vacation rental permits is 1.5% of the residential dwellings in the community. Vacation rentals are generally seen as undesirable due to their impacts on neighborhood character and housing stock. While opponents to ADUs claim that they also negatively impact neighborhood character, the presence of these units increases housing stock. Occupants of ADUs are Durango residents, often members of the workforce who contribute to our community.

Spatial analysis also readily identified lots that do not currently qualify for new ADUs, either through zoning or based on minimum lot size standards. The RH zone, where ADUs are not currently allowed, contains 232 total properties. Data indicated that 397 properties in ENs 1, 2, and 3, which employ varying lot size requirements, do not meet the currently established

minimums. These results are described in more detail in Table 1 and are visually represented by the two maps in Figure 8.

It should be noted that while these numbers represent the total lots that do not meet

Zone	Total Ineligible	Total Parcels	% Ineligible
EN-1	134	724	18.5%
EN-2	200	579	34.5%
EN-3	63	319	19.7%

the minimum lot size or are ineligible based on zoning, not all of these properties are able to accommodate ADUs based on other

requirements, such as parking or dimensional standards. In the RH zone, a substantial number of the 232 total properties are condominiums, which are not eligible for ADUs.

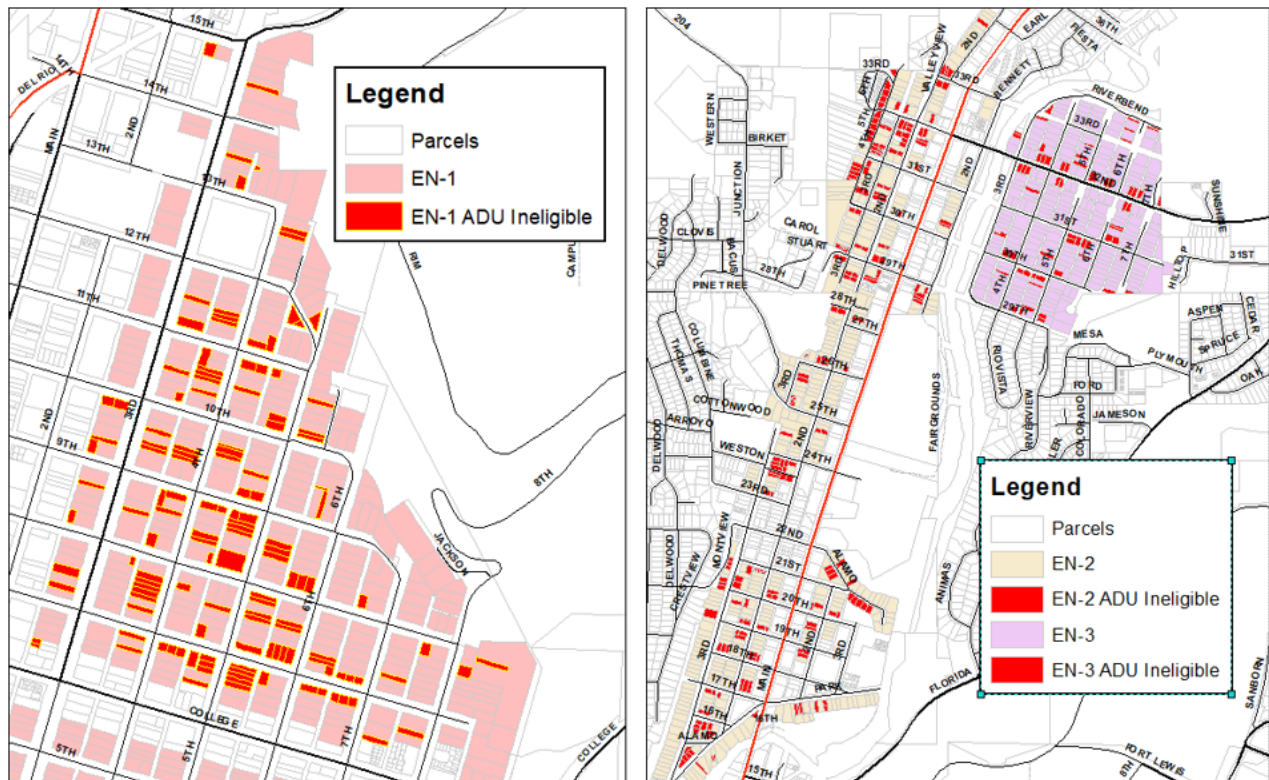


Figure 10: Properties that do not qualify to add an ADU based on current minimum lot size requirements.

## 4.2 Survey Results

The two ADU surveys ran for a fifteen-day timeframe in March and were presented through the Virtual City Hall forum on the City's website. Broadly, the survey results contributed to the suggested edits to the ADU language in the Land Use and Development Code and highlighted the need for additional outreach to improve the public's knowledge about ADU

requirements. Survey results were also useful in drafting the concept of an incentive program, which would use City funds to help residents offset the costs of ADU construction.

#### 4.2.1 ADU Owner Survey

The ADU owner survey was sent to 143 ADU owners using the personal email addresses on file for each unit. Unfortunately, many of these emails were either no longer valid or belonged to individuals who had since sold their property. This contributed to a lower participation rate than staff had hoped for, with only 21 property owners providing responses. The results for some questions therefore weren't helpful, and compiled responses overall were interpreted as more of a snapshot of how these units are being used.

The survey asked ADU owners to indicate the current usage of the unit. In general, most ADUs appear to be offered for rent or used residentially by the property owner or a family member. This suggests that ADUs are most often used in a manner that helps address the housing issues in Durango, which is a positive and desired outcome. In particular, the indication that more than 50% of ADUs are occupied by a renter with a long-term lease is very encouraging.

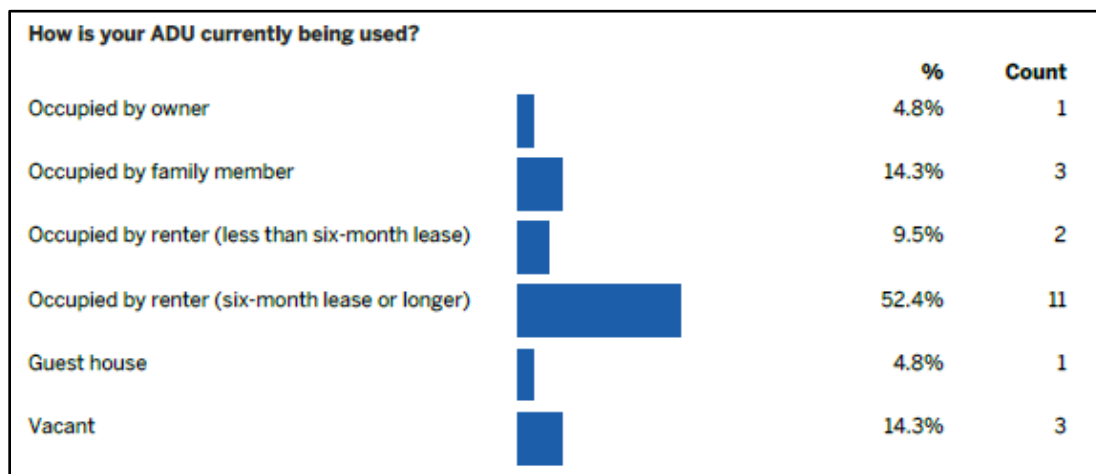


Figure 11: More than 80% of ADU owner responses stated that units were occupied residentially, with more than half occupied by a long term renter.

Data from ADU owners on the amount of rent charged had potential to demonstrate the affordability of these units for tenants. Generally, the limited data appears to support the conclusion that these units tend to be offered at a more affordable price point, with more than half of the

respondents stating that they ask for less than \$1,000/month

in rent from their tenants. Given that 2022 data from HUD suggests an individual making 80% of Area Median Income could afford a rental rate of \$1,450 per month, this is very positive information. However, it would have been even better news with a much larger sample size.

Two questions were provided on the owner survey which were related to parking for existing ADUs. Results indicated that most ADU residents park on-site and have only one vehicle, which indicates a general alignment with existing code standards and limited neighborhood impacts on one of the most commonly cited concerns from opponents.

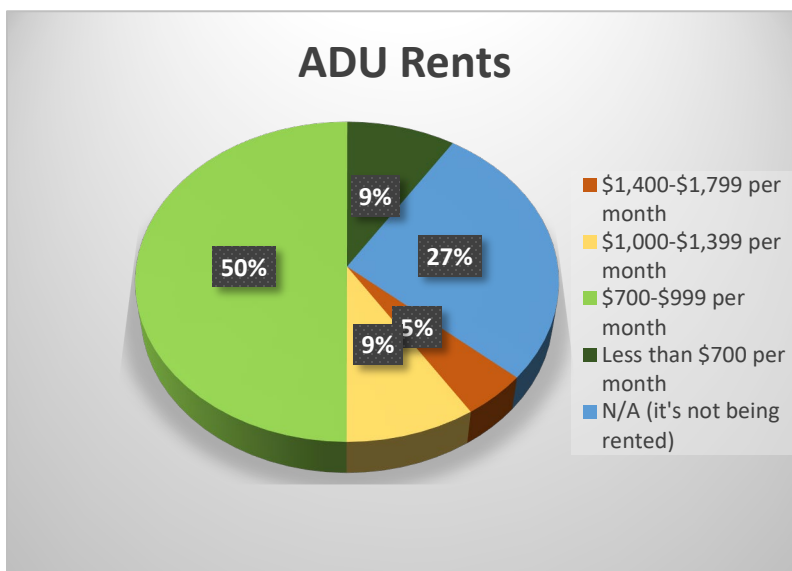


Figure 12: More than half of ADU owners who responded indicated that their ADU was rented at less than \$1,000/month.

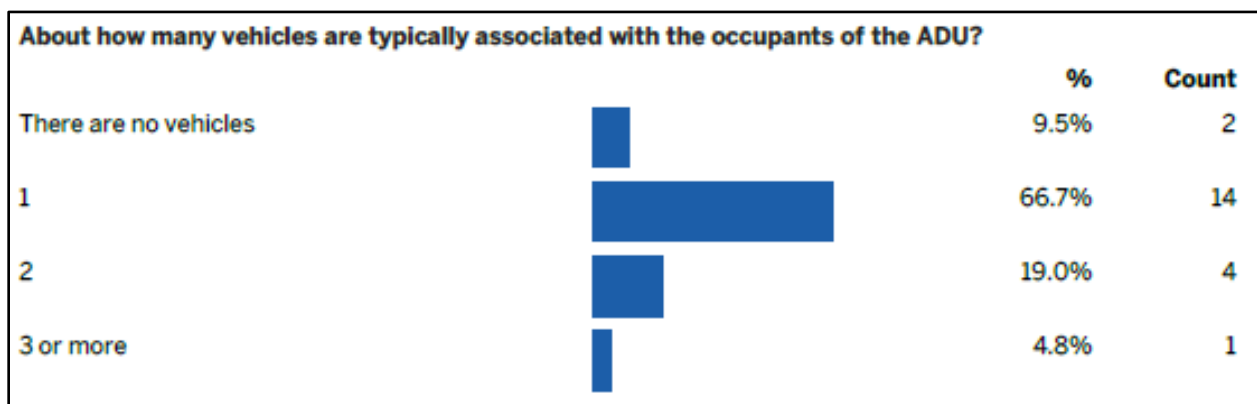


Figure 13: More than 75% of respondents indicated that ADU occupants had one vehicle or less.

Written comments were not included in all responses, but those that did provided some useful information. The bulleted items below list other findings that were indicated by these comments.

- Most respondents stated that income generated by the ADU helped to offset their home ownership costs. Some responses specifically stated that they purchased a property with an ADU to help them pay for the mortgage.
- Nearly 75% of the respondents' ADUs were constructed as detached units, either as a cottage or a detached garage with living space.
- Nearly 50% of respondents stated that they purchased the home with an existing ADU. This fact, combined with the low response rate, meant that staff's questions regarding the cost of adding an ADU and the efficiency of the City's approval process did not yield much usable information.

#### 4.2.2 Community Survey

The community survey generated much higher participation than the owner-specific survey, with 323 responses received. Nearly 80% of the respondents indicated that they were City residents, with the vast majority stating that they live in Established Neighborhood zones. These responses, especially when analyzed in detail, presented a reasonable picture from which to draw conclusions.

Staff asked whether respondents knew if ADUs were permitted in their neighborhood. The results indicated in Figure 14 are focused on residents of EN zones, where ADUs are permitted. The total number of responses for each column

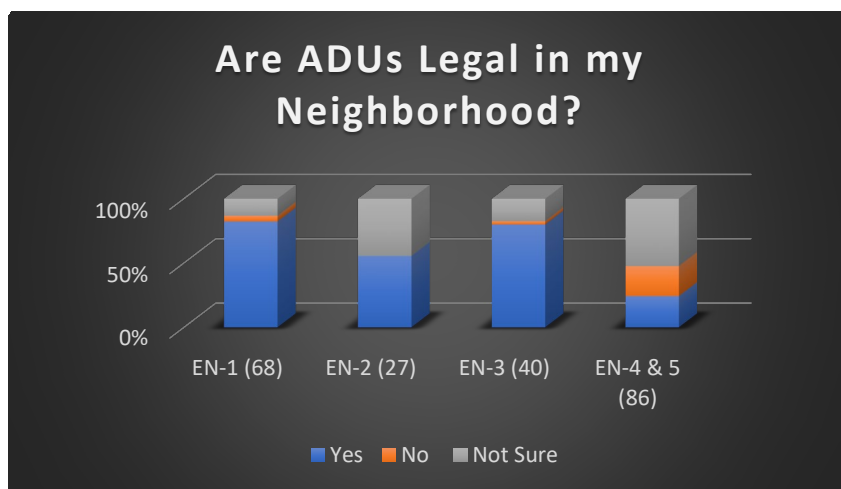


Figure 14: Community understanding of whether ADUs are legal in their neighborhoods.

are provided at the bottom of the graph. While residents of EN-1, 2, & 3 seem to generally understand that ADUs are allowed in their neighborhoods, this knowledge is substantially

different for EN-4 & 5. ADUs have been legal in these areas since 2019, but as we have seen, very few permits have been issued. The results of this question may help to explain the reason why few ADUs have been added to these areas, though other possible explanation for this result also exist. One possibility is the presence of restrictive covenants within the Crestview Addition portion of EN-4, which encompasses about 300 single family parcels. This neighborhood was developed in the 1950s and has a recorded covenant that states only single-family homes may be constructed. This covenant has never been enforced by the neighborhood and there is no HOA in place. Despite this, the City has taken the position that no new ADUs would be permitted in the Crestview Addition until such point as the covenant is deemed to be invalid by a legal process, presumably a judge's decision.

The survey highlighted one last reason why residents of ENs 4 & 5 might not know if ADUs were legal in their neighborhoods. As mentioned, detached ADUs are not allowed in EN 4, 5, and 6 due to the lack of alleys in these areas. When crafting survey questions, staff wanted to learn whether respondents from these areas considered options for building integrated ADUs

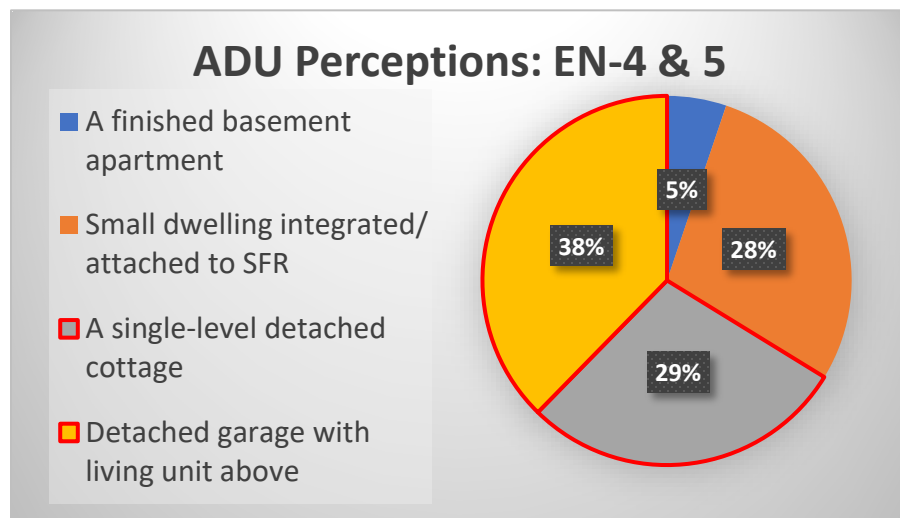


Figure 15: Residents of EN-4 and EN-5 most often perceive of ADUs as detached structures, which are not permitted in these zones.

as frequently as detached ADUs. The survey confirmed staff's suspicions that detached units are what two-thirds of EN-4 and 5 respondents picture when they think about ADUs, as evidenced by Figure 15. Approved

ADUs also seem to lean heavily towards this type of ADU, with 27 of the 41 new ADUs in eligible zones built as detached units. Improved public outreach may help residents in these zones understand that they could add an ADU to their property if it was incorporated into the main home.

While detached ADUs are presumably more desirable because they provide for more distance between a homeowner and the ADU occupants, they are significantly more expensive to build. Detached ADUs require separate sewer service connections, at a minimum, and may also require a separate water service in some circumstances. These utility connections incur significant excavation costs, especially if the units are not immediately adjacent to water or sewer mains. In addition, many detached ADUs are built from the ground up rather than converted from existing detached buildings such as a garage or shed. With rising construction costs, detached ADUs are likely only affordable to wealthier homeowners or those who have paid off their homes.

While not all respondents were City residents, the question described in Figure 16 was framed to apply broadly to anyone who might be interested in living in Durango. About 80% indicated that they would or might be interested in building an ADU, with a significant majority

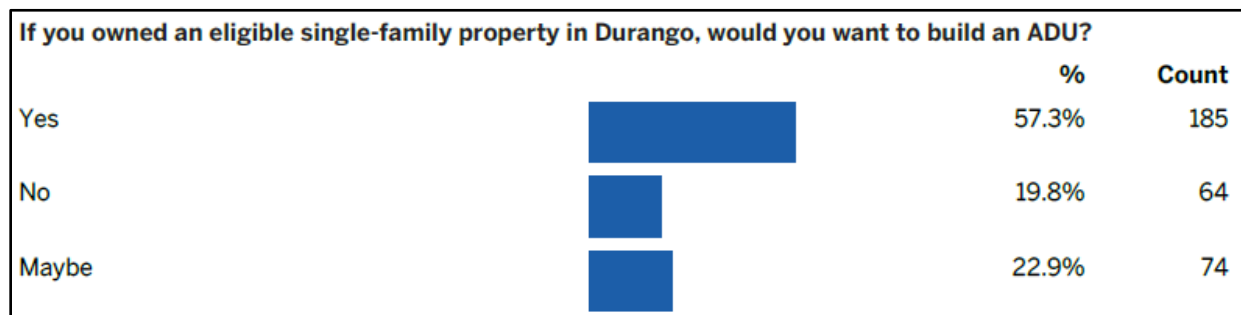


Figure 16: Percentage of community survey respondents who would consider building an ADU.

responding in the affirmative. This is an indication that more ADUs could be added to the community if the code allowed and if the right incentives were provided. Furthermore, most respondents were not concerned about impacts of ADUs on their neighborhood character.

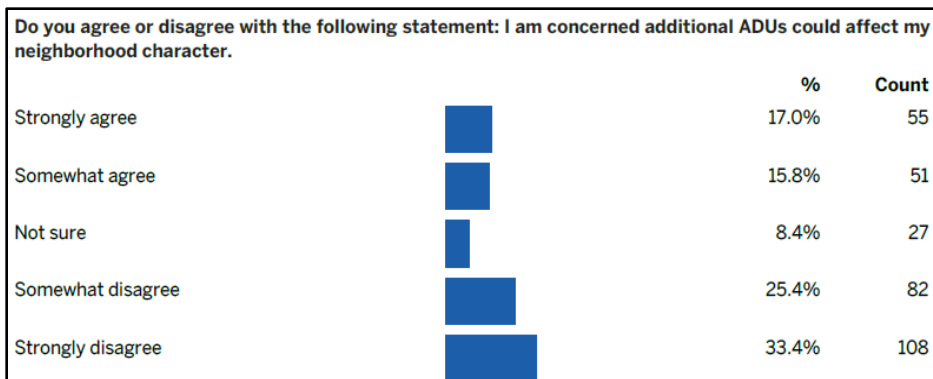


Figure 17: Most survey respondents were not concerned with ADU impacts on neighborhood character.

These responses were not analyzed by zoning or residency, so they may be somewhat skewed by responses from non-city residents.



However, the data do clearly suggest that the majority are not strongly opposed to new ADUs in the community.

The community survey suggested broad support for updates to the Land Use and Development Code that would provide flexibility and simplify the approval process for new ADUs. Over 64% of respondents supported changing the code specifically to allow for variances. The vast majority also felt that LUDC amendments would be appropriate to promote the construction of new ADUs, with only 18% of respondents opposed to this idea.

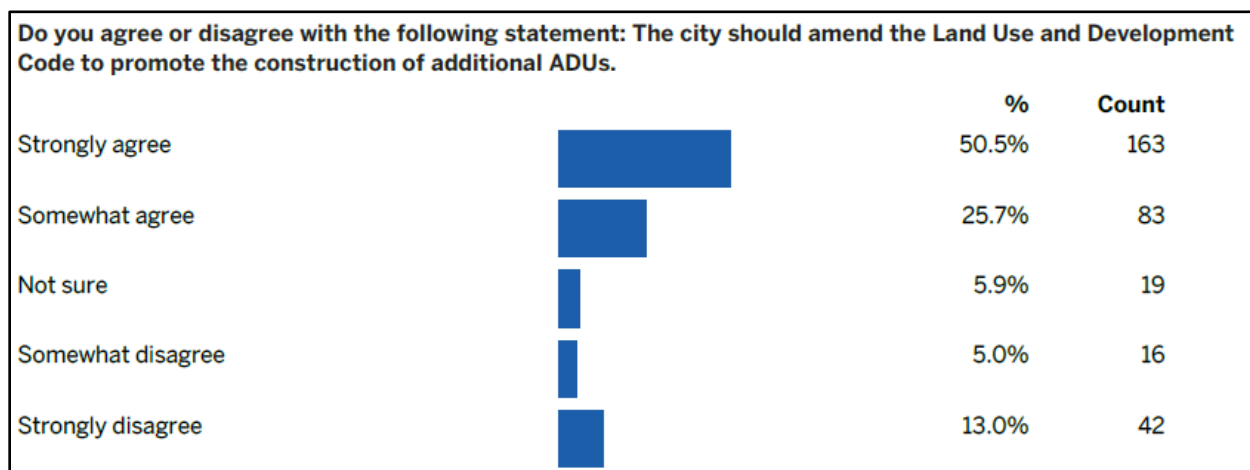


Figure 18: A broad majority of surveyed community members supported reducing code restrictions on ADUs.

The survey also indicated support for a program incentivizing the creation of new ADUs through grants or fee waivers. The question was framed to imply that such a program would require some degree of affordability for tenants. At the time the survey was drafted, this idea was very much in the conceptual phase and has been refined significantly since. Discussion of the incentive program is included later in this practicum.

The question described in Figure 19 was posed to identify the perceived barriers preventing the construction or addition of new ADUs in the community. Barriers that were described by the survey included items that were both within and outside of the city's control. Respondents were allowed to choose a minimum of one and up to three total options, without specifying any order.



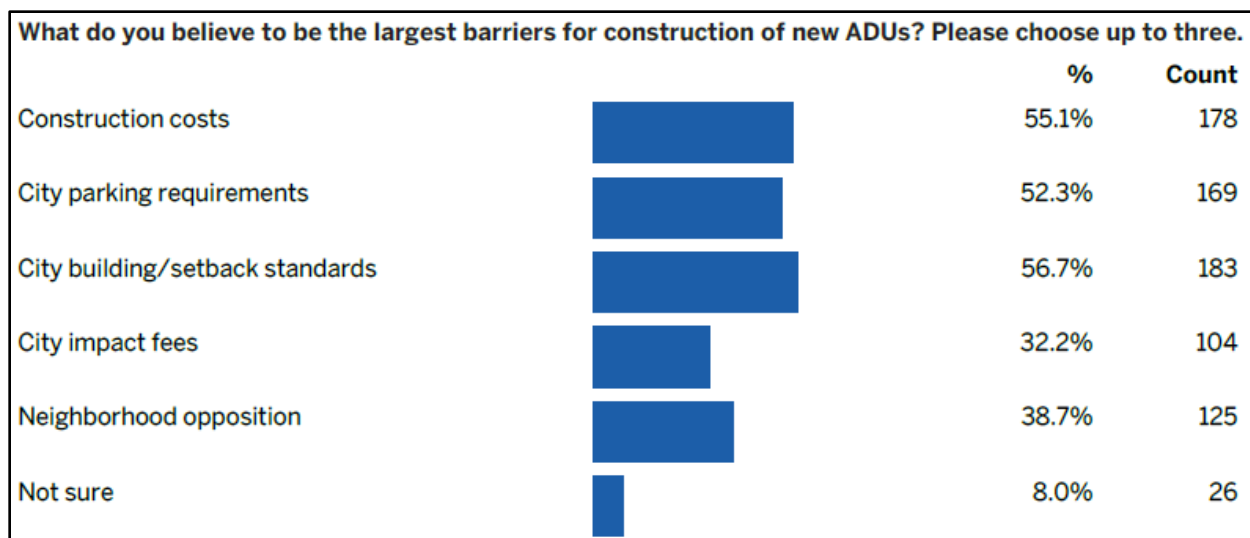


Figure 19: Perceived barriers to ADU construction as outlined by community members.

Of the barriers outlined above, the City is able to substantially impact all but Neighborhood Opposition with LUDC amendments and a financial incentive program. The proposed LUDC redlines were drafted to directly address the feedback provided from this question as related to parking standards and dimensional/design requirements. Depending on the amount awarded, a financial incentive program could nullify impact fees and may help to offset construction costs, though the latter will continue to provide challenges depending on the type of ADU desired.

Many respondents provided written comments in addition to their answers to the multiple choice questions. The bullets below summarize some of the more consistent feedback that was provided, and all written comments are included with the survey results in Appendix 1.3:

- Owner-occupancy for properties with ADUs is a crucial aspect of the program and should not be reconsidered.
- The use of ADUs as vacation rentals should be specifically prohibited.
- ADUs represent a viable option for additional infill development if property owners aside from just the wealthy were able to pursue adding one to their property. Providing for flexibility to code standards would allow more homeowners to explore the opportunity of building an ADU.
- Parking is seen as both a neighborhood impact and a barrier to adding more ADUs.

- Encouraging the creation of more ADUs seems like a simple, low barrier option to help address the City's housing shortage, with minimal impacts on the community.

These comments reinforce some of the City's standards that are already in place for ADUs, specifically the need to preserve the Owner Occupancy requirement and to maintain prohibitions against vacation rentals. The Owner Occupancy requirement is a major restriction on ADUs that, by code, must be recertified biannually by submitting a notarized Owner Occupancy Affidavit. Despite this code requirement, very few owners have complied by actually filing these affidavits. As mentioned earlier, City staff have not prioritized following up on this because it is time consuming to contact owners, send the affidavit, and collect the notarized documents. However, the survey comments indicate that the community expects staff to follow up on enforcing this standard.

While the owner occupancy requirement has proved to be somewhat weak from an enforcement perspective, the regulations for vacation rentals in Durango are very tight. Vacation rentals are prohibited entirely in ENs 3 through 6. In EN-1 and 2, the total number of permitted vacation rentals is capped at 3% of the total number of parcels. These caps have been reached, and individuals who wish to obtain approval for a vacation rental in these zones must be placed on a wait list. While these standards alone serve to limit the possibility for property owners to use their ADU as a vacation rental in all but EN-1 and EN-2, the code actually goes further by stating that properties with ADUs are ineligible for this use. Vacation rental monitoring is contracted out by the City to a third party which is tracked closely by staff. To date, fewer than 5 properties with ADUs have ever been listed for rent on a short-term basis, and those that have were swiftly caught and brought into compliance.

#### **4.3 Code Revisions**

The process of identifying and drafting the necessary code revisions was informed by the survey results, the input from the Code Alignment Group, and staff's expertise. A first draft compiled in mid-April took a conservative approach towards the edits while still addressing the more restrictive aspects of the code. This draft proposed the following updates to provide additional flexibility:

- Allow Alternative Compliance for dimensional and design standards as described in subsections F, H, and I.
- Eliminate minimum lot sizes for integrated ADUs in the EN-1, 2, & 3 zones.
- Allow ADUs in the Residential High Density zone.
- Extend an existing parking reduction which allows one on-street parking space to be counted towards the total required parking to all residential zones. This standard is currently only applicable to ENs 4, 5, & 6.
- Eliminate the requirement for ADU owners to recertify owner occupancy on a biannual basis.
- Edit the additional requirements for RL, RM, and the newly added RH zone to imply that a plat amendment stating that ADUs are a permitted use is not necessary for existing developments.

Due to the lengthy legal process required for any proposed text amendments, it makes sense to edit any code language that is perhaps unclear, poorly worded, or inconsistent within the section that is being revised. Therefore, a few additional clarifying changes were included in the redlines to the CAWG as well, mostly for the sake of improving the consistency and readability of the code. These minor edits are described below:

- Clarify language describing how ADU floor area is measured.
- Reword the parking requirements to imply that “off-street” parking is required rather than “on-site”.
- Update design standards for second story windows and decks which overlook interior property lines to be consistent with the existing requirements for detached duplex units.

These initial edits provided the baseline for future revisions that came out of internal discussions and feedback from the Code Alignment Working Group, who’s review was scheduled for April 27. During the April 27<sup>th</sup> discussion with the CAWG, members expressed support for the majority of the changes. There were, however, a few points of contention that generated substantial discussion and disagreement.

First, there was lengthy discussion regarding the restrictive privacy standards proposed for 2nd story detached ADUs. The amendments required windows overlooking side property lines to be a minimum of 5.5' above the floor height or to use obscured privacy glass. This same standard had been recently adopted based on the CAWG's recommendation for detached duplex units with a second story, so this was not anticipated to be a significant point of discussion. However, one of the architects suggested that a 5.5' window sill height would not comply with standards for an egress window by the building code. The sill height was therefore recommended to be lowered to 44", which was only 2" higher than the current standard.

On the other end of the spectrum, the members of the CAWG also provided some direction to be bolder in reducing restrictions, specifically by increasing the allowed building height for detached ADUs. This item was highlighted back in October during the first discussions on the matter. During the April meeting, staff pushed back more fervently on the question of building height, since increasing this standard would conflict with other regulations for accessory structures. By code, accessory structure dimensional standards apply consistently to sheds, detached garages, detached duplex units (in most cases), and finally detached ADUs. In order to preserve consistency, increasing a height standard for ADUs would require the same action for, at a minimum, detached duplexes. This disagreement amongst staff and some CAWG members on this question unfortunately caused the discussion to digress beyond the original intent of the amendments. The matter was unable to be resolved during this meeting, and staff was directed to reconsider if the support of the CAWG was desired prior to bringing the edits forward for adoption.

This was a frustrating outcome that caused a month-long delay in the scheduling of public hearings for the amendments. The proposed timeline for the revisions was envisioned to establish the support of the CAWG in April prior to Planning Commission's review in May, which would line up the final review and adoption by City Council in late June. The lack of support for amendments that had been in the works for over 6 months and were backed by public feedback due to disagreements on building heights seemed to be the equivalent of throwing the proverbial baby out with the bathwater.

Staff discussions in response to this disappointing initial outcome focused on whether other changes could be proposed that would appease members of the Code Alignment Working Group while still achieving the original intent of the amendments and preserving consistency within existing standards. Some of the ideas that were proposed included allowing ADUs as a use by-right in all residential zones, allowing detached ADUs on corner lots in the more suburban ENs 4, 5, & 6, and eliminating minimum lot sizes for all ADU types. The first idea, allowing ADUs as a use by-right, was deemed to be too far-fetched given the concerns expressed about enforcement. The Limited Use Permit required with an ADU approval serves as the enforcement mechanism for all applicable standards, including owner occupancy. By-right uses rarely occur in Durango's Land Use and Development code with such restrictive standards, so it appeared that the only way to do this would be to eliminate the owner occupancy requirement, which clearly was not palatable. By-right ADUs was a concept that could work in smaller Planned Developments like Rosemary Lane, but the City overall was not ready for this step.

Discussions about the regulations for detached ADUs also struggled to gain traction amongst staff. Understanding that detached ADUs are the most expensive to build provided a baseline for the opposition to this suggestion, though the minimum lot size requirements were also highlighted. These requirements were established in 2014 after very specific public input from residents of within the EN-1 zone. Undermining this original feedback from residents would have likely triggered a more substantial public outcry, possibly from members of the CHEN group who were responsible for the most restrictive code language. The issue with detached ADUs on corner lots in ENs 4, 5, & 6 was similarly seen as an idea that would bring the NIMBY crowd out in force without actually creating much potential for new ADUs. Both questions were ultimately seen as too risky given the relatively minimal reward. Expanding allowances for more expensive detached ADUs to relatively fewer parcels wasn't worth the possibility that the more important proposed edits could be derailed due to public opposition.

After making the changes described above, processing the feedback from the CAWG, and formally continuing the public hearing before the Planning Commission to consider the amendments, contact with members of the CAWG about the ADU amendments was

reestablished through an email in early June. In this email, the proposed amendments were described again in some detail along with the broader original intent: to simplify and provide flexibility to the ADU program so that more property owners will have the option to build an ADU. In response to the push for increased heights and dimensional standards, a detailed description of the Alternative Compliance Process was provided. Feasibly, a variance could be used to allow for an increased height in certain circumstances. From the perspective of staff, this approach seemed more appropriate than just increasing height allowances across the board. In summary, this email highlighted the importance of the proposed changes as compared to the marginal benefits that would be provided by increasing the allowed overall height for detached ADUs. It also listed the risks of increasing this height allowance:

- **Consistency.** *ADU height and wall plate standards are consistent with what is allowed by code for other accessory structures, including detached duplexes. If we increase the standards for ADUs, our code would allow these units to be taller than a detached duplex unit. Duplexes are only allowed on larger lot sizes, so this wouldn't make any sense. We could allow all accessory structures an increased height, but then we'd get excessively tall sheds and detached garages.*
- **Privacy.** *This was a topic of discussion in last month's meeting. Allowing taller ADUs increases the potential for privacy impacts to neighboring properties.*
- **Public opposition.** *The survey revealed that a substantial contingent of the public still opposes ADUs, and both staff and our elected officials are likely to hear from these folks during the code amendment process. Staff is comfortable advocating for the proposed changes in the face of public opposition using the rationale that the amendments will, broadly, make it simpler for residents to build an ADU. It's more difficult to apply this argument towards a height increase, especially since it's only applicable to one type of ADU- a detached, second story unit. Incidentally, this type of ADU is also the MOST expensive to build.*
- **Use of the EN Design Guidelines.** *Those of you on the DRB are probably familiar with this document. For those who aren't, this document is a crucial source for planning staff in the decision-making process for Alternative Compliance. It contains design standards*

*that would help to justify increases to wall plate or overall heights through a variance process, including those outlined below. However, codifying height increases for ADUs may undermine these standards in some circumstances:*

- *From [2.5, Building Height](#):*
  - *Minimize the shading effect that a taller mass has on a property.*
  - *Consider incorporating a second floor within the roof form.*
  - *Separate taller buildings from adjacent properties with greater side yard setbacks.*
- *From [2.19, Accessory Structures](#): In general, an accessory building should appear subordinate in scale to the primary structure on the lot.*
- *From [2.14, Side Yard Setbacks](#): Provide a greater setback when the height of the new side wall is greater than a neighboring building.*

This email sparked a different debate than had occurred during the April meeting. The group's informal chair, who also serves as the Vice Chair of the Planning Commission, responded by stating that he had conferred with the most vocal advocate for height increases. While they both agreed on a desire to reduce prescriptive standards, they also agreed that the ability to vary from height standards could be accomplished through Alternative Compliance. While this was a major step forward, a concern with how owner occupancy would be certified was highlighted. The suggestion was that removing the requirement for ADU owners to certify owner occupancy once every two years would not be well supported by the public and should be reconsidered. During the April meeting, staff framed the removal of this requirement as necessary since it was not being enforced, though the owner occupancy standard was to remain in place. The proposed edits actually strengthened this obligation by requiring an affidavit certifying owner occupancy to be recorded on a property whenever a new ADU was built. Recording the affidavit would cause it to come up in future title searches, so that prospective buyers would be aware of the need to live on the property. This update was appreciated, but concerns about ADU enforcement were still an issue, especially if the City has

shown an inability to follow up on recertifying such a specific requirement originally included in the code to minimize the impact of these units.

To provide some background on this issue, in Durango, code enforcement procedures are almost always driven by complaints from the public. In the experience of the author of this practicum, this is mostly due to the lack of staff time to actively look for code violations in the community. This is true for nearly all circumstances, with the exception of vacation rentals.

Staff followed up with a phone call to the chair of the CAWG to work through his comments. Based on the public's written support for the owner occupancy requirements in the survey, this member felt that keeping some manner of owner occupancy enforcement within the code was an important way to demonstrate to the public that the City is interested in preserving this standard and protecting Established Neighborhoods. He suggested that the City could certify owner occupancy through a digital registration, similar to the process that is currently required for Business Licenses. This would simplify the procedure substantially for the City and the property owner, and would help the City to keep track of contact information for ADU owners- something that clearly was ineffective based on the poor response rate in the Owner Survey. Even though it wasn't quite applicable to the original intent of the edits in that it did not reduce restrictions on ADUs, this suggestion seemed appropriate by possibly building good will with those community members who are opposed to this use.

Code Alignment Working Group members were provided with a final updated section of code incorporating the suggested edits from the group's chair, with a request for a statement in support prior to the June 27<sup>th</sup> Planning Commission hearing. While only 3 members of the group ultimately responded, all three expressed support for the changes. Based on the informal nature of the group and the lack of dissent from any members, this was deemed to be adequate for the proposal to be brought forward to public hearings.

Prior to the Planning Commission hearing, a few additional minor revisions to the code redlines were made. First, staff realized that the definition of an ADU implied that they were only accessory to a single family detached unit. One of the reasons for including ADUs as an allowed use in the RH zone was the need to provide an option for proposed townhome developments to include ADUs. A creative development proposal for an RH zoned property



from several years prior had intended to include an option for integrated ADUs. However, because this was not an allowed use in the zone, the developer was required to go through the more extensive Planned Development review process. The proposal did receive a Conceptual approval, but ultimately did not move forward. To provide flexibility for this type of scenario in the future, the definition of an ADU was therefore broadened to imply that units could be approved as an accessory use to any single-family home, including single-family attached homes- also known as townhomes.

The other minor revision that was included was striking the language implying that outdoor open space must be provided on properties with new ADUs. Previous iterations had softened this language to the extent that it did not seem necessary to include it within the code at all. Instead of removing this language entirely, however, it was moved into the subsection describing bulk and intensity, which refers to lot coverage and Floor Area Ratio. The intent of this change was to ensure that staff would be aware of the recommendation to include open space on these properties even if it was not specifically required. This recommendation could be considered if a property owner ever requested a variance to Bulk and Intensity standards, such that staff would consider a variance to be more appropriate if outdoor open space was not sacrificed.

The redlined code section that was provided to Planning Commission for their review did not include the final edits mentioned above, so these changes instead needed to be presented as recommended edits to the proposal. All versions of the redlines code are included in the appendices of this report.

## **4.4 Public Hearing Process**

### **4.4.1 Public Comment**

Planning Commission and City Council hearings for text amendments each require a legal notice to be published in the local newspaper announcing the proposed changes. For the Planning Commission review, this notice was posted in the Durango Herald on Saturday, June 11<sup>th</sup> with a link to the proposed redlines on the City's website. Prior to the June 27<sup>th</sup> hearing, three emailed comments were received, a surprisingly minimal amount. Two of the three

letters were from known ADU opponents and CHEN group supporters who have been outspoken in their disapproval of these units in the past. These letters expressed the same broad concerns about additional density in Established Neighborhoods that had been described with previous text amendments: overcrowding, parking, and privacy. The third comment was from a resident in EN-1 who felt that the proposed changes did not go far enough to address housing needs in the community. This comment stated that minimum lot sizes should be eliminated for all ADU types in all zones within the City.

In advance of the City Council meeting, three more residents submitted written comments regarding the proposed changes. While it was anticipated that most comments would be opposed to the changes, the final tally ended up as an even split. Two of the three comments submitted before the City Council hearing expressed generalized support. One of these was from the property owner who originally complained to the City's Community Development Director about the inability to pursue a variance due to the presence of an ADU on her property. The third comment took a position of supporting some aspects of the proposed changes, such as increased flexibility for variances and strengthening the owner occupancy standards, while also expressing concern about the parking provisions. In the end, the proposal went before City Council with 2 comments in opposition, 2 comments in support, 1 comment taking a middle-ground position and 1 comment pushing for more extensive changes.

#### **4.4.2 Planning Commission**

Durango's Planning Commissioners are provided with the packet summarizing the projects under review 5 days prior to scheduled hearings, which are always held on a Monday. There is also a brief study session on the Thursday prior, where brief descriptions of the proposals on the agenda are described. Commissioners also have the opportunity to ask clarifying questions during the study session and can request additional information to be presented during the public hearing. The study session was held on Thursday, June 23 with three of the five commissioners in attendance. Discussion at this point was relatively minimal, though one commissioner did ask for a more complete list of approved ADUs within EN zones.

Her assumption was that many ADUs that existed in the community were still not legalized, and that staff's projected estimate of the number of these units was therefore

### ADU vs Detached Duplex

- ADU versus Duplex- "detached duplexes" allowed in EN 1 & 2, can appear very similar to a detached ADU but are much less restricted.



*Figure 20: Demonstrating the similarities between detached duplexes and ADUs. The unit at left is an ADU, whereas the similar structure at right is a detached duplex.*

inaccurate. In preparing for the presentation before Planning Commission, it was understood that the total numbers of ADUs in the community would therefore be under some scrutiny. Understanding that many detached duplex units exist in EN-1, a specific slide demonstrating the similarities between these two units was included in the presentation. This was intended to help show that ADUs were not the only source of additional density along alleys.

The Planning Commission hearing considering the amendments took place on June 27<sup>th</sup>, 2022. The presentation included a lengthy history on Durango's ADU program, an overview of the survey process and results, a description of ADU locations using the maps that were produced through ArcMap, and detailed descriptions of the proposed amendments. The amendments were framed through the context of the City's housing shortage and the extent to which removing restrictions on ADUs may help to encourage the creation of more of these units. A thorough account of the City's Alternative Compliance program was provided to ensure that commissioners understood the extent to which variance requests would be scrutinized. Staff also described the extent to which the proposed amendments had been reviewed by both staff and the Code Alignment Working Group. The concluding slides stated that the proposed amendments were mostly incremental in nature and preserved some of the most popular restrictions on the use while still providing increased flexibility.

There was no public comment on the proposal from the community, but a substantial number of questions and comments from the Planning Commission followed the staff

presentation. Some of the questions were simpler, while others led into lengthy discussion.

Simpler questions included:

- A request for clarification on public noticing requirements for Alternative Compliance to confirm that neighbor concerns would be addressed.
- How ADUs are approved for PD zones, and whether existing PDs that do not allow ADUs could create a pathway to legalize this use.
- How the national conversation on ADUs has progressed since Durango originally adopted standards for this use.
- Clarification on what impact fees are required for new ADUs.
- How staff will know whether the amendments are successful in encouraging the construction of new ADUs.

Questions about how density was regulated in the context of ADUs led to a broader discussion. The function of existing regulations was explained by staff more than once, with some commissioners expressing concerns that the allowed density in EN-1 is exceeded in certain areas if alley dwellings are factored into the calculation. In this area, density is broadly capped at 12 units per acre, though this is referenced more by the Comprehensive Plan than code. This standard does align with the 7500 square foot minimum lot size for duplexes, as this equates to 11.2 units per acre. While there may be more than 12 dwelling per acre in parts of the EN-1 zone, ADUs would not count towards these density calculations based on the maximum occupancy requirements.

Broad discussions on enforcement of ADU standards also took up a significant amount of the hearing. The commissioners were pleased that the owner occupancy requirement had been reconsidered and determined to need an overhaul, and they expressed support for City staff taking whatever action was required to ensure that enforcement of this standard was not placed solely on neighbors. There was even a statement from the Vice Chair requesting that the Code Enforcement Division receive a higher level of funding to more broadly address Land Use violations that seem to be prevalent in the community. Taking this a bit further, the Vice Chair suggested that the code section regulating ADUs include a specific reference to enforcement language, so that individuals pursuing this use would be aware that action could be taken if

their ADU was found to be non-compliant. This provision was supported by other commissioners.

Commissioners also discussed the impacts of increasing traffic in EN-1, specifically due to the condition of the alleys in the area. While ADUs have been deemed to not contribute to density, detached units do contribute to alley traffic. The condition of many alleys in the downtown neighborhoods has deteriorated substantially in recent years, and commissioners felt that capital improvement funds should be dedicated to repaving these alleys if the City intends to encourage more dwellings taking access from these locations. While this issue was unlikely to be something that could be captured or regulated through the proposed amendments, the commissioners felt that City Council should be aware of this concern.

Concluding statements from the commissioners generally expressed support for the proposed edits. One commissioner did state that the City needed to bolster enforcement efforts before she could support changes that may result in more ADUs in the community. She also felt that there were other ways to address the housing shortage in Durango that would have a lesser impact on established neighborhoods, specifically mentioning the substantial number of rental housing units that had been approved in recent months. Finally, this commissioner implied that she had little confidence in the ability for ADUs to offset mortgage costs. Her research indicated that return on investments for ADUs was often in the negative, and that therefore these units would not improve housing affordability for Durango residents.

Other commissioners refuted these claims with anecdotal evidence from their own lived experiences as Durango residents. The Planning Commission's Chair stated that he had a friend who previously owned a home in EN-1 and wanted to add an ADU to help offset mortgage costs. His property, however, did not meet the required minimum lot size and therefore pursuing the ADU was not possible. Ultimately, this person needed to move away from Durango to a more affordable community. Another commissioner mentioned that he had purchased a home with a secondary dwelling specifically because the rental income from this unit allowed him to afford the mortgage costs. After these final comments, a motion to recommend adoption was made by the Vice Chair. With the edits described above and those

mentioned in the presentation from staff, the Planning Commission recommended that the City Council adopt the amendments on a 4-1 vote.

#### **4.4.3 City Council**

Following the Planning Commission's recommendation, the final edits to the code redlines were compiled. The packet provided to the City Council included these edits, all public comments received, supporting documents summarizing survey results and showing ADU locations, Planning Commission minutes, and the Planning Commission staff report. The summary documentation written for City Council provided a brief history of ADUs in Durango, highlighted the specific restrictions that staff were proposing to modify, and tied the proposed changes to adopted policies related to housing affordability and availability. While City Councilors will often reach out to staff for further information prior to their review of text amendments, there was no outreach from these officials in the week leading up to the public hearing.

City Council's consideration of the amendments took place on July 19<sup>th</sup>, 2022. Staff's presentation was pared down from what was given to the Planning Commission to focus more heavily on the City's policy goals. Following the presentation, there was one verbal comment expressing opposition to any need for additional ADUs in the community. The individual who spoke out was an active member of the CHEN group that had played a substantial role in getting the more restrictive aspects of the code included in the original text. The perceived issues that were cited, again, included many of the most common concerns about this use: density, overcrowding, parking concerns, and neighborhood impacts. In a notable departure from previous public hearings considering ADU code amendments, this was the only public comment provided during the hearing.

City council's discussion of the proposed amendments also highlighted some of the more common themes that had come up during this process. Councilor Olivier Bosmans started the questions by asking about enforcement of short-term rental regulations for ADUs, before moving on to inquire about the safety of these units and their impact on neighborhood character. Responses to these questions described the firm stance that the City has taken on

short-term rentals, covered the building permitting process for ADUs, and described the length to which Community Development staff protect neighborhood character when considering Alternative Compliance requests. Councilor Jessika Buell's comments focused on how community change is a constant and that efforts are needed to address housing needs, regardless of the scale of the changes. Councilor Baxter, a prior Planning Commissioner, had a number of comments:

- The private covenant prohibiting ADUs in the Crestview neighborhood is a challenge, and she is aware of ADUs that exist in the area despite not being legal.
- An ADU's ability to offset ownership costs is applicable to the property owner who adds the ADU, but not necessarily to future owners since property value increases reflect the inclusion of the second unit.
- The amount of staff time spent on this issue is disproportionate given the relatively few numbers of new ADUs built. With the scope of the housing issue facing the community, staff should focus efforts on areas that may have a greater impact.
- Including ADUs in the community does help to promote a multigenerational community and strongly aligns with the policy goals outlined by the Strategic Plan.

Mayor Noseworthy commented that increases in population within the community are inevitable, and that her preference would be for new residents to live within areas that do not require significant commutes. She feels that ADUs help to address this preference. Councilor Buell moved to approve the amendments as proposed, with a second from Mayor pro-tem Youssef. The motion passed on a 5-0 vote.

## **5. Findings and Lessons Learned**

### **5.1 Overview**

City Council's adoption of the scaled back changes 8 years to the month from the implementation of the original language legalizing ADUs suggests that the political will for confronting issues related to housing availability outweighs continued opposition to new ADUs. Two differences between this process and the initial adoption of code standards for ADUs in 2013 are notable. First, while housing costs were seen to be an issue in 2013, they were not nearly given the same level of attention as that of the 2022 City Council. During Councilor Baxter's comments on the proposed amendments, she stated that addressing housing needs in Durango is probably the City Council's top priority. This was simply not the case in 2013. Secondly, the perceived threat posed by ADUs to neighborhood character has waned substantially since their original legalization. Some of this may be attributed to staff's incremental approach towards loosening restrictions, as well as the strengthening of standards related to owner occupancy. It is also likely that the arguments posed by members of the CHEN group have been shown to be less valid in the 8 years since ADUs became legal. Because so few units have been created, neighborhood impacts have truly been minimal. Population increases in Durango have perhaps contributed to more traffic and congestion in the busier parts of town but pinning the blame on ADUs for these conditions is just not supported by the numbers of new ADUs. This is especially true when viewing these units as a percentage of the overall number of dwellings in the community.

Several councilors commented on whether dedicating staff time and attention to ADUs is worthwhile given the low numbers of these units that are created. This may be a valid observation based on the past, but the community survey results indicated that a significant portion of respondents would be interested in building ADUs. There may therefore be a significant opportunity to promote the construction of these units through means aside from just providing flexibility in code standards. With the adoption of the proposed edits, the next steps for community development staff will be to initiate an outreach program informing residents in Established Neighborhoods 4, 5, & 6 of the process to add an ADU to their homes.



Data on new ADUs clearly show that these neighborhoods can readily absorb many more of these units, the question simply becomes how to jump-start construction.

## **5.2 Incentivizing ADUs**

The creation of an ADU incentive program which would provide a rebate in an amount that would, at a minimum, offset the impact fees imposed on ADUs could help initiate the creation of more of these units. Understanding that construction costs are a substantial barrier especially for detached ADUs, any outreach or incentive program should focus on or direct interested property owners to pursue an integrated ADU. This is, of course, the only option for many property owners (including all of those in ENs 4, 5, & 6) based on the adopted codes. While some of the evidence collected suggests that detached ADUs are more desirable, the conversion of existing conditioned living space within a home incurs a fraction of the cost of building a detached unit from the ground up. This is especially true if the floor plan of an existing home is more conducive to a conversion based on the location of bathrooms and plumbing fixtures. With the inclusion of an incentive program offsetting development fees, owners that add an integrated ADU may see a full return on their investment within the first year or two of adding the unit.

Another consideration that may help address the dearth of ADUs in at least one of the EN-4 neighborhoods is altering the City's policy position related to the protective covenants prohibiting ADUs that have been in place for the Crestview neighborhood since its original subdivision in the 1950s. These covenants have existed for decades without enforcement, and many residents are probably completely unaware of their existence. In the City Council hearing, Councilor Baxter acknowledged the challenge that these covenants present without really presenting a solution, and even went so far as to say that neighbors should report unpermitted ADUs to the City. This would put staff in the incredibly awkward position of requiring an ADU to be removed from a property where our codes could permit its existence, possibly evicting a resident in the process. This is not a desired outcome for anybody, save perhaps the disgruntled neighbor, and clearly conflicts with the adopted policies which were used to justify the ADU code amendments.

Consulting with the City Attorney on these questions may help lead to a different approach. The City, by law, has no obligation to enforce or even consider protective covenants on a development. Such covenants are private and are enforced by an Owner's Association. The City's position has always been that zoning regulations supersede covenants in a scenario where covenants allow a use but zoning does not. In such cases, enforcement of the more restrictive standard falls upon the City. In the reverse scenario, where zoning allows a land use but private covenants do not, conventional logic would suggest that enforcement should fall upon the Owner's Association. In this case, the Crestview Neighborhood does not have an Owner's Association and has not enforced other provisions included in their covenants. The City's decision to recognize the restrictive covenant and not permit ADUs in this area was, as far as the author is concerned, based on politics. In 2019, staff's initiative to legalize ADUs in these zones was met with nearly as much opposition as the 2013 process. To appease a subset of opposed citizens, staff and City Councilors decided to recognize the covenants as valid until such point as a Crestview resident was able to obtain a legal decision overturning their validity. This helped to get the proposed amendments for the broader EN-4 zone across the line.

During the 2022 National APA Conference in San Diego, the author of this practicum had an opportunity to discuss this issue with Don Elliott, FAICP, a Director with the Clarion Associates firm out of Denver which specializes in land use consulting. Don's advice on this matter was to completely ignore the existence of the covenant. The City of Durango has no legal obligation to acknowledge that it exists, let alone take a position that amounts to a de-facto enforcement of the covenant by not permitting new or legalizing existing ADUs. With housing availability at a crisis level, enforcing a private covenant prohibiting ADUs amounts to bending to the will of the NIMBY crowd. This is certainly not a legally defensible position, does not align with policy directives from multiple guiding City documents, and also would seem to be a poor political position.

While much of the focus in Durango should logically be applied to encouraging integrated ADUs, simplifying pathways for detached ADUs is also worth considering. There are three plausible ways to approach this: encourage pre-fab modular units, allow for tiny homes, and provide pre-approved plan sets. While the pre-fab trend has not yet reached Durango, the

City's Community Development Department has had many inquiries in recent years about bringing tiny homes onto single family lots. Generally, staff have been open to this idea as long as a few main criteria are met:

1. The tiny home must be placed on a permanent foundation;
2. It must be connected to City utilities with a separate sewer service line; and
3. The property must be eligible for a detached ADU.

The first two items listed above are the biggest regulatory hurdles for homeowners and most often what derails their plans. Most tiny homes seem to be built as mobile structures more comparable to manufactured housing than a truly stick-built structure. Removing the tiny home from the trailer upon which it was constructed and placing it on a foundation is a much more complicated task than simply providing skirting. Worse yet, requiring separate utility connections can cost tens of thousands. Reconsidering these two items would simplify the City's ability to approve these units within the neighborhoods where detached ADUs are allowed.

Many municipalities now provide pre-approved plan sets for detached ADUs. This helps to offset initial design costs and ensures that units are designed in a manner that fits the neighborhood context. In Durango, this option was discussed briefly amongst staff as part of the proposed text amendments. While this has not been pursued further, doing so would not require any further amendments and may be worth considering. Waiting until construction costs begin to fall back to pre-pandemic levels may be worthwhile before moving forward with such an option, given that only more wealthy property owners are likely to be able to afford to build a detached ADU. Providing plan sets for these units free of charge is essentially a subsidy and providing this for the wealthy may be a less palatable idea.

### **5.3 Enforcement**

Enforcement was a consistent topic that was brought up by reviewing CAWG members, Planning Commissioners, City Councilors, and the public. The need to follow through on the enforcement of existing standards is imperative as staff moves forward implementing the code updates. While this can be a tedious task, follow through on enforcement helps to build trust

with the community and provides staff with credibility. This can help to make or break future proposals that could impact established neighborhoods and having this standing within the community is likely to be useful given the City's current housing goals. Aside from these rather incremental changes to promote flexibility to ADU standards, staff has also attempted to kick start an initiative that would legalize smaller scale multifamily uses in some EN zones. The EN-1 zone in particular is known to contain at least 30 or more nonconforming multiplex properties. These are typically single-family homes that have been converted to 3 to 5-unit apartment buildings. In most cases, these buildings have maintained their single-family appearance and have little impact on neighborhood character. As housing shortages become more dire, however, more homes have been cut up into units in a manner that displays little regard for local design standards, let alone tenant safety. Therefore, these units have the potential to fire up neighbors on a scale that could exceed the CHEN group's picketing efforts from 2013. If efforts to legalize these existing nonconforming properties and create a pathway to approval for new multiplexes are to have any chance at success, the City will need to reference any political capital gained through a successful enforcement campaign for ADU standards.

#### **5.4 Program Monitoring and Future Amendments**

During the Planning Commission's review of the amendments, one commissioner asked if the City had targeted a numeric goal to indicate that the amendments were successful in encouraging ADU construction. At the time, there was not a specific target and therefore no specific answer to this question. Upon reflection, however, the answer to this question should be rather simple: more ADUs need to be built, on average, than were in the first 8 years of the program's implementation. Discussions with the City's Housing Innovation Manager about a measure of success for the incentive program led to the conclusion that permitting 10 new ADUs in a calendar year would be a win. To date, the best year for ADU construction was 2021, when 8 units were approved. Exceeding this number in an expensive and difficult construction market, especially with inflation and rising interest rates, may be a challenge.

Monitoring the growth in ADUs in Durango will remain relatively simple. Data can be collected from the City's Land Use and Building Permitting software and linked with ArcMap

parcel data for future spatial analysis, as was completed during this project. Unless there is a major proliferation in ADUs, however, this analysis is probably only necessary every few years. Because these units are approved so infrequently, staff can probably track where and what types of ADUs are being built without detailed data analysis. Participation in the incentive program, once it gets off the ground, will also help to provide information as to the success of the amendments.

The incremental nature of the amendments that were proposed, reviewed, and adopted by City Council may ultimately allow for minimal gains in new ADUs in the coming years. Balancing the feedback of the community with the broader housing goals outlined by the City's Housing Plan and the Strategic Plan led to a process that was reminiscent of the concept described by Lindblom's famous article, *The Science of "Muddling Through,"* which broadly justifies incrementalism as an effective approach to changing public policy. If gains in the number of ADUs remain minimal, future incremental updates should reconsider the strictest requirements that have remained in place, specifically owner occupancy, locational qualifiers for detached ADUs, and the maximum allowed square footages for new units. Despite the documented policies prioritizing the construction of new housing, there was simply not enough political will to reconsider these standards at this time. Portland, Oregon still represents the best example of a successful ADU program, and it is important to recognize that their standards for this use evolved over nearly three decades of policy. Durango, by comparison, has allowed for legal ADUs for 8 years, with 3 revisions to the originally adopted codes now on the books. The initial catalyst for the amendments proposed in this practicum was removing the provision prohibiting variances. Reducing parking requirements and removing minimum lot sizes for integrated ADUs were logical steps to include without pushing policy makers and community members to the brink of their comfort levels. While the final outcome of these changes will be revealed in the coming years, growth in ADUs in Durango may require further code amendments to tackle the remaining restrictive provisions.

## **6. Appendices**

1. ADU Surveys
  1. Press Release
  2. Community Survey with Results
  3. ADU Owner Survey with Results
2. Code Amendment Iterations
3. Written public comment
4. Planning Commission Minutes
5. City Council Agenda Documentation & Staff

**Media Contact:**

Dan Armentano

Planner II

(970) 375-4864

[Dan.Armentano@durangogov.org](mailto:Dan.Armentano@durangogov.org)

**Follow us:**

[Twitter.com/cityofdurango](https://twitter.com/cityofdurango)

[Facebook.com/cityofdurango](https://facebook.com/cityofdurango)

[Instagram.com/cityofdurango](https://instagram.com/cityofdurango)



FOR IMMEDIATE RELEASE, MARCH 2, 2022

## NEWS RELEASE

### City seeks public input on standards regulating ADUs

**Durango, CO:** The City of Durango has posted a [survey](#) to gather residents' input on standards regulating Accessory Dwelling Units (ADUs). In 2014, the City adopted codes that permitted new ADUs in certain neighborhoods. By 2019, the allowance for ADUs had been expanded to all established neighborhoods. Despite this, in the nearly eight years since the original code changes, fewer than 50 ADUs have been built. In the face of a significant housing shortage, city staff hope to identify what barriers may exist in the creation of new ADUs in the community. An ADU is a secondary house or apartment that shares a property with a larger single-family home. ADUs are either integrated within, attached to, or detached from the main residence. These units are a desirable housing option because they are built in convenient locations already connected to City services.

"When the Land Use and Development Code was updated in 2014 to allow for new ADUs, there was an assumption that the City would begin permitting lots of these units," said Planner Dan Armentano. "This has not been the case, and staff is concerned that restrictive code requirements may play a role in limiting the number of homeowners pursuing the option to add an ADU to their property."

Current regulations impose a variety of restrictions on new ADUs, including standards for design, parking, and dimensions. In nearly all cases, no variances to ADU standards are available to applicants. Community Development staff are seeking public input to help shape how ADU regulations might be revised to allow local property owners to better utilize their property and create additional housing options in our neighborhoods.

A short survey is available to the public until March 16 at [DurangoGov.org/](http://DurangoGov.org/). Results will help determine if text amendments to ADU standards are appropriate. Any proposed amendments will require public hearings before the Planning Commission and City Council. For more information and background on ADUs in Durango, please visit [www.durangogov.org/ADU](http://www.durangogov.org/ADU).



### 6.1.2 ADU Community Survey

## **VIRTUAL CITY HALL - NEW TOPIC WORKSHEET (content areas)**

**TOPIC NAME:** Accessory Dwelling Unit Community Survey

**TOPIC QUESTION/CALL TO ACTION:** Seeking input from community members about the ADU program to gauge public knowledge and identify barriers to ADU construction.

**DEADLINE FOR FEEDBACK:** Survey live from March 2-March 16 (Estimate)

**INTRO TEXT CONTENT (Ideally 200-250 words):** 208 Word Count



The City of Durango legalized Accessory Dwelling Units (ADUs) in the Land Use and Development Code (LUDC) following an extensive public process in 2014. Since this time, the code has been updated to allow ADUs in nearly all residential zones. Nearly 150 legal ADUs exist in the City today, and the majority of these were constructed prior to the 2014 code changes. Fewer than 50 new ADUs have been built in the last 8 years.

In the face of a significant housing shortage in our community, City staff are interested in taking a second look at the standards regulating ADUs. This survey is an attempt to gauge the knowledge about the [ADU Program](#), as well as to identify what barriers may exist in the creation of new ADUs in the community. The City is seeking your input to help shape how we might revise the LUDC for local property owners to better utilize their property and create housing options in convenient locations already served by City services.

Please take a moment to complete this brief 5-10 minute survey. We appreciate your time and value your feedback. The survey is anonymous and responses will be confidential, compiled together and analyzed as a group and not used for monitoring purposes.

ADU Program - <https://www.durangogov.org/850/ADU-Program-Information>



## Accessory Dwelling Unit Community Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

### Summary Of Responses

**As of March 17, 2022, 12:00 PM, this forum had:**

Attendees: 431  
Responses: 323  
Hours of Public Comment: 16.2

**Topic Start**

March 1, 2022, 3:56 PM

**Topic End**

March 17, 2022, 11:59 AM







#### QUESTION 1

**Where are you a resident?**

		%	Count
Durango		84.5%	273
La Plata County (outside of Durango)		14.6%	47
Outside of La Plata County		0.9%	3

#### QUESTION 2

**If you are a resident of Durango, where is your residence located?**

		%	Count
EN-1: Old Durango neighborhood		21.1%	68
EN-2: North Main Corridor		8.4%	27
EN-3: Animas City		12.4%	40
EN-4 & EN-5: Riverview and Crestview		26.6%	86
Other area		13.0%	42
Outside city limits		18.6%	60

## Accessory Dwelling Unit Community Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

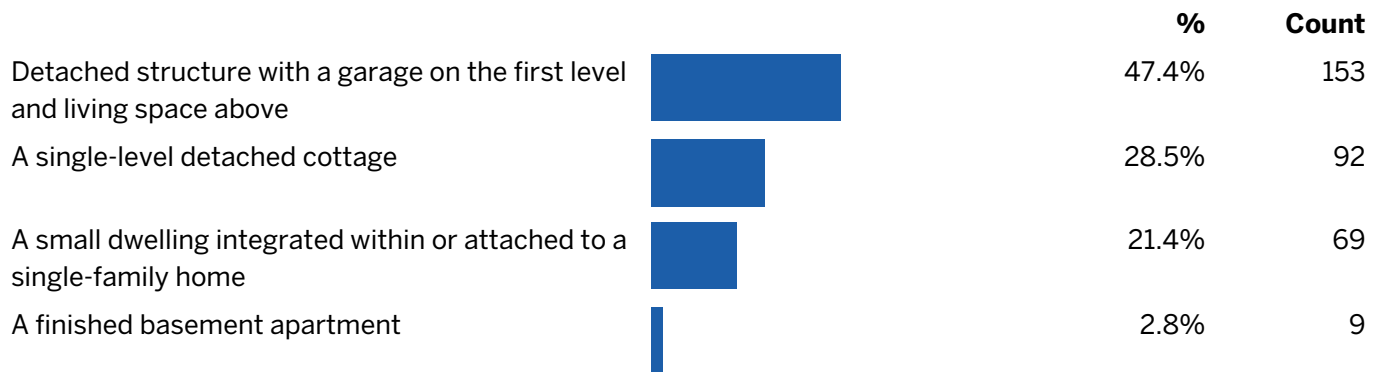
### QUESTION 3

#### Are ADUs are permitted in your neighborhood?



### QUESTION 4

#### When you picture a typical ADU, what do you envision?



### QUESTION 5

#### If you owned an eligible single-family property in Durango, would you want to build an ADU?

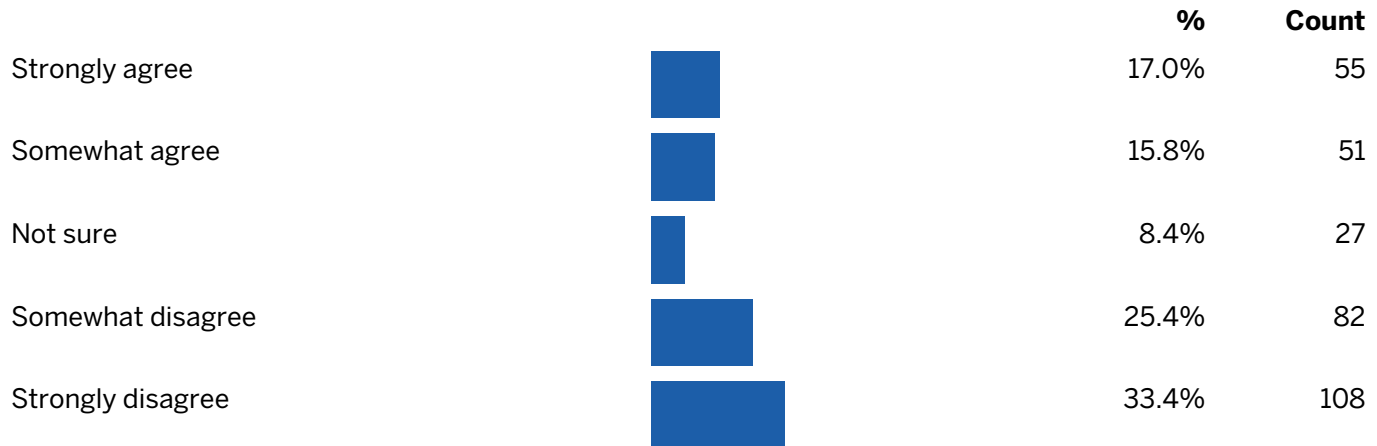


### QUESTION 6

## Accessory Dwelling Unit Community Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

**Do you agree or disagree with the following statement: I am concerned additional ADUs could affect my neighborhood character.**



### QUESTION 7

**What do you believe to be the largest barriers for construction of new ADUs? Please choose up to three.**



### QUESTION 8

**Currently, properties with existing ADUs cannot obtain any variances (setbacks, building coverage, height, etc.). Do you think the city should reconsider this?**

## Accessory Dwelling Unit Community Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

		%	Count
Yes		64.1%	207
No		20.4%	66
Not sure		15.5%	50

### QUESTION 9

**Do you agree or disagree with the following statement: The city should amend the Land Use and Development Code to promote the construction of additional ADUs.**

		%	Count
Strongly agree		50.5%	163
Somewhat agree		25.7%	83
Not sure		5.9%	19
Somewhat disagree		5.0%	16
Strongly disagree		13.0%	42

### QUESTION 10

**Do you agree or disagree with the following statement:  
The city should consider providing financial incentives such as grants or fee waivers for new ADUs if owners commit to offering the units at affordable rental price points.**

		%	Count
Strongly agree		52.0%	168
Somewhat agree		23.8%	77
Not sure		5.9%	19

## Accessory Dwelling Unit Community Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

		%	Count
Somewhat disagree		5.0%	16
Strongly disagree		13.3%	43

### QUESTION 11

Do you have any other feedback you would like to provide regarding ADUs?

adu adus affordable all also build could do durango existing help home housing income like live lot more  
need neighborhood neighborhoods one only parking people property rent rental rentals requirements S so t term they think  
units way who

Space within an existing home with a separate entrance should absolutely be allowed as rental space. The City might consider permits based on the number of people already living in the home. For example, I am a single, retired homeowner with a finished basement space with a separate entrance and would LOVE to rent to 1-2 people to let in order to augment my social security income. The City could put requirements on this line: 1 extra car only; must have off street parking spot; annual renewal of permit with reasonable fee; etc. These kinds of things are readily able and would allow for extra income for seniors, as well as provide more housing within Durango. The current rules are WAY too strict and restrictive, especially for homeowners who are only one or two people in a big house. The City needs to get a lot more creative with this. It would also be a great way for the City to increase its funds to help with other causes they need funding. I sincerely hope this will open up and become more reasonable. Some places could be looked at on a case-by-case basis. I have seen the anger in our community due to lack of affordable housing, and opening this up would help release that pressure and be a win-win for everyone!!!

The Fees are a huge barrier for a homeowner to proceed, even if they have the space and appropriate location.

It is understandable that building new ADUs on a city lot with an existing house would cause some interference with the peace of the neighborhood, but the housing crunch is so horrible in Durango, the City needs to open up to all possibilities. I have never understood why a finished basement with a separate entrance is not allowed. Guidelines and requirements (by the City) could be put around these existing spaces, as well as...if needed or desired by the City....an annual or one-time fee. This would generate funds for the City, and I doubt most people with this kind of space would object to a reasonable fee. The number of people renting the space could be calibrated to the square footage, as well as the number of cars. Off street parking availability should be a requirement, as well. You really need to open this option up to all Durango home owners. Many of us are retired or low income and it's an excellent way to augment our income, as well as to increase the living spaces availability within the Durango city limits.

Durango is very congested. Allowing more ADUs without the proper infrastructure will lead to more congestion.

Lots of people have an interest in building ADUs but they are not allowed on their lot due to parking requirements, setbacks, etc. Also, the idea of offering incentives to provide ADUs as affordable housing is very desirable.

I don't understand the point of the question about what I envision when I think of an ADU. I envision all of those things, but there was no way to select more than one response and it was a required response, so I don't know what you are hoping to learn from that question.

I think ADU policy and approvals have been inconsistent and unfair in the past. I hope that moving forward, policies are equally applied to all properties.

I have a detached garage I would like to convert into an ADU. The cost for the sewer permit and water permit are very high. Would like to daisy chain their sewage and water lines to the main house and not get new permits to go all the way to the street.

We are in our 70s. There will come a time when we don't want to maintain or have the privacy of our double lot (now consolidated), so building an ADU on it and waiting to rent until later would make sense. We would only build it if the start up costs and other city fees were reasonable.

I think the city's push for more density is misguided. I understand that affordable housing is needed, but allowing for more units in the downtown area is not the answer.

I do like that the majority of ADUs would be used for long term rentals as opposed to vacation rentals to promote and provide affordable housing for locals. I'm not opposed to vacation rentals, especially if the ADU does not have a kitchen.
There is less and less affordable space for lower class residents in Durango. As I see it, more ADUs would be good for everyone. Provide supplemental income for homeowners, while providing more folks with places to live. But holy smokes, if you subsidize homeowners to build ADU's what's to stop them from jacking up the rent price of their units?
I think a goal should be to make it easy and relatively inexpensive to obtain permits so it isn't a hindrance for people to have legal ADUs.
ADU rental units have little to no negative effect on the neighborhood. They are a great housing solution to help retain and maintain our workforce.
I think that ADUs, like vacation rentals, should have rules related to owner occupation in order to (a) support affordable housing and (b) give homeowners in Durango an additional income source. I know it would be incredibly hard to monitor, but I do think lower-income homeowners should have more options around ADUs and vacation rentals than wealthy homeowners.
Empty nesters with large houses that formerly accommodated families should be allowed to reconfigure homes. Water and sewer tap fees should be eliminated or reduced for ADUs -- a 500 sq ft apartment does not add substantially to water/sewer use. New single-family homes should be required to have ADUs. We have million dollar homes that sit empty most of the year, and millionaires who expect their coffee/meals to be served by people making slave wages.
Allowing ADU owners variances to code impacts their neighbors and changes the character of the neighborhoods which people have already paid \$750k+ to live in. If the city was going to incentivize anyone it should be the neighbors without ADUs who will be impacted by lack of parking and increased noise.
The issue with allowing the propagation of ADUs is that people will look for ways to rent them short term to tourists for higher profits, which doesn't help with the housing issues we have and further deteriorates our quality of life. It also leads to more houses which are completely rented out by an investor living outside the area. These properties, which used to be homes, will never again come on the market as a single-family home. This further drives up the property values around town making it harder for people to actually live and work in Durango and pushes us closer and closer to a Telluride or Aspen character every day. I appreciate the city trying to solve for our housing issues, but ADUs are not going to be the answer.
Enough with ADU's. Drop it.
I do not think that properties should be able to make their existing house/structure taller, blocking views, etc.
There are already three recent illegal ADUs in my neighborhood of 11 houses. Parking and traffic is a huge issue now. It has also degraded the character of the neighborhood.
Give greater attention to the growing traffic/parking that additional adus would add to our current traffic/parking issues.
Make it easy. Make it affordable to do. Current policies keep existing ones unregistered and needed new affordable options from being created.
My aging mother lived next door to an ADU, and it was a nightmare for her until she died. The renters were noisy, they parked anywhere they pleased, and they came and went at all hours with accompanying racket. I said above I would consider building an ADU if I owned an eligible property,

but it would have to fit this description: A small dwelling integrated within or attached to a single-family home. That way the owner would be responsible for the noise and parking.
I have a legal ADU in EN-4. I paid thousands in fees to establish it. I know of several other ADU's that are not registered or paid for. I could tell the City these addresses but I have chosen not to. We all know they are out there! The point is, I don't think it is fair to charge only the people whose neighbors have complained or chose to register. Before "expanding" availability and providing grants to those staying under the radar yet currently renting out an ADU, it seems like the City should have Muni-Revs or similar find them and have them officially establish current ADU's. Again, I paid the fee and went through the process, but others have not. Thank you and have a good day!
<p>What primarily needs to be regulated is the proliferation of vacation rentals. It is more lucrative for a property owner to have a vrbo or air bnb than a long term rental available for other Durango residents and employees. So now we have less housing for locals and more options for visitors. Vacationers might like the idea of a "home" rather than a hotel room but it is creating a dire situation for the very people who are supporting those visitors (service workers) and their support (teachers, health care workers) First step need to be to rethink and regulate vacation rentals. There are already city codes to minimize and regulate impacts in neighborhoods, but in the case of ADU's the responsibility should be on the property owner and ADU resident not on the impacted neighbor. For example:</p> <ol style="list-style-type: none"> <li>1. ADU must be in an owner occupied residence, not a rental</li> <li>2. Off street parking is required (both for snow removal and so streets aren't a "car-scape"</li> <li>3. NO PETS only allowed for the primary home owner</li> <li>4. Lease agreements that include quiet hours, no smoking</li> </ol> <p>That might seem strict and overreaching but issues that arise are because of nuisances created by Pets, Parking, Parties, (and Pot!)</p> <p>I believe that homeowners have the right to the quiet enjoyment of their residence, while I support the idea of affordable attainable housing, I would not want the quality of my life and value of my property devalued by an increased density that changes the character of my neighborhood. Thank you</p> <p>Until the city deals with the parking problems that already exist in Durango, ADUs will simply exacerbate the present problems.</p> <p>We have addressed this previously why do citizens have to continually fight for our existing neighborhoods.</p> <p>We should required ADUs meet certain standards and we do need some limits to ensure people aren't building unsightly or impractical units on their property in dense in-town neighborhoods. That being said, the current regulations and limitations are unreasonable. I think anyone should be able to have a tasteful and appropriately sized ADU of almost any variety on their property in almost all neighborhoods in Durango.</p> <p>The most important thing I think the city should do is allow people to rent out their houses for a few weeks a year, say up to six or eight, for a week at a time. This is not an ADU issue, but does help people get more income from their property, and may therefore allow some people to take this approach rather than creating an ADU. if you could rent your house out while you're on vacation then it helps subsidize your vacations, providing thousands of dollars of income, while not destroying the character of neighborhoods by making them full-time rentals or having full- time ADU's.</p> <p>ADUs are definitely needed in Durango (all of the Durango neighborhoods) due to population growth and lack of housing. This would be a positive way to provide more housing options for renters and accommodating growing, aging family members without the sprawl and negative impact on the</p>



town's blueprint. There really are no available lots in Durango anymore. Reconsidering allowing ADUs must be inclusive of all neighborhoods. Thank you.
Allow ADU's to apply for Alternative Compliance! Connie Gordon, Architect, Design Review Board Member and ADU advocate and crusader.
I like the idea of ADU's and understand the need for them, but I do feel like parking in some areas is already an issue. I also feel like a DRB for ADU's would be good. Have some input instead of round peg/square hole that code sometimes backs us into. Not all lots in the City are the same and Staff should have to have a public forum to present to, not just their closed door meetings.
In-fill is a great solution to the affordable housing issue and a way to keep young people in town, particular in neighborhoods where people can walk and bike to work. The City regulations, code and costs do not make it an easy option for homeowners to pursue to help be a part of the solution. The City should put on an 18 month fee moratorium for people willing to build ADUs. Just as you are investing in buying the hotel, you could look at the fee moratorium as an investment in your homeowners to have them help you help the affordable housing situation.
Allowing ADUs in residential neighborhoods threatens the not only the character of the neighborhood but more importantly the additional traffic in these areas increases the chance of collisions with vehicles and kids. People invest in single family residences for the safety of their families. Neighborhoods adjacent to schools should not be allow to construct new ADUs.
I think they are a GOOD idea
Amend requirements for subdivision of large lots to allow for more housing units to be constructed where City utilities and infrastructure already exist.
I dont think the city needs to promote ADUs they just should block it.
I am considering purchasing land and constructing a new home with an ADU, either within or outside city limits. There are two major hurdles I face based on your ADU requirements.  1) The 550 sq ft requirement is way too small - very few people want to live in only 550 sq ft, and if you do it it will have to be a 1 bedroom so it's much harder to charge enough rent to have a reasonable return on your investment to build it. I think 1000sq ft or a % of the primary home's square footage (whichever is smaller) would be a much more reasonable limit that would enable me to build another dwelling unit available for rent for someone in your city!  2) For lots that larger (perhaps 1 acre+), you should allow the ADU to be quite a bit larger like up to 1500 sq ft. since there are rather few acre+ lots within city limits, this would actually effect mostly properties that are in the county just outside limits but connected to city water/sewer. I am considering lots that are 3+ acres in the county to build my home + large carriage home, but if I am connected to city water and sewer, I STILL am only allows 550 sq ft. I really want to build a lot with 2 units on it, but these rules make it impossible. Thank you for your consideration.
Being able to have ADUs would greatly increase affordability and living options in Durango without creating sprawl.
I live in an ADU that hasn't been approved yet. The more affordable rent is the one thing that has allowed me to get ahead as a long time educator in this community.
I find that parking is a big concern since most cars for ADUs seem to be in the street.
some of these questions didnt allow for adequate answers (adu doesnt have a 'typical' type, affecting neighborhood character could be for better or worse?). Density is critical for addressing housing as well as environmental impacts, reducing impact on WUI for wildfire safety, and other measures. as a

long time resident, we all need to recognize change is part of our community and supporting finding solutions that impact housing affordability for primary owners and ADU renters.

In general I like the idea of incentivizing the development of ADUs to mitigate our local affordable housing issue. In practice, I think there are a lot of details that need to be considered to prevent abuse and exploitation of any new programs. How about increased taxes on short-term rentals and second homes (homes not occupied for large parts of the year) to fund incentives for affordable housing?

Parking is always a problem because we all have a lot of stuff, city parking requirements are very reasonable. The city's attitude about ADUs has completely changed in the last 10 years.

We have few ways to build enough housing in Durango. While adding ADUs won't solve all our problems we have to try something!

The problem with building ADUs for "affordable" housing are that the owners still set these rental prices. The reality is that unless housing is built to accommodate those of us that desire to spend less than 30% of our income on rent/housing, we need to establish residences that do not have to cost more than \$300 a month.

### 6.1.3 ADU Owner Survey

## VIRTUAL CITY HALL - NEW TOPIC WORKSHEET (content areas)

**TOPIC NAME:** Accessory Dwelling Unit Owner Survey

**TOPIC QUESTION/CALL TO ACTION:** Seeking direct input from current ADU owners so the City can better understand costs, uses, processes, and how to revise LUDC for local property owners to better utilize their property and create housing options in convenient locations already served by City services.

**DEADLINE FOR FEEDBACK:** Survey live from March 2-March 16 (Estimate)

**INTRO TEXT CONTENT** (Ideally 200-250 words): 195 Word Count



Durango has a housing affordability issue. Much of the cost of housing stems from forces beyond local control, but there are things the City can do to affect cost, quality and availability of housing. Housing affordability depends on land use regulation, housing supply, the cost of materials and labor, the availability of land, the cost of infrastructure, adequate allowable densities for infill development, incomes commensurate with housing costs, and the strength of affordable housing programs.

The City wants to hear from Accessory Dwelling Unit (ADU) owners to better understand costs, uses, processes, and ways to revise Land Use and Development Code (LUDC) standards for local property owners to better utilize their property and create housing options in convenient locations already served by City services. Community Development staff are currently reviewing the [ADU Program](#) and are seeking your input to help shape future updates to the LUDC and ADU Program.

Please take a moment to complete this brief 5-10 minute survey. We appreciate your time and value your feedback. The survey is anonymous and responses will be confidential, compiled together and analyzed as a group. Survey responses **will not** be used for monitoring or enforcement purposes.

**Include / send by email:**

ADU Program - <https://www.durangogov.org/850/ADU-Program-Information>

## Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

### Summary Of Responses

As of March 17, 2022, 3:15 PM, this forum had:

Attendees: 38  
Responses: 21  
Hours of Public Comment: 1.1

Topic Start

March 1, 2022, 3:46 PM

Topic End

March 16, 2022, 11:59 PM

#### QUESTION 1

Why did you choose to build an ADU and/or buy a home with an existing ADU?

Answered 21

Skipped 0

additional adu also couple folks had help home house housing income lease legal month mortgage mostly new  
out pay people person planning priced rate re reasonably rent rental rented renter renters so space stay than time w was year years

#### QUESTION 2

Is your ADU completed or still under construction?

		%	Count
It's completed		95.2%	20
It's under construction		4.8%	1

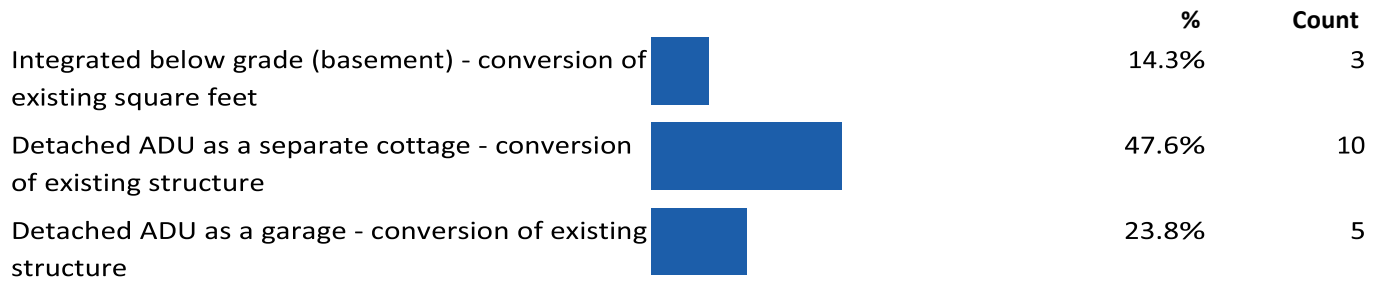
#### QUESTION 3

Which best describes the type of ADU you have?

	%	Count
Attached to main home - addition of new square	14.3%	3 feet

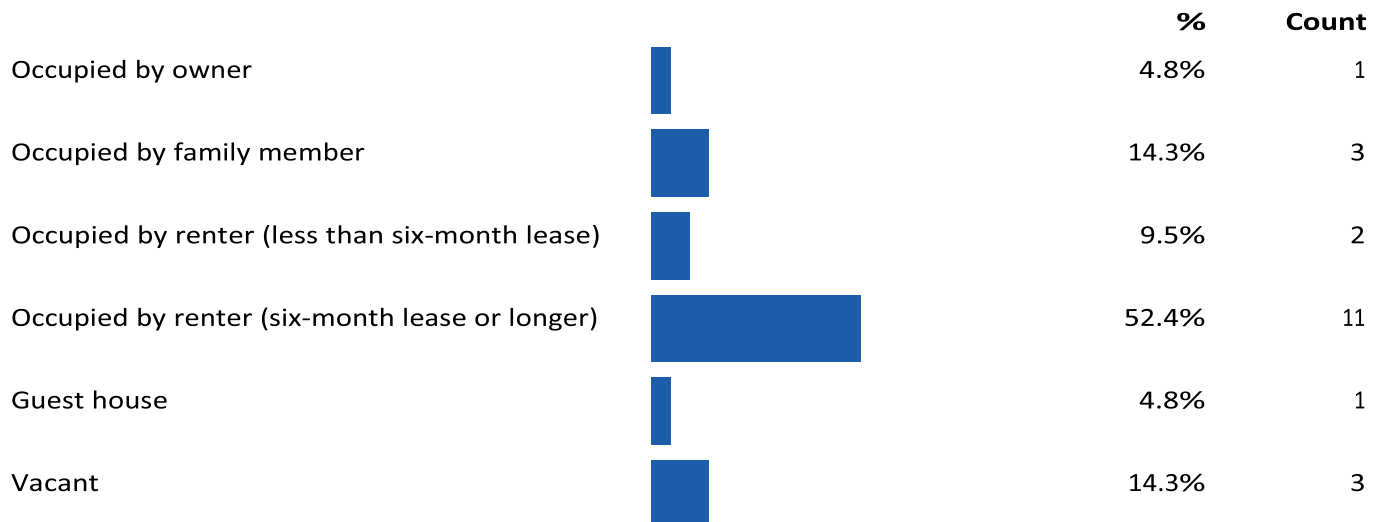
### Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.



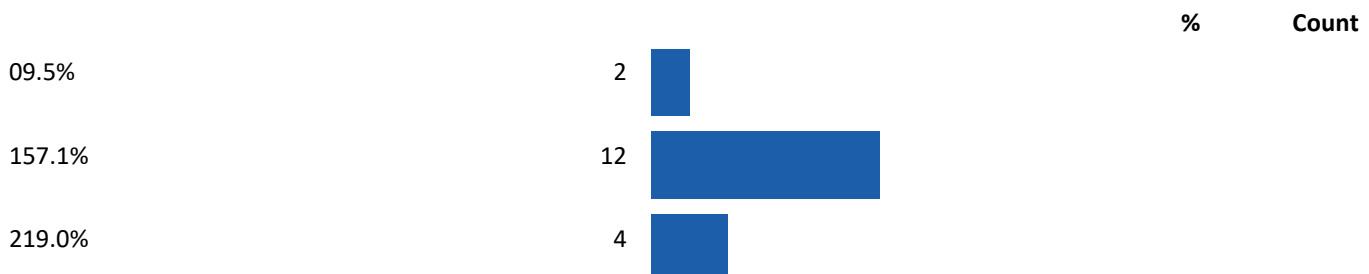
#### QUESTION 4

How is your ADU currently being used?



#### QUESTION 5

How many people typically occupy the ADU throughout a given month?



### Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

		%	Count
4		4.8%	1
Varies		9.5%	2

#### QUESTION 6

If you are renting out your ADU, how long is the lease-term?

		%	Count
30 days or more but less than 3 months		14.3%	3
12 months		57.1%	12
N/A (it's not being rented)		28.6%	6

#### QUESTION 7

If you are renting out your ADU, what is the rental rate?

		%	Count
Less than \$700 per month		4.8%	1
\$700-\$999 per month		52.4%	11
\$1,000-\$1,399 per month		9.5%	2
\$1,400-\$1,799 per month		4.8%	1
N/A (it's not being rented)		28.6%	6

#### QUESTION 8

Does your ADU income help pay a portion of your mortgage to offset your monthly home ownership costs?

### Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

		%	Count
Yes		76.2%	16
N/A (It's not being rented)		23.8%	5

#### QUESTION 9

Where are vehicles associated with ADU occupants typically parked?

		%	Count
On site		66.7%	14
On street		28.6%	6
N/A (there are no vehicles)		4.8%	1

#### QUESTION 10

About how many vehicles are typically associated with the occupants of the ADU?

		%	Count
There are no vehicles		9.5%	2
1		66.7%	14
2		19.0%	4
3 or more		4.8%	1

#### QUESTION 11

Did you build the ADU, or did you purchase the property with an existing ADU?

		%	Count
Purchased home with an existing ADU		81.0%	17

## Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

		%	Count
Purchased home then added an ADU		19.0%	4






### QUESTION 12

About how much did you or the previous owner pay to construct the ADU?

		%	Count
\$0-\$20,000		38.1%	8
\$20,000-\$50,000		33.3%	7
\$50,000-\$100,000		19.0%	4
More than \$150,000		9.5%	2

### QUESTION 13

How would you best describe the process of building the ADU?

		%	Count
Straightforward		4.8%	1
Somewhat challenging but manageable		14.3%	3
Overly complex and difficult		4.8%	1
I purchased the home with an existing, approved ADU		47.6%	10
Other		28.6%	6

### QUESTION 14

What could be done to remove obstacles to ADU construction to make the process more simple and enticing?



## Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

Answered 16

Skipped 5

adu affordable all around both building **cost** don't **easy** house just **make** more neighborhoods owner parking permit permitting possible process rent requirement requirements **s** so **t** think water why

Low cost financing
Eliminate the owner occupancy rule.
The ADU was in place when we purchased the property so we have no real idea of initial cost.
Variances
I don't know, I haven't gone through the process of building an ADU
For me, it is a simple matter of not having the money and construction skills to complete it. Please help! I would love to add this studio ADU to Durango's housing!
Process works well
Decrease parking requirements, impact fees, and lot size restrictions.
Improve public transportation so that an ADU wouldn't necessarily need parking spaces.
To encourage more ADU's in town, I would say, lower the cost of the permitting if possible. If it's just for a permit, why would someone have to pay \$6000? If that included a water hookup, that makes sense, (although why does it have to be that much?), but \$6k just to get the permit? I think there are many illegal ADU's, or possible ADU's that aren't utilized, around because of that hurdle. Both my neighbors to the south and the north have totally feasible ADU's but have balked at the permitting costs, or the parking requirements.
I think the City has now formalized plans that policies that are easy to follow. I think the elephant in the room is water and parking. The infill is making residential neighborhoods crowded and undesirable.
Allow them in all neighborhoods and the county as long as they comply with safety and building codes, and has parking available. Don't play favorites to certain neighborhoods and make it easy to build or apply for an ADU variance. Simplify the process and make it affordable.
All around less restrictive.
Delete owner living there requirement. Ease parking requirement. Thanks!
To help with my home ownership expenses and to offset my monthly mortgage. I rent to folks making under \$15 hr and with my costs rising, especially renter insurance, I am planning to sell my home and cash

### Accessory Dwelling Unit Owner Survey

Please provide your input on Accessory Dwelling Units in the City of Durango.

out. I anticipate the new owner will remodel the unit and either use for guests or rent it out at a much higher rate than the affordable rate now.

City could provide homeowner incentives for reducing the rental rate to a more affordable cost for local workforce.

## **6.2 Code Amendment Iterations**

See following pages.

4/19 Redlines

### Sec. 2-3-2-3 Accessory Dwelling Units

**A. Generally.** Accessory dwelling units (ADUs) may be allowed as a major accessory use to single-family detached dwelling units by limited use review according to the standards of this Section. ADUs are not an accessory to any other use. ~~Variances from the requirements of this Section, Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, and Division 3-3-2, Housing Palette shall not be granted. Properties which contain ADUs shall not be allowed any variances to the principal or accessory structures that increase enclosed space, except for a detached single story garage as noted below. Covered open porches, detached single story garages, with a maximum size of 450 square feet, and minor roof eave encroachments are eligible for Alternative Compliance review.~~ **At the discretion of the administrator, ADUs may be eligible for relief from the standards in Sections 2-3-2-3(F), (H), and (I) as outlined below through the Alternative Compliance process described in Division 3-1-5 and Article 6-3.**

**B. ADU Types.** There are two types of ADUs:

1. **Integrated ADUs.** Integrated ADUs are units that are created by dividing space within a principal building, or by adding floor area to an existing building. See Figure A, ADU Types: Integrated ADU (Basement) and Figure 2-3-2-3B, ADU Types: Integrated ADU. Integrated ADUs may be accessed from within the principal building or from outside, according to the standards of this Section. For the purposes of this Section, an attached ADU must have a minimum of twenty-five (25) percent of the length of the combined length of its first floor exterior walls shared with the principal structure. The shared walls shall not be the walls of a breezeway.
2. **Detached ADUs.** Detached ADUs are units that are located inside of accessory buildings. See Figure C, ADU Types: Detached ADU. The accessory building that includes a detached ADU may also include a garage. See Figure 2-3-2-3D, ADU Types: Detached ADU (Garage).

**C. Where Permitted.** Accessory dwelling units are allowed only as provided in Table 2-3-2-3A, *Zones and ADU Types*. ADUs are not allowed in districts that are not listed in the table.

Table 2-3-2-3 A Zones and ADU Types		
Zone	Integrated Unit	Detached Unit
<b>TABLE NOTE:</b> <ol style="list-style-type: none"> <li>1. Not allowed if a lot is developed with two single-family detached units pursuant to Section 2-2-3-3, <i>Standards for Residential Land Uses</i></li> <li>2. Not all parcels will be able to accommodate an ADU.</li> </ol>		
EN-1	Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive. <sup>1</sup> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>	Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive. <sup>1</sup> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>
EN-2	Allowed if parcel area is at least 7,000 sf. <sup>1</sup>	Allowed if parcel area is at least 7,000 sf. <sup>1</sup>
EN-3	Allowed if parcel area is at least 7,500 sf.	Allowed if parcel area is at least 7,500 sf.
EN-4	Allowed	Not Allowed
EN-5	Allowed	Not Allowed
EN-6	Allowed	Not Allowed
EN-MF	Allowed <sup>1</sup>	Allowed <sup>1</sup>
RA	Allowed	Allowed

**Table 2-3-2-3 A**  
**Zones and ADU Types**

Zone	Integrated Unit	Detached Unit
RL	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below
RM	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below
RH	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below
MU-N	Allowed <sup>1</sup>	Allowed <sup>1</sup>

**TABLE NOTE:**

1. Not allowed if a lot is developed with two single-family detached units pursuant to Section 2-2-3-3, *Standards for Residential Land Uses*.
2. Not all parcels will be able to accommodate an ADU.

**D. Owner Occupancy.** Owner occupancy is required as set out in this Subsection.

1. Either the principal residence or the accessory dwelling unit must be owner-occupied. Only one of the units is allowed to be rented to a non-owner, unless an exception is granted pursuant to the provisions of this Section.
2. A notarized affidavit signed by a current property owner must be submitted to the Department on or before March 1st of every odd-numbered year attesting to owner occupancy. These affidavits and a record of compliance with this requirement will be kept on file by the Department.
3. The Administrator may grant an exception to the owner occupancy requirement for temporary absences of two (2) years or less when the owner is able to submit acceptable proof of absence from the Durango area. The Administrator may grant one extension of up to one additional year. For extreme circumstances, the owner may make a request to the Planning Commission to allow an exception to the owner-occupancy requirement for up to five (5) years. This exception would allow both units to be rented to non-owners.
4. Purchasers of homes with an accessory dwelling unit must register with the Department within 60 days of purchase by submitting a notarized owner-occupancy affidavit.
5. If the provisions of this Subsection are not met, the property owner shall cause the accessory dwelling unit to be vacated as a dwelling unit and/or remove the unit and return the property to its single-family dwelling status.

*Recordable doc.*

*provide*

**E. Number of ADUs.** No parcel shall contain more than one ADU.

**F. Bulk and Intensity.** The bulk and intensity standards for the parcel shall be as set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.

**G. Maximum Floor Area of the ADU.** The floor area of an ADU shall not exceed the maximum floor area set out below. The floor area is measured as the **enclosed, interior** area within of the unit ADU itself, and does not include **porches, decks, or** areas of an accessory building that are used for other purposes such as a detached garage or a workshop that is not incorporated into the ADU. See Figure E, *Illustrative Measurement of ADU Dimensions*.

- a. *Integrated ADUs.* The floor area of an integrated ADU shall not exceed 550 square feet, except that ADUs that are located entirely in basements are not subject to this requirement.
- b. *Detached ADUs.* The floor area of detached ADUs shall not exceed 550 square feet.

**H. Setbacks and Heights of Buildings that Contain Detached ADUs.** The minimum setback and maximum height standards that apply to buildings that contain detached ADUs are set out in Table 2-3-2-3B, *Minimum Setbacks and Maximum Height of Buildings with Detached ADUs*.

Table 2-3-2-3B Minimum Setbacks and Maximum Height of Buildings with Detached ADUs						
Zone	Minimum Setbacks				Maximum Height To	
	Front	Interior Side	Street Side	Rear	Peak or Ridge	Plate
<b>TABLE NOTE:</b> 1. May be increased to be the same as the principal building if both: (a) the building that contains the ADU is compliant with the setbacks that apply to the principal building, and (b) the property is a <u>corner lot</u> or a <u>through lot</u> .						
EN-1 or EN-MF East of the Animas River	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.	Same as principal building requirement	10 ft. where no alley is present; 3 ft. where an alley abuts the rear lot line, except that if the unit is above a garage, there must be at least 25 ft. of maneuvering space from the opposite alley right-of-way line to the garage door	20 ft. <sup>1</sup>	13 ft. 6 in. <sup>1</sup>
EN-2, EN-3 or EN-MF West of the Animas River	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RA	Same as principal building	If plate height is 11 ft. 6 in. or less: 5 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RL	Rear 1/2 of the lot	5 ft.			18 ft.	11 ft. 6 in.
RM	Rear 1/2 of the lot	<del>If plate height is 11 ft. 6 in. or less: 5 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.</del>			20 ft.	13 ft. 6 in.
MU-N	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RH	Rear 1/2 of the lot	<del>If plate height is 11 ft. 6 in. or less: 5 ft. If more than 11 ft. 6 in.: same as principal building requirement.</del>	Same	Same	20'	13.5'

**I. Design Standards.** ADUs shall conform to the following design standards:

1. **Integrated ADUs.** Integrated ADUs shall not involve design modifications to the exterior of the principal building that make their presence obvious.
  - a. The single-family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood.
  - b. Where exterior doors provide direct access to the integrated unit, such doors shall be designed, located, and configured in a manner that is typical for secondary access to a single-family building (e.g., side doors, French doors, etc.).
  - c. External stairs are not allowed to provide access to a second-story ADU.



- d. If a building is expanded to accommodate an attached or integrated ADU, the expansion shall be designed in a manner that is comparable to the principal building, including but not limited to:
  - 1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
  - 2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling.
- 2. *Detached ADUs.* Detached ADUs shall be designed and configured in the following manner:
  - a. Where an alley access exists, ADUs shall take vehicular access from the alley.
  - b. The use of dormers shall be limited as follows:
    - 1. A dormer ridge or roof line shall not extend above the primary roof ridge.
    - 2. The width of a dormer face shall not exceed the lesser of 16 feet or 50 percent of the length of the wall plane upon which the dormer is located.
    - 3. More than one dormer is allowed on a wall plane, provided that the total combined width of dormer faces does not exceed 50 percent of the wall plane length.
    - 4. The space between dormers shall not be less than the greater of one-half the width of the adjoining dormer, or one-half the average of the two dormers if they are different sizes.
    - 5. A dormer shall be set back a minimum of three feet from the nearest building wall plane that runs perpendicular to the dormer face.
  - c. Generally, second floor windows of detached units or garage units shall face streets and alleys. Windows that face or overlook interior lot lines shall be located at least ~~three~~ **five** and one-half feet above the finished floor unless the Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard. Opaque windows are exempt from the minimum window height standard.
  - d. Generally, access to second floor units shall be from internal stairs. External stairs may be allowed in certain circumstances as long as the following standards are met:
    - 1. External stairs parallel streets or alleys and shall not be located parallel to interior side property lines; and/or
    - 2. The Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.
  - e. Exterior second floor decks or balconies may not be located so they face or overlook the interior side property lines. Decks or balconies shall face streets or alleys, *and screen walls may be used to protect the privacy of adjacent properties. Rooftop decks or terraces are prohibited.*
  - f. Design.
    - 1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
    - 2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling.

**J. Parking for ADUs.**

1. In addition to the parking requirements for the principal building set out in Section 4-5-2-2, Required Off-Street Parking Spaces, one off-street parking space shall be provided for the ADU.
    - a. Existing ~~on-site~~ <sup>off-street</sup> required parking must be retained but may be reconfigured.
    - b. If no parking exists on the parcel, a total of two parking spaces must be provided, one for the ADU and one for the principal dwelling unit.
    - c. Three ~~on-site~~ <sup>off-street</sup> parking spaces are required on the lot with an Accessory Dwelling Unit in the EN-4, 5 and 6 zones. If it can be demonstrated that lot containing the ADU fronts a street that is not a collector or an emergency snow route, and that on-street parking is allowed, and that the width of the street pavement can accommodate two drive lanes and on-street parking, then only two off-street parking spaces may be required, subject to verification of the above requirements by the Community Development Department.
  2. Use of tandem parking to meet the parking requirements is allowed; however, the total number of tandem spaces used to meet parking requirements for the property shall not exceed one.
  3. Parking spaces must be enclosed in a garage or hard surfaced with asphalt, concrete, or other material approved by the City Engineer.
- K. **Required Usable Outdoor Area.** Lots that are developed with ADUs shall include a useable outdoor area that is located behind the principal buildings unless the principal structure is on the back half of the lot. The useable outdoor area shall be at least 600 sf., with no dimension less than 10 feet.
- L. **Additional Requirements in RL, RM, and RH Districts.**
  1. ~~New lots~~ Lots that may be developed with ADUs shall be annotated on the plat as allowing such accessory use. *Existing lots do not require a plat amendment prior to the addition of an ADU.*
- M. **Additional Requirements for EN-4, EN-5 and EN-6 Zone Districts.**
  1. Access to ADUs. A continuous paved access corridor shall be provided from the front of any lot containing an ADU to the ADU entrance. The route must be suitable for emergency responders to use, and shall have an unobstructed vertical clearance of ten feet and an unobstructed horizontal clearance of seven feet, including five feet clear of roof eaves or other projections. The access shall be kept accessible during all conditions, including being accessible when snow is on the ground.
- N. **Relationship to Other Standards.**
  1. Buildings that contain ADUs are counted toward the building coverage and floor area limitations for the lot upon which they are located as set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones and Division 3-2-2, Housing Palettes.
  2. ADUs that are located within the same building as a detached garage are not eligible for the 450 square foot floor area ratio bonus for detached garages that is allowed by Section 3-1-5-3, Detached Garage Bonus.
  3. Construction of ADUs may trigger public improvements, including but not limited to sidewalk improvements, curb ramps, street trees, driveway improvements and driveway apron upgrades, and water meter upgrades, as determined by the ~~Community Development Department~~ <sup>City Engineer</sup> on a case-by-case basis.



# CHAPTER 3 LOTS, BUILDINGS, AND STRUCTURES

---

## ARTICLE 3-1 ESTABLISHED NEIGHBORHOOD ZONES

---

### Division 3-1-5 Alternative Compliance

---

#### Sec. 3-1-5-1 Alternative Compliance

---

**A. Generally.**

1. Alternative compliance review is a review process that allows for routine approval of proposed development in EN (all sub-districts) zones, in cases where the proposed development does not strictly comply with the applicable standards of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, ~~or~~ Division 3-1-3, Design Standards Applicable within Multiple EN Zones, *or other applicable LUDC sections.*
2. Alternative compliance is a design-based review, in which the Administrator evaluates proposed development according to the *Design Guidelines for Established Neighborhoods*, and (in cases where additional standards are provided) the standards of this Division, to determine whether the quality and character of the proposed development justifies departure from the requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, Division 3-1-3, Design Standards Applicable within Multiple EN Zones, ~~or~~ Section 3-5-1-1, Fences and Walls, *or other applicable LUDC sections.*

**B. Limitation.** Alternative compliance review cannot be applied to further reduce setbacks or further increase building height if said standards are already modified through the application of setback reductions and height increases which are available pursuant to Division 3-1-4, Setback Reductions and Height Increases.

**C. When Required.** Alternative compliance review is required in the following circumstances:

1. Development, redevelopment, or building expansions on lots with:
  - a. A lot area of 3,000 square feet or less; or
  - b. A lot width of 25 feet or less.
2. Development, redevelopment, or building expansions which impact a slope with a grade of 30 percent or more.
3. Development of a duplex, or two single-family detached homes on a single lot in lieu of a duplex, in the EN-1 or EN-2 zones.
4. Development of an ADU in the EN-4, 5 and 6 zones, when more than two parking spaces may be required in the front setback.

**D. When Optional.** Alternative compliance review may be conducted at the applicant's request in order to:

1. Modify the requirements of Division 3-1-3, Design Standards Applicable within Multiple EN Zones, except the requirements of Section 3-1-3-2, Number of Principal Buildings, (which is addressed by Subsection C.3., above);
2. Reduce the minimum setback requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
3. Increase the maximum wall plate height requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
4. Allow a tower or cupola exception. (See Section 3-1-5-2, Tower or Cupola Exception.)
5. Allow a detached garage bonus. (See Section 3-1-5-3, Detached Garage Bonus.)
6. Allow for additional lot coverage or floor area. (See Section 3-1-5-4, Building Coverage or Floor Area Ratio (FAR) Increase.)
7. Modify the requirements of Section 3-5-1-1, Fences and Walls.
8. **Modify the requirements of Section 2-3-2-3, Accessory Dwelling Units, as described in that Section.**

Redlines from CAG → 4/28/22

## Proposed Redlines to Section 2-3-2-3, Accessory Dwelling Units and Section 3-1-5-1, Alternative Compliance

### Sec. 2-3-2-3 Accessory Dwelling Units

**A. Generally.** Accessory dwelling units (ADUs) may be allowed as a major accessory use to single-family detached dwelling units by limited use review according to the standards of this Section. ADUs are not an accessory to any other use. ~~Variances from the requirements of this Section, Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, and Division 3-3-2, Housing Palette shall not be granted. Properties which contain ADUs shall not be allowed any variances to the principal or accessory structures that increase enclosed space, except for a detached single story garage as noted below. Covered open porches, detached single story garages, with a maximum size of 450 square feet, and minor roof eave encroachments are eligible for Alternative Compliance review.~~ **At the discretion of the administrator, ADUs may be eligible for relief from the standards in Sections 2-3-2-3(F), (H), and (I) as outlined below through the Alternative Compliance process described in Division 3-1-5 and Article 6-3.**

**B. ADU Types.** There are two types of ADUs:

and K.

1. **Integrated ADUs.** Integrated ADUs are units that are created by dividing space within a principal building, or by adding floor area to an existing building. See Figure A, ADU Types: Integrated ADU (Basement) and Figure 2-3-2-3B, ADU Types: Integrated ADU. Integrated ADUs may be accessed from within the principal building or from outside, according to the standards of this Section. For the purposes of this Section, an attached ADU must have a minimum of twenty-five (25) percent of the length of the combined length of its first floor exterior walls shared with the principal structure. The shared walls shall not be the walls of a breezeway.
2. **Detached ADUs.** Detached ADUs are units that are located inside of accessory buildings. See Figure C, ADU Types: Detached ADU. The accessory building that includes a detached ADU may also include a garage. See Figure 2-3-2-3D, ADU Types: Detached ADU (Garage).

**C. Where Permitted.** Accessory dwelling units are allowed only as provided in Table 2-3-2-3A, Zones and ADU Types. ADUs are not allowed in districts that are not listed in the table.

Table 2-3-2-3 A Zones and ADU Types		
Zone	Integrated Unit	Detached Unit
EN-1	Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive. <sup>1</sup> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>	Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive. <sup>1</sup> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>
EN-2	Allowed if parcel area is at least 7,000 sf. <sup>1</sup>	Allowed if parcel area is at least 7,000 sf. <sup>1</sup>
EN-3	Allowed if parcel area is at least 7,500 sf.	Allowed if parcel area is at least 7,500 sf.
EN-4	Allowed	Not Allowed on corner lots
EN-5	Allowed	Not Allowed on corner lots
EN-6	Allowed	Not Allowed on corner lots
EN-MF	Allowed <sup>1</sup>	Allowed <sup>1</sup>

See what Code alignment group thinks about eliminating min lot size for detached.  
\* Mallory's example.

MU-A?

Table 2-2-3 A  
Zones and ADU Types

Zone	Integrated Unit	Detached Unit
RA	Allowed	Allowed
RL	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below
RM	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below
RH	Allowed	Allowed subject to Subsection L., below
MU-N	Allowed <sup>1</sup>	Allowed <sup>1</sup>
<b>TABLE NOTE:</b> 1. Not allowed if a lot is developed with two single-family detached units pursuant to Section 2-2-3-3, <i>Standards for Residential Land Uses</i> . 2. Not all parcels will be able to accommodate an ADU.		

**D. Owner Occupancy.** Owner occupancy is required as set out in this Subsection.

1. Either the principal residence or the accessory dwelling unit must be owner-occupied.
  - a. The property owner shall provide a notarized, recorded affidavit to the Community Development Department attesting to the owner occupancy requirement prior to obtaining City approval for the ADU.
  - b. Only one of the units is allowed to be rented to a non-owner, unless an exception is granted pursuant to the provisions of this Section.
2. ~~A notarized affidavit signed by a current property owner must be submitted to the Department on or before March 1st of every odd-numbered year attesting to owner occupancy. These affidavits and a record of compliance with this requirement will be kept on file by the Department.~~
3. The Administrator may grant an exception to the owner occupancy requirement for temporary absences of two (2) years or less when the owner is able to submit acceptable proof of absence from the Durango area. The Administrator may grant one extension of up to one additional year. For extreme circumstances, the owner may make a request to the Planning Commission to allow an exception to the owner-occupancy requirement for up to five (5) years. This exception would allow both units to be rented to non-owners.
4. Purchasers of homes with an accessory dwelling unit must register with the Department within 60 days of purchase by submitting a notarized and recorded owner-occupancy affidavit.
5. If the provisions of this Subsection are not met, the property owner shall cause the accessory dwelling unit to be vacated as a dwelling unit and/or remove the unit and return the property to its single-family dwelling status.

**E. Number of ADUs.** No parcel shall contain more than one ADU.

**F. Bulk and Intensity.** The bulk and intensity standards for the parcel shall be as required by the underlying zone set out in ~~Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.~~

**G. Maximum Floor Area of the ADU.** The floor area of an ADU shall not exceed the maximum floor area set out below. The floor area is measured as the enclosed, interior area within of the unit ADU itself, and does not include porches, decks, or areas of an accessory building that are used

for other purposes such as a detached garage or a workshop ~~that is not incorporated into the ADU~~. See Figure E, *Illustrative Measurement of ADU Dimensions*.

- a. *Integrated ADUs*. The floor area of an integrated ADU shall not exceed 550 square feet, except that ADUs that are located entirely in basements are not subject to this requirement.
- b. *Detached ADUs*. The floor area of detached ADUs shall not exceed 550 square feet.

**H. Setbacks and Heights of Buildings that Contain Detached ADUs.** The minimum setback and maximum height standards that apply to buildings that contain detached ADUs are set out in Table 2-3-2-3B, *Minimum Setbacks and Maximum Height of Buildings with Detached ADUs*.

Table 2-3-2-3B Minimum Setbacks and Maximum Height of Buildings with Detached ADUs						
Zone	Minimum Setbacks				Maximum Height To	
	Front	Interior Side	Street Side	Rear	Peak or Ridge	Plate
EN-1 or EN-MF East of the Animas River	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.	Same as principal building requirement	10 ft. where no alley is present; 3 ft. where an alley abuts the rear lot line, except that if the unit is above a garage, there must be at least 25 ft. of maneuvering space from the opposite alley right-of-way line to the garage door	20 ft. <sup>1</sup>	13 ft. 6 in. <sup>1</sup>
EN-2, EN-3 or EN-MF West of the Animas River	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RA	Same as principal building	If plate height is 11 ft. 6 in. or less: 5 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RL	Rear 1/2 of the lot	5 ft.			18 ft.	11 ft. 6 in.
RM	Rear 1/2 of the lot	<del>5 ft.</del> <del>If plate height is 11 ft. 6 in. or less: 5 ft.</del> <del>If plate height is more than 11 ft. 6 in.: same as principal building requirement.</del>			20 ft.	13 ft. 6 in.
RH	Rear ½ of the lot	5 ft.			20 ft.	13 ft. 6 in.
MU-N	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
<b>TABLE NOTE:</b> 1. May be increased to be the same as the principal building if both: (a) the building that contains the ADU is compliant with the setbacks that apply to the principal building, and (b) the property is a <u>corner lot</u> or a <u>through lot</u> .						

**I. Design Standards.** ADUs shall conform to the following design standards:

1. *Integrated ADUs*. Integrated ADUs shall not involve design modifications to the exterior of the principal building that make their presence obvious.



- a. The single-family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood.
  - b. Where exterior doors provide direct access to the integrated unit, such doors shall be designed, located, and configured in a manner that is typical for secondary access to a single-family building (e.g., side doors, French doors, etc.).
  - c. External stairs are not allowed to provide access to a second-story ADU.
  - d. If a building is expanded to accommodate an attached or integrated ADU, the expansion shall be designed in a manner that is comparable to the principal building, including but not limited to:
    1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
    2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling
2. *Detached ADUs.* Detached ADUs shall be designed and configured in the following manner:
- a. Where an alley access exists, ADUs shall take vehicular access from the alley.
  - b. The use of dormers shall be limited as follows:
    1. A dormer ridge or roof line shall not extend above the primary roof ridge.
    2. The width of a dormer face shall not exceed the lesser of 16 feet or 50 percent of the length of the wall plane upon which the dormer is located.
    3. More than one dormer is allowed on a wall plane, provided that the total combined width of dormer faces does not exceed 50 percent of the wall plane length.
    4. The space between dormers shall not be less than the greater of one-half the width of the adjoining dormer, or one-half the average of the two dormers if they are different sizes.
    5. A dormer shall be set back a minimum of three feet from the nearest building wall plane that runs perpendicular to the dormer face.
  - c. Generally, second floor windows of detached units or garage units shall face streets and alleys. Windows that face or overlook interior lot lines shall be located at least ~~three~~ **five** feet and one-half feet above the finished floor unless the Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard. ~~Opaque windows~~ **Non-transparent** are exempt from the minimum window height standard.
  - d. Generally, ~~access to second floor units~~ **access to second floor units** shall be from internal stairs. External stairs may be allowed in certain circumstances as long as the following standards are met:
    1. External stairs parallel streets or alleys and shall not be located parallel to interior side property lines; and/or
    2. The Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.
  - e. Exterior second floor decks or balconies may not be located so they face or overlook the interior side property lines. Decks or balconies shall face streets or alleys **and screen walls may be used to protect the privacy of adjacent properties. Rooftop decks or terraces are prohibited.**

f. Design.

1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling.

J. **Parking for ADUs.**

1. In addition to the parking requirements for the principal building set out in Section 4-5-2-2, Required Off-Street Parking Spaces, one off-street parking space shall be provided for the ADU.
  - a. Existing **off-street on-site**, required parking must be retained but may be reconfigured.
  - b. If no parking exists on the parcel, a total of two **off-street** parking spaces must be provided, one for the ADU and one for the principal dwelling unit.
  - c. ~~Three on-site parking spaces are required on the lot with an Accessory Dwelling Unit in the EN-4, 5 and 6 zones.~~ If it can be demonstrated that a lot containing an ADU fronts a street that is not a collector or an emergency snow route, and that on-street parking is allowed, and that the width of the street pavement can accommodate two drive lanes and on-street parking, then **the required parking spaces may be reduced by one, only two off-street parking spaces may be required**, subject to verification of the above requirements by the Community Development Department.
2. Use of tandem parking to meet the parking requirements is allowed; however, the total number of tandem spaces used to meet parking requirements for the property shall not exceed one.
3. Parking spaces must be enclosed in a garage or hard surfaced with asphalt, concrete, or other material approved by the City Engineer.

K. **Required Usable Outdoor Area.** Lots that are developed with ADUs shall include a useable outdoor area that is located behind the principal buildings unless the principal structure is on the back half of the lot. The useable outdoor area shall be at least 600 sf., with no dimension less than 10 feet.

L. **Additional Requirements in RL, RM, and RH Districts.**

1. **New** lots that may be developed with ADUs shall be annotated on the plat as allowing such accessory use. **Existing lots with these zoning designations do not require a plat amendment prior to the addition of an ADU.**

M. **Additional Requirements for EN-4, EN-5 and EN-6 Zone Districts.**

1. Access to ADUs. A continuous paved access corridor shall be provided from the front of any lot containing an ADU to the ADU entrance. The route must be suitable for emergency responders to use, and shall have an unobstructed vertical clearance of ten feet and an unobstructed horizontal clearance of seven feet, including five feet clear of roof eaves or other projections. The access shall be kept accessible during all conditions, including being accessible when snow is on the ground.

N. **Relationship to Other Standards.**

1. Buildings that contain ADUs are counted toward the building coverage and floor area limitations for the lot upon which they are located as set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones and Division 3-2-2, Housing Palettes.
2. ADUs that are located within the same building as a detached garage are not eligible for the 450 square foot floor area ratio bonus for detached garages that is allowed by Section 3-1-5-3, Detached Garage Bonus.
3. Construction of ADUs may trigger public improvements, including but not limited to sidewalk improvements, curb ramps, street trees, driveway improvements and driveway apron upgrades, and water meter upgrades, as determined by the ~~Community Development Department~~ **City Engineer** on a case-by-case basis.

## CHAPTER 3 LOTS, BUILDINGS, AND STRUCTURES

---

### ARTICLE 3-1 ESTABLISHED NEIGHBORHOOD ZONES

---

#### Division 3-1-5 Alternative Compliance

---

##### Sec. 3-1-5-1 Alternative Compliance

---

###### A. Generally.

1. Alternative compliance review is a review process that allows for routine approval of proposed development in ~~EN (all sub-districts) zones~~, in cases where the proposed development does not strictly comply with the applicable standards of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, ~~or~~ Division 3-1-3, Design Standards Applicable within Multiple EN Zones, Section 3-5-1-1, Fences and Walls **or Section 2-3-2-3, Accessory Dwelling Units**.
2. Alternative compliance is a design-based review, in which the Administrator evaluates proposed development according to the *Design Guidelines for Established Neighborhoods*, and (in cases where additional standards are provided) the standards of this Division, to determine whether the quality and character of the proposed development justifies departure from the requirements **listed in the code sections described above.** ~~of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, Division 3-1-3, Design Standards Applicable within Multiple EN Zones, or Section 3-5-1-1, Fences and Walls.~~

B. **Limitation.** Alternative compliance review cannot be applied to further reduce setbacks or further increase building height if said standards are already modified through the application of setback reductions and height increases which are available pursuant to Division 3-1-4, Setback Reductions and Height Increases.

C. **When Required.** Alternative compliance review is required in the following circumstances:



1. Development, redevelopment, or building expansions on lots with:
  - a. A lot area of 3,000 square feet or less; or
  - b. A lot width of 25 feet or less.
2. Development, redevelopment, or building expansions which impact a slope with a grade of 30 percent or more.
- ~~3. Development of a duplex, or two single family detached homes on a single lot in lieu of a duplex, in the EN-1 or EN-2 zones.~~
4. Development of an ADU in the EN-4, 5 and 6 zones, when more than two parking spaces may be required in the front setback.

D. **When Optional.** Alternative compliance review may be conducted at the applicant's request in order to:

1. Modify the requirements of Division 3-1-3, Design Standards Applicable within Multiple EN Zones, except the requirements of Section 3-1-3-2, Number of Principal Buildings, (which is addressed by Subsection C.3., above);
2. Reduce the minimum setback requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
3. Increase the maximum wall plate height requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
4. Allow a tower or cupola exception. (See Section 3-1-5-2, Tower or Cupola Exception.)
5. Allow a detached garage bonus. (See Section 3-1-5-3, Detached Garage Bonus.)
6. Allow for additional lot coverage or floor area. (See Section 3-1-5-4, Building Coverage or Floor Area Ratio (FAR) Increase.)
7. Modify the requirements of Section 3-5-1-1, Fences and Walls.
8. **Modify the requirements of Section 2-3-2-3, Accessory Dwelling Units, as described in that Section.**

Edits to PC 6/27/22

**LUDC Text Amendments to Chapters 2, 3, and 7,**  
**Including Standards for Accessory Dwelling Units**

**Sec. 2-3-2-3 Accessory Dwelling Units**

- A. Generally.** Accessory dwelling units (ADUs) may be allowed as a major accessory use to single-family ~~detached~~ dwelling units by limited use review according to the standards of this Section. ADUs are not an accessory to any other use. ~~Variances from the requirements of this Section, Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, and Division 3-3-2, Housing Palette shall not be granted. Properties which contain ADUs shall not be allowed any variances to the principal or accessory structures that increase enclosed space, except for a detached single story garage as noted below. Covered open porches, detached single story garages, with a maximum size of 450 square feet, and minor roof eave encroachments are eligible for Alternative Compliance review.~~ **At the discretion of the administrator, ADUs may be eligible for relief from the standards in Sections 2-3-2-3(F), (H), (I) and (K) as outlined below through the Alternative Compliance process described in Division 3-1-5 and Article 6-3.** *ADD a reference to 6-4, Enforcement. → Section O.*
- B. ADU Types.** There are two types of ADUs:
1. **Integrated ADUs.** Integrated ADUs are units that are created by dividing space within a principal building, or by adding floor area to an existing building. See Figure A, ADU Types: Integrated ADU (Basement) and Figure 2-3-2-3B, ADU Types: Integrated ADU. Integrated ADUs may be accessed from within the principal building or from outside, according to the standards of this Section. For the purposes of this Section, an attached ADU must have a minimum of twenty-five (25) percent of the length of the combined length of its first floor exterior walls shared with the principal structure. The shared walls shall not be the walls of a breezeway.
  2. **Detached ADUs.** Detached ADUs are units that are located inside of accessory buildings. See Figure C, ADU Types: Detached ADU. The accessory building that includes a detached ADU may also include a garage. See Figure 2-3-2-3D, ADU Types: Detached ADU (Garage).
- C. Where Permitted.** Accessory dwelling units are allowed only as provided in Table 2-3-2-3A, Zones and ADU Types. ADUs are not allowed in districts that are not listed in the table.

Table 2-3-2-3 A Zones and ADU Types		
Zone	Integrated Unit	Detached Unit
EN-1	<del>Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive.<sup>1</sup></del> <del>Allowed on any size parcel for properties south of E. College Drive<sup>2</sup></del>	Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive. <sup>1</sup> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>
EN-2	<del>Allowed if parcel area is at least 7,000 sf.<sup>1</sup></del>	Allowed if parcel area is at least 7,000 sf. <sup>1</sup>
EN-3	<del>Allowed if parcel area is at least 7,500 sf.</del>	Allowed if parcel area is at least 7,500 sf.
EN-4	Allowed	Not Allowed
EN-5	Allowed	Not Allowed
EN-6	Allowed	Not Allowed
EN-MF	Allowed <sup>1</sup>	Allowed <sup>1</sup>
RA	Allowed	Allowed
RL	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below

**Table 2-2-3 A  
Zones and ADU Types**

Zone	Integrated Unit	Detached Unit
RM	Allowed subject to Subsection J., below	Allowed subject to Subsection L., below
RH	Allowed	Allowed subject to Subsection L., below
MU-N	Allowed <sup>1</sup>	Allowed <sup>1</sup>

**TABLE NOTE:**

1. Not allowed if a lot is developed with two single-family detached units pursuant to Section 2-2-3-3, *Standards for Residential Land Uses*.
2. Not all parcels will be able to accommodate an ADU.

**D. Owner Occupancy.** Owner occupancy is required as set out in this Subsection.

1. Either the principal residence or the accessory dwelling unit must be owner-occupied.
  - a. The property owner shall provide a notarized, recorded affidavit to the Community Development Department attesting to the owner occupancy requirement prior to obtaining City approval for the ADU.
  - b. Following the completion of the ADU, the owner occupancy requirement shall be recertified to the Community Development Department on a biannual basis.
  - c. Only one of the units is allowed to be rented to a non-owner, unless an exception is granted pursuant to the provisions of this Section.
2. ~~A notarized affidavit signed by a current property owner must be submitted to the Department on or before March 1st of every odd numbered year attesting to owner occupancy. These affidavits and a record of compliance with this requirement will be kept on file by the Department.~~
3. The Administrator may grant an exception to the owner occupancy requirement for temporary absences of two (2) years or less when the owner is able to submit acceptable proof of absence from the Durango area. The Administrator may grant one extension of up to one additional year. For extreme circumstances, the owner may make a request to the Planning Commission to allow an exception to the owner-occupancy requirement for up to five (5) years. This exception would allow both units to be rented to non-owners.
4. Purchasers of homes with an accessory dwelling unit must register with the Department within 60 days of purchase by submitting a notarized owner-occupancy affidavit.
5. If the provisions of this Subsection are not met, the property owner shall cause the accessory dwelling unit to be vacated as a dwelling unit and/or remove the unit and return the property to its single-family dwelling status.

**E. Number of ADUs.** No parcel shall contain more than one ADU.

**F. Bulk and Intensity.** The bulk and intensity standards for the parcel shall be as **required by the underlying zone** ~~set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.~~

**G. Maximum Floor Area of the ADU.** The floor area of an ADU shall not exceed the maximum floor area set out below. The floor area is measured as the **enclosed, interior** area **within of the unit** ~~ADU itself, and does not include porches, decks, or areas of an accessory building that are used for other purposes such as a detached garage or a workshop that is not incorporated into the ADU. See Figure E, Illustrative Measurement of ADU Dimensions.~~

✓ Add sentences

- a. *Integrated ADUs.* The floor area of an integrated ADU shall not exceed 550 square feet, except that ADUs that are located entirely in basements are not subject to this requirement.

- b. *Detached ADUs.* The floor area of detached ADUs shall not exceed 550 square feet.

**H. Setbacks and Heights of Buildings that Contain Detached ADUs.** The minimum setback and maximum height standards that apply to buildings that contain detached ADUs are set out in Table 2-3-2-3B, *Minimum Setbacks and Maximum Height of Buildings with Detached ADUs.*

Table 2-3-2-3B Minimum Setbacks and Maximum Height of Buildings with Detached ADUs						
Zone	Minimum Setbacks				Maximum Height To . . .	
	Front	Interior Side	Street Side	Rear	Peak or Ridge	Plate
EN-1 or EN-MF East of the Animas River	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.	Same as principal building requirement	10 ft. where no alley is present; 3 ft. where an alley abuts the rear lot line, except that if the unit is above a garage, there must be at least 25 ft. of maneuvering space from the opposite alley right-of-way line to the garage door	20 ft. <sup>1</sup>	13 ft. 6 in. <sup>1</sup>
EN-2, EN-3 or EN-MF West of the Animas River	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RA	Same as principal building	If plate height is 11 ft. 6 in. or less: 5 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
RL	Rear 1/2 of the lot	5 ft.			18 ft.	11 ft. 6 in.
RM	Rear 1/2 of the lot	<del>5 ft.</del> <del>If plate height is 11 ft. 6 in. or less: 5 ft.</del> <del>If plate height is more than 11 ft. 6 in.: same as principal building requirement.</del>			20 ft.	13 ft. 6 in.
RH	Rear ½ of the lot	5 ft.			20 ft.	13 ft. 6 in.
MU-N	Rear 1/2 of the lot	If plate height is 11 ft. 6 in. or less: 3 ft. If plate height is more than 11 ft. 6 in.: same as principal building requirement.			20 ft.	13 ft. 6 in.
<b>TABLE NOTE:</b> 1. May be increased to be the same as the principal building if both: (a) the building that contains the ADU is compliant with the setbacks that apply to the principal building, and (b) the property is a <u>corner lot</u> or a <u>through lot</u> .						

**I. Design Standards.** ADUs shall conform to the following design standards:

1. *Integrated ADUs.* Integrated ADUs shall not involve design modifications to the exterior of the principal building that make their presence obvious.
  - a. The single-family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood.



- b. Where exterior doors provide direct access to the integrated unit, such doors shall be designed, located, and configured in a manner that is typical for secondary access to a single-family building (e.g., side doors, French doors, etc.).
  - c. External stairs are not allowed to provide access to a second-story ADU.
  - d. If a building is expanded to accommodate an attached or integrated ADU, the expansion shall be designed in a manner that is comparable to the principal building, including but not limited to:
    - 1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
    - 2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling
2. *Detached ADUs.* Detached ADUs shall be designed and configured in the following manner:
- a. Where an alley access exists, ADUs shall take vehicular access from the alley.
  - b. The use of dormers shall be limited as follows:
    - 1. A dormer ridge or roof line shall not extend above the primary roof ridge.
    - 2. The width of a dormer face shall not exceed the lesser of 16 feet or 50 percent of the length of the wall plane upon which the dormer is located.
    - 3. More than one dormer is allowed on a wall plane, provided that the total combined width of dormer faces does not exceed 50 percent of the wall plane length.
    - 4. The space between dormers shall not be less than the greater of one-half the width of the adjoining dormer, or one-half the average of the two dormers if they are different sizes.
    - 5. A dormer shall be set back a minimum of three feet from the nearest building wall plane that runs perpendicular to the dormer face.
  - c. ~~Generally,~~ Second floor windows of detached units or garage units ~~shall~~ **should** face streets and alleys. Windows that face or overlook interior lot lines shall ~~either:~~
    - 1. **Use a sill height equivalent to the maximum allowed for an egress window as described by the City's adopted building codes, and be located at least three and one-half feet above the finished floor, unless the Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.**
    - 2. **Use obscure or similar glass types that let in sunlight while preserving privacy.** ~~Opaque windows are exempt from the minimum window height standard.~~
  - d. Generally, access to second floor units shall be from internal stairs. External stairs may be allowed in certain circumstances as long as the following standards are met:
    - 1. External stairs parallel streets or alleys and shall not be located parallel to interior side property lines; and/or
    - 2. The Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.
  - e. Exterior second floor decks or balconies may not be located so they face or overlook the interior side property lines. Decks or balconies shall face streets or alleys, **and**

screen walls may be required to protect the privacy of adjacent properties. Rooftop decks or terraces are prohibited.

f. Design.

1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling.

J. **Parking for ADUs.**

1. In addition to the parking requirements for the principal building set out in Section 4-5-2-2, Required Off-Street Parking Spaces, one off-street parking space shall be provided for the ADU.
  - a. Existing ~~off-street on-site~~, required parking must be retained but may be reconfigured.
  - b. If no parking exists on the parcel, a total of two ~~off-street~~ parking spaces must be provided, one for the ADU and one for the principal dwelling unit.
  - c. ~~Three on-site parking spaces are required on the lot with an Accessory Dwelling Unit in the EN-4, 5 and 6 zones.~~ If it can be demonstrated that a lot containing an ADU fronts a street that is not a collector or an emergency snow route, and that on-street parking is allowed, and that the width of the street pavement can accommodate two drive lanes and on-street parking, then **the total required parking spaces may be reduced by one**, ~~only two off-street parking spaces may be required~~, subject to verification of the above requirements by the Community Development Department.
2. Use of tandem parking to meet the parking requirements is allowed; however, the total number of tandem spaces used to meet parking requirements for the property shall not exceed one.
3. Parking spaces must be enclosed in a garage or hard surfaced with asphalt, concrete, or other material approved by the City Engineer.

K. **Required Usable Outdoor Area.** ~~In addition to demonstrating compliance with Bulk & Intensity standards as described elsewhere in this section~~, lots that are developed with ADUs ~~shall~~ should include a useable outdoor area that is located behind the principal building unless the principal structure is on the back half of the lot. ~~The useable outdoor area shall be at least 600 sf., with no dimension less than 10 feet.~~ Use of the outdoor space may be allocated to occupants of either dwelling at the property owner's discretion, with no requirement that occupants of the ADU have use of such space.

L. **Additional Requirements in RL, RM, and RH Districts.**

1. **New** lots that may be developed with ADUs shall be annotated on the plat as allowing such accessory use. ~~Existing lots with these zoning designations do not require a plat amendment prior to the addition of an ADU.~~

M. **Additional Requirements for EN-4, EN-5 and EN-6 Zone Districts.**

1. Access to ADUs. A continuous paved access corridor shall be provided from the front of any lot containing an ADU to the ADU entrance. The route must be suitable for emergency responders to use, and shall have an unobstructed vertical clearance of ten feet and an

unobstructed horizontal clearance of seven feet, including five feet clear of roof eaves or other projections. The access shall be kept accessible during all conditions, including being accessible when snow is on the ground.

**N. Relationship to Other Standards.**

1. Buildings that contain ADUs are counted toward the building coverage and floor area limitations for the lot upon which they are located as set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones and Division 3-2-2, Housing Palettes.
2. ADUs that are located within the same building as a detached garage are not eligible for the 450 square foot floor area ratio bonus for detached garages that is allowed by Section 3-1-5-3, Detached Garage Bonus.
3. Construction of ADUs may trigger public improvements, including but not limited to sidewalk improvements, curb ramps, street trees, driveway improvements and driveway apron upgrades, and water meter upgrades, as determined by the ~~Community Development Department~~ **City Engineer** on a case-by-case basis.

*O. Enforcement...*

## **CHAPTER 3 LOTS, BUILDINGS, AND STRUCTURES**

---

### **ARTICLE 3-1 ESTABLISHED NEIGHBORHOOD ZONES**

---

#### **Division 3-1-5 Alternative Compliance**

---

##### **Sec. 3-1-5-1 Alternative Compliance**

---

**A. Generally.**

1. Alternative compliance review is a review process that allows for routine approval of proposed development ~~in EN (all sub-districts) zones,~~ in cases where the proposed development does not strictly comply with the applicable standards of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, ~~or Division 3-1-3, Design Standards Applicable within Multiple EN Zones,~~ Section 3-5-1-1, Fences and Walls **or Section 2-3-2-3, Accessory Dwelling Units.**
2. Alternative compliance is a design-based review, in which the Administrator evaluates proposed development according to the *Design Guidelines for Established Neighborhoods*, and (in cases where additional standards are provided) the standards of this Division, to determine whether the quality and character of the proposed development justifies departure from the requirements **listed in the code sections described above.** ~~of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, Division 3-1-3, Design Standards Applicable within Multiple EN Zones, or Section 3-5-1-1, Fences and Walls.~~

- B. Limitation.** Alternative compliance review cannot be applied to further reduce setbacks or further increase building height if said standards are already modified

through the application of setback reductions and height increases which are available pursuant to Division 3-1-4, Setback Reductions and Height Increases.

C. **When Required.** Alternative compliance review is required in the following circumstances:

1. Development, redevelopment, or building expansions on lots with:
  - a. A lot area of 3,000 square feet or less; or
  - b. A lot width of 25 feet or less.
2. Development, redevelopment, or building expansions which impact a slope with a grade of 30 percent or more.
- ~~3. Development of a duplex, or two single family detached homes on a single lot in lieu of a duplex, in the EN-1 or EN-2 zones.~~
4. Development of an ADU in the EN-4, 5 and 6 zones, when more than two parking spaces may be required in the front setback.

D. **When Optional.** Alternative compliance review may be conducted at the applicant's request in order to:

1. Modify the requirements of Division 3-1-3, Design Standards Applicable within Multiple EN Zones, except the requirements of Section 3-1-3-2, Number of Principal Buildings, (which is addressed by Subsection C.3., above);
2. Reduce the minimum setback requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
3. Increase the maximum wall plate height requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
4. Allow a tower or cupola exception. (See Section 3-1-5-2, Tower or Cupola Exception.)
5. Allow a detached garage bonus. (See Section 3-1-5-3, Detached Garage Bonus.)
6. Allow for additional lot coverage or floor area. (See Section 3-1-5-4, Building Coverage or Floor Area Ratio (FAR) Increase.)
7. Modify the requirements of Section 3-5-1-1, Fences and Walls.
8. **Modify the requirements of Section 2-3-2-3, Accessory Dwelling Units, as described in that Section.**

### Division 3-1-3 Design Standards Applicable within Multiple EN Zones

#### **3-1-3-6 Garages and Accessory Structures**

B. **Accessory structures.** In all EN zones, accessory structures with living space on the second floor ~~shall~~ **should** have windows facing streets and alleys. Windows that face or overlook interior lot lines shall ~~either~~.

1. **Use a sill height equivalent to the maximum allowed for an egress window as described by the City's adopted building codes, ~~as~~ <sup>and</sup> be located at least five and one-half feet above the finished**



floor unless the Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.

2. Use obscure or similar glass types that let in sunlight while preserving privacy. Opaque windows are exempt from the minimum window height standard.

Generally, access to second floor units shall be from internal stairs. External stairs may be allowed in certain circumstances as long as the following standards are met:

1. External stairs parallel streets or alleys and shall not be located parallel to interior side property lines; and/or
2. The Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.

Exterior second floor decks or balconies may not be located so they face or overlook the interior side property lines. Decks or balconies shall face streets or alleys, and screen walls may be required used to protect the privacy of adjacent properties. Rooftop decks or terraces are prohibited.

## CHAPTER 7 WORD USAGE, MEASUREMENTS, CALCULATIONS, AND DEFINITIONS

---

### ARTICLE 7-2 MEASUREMENTS AND CALCULATIONS

---

#### Division 7-2-1 Measurements

---

##### Sec. 7-2-1-2 Gross Floor Area

---

###### B. Gross Floor Area (Generally)

2. GFA is measured as the sum of the following areas, which shall not include areas identified in Subsection B.3., below:
  - d. Areas, except carports, that are covered by a permanent roof or awning structure, if **their perimeter is bounded by 2 or more walls** ~~50 percent or more of their perimeter is enclosed by walls~~ (e.g., covered porches, balconies, patios, and breezeways).

Definitions:

Strike "detached"

# Final Edits to Council

## LUDC Text Amendments to Chapters 2, 3, and 7, Including Standards for Accessory Dwelling Units

\*Updated 6/28/22 with recommended edits from the City of Durango Planning Commission

### Sec. 2-3-2-3 Accessory Dwelling Units

**A. Generally.** Accessory dwelling units (ADUs) may be allowed as a major accessory use to single-family ~~detached~~ dwelling units by limited use review according to the standards of this Section. ADUs are not an accessory to any other use. ~~Variances from the requirements of this Section, Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, and Division 3-3-2, Housing Palette shall not be granted. Properties which contain ADUs shall not be allowed any variances to the principal or accessory structures that increase enclosed space, except for a detached single story garage as noted below. Covered open porches, detached single story garages, with a maximum size of 450 square feet, and minor roof eave encroachments are eligible for Alternative Compliance review.~~ **At the discretion of the administrator, ADUs may be eligible for relief from the standards in Sections 2-3-2-3(F), (H), and (I) as outlined below through the Alternative Compliance process described in Division 3-1-5 and Article 6-3.**

**B. ADU Types.** There are two types of ADUs:

1. **Integrated ADUs.** Integrated ADUs are units that are created by dividing space within a principal building, or by adding floor area to an existing building. See Figure A, ADU Types: Integrated ADU (Basement) and Figure 2-3-2-3B, ADU Types: Integrated ADU. Integrated ADUs may be accessed from within the principal building or from outside, according to the standards of this Section. For the purposes of this Section, an attached ADU must have a minimum of twenty-five (25) percent of the length of the combined length of its first floor exterior walls shared with the principal structure. The shared walls shall not be the walls of a breezeway.
2. **Detached ADUs.** Detached ADUs are units that are located inside of accessory buildings. See Figure C, ADU Types: Detached ADU. The accessory building that includes a detached ADU may also include a garage. See Figure 2-3-2-3D, ADU Types: Detached ADU (Garage).

**C. Where Permitted.** Accessory dwelling units are allowed only as provided in Table 2-3-2-3A, *Zones and ADU Types*. ADUs are not allowed in districts that are not listed in the table.

Table <u>2-3-2-3 A</u> Zones and ADU Types		
Zone	Integrated Unit	Detached Unit
EN-1	<del>Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive.<sup>1</sup></del> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>	Allowed if parcel area is at least 5,000 sf. for properties north of E. College Drive. <sup>1</sup> Allowed on any size parcel for properties south of E. College Drive <sup>2</sup>
EN-2	<del>Allowed if parcel area is at least 7,000 sf.<sup>1</sup></del>	Allowed if parcel area is at least 7,000 sf. <sup>1</sup>
EN-3	<del>Allowed if parcel area is at least 7,500 sf.</del>	Allowed if parcel area is at least 7,500 sf.
EN-4	Allowed	Not Allowed
EN-5	Allowed	Not Allowed
EN-6	Allowed	Not Allowed
EN-MF	Allowed <sup>1</sup>	Allowed <sup>1</sup>

**Table 2-2-3 A  
Zones and ADU Types**

Zone	Integrated Unit	Detached Unit
RA	Allowed	Allowed
RL	Allowed <del>subject to Subsection J., below</del>	Allowed subject to Subsection L., below
RM	Allowed <del>subject to Subsection J., below</del>	Allowed subject to Subsection L., below
<b>RH</b>	<b>Allowed</b>	<b>Allowed subject to Subsection L., below</b>
MU-N	Allowed <sup>1</sup>	Allowed <sup>1</sup>

**TABLE NOTE:**

1. Not allowed if a lot is developed with two single-family detached units pursuant to Section 2-2-3-3, Standards for Residential Land Uses.
2. Not all parcels will be able to accommodate an ADU.

**D. Owner Occupancy.** Owner occupancy is required as set out in this Subsection.

1. Either the principal residence or the accessory dwelling unit must be owner-occupied.
  - a. **The property owner shall provide a notarized, recorded affidavit to the Community Development Department attesting to the owner occupancy requirement prior to obtaining City approval for the ADU.**
  - b. **Following the completion of the ADU, the owner occupancy requirement shall be recertified to the Community Development Department on a biannual basis.**
  - c. Only one of the units is allowed to be rented to a non-owner, unless an exception is granted pursuant to the provisions of this Section.
- ~~2. A notarized affidavit signed by a current property owner must be submitted to the Department on or before March 1st of every odd-numbered year attesting to owner occupancy. These affidavits and a record of compliance with this requirement will be kept on file by the Department.~~
3. The Administrator may grant an exception to the owner occupancy requirement for temporary absences of two (2) years or less when the owner is able to submit acceptable proof of absence from the Durango area. The Administrator may grant one extension of up to one additional year. For extreme circumstances, the owner may make a request to the Planning Commission to allow an exception to the owner-occupancy requirement for up to five (5) years. This exception would allow both units to be rented to non-owners.
4. Purchasers of homes with an accessory dwelling unit must register with the Department within 60 days of purchase by submitting a notarized owner-occupancy affidavit.
5. If the provisions of this Subsection are not met, the property owner shall cause the accessory dwelling unit to be vacated as a dwelling unit and/or remove the unit and return the property to its single-family dwelling status.

**E. Number of ADUs.** No parcel shall contain more than one ADU.

**F. Bulk and Intensity.** The bulk and intensity standards for the parcel shall be as **required by the underlying zone** ~~set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.~~ **Lots developed with ADUs should include a usable outdoor area, typically located behind the principal building. Use of outdoor space may be allocated to occupants of either dwelling at the property owner's discretion, with no requirement that occupants of the ADU have use of such space.**



- a. *Integrated ADUs.* The floor area of an integrated ADU shall not exceed 550 square feet, except that ADUs that are located entirely in basements are not subject to this requirement.
- b. *Detached ADUs.* The floor area of detached ADUs shall not exceed 550 square feet.

**Table 2-3-2-3B**  
**Minimum Setbacks and Maximum Height of Buildings with Detached ADUs**

1. May be increased to be the same as the principal building if both: (a) the building that contains the ADU is compliant with the setbacks that apply to the principal building, and (b) the property is a corner lot or a through lot.

- I. **Design Standards.** ADUs shall conform to the following design standards:
1. *Integrated ADUs.* Integrated ADUs shall not involve design modifications to the exterior of the principal building that make their presence obvious.
    - a. The single-family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood.
    - b. Where exterior doors provide direct access to the integrated unit, such doors shall be designed, located, and configured in a manner that is typical for secondary access to a single-family building (e.g., side doors, French doors, etc.).
    - c. External stairs are not allowed to provide access to a second-story ADU.
    - d. If a building is expanded to accommodate an attached or integrated ADU, the expansion shall be designed in a manner that is comparable to the principal building, including but not limited to:
      1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
      2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling
  2. *Detached ADUs.* Detached ADUs shall be designed and configured in the following manner:
    - a. Where an alley access exists, ADUs shall take vehicular access from the alley.
    - b. The use of dormers shall be limited as follows:
      1. A dormer ridge or roof line shall not extend above the primary roof ridge.
      2. The width of a dormer face shall not exceed the lesser of 16 feet or 50 percent of the length of the wall plane upon which the dormer is located.
      3. More than one dormer is allowed on a wall plane, provided that the total combined width of dormer faces does not exceed 50 percent of the wall plane length.
      4. The space between dormers shall not be less than the greater of one-half the width of the adjoining dormer, or one-half the average of the two dormers if they are different sizes.
      5. A dormer shall be set back a minimum of three feet from the nearest building wall plane that runs perpendicular to the dormer face.
    - c. ~~Generally,~~ Second floor windows of detached units or garage units ~~shall~~ **should** face streets and alleys. Windows that face or overlook interior lot lines shall:
      1. **Use a sill height equivalent to the maximum allowed for an egress window as described by the City's adopted building codes, and; be located at least three and one-half feet above the finished floor. unless the Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.**
      2. **Use obscure or similar glass types that let in sunlight while preserving privacy. Opaque windows are exempt from the minimum window height standard.**
    - d. Generally, access to second floor units shall be from internal stairs. External stairs may be allowed in certain circumstances as long as the following standards are met:
      1. External stairs parallel streets or alleys and shall not be located parallel to interior side property lines; and/or

2. The Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.
- e. Exterior second floor decks or balconies may not be located so they face or overlook the interior side property lines. Decks or balconies shall face streets or alleys, **and screen walls may be required to protect the privacy of adjacent properties. Rooftop decks or terraces are prohibited.**
- f. Design.
  1. Siding, roofing, windows and building trim materials shall visually match those used on the principal dwelling; and
  2. The roof pitch shall be similar to the predominant roof pitch on the principal dwelling.

**J. Parking for ADUs.**

1. In addition to the parking requirements for the principal building set out in Section 4-5-2-2, Required Off-Street Parking Spaces, one off-street parking space shall be provided for the ADU.
  - a. Existing **off-street on-site**, required parking must be retained but may be reconfigured.
  - b. If no parking exists on the parcel, a total of two **off-street** parking spaces must be provided, one for the ADU and one for the principal dwelling unit.
  - c. ~~Three on-site parking spaces are required on the lot with an Accessory Dwelling Unit in the EN-4, 5 and 6 zones.~~ If it can be demonstrated that a lot containing an ADU fronts a street that is not a collector or an emergency snow route, and that on-street parking is allowed, and that the width of the street pavement can accommodate two drive lanes and on-street parking, then **the total required parking spaces may be reduced by one, only two off-street parking spaces may be required,** subject to verification of the above requirements by the Community Development Department.
2. Use of tandem parking to meet the parking requirements is allowed; however, the total number of tandem spaces used to meet parking requirements for the property shall not exceed one.
3. Parking spaces must be enclosed in a garage or hard surfaced with asphalt, concrete, or other material approved by the City Engineer.

~~K. **Required Usable Outdoor Area.** Lots that are developed with ADUs shall should include a useable outdoor area that is located behind the principal building unless the principal structure is on the back half of the lot. The useable outdoor area shall be at least 600 sf., with no dimension less than 10 feet.~~

**L. Additional Requirements in RL, RM, and RH Districts.**

1. **New** lots that may be developed with ADUs shall be annotated on the plat as allowing such accessory use. **Existing lots with these zoning designations do not require a plat amendment prior to the addition of an ADU.**

**M. Additional Requirements for EN-4, EN-5 and EN-6 Zone Districts.**

1. Access to ADUs. A continuous paved access corridor shall be provided from the front of any lot containing an ADU to the ADU entrance. The route must be suitable for emergency

responders to use, and shall have an unobstructed vertical clearance of ten feet and an unobstructed horizontal clearance of seven feet, including five feet clear of roof eaves or other projections. The access shall be kept accessible during all conditions, including being accessible when snow is on the ground.

**N. Relationship to Other Standards.**

1. Buildings that contain ADUs are counted toward the building coverage and floor area limitations for the lot upon which they are located as set out in Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones and Division 3-2-2, Housing Palettes.
2. ADUs that are located within the same building as a detached garage are not eligible for the 450 square foot floor area ratio bonus for detached garages that is allowed by Section 3-1-5-3, Detached Garage Bonus.
3. Construction of ADUs may trigger public improvements, including but not limited to sidewalk improvements, curb ramps, street trees, driveway improvements and driveway apron upgrades, and water meter upgrades, as determined by the ~~Community Development Department~~ **City Engineer** on a case-by-case basis.
4. **Enforcement.** Properties that have been approved for an ADU shall remain in compliance with the standards of this section, as described by the approval document provided by the Administrator. Violations of the standards listed above or of any stated approval conditions shall result in enforcement action as described by Article 6-4, Enforcement and Remedies, and may result in the revocation of the ADU approval.

## **CHAPTER 3 LOTS, BUILDINGS, AND STRUCTURES**

---

### **ARTICLE 3-1 ESTABLISHED NEIGHBORHOOD ZONES**

---

#### **Division 3-1-5 Alternative Compliance**

---

##### **Sec. 3-1-5-1 Alternative Compliance**

---

**A. Generally.**

1. Alternative compliance review is a review process that allows for routine approval of proposed development ~~in EN (all sub-districts) zones~~, in cases where the proposed development does not strictly comply with the applicable standards of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones, ~~or Division 3-1-3, Design Standards Applicable within Multiple EN Zones~~, Section 3-5-1-1, Fences and Walls or Section 2-3-2-3, Accessory Dwelling Units.
2. Alternative compliance is a design-based review, in which the Administrator evaluates proposed development according to the *Design Guidelines for Established Neighborhoods*, and (in cases where additional standards are provided) the standards of this Division, to determine whether the quality and character of the proposed development justifies departure from the requirements ~~listed in the code sections described above. of Division 3-1-~~

~~2, Bulk and Intensity in EN and EN-MF Zones, Division 3-1-3, Design Standards Applicable within Multiple EN Zones, or Section 3-5-1-1, Fences and Walls.~~

- B. **Limitation.** Alternative compliance review cannot be applied to further reduce setbacks or further increase building height if said standards are already modified through the application of setback reductions and height increases which are available pursuant to Division 3-1-4, Setback Reductions and Height Increases.
- C. **When Required.** Alternative compliance review is required in the following circumstances:
1. Development, redevelopment, or building expansions on lots with:
    - a. A lot area of 3,000 square feet or less; or
    - b. A lot width of 25 feet or less.
  2. Development, redevelopment, or building expansions which impact a slope with a grade of 30 percent or more.
  3. ~~Development of a duplex, or two single family detached homes on a single lot in lieu of a duplex, in the EN-1 or EN-2 zones.~~
  4. Development of an ADU in the EN-4, 5 and 6 zones, when more than two parking spaces may be required in the front setback.
- D. **When Optional.** Alternative compliance review may be conducted at the applicant's request in order to:
1. Modify the requirements of Division 3-1-3, Design Standards Applicable within Multiple EN Zones, except the requirements of Section 3-1-3-2, Number of Principal Buildings, (which is addressed by Subsection C.3., above);
  2. Reduce the minimum setback requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
  3. Increase the maximum wall plate height requirements of Division 3-1-2, Bulk and Intensity in EN and EN-MF Zones.
  4. Allow a tower or cupola exception. (See Section 3-1-5-2, Tower or Cupola Exception.)
  5. Allow a detached garage bonus. (See Section 3-1-5-3, Detached Garage Bonus.)
  6. Allow for additional lot coverage or floor area. (See Section 3-1-5-4, Building Coverage or Floor Area Ratio (FAR) Increase.)
  7. Modify the requirements of Section 3-5-1-1, Fences and Walls.
  8. **Modify the requirements of Section 2-3-2-3, Accessory Dwelling Units, as described in that Section.**



## Division 3-1-3 Design Standards Applicable within Multiple EN Zones

---

### 3-1-3-6 Garages and Accessory Structures

---

**B. Accessory structures.** In all EN zones, accessory structures with living space on the second floor ~~shall~~ **should** have windows facing streets and alleys. Windows that face or overlook interior lot lines shall:

1. **Use a sill height equivalent to the maximum allowed for an egress window as described by the City's adopted building codes, and;** ~~be located at least five and one-half feet above the finished floor unless the Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.~~
2. **Use obscure or similar glass types that let in sunlight while preserving privacy.** ~~Opaque windows are exempt from the minimum window height standard.~~

Generally, access to second floor units shall be from internal stairs. External stairs may be allowed in certain circumstances as long as the following standards are met:

1. External stairs parallel streets or alleys and shall not be located parallel to interior side property lines; and/or
2. The Administrator determines that other features are in place to protect the privacy of the adjacent lot's rear yard.

Exterior second floor decks or balconies may not be located so they face or overlook the interior side property lines. Decks or balconies shall face streets or alleys, and screen walls may be **required** ~~used~~ to protect the privacy of adjacent properties. Rooftop decks or terraces are prohibited.

## CHAPTER 7 WORD USAGE, MEASUREMENTS, CALCULATIONS, AND DEFINITIONS

---

### ARTICLE 7-2 MEASUREMENTS AND CALCULATIONS

---

#### Division 7-2-1 Measurements

---

##### Sec. 7-2-1-2 Gross Floor Area

---

###### B. Gross Floor Area (Generally)

2. GFA is measured as the sum of the following areas, which shall not include areas identified in Subsection B.3., below:
  - d. Areas, except carports, that are covered by a permanent roof or awning structure, if **their perimeter is bounded by 2 or more walls** ~~50 percent or more of their perimeter is enclosed by walls (e.g., covered porches, balconies, patios, and breezeways).~~

### ARTICLE 7-3 DEFINITIONS

---

#### D

**Dwelling Unit, Accessory** means a dwelling unit that is:

1. Located inside of or attached to an existing single-family ~~detached~~ dwelling unit (the "principal dwelling unit"), or in a separate accessory building on the same lot as the principal dwelling unit;

2. Clearly subordinate in size and scale to the principal dwelling unit.

Accessory dwelling units are intended to provide alternative living arrangements for one family on a single-family residential lot. Accordingly, the approval or presence of an accessory dwelling unit does not authorize the occupancy of the lot by more than one family.

### 6.3 Written Public Comment

**From:** Barbara <barbgarlick@hotmail.com>  
**Sent:** Sunday, May 15, 2022 12:56 PM  
**To:** Armentano, Dan <Dan.Armentano@durangogov.org>  
**Subject:** Proposed changes to LUDC - ADUs in EN-1 north of College Dr

External message - please be cautious when opening links or attachments in email.

Dan:

Back in 2013 the proposed new land use development code (LUDC) for the City of Durango included a provision that would have allowed the construction of five hundred new alley dwelling units (ADUs) in the city's two most beautiful and historic neighborhoods: EN-1 and EN-2. The apparent goal in permitting all of these alley apartments was infill, allowing more people to live close to downtown.

At the time, we were extremely concerned about the negative impact these units would have on the character of these cherished neighborhoods. We felt that Durango had actually been ahead of the curve on the idea of infill. These neighborhoods already had a significant number of apartment buildings, condos, duplexes and ADUs, plus numerous schools, churches, and medical offices. The few remaining owner-occupied, single-family homes helped these neighborhoods preserve their historical and residential character and that, in turn, helped the entire city retain its unique, small-town atmosphere.

We joined Citizens for Healthy Established Neighborhoods (CHEN), a group of like-minded citizens who felt that the City needed to seriously consider the impact of more alley apartments on our infrastructure and other city services, snow removal, emergency response, and safety issues such as people walking down dark, unlit alleys at night. We also felt that we needed to consider the impact on the general quality of life of the people who are currently living in these neighborhoods: issues such as noise, privacy, blocked sunlight, trash, traffic, parking, and animals.

As a result of these concerns, CHEN advocated for a few restrictions on ADUs that we believed were necessary to protect the integrity of these historic neighborhoods and not fill every square inch of them up with more rental units. City Council adopted several of these recommendations:

- Minimum lot size of 7,000 square feet
- Owner occupancy of one unit
- Access to the street for both units for mail and recycle containers
- No variances

It has come to our attention that the City is now considering easing these restrictions for EN-1, north of College Drive. We are adamantly opposed to these changes. Nothing that has happened in these intervening nine years has convinced us that allowing more ADUs is the solution to our housing problems. In fact, the tremendous influx of tourists and new residents as a result of the Covid-19 pandemic has just exacerbated all of the problems that come with overcrowding. We are more

convinced than ever that the negative impacts of easing restrictions on ADUs in these neighborhoods will, by far, exceed any potential benefits. Please do not allow these changes.

Sincerely,

Bruce & Barbara Garlick  
2143 W. 2<sup>nd</sup> Ave  
Durango, CO  
(970) 247-9664

**From:** Mike Todt <miketodt@gmail.com>  
**Sent:** Wednesday, May 25, 2022 5:24 PM  
**To:** Armentano, Dan <Dan.Armentano@durangogov.org>  
**Subject:** ADUs

External message - please be cautious when opening links or attachments in email.

In fact, you have not gone far enough. Creating guidelines that prevent people from having ADUs and preventing people, with low incomes, to live within any neighborhood is the new redlining. As I live in EN1 south of College, there are no lot requirements. Why is there a lot requirement in EN1 north of College Avenue. My suggestion, let people in any area have ADUs. They might end up being affordable and that would help the housing situation immensely.

Mike Todt

Sent from [Mail](#) for Windows

May 16, 2022

Hello Important People!

First of all, thank you for inviting the public to participate in our community issues. This exercises one of our fundamental rights to participate, and reaffirms that you are interested in what the public thinks.

Going back several years, there is quite a history to the EN neighborhoods, their situations, and all that has transpired. Several of us began working with the City on the ADU question. My file folder goes back to 2011 with many public meetings, letters, meeting with Planning, etc. I believe things started way before that. Our group did not want more ADUs in our neighborhoods, just to upgrade and legalize the ones that were already rampant. After several years of communications, we compromised with the City and we both made positive gains (owner occupied, certain minimum property square footage, etc. ). Thus, Legal ADUs were born, much to our satisfaction, as far as safety went anyway.

Then, the issue was Vacation Rentals. Again, there were several meetings and public forums, letters, and more meetings. It was finally decided, again a compromise, to only allow one vacation rental per city block face. That seems to be fairly comfortable, although sometimes the one down the street from me has partying vacation people, and boats and trailers that don't fit into the neighborhood. Again, compromise.

Vicki Vandergrift at Planning worked closely with us on all this. She has details, if necessary.

Your new changes to the code (variances, relief from standards, fewer parking spaces, and the elimination of lot size requirements for integrated ADUs) just add more pressure, more people, more cars, more traffic, more trash, more dogs, more fire danger, more stress, and more infrastructure and utility overload. It gives people less privacy, less sun, less space to look at the surrounding hills, and less peace and tranquility, even with the building restrictions.

I am strictly against any change in the zoning for any of these neighborhoods, as we are already too crammed in together. Current codes are the result of many years of work by all of us, and should remain steadfast!

Remember those studies of rats in cages in Psychology 101 in college? The closer they were together, the more anger and violence arose. We do not need more of this!

There is too much density as it is. Why do we think we can just keep on adding more and more? Many of us worked for years here to afford to live in town, and to compromise the quality of our lives in order to accommodate hordes more does not seem the right balance for anyone. More and more people will continue to come to Durango. Why jeopardize these beautiful old neighborhoods when the influx will never end?

I realize we need more housing for the middle class and none is available, but isn't this what the fair market is about? Doesn't it make more sense to invest in more outlying development where there's a bit more room for people, parking, walking dogs, noise, etc.? Twin Buttes and/or Three Springs?

I am especially concerned about the physical, environmental, infrastructure, and privacy impacts of the proposed increased density in residential neighborhoods. It leads to "neighborhood destabilization," once identified by a planning consultant. I think it wise to protect these established neighborhoods while we still can.

Thank you for your attention to this important matter.

Martha McClellan  
230 W. 19th St.

Durango, CO 81301

**From:** Laurie Roberts <lroberts@frontier.net>

**Sent:** Wednesday, July 13, 2022 4:29 PM

**To:** Armentano, Dan <Dan.Armentano@durangogov.org>

**Subject:** ADU Proposal

External message - please be cautious when opening links or attachments in email.

Good afternoon-

I'm writing in support of any proposals to increase housing opportunities in Durango, including ADUs. I'm very familiar with support programs for ADUs in west Denver: <https://www.mywdrc.org/adu-pilot-program> This program also includes financing assistance.

Our group, United Today, Stronger Tomorrow, is engaged in creating public will for increased residential development. We've been involved in the recent mobile home co-op efforts.

I like the ideas presented in the ADU text code amendments. Personally, I worry that the locals rebate program doesn't go far enough. I'd like to see some of the west Denver elements available here locally: pre-approved ADU designs and financing assistance, as well as extended dwellings to locals requirements.

Please update our Land Use Code with these new proposals!

Respectfully,  
Laurie Roberts

July 18, 2022

Hello Dan, Kevin and City Councilors,

I want to thank you for considering the Alternative Compliance for the ADU's in the city of Durango. I have been talking to Dan about this for years, and brought it to Kevin's attention last year. I understand that if these updates are adopted, it would allow home owners, like myself, to build additions to our home following a successful Alternative Compliance review. I have seen that there are also a number of other changes included that will ease restrictions on this use and encourage the creation of much needed housing in Durango. I am 100% behind this and hope you will adopt the proposed changes.

When I bought my home 10 years ago on E 4<sup>th</sup> Ave, I was told the ADU was legally built. I am a single mom with twins in a 2 bedroom. My plan was to build an additional bedroom upstairs about 6 years ago when my girls turned 8. Around that time, the city decided to make everyone with an ADU register the unit and pay fees to make it legal, which I did. At the same time, the new codes were announced about building restrictions for home with ADU's and my small lot did not allow for me to comply. I have not been able to build a bedroom on the second floor since then even though it was not changing the outside perimeter of my home as I was not allowed to ask for a variance.

I have had to become creative in giving my twins "separate spaces" in the master bedroom while I use the tiny second bedroom for myself since we have not been allowed to build for all these years. Obviously it was a shock to me when this happened as I bought this home with the intention to add on as my ADU was already legal and on my title.

There is a big housing problem here in Durango and I know that when the ADU rules were put into place it was to prevent an overbuild of ADU's at that time because of the "legalization" process. I have also heard at several planning meetings I have attended over the years on this topic that not that many have been built. It is very costly to build an ADU and to do any kind of updates or renovations to homes these days as you know.

Again, I hope you will vote to adopt the revised changes the planning office is presenting to you.

Sarah Shaw  
695 E 4<sup>th</sup> Ave



**From:** Karen Anesi <karenanesi@gmail.com>  
**Sent:** Monday, July 18, 2022 1:59 PM  
**To:** Armentano, Dan <Dan.Armentano@durangogov.org>; City Manager <citymanager@durangogov.org>; CityCouncil <CityCouncil@durangogov.org>  
**Subject:** Comments re ADUs

External message - please be cautious when opening links or attachments in email.

Dear Dan,

Thank you for taking the time to speak with me last week. I am sorry I'm so late getting these to you. I procrastinated; then I had spotty Internet access over the weekend. Because I am late getting this to you, I'm mailing it to the council as well.

Please include my comments in the record for the City Council 7/19/22 public hearing re code amendments to the LUDC re: ADUs.

My comments are based on both a recent conversation I had with Dan Armentano, (who clarified concerns I had regarding examples of when variances are appropriate and when alternative compliance is used) plus minutes and documents dating back to 2015.

My support for these amendments remains limited. Based on the staff report presented to the planning commission, I doubt that these proposed LUDC amendments will impact Durango's push to provide housing for the population needing it most. At best, it's a drop in the bucket. At worst it has the potential to create further conflict among neighbors, especially in areas with limited parking capacity.

First the pros: I'm pleased to read that staff supports owner occupancy. Strengthening the owner occupancy standard along with simplification of the recertification process makes sense. Good luck monitoring and enforcing that.

Minimum lot size standards are necessary-- especially for detached units-- because the neighborhoods already most densely populated can't afford a continual push from the City to pack more people into less space. Aging infrastructure can't support it. I'm not willing to predict if attached ADUs will have the same impact, but I know what it feels like when ten unrelated people share a small backyard. I live two houses north of Animal House. (The name given to Durango's arguably most infamous duplex near the north end of The Boulevard.)

I'm pleased that staff want to protect the privacy of adjacent properties by prohibiting rooftop decks and terraces and requiring obscured second story windows that will do the same.

The incremental reduction of the parking standard concerns me, especially for EN 3. The number of streets considered arterial and collectors in EN 1 and EN 2, means most ADUs in these two zones will require on-site parking, I assume.

Alternative compliance is only as good as the administrator overseeing it. I'm appreciative of present staff, but also glad the standard notification of neighbors will still apply.

The real concern I have has little to do with text amendments but everything to do with how neighborhood character indeed changes as residents vie for limited resources, despite staff collected

data that suggests the number of ADUs built are negligible-- (therefore neighborhood character remains unchanged.)

Not sure I trust the count because staff can't be expected to know how many unrelated people live in structures --whether duplexes or ADUs. There's an assumption that all ADUs are registered, just as the City assumes it knows where all duplexes and multi-residential structures are located. A duplex can house as many as 10 unrelated persons and that could mean ten automobiles are parked for each duplex that exists on a single block. It's the same for ADUs.

Bottom line: The city does not have the staff resources to count, monitor or enforce when infractions occur. Code enforcement is complaint driven. As I have called to the attention of city leaders in the past: Neighbors aren't interested in policing what's happening next door. They just want to live in peace.

Peace is the common denominator among all the diverse neighborhoods within the City. Please take this observation into consideration as you move forward.

Respectfully,

Karen Brucoli Anesi

--

Karen Brucoli Anesi  
970-799-0680

## 6.4 Planning Commission Minutes

### Planning Commission Minutes

**DURANGO PLANNING COMMISSION  
VIRTUAL MEETING  
MONDAY, June 27, 2022  
5:00 PM  
DURANGO, COLORADO**

**DRAFT MINUTES**

**MEMBERS PRESENT:** Chair Matt Payne, Vice-Chair Geoff Hickcox, Susan Ulery, Brian Devine, and Alma Evans.

**MEMBERS ABSENT:** None.

**STAFF PRESENT:** Kevin Hall, Managing Director of Community Development, Daniel Murray, Development Services Manager, Mark Williams, Planner II, Dan Armentano, Planner II, Savannah Lytle, Planner III, Marty Pool, Sustainability Manager, Dirk Nelson, City Attorney, Vicki Vandegrift, Planner III, and Bryce Bierman, Planner I.

1. Call To Order/Roll Call Chair Payne called the meeting to order at 5:00 pm.
2. Announcements Joint Study Session between Durango City Councilors and La Plata County Commissioners regarding the future of a homeless encampment to be held Wednesday June 29<sup>th</sup> at 3:30pm.
3. Public Participation None.
4. Consent Agenda
5. Public Hearings  
5.4 **Accessory Dwelling Unit (ADU) Text Amendments**

### ADUs in Durango

- ADUs have existed in Durango for about as long as the City itself.
- Efficient way to increase housing options in existing and proposed neighborhoods:
- Make use of existing infrastructure, including water, sewer, street system.
- Do not require substantial development approvals.
- Due to their modest size, ADUs are an affordable housing option.

### ADU Program History

- ADUs were originally legalized in 2014 for ENs 1 & 2.
  - Expanded to EN-3 in early 2015 with similar standards
  - Expanded to ENs 4, 5, & 6 in 2019
- Due to public concerns, code included several limiting provisions:
  - No variances allowed.
  - Strict design standards- unit size, privacy, access, etc.
  - Owner occupancy required.
  - Occupancy limited to that of SF home: not more than 5 unrelated individuals.
- Proposed amendments:
  - Incremental, improve consistency, and have been in process for nearly a year.
  - Have been reviewed and supported by the Code Alignment Group.

#### ADU Program Overview

- Durango has about 8500 residential units, 143 of which are ADUs.
- Legal ADUs are 1.7% of Durango's residential units- comparable to the number of vacation rentals.
  - Pre-existing ADUs
    - 98 units legalized through a registration period starting in 2014.
    - Represent about 2/3rds of all ADUs.
    - Around 300 units were registered, but many qualified as duplexes or were nonconforming multifamily uses.
  - New ADUs
    - Since 2014, 45 new ADUs have been permitted, mostly in ENs 1, 2, & 3
    - About 6 new units per year
    - New ADUs account for 0.5% of residential units.
- Most new ADUs are detached and located in EN-1, 2, & 3:
  - EN-1: 19
  - EN-2: 7
  - EN-3: 11
  - EN-4: 2
  - EN-5: 1
  - Other: 5
- Many PD zones allow ADUs:
  - Rincon, Arrowhead Ridge, Rosemary Lane, etc.

#### ADU vs. Detached Duplex

- ADU versus Duplex- "detached duplexes" allowed in EN 1 & 2, can appear very similar to a detached ADU but are much less restricted.

#### ADU Survey

- Two surveys: an ADU Owner Survey and a Community Survey
- Ran for 2+ weeks in March
- **Goals:**
  - Gauge public knowledge of existing ADU regulations.
  - Understand public support for code updates and incentives.
  - Improve understanding of how ADUs are used.

#### ADU Owner Survey

- Limited responses.
- Rents: More than half rented at <\$1000/month
- Parking: 2/3rds reported only 1 vehicle with the ADU
- ADU rents help offset home ownership costs

#### ADU Community Survey

- Good participation- 323 total responses.
- Survey indicated support for:
  - Amending the LUDC to promote new ADUs.
  - Allowing variances.
  - Keeping requirements for owner-occupancy, prohibiting vacation rentals.
- The public is interested in building more ADUs.

#### Summary of Amendments

- Allow Alternative Compliance for proposed ADUs.
- Simplify the method for ADU property owners to re-certify owner occupancy every 2 years. A recorded affidavit is now required when the ADU is approved.
- Allow ADUs in the Residential High Density (RH) zone.
- In all zones, eliminate the minimum lot size for integrated ADUs.
- In all zones, allow properties with proposed ADUs to reduce their required total parking by one space if on-street parking is available, subject to a few conditions.
- Update design requirements for windows and decks on detached, second story ADUs and duplex units to protect neighbor privacy.
- Minor clarifying edits to improve the readability, consistency, and flexibility of the ADU codes.
- References to the ADU standards in the section of code describing the applicability of Alternative Compliance.
- A minor change to how Gross Floor Area is calculated.

#### Alternative Compliance for ADUs

- Current language: *"Properties which contain ADUs shall not be allowed any variances to the principal or accessory structures that increase enclosed space."*
- Proposed change: *"At the discretion of the administrator, ADUs may be eligible for relief from the standards in Sections 2-3-2-3(F), (H), and (I) as outlined below through the Alternative Compliance process described in Division 3-1-5 and Article 6-3."*
- Sections F, H, & I include:
  - Bulk & Intensity (Floor Area Ratio, Lot Coverage)
  - Setbacks & Building Height
  - Design Standards
- Alternative Compliance is an administrative variance process that has been successfully implemented in EN zones since 2005.
  - Uses the EN Design Guidelines, neighborhood context, & public comment as a reference for what may be appropriate.
  - Staff findings are often very specific and used to avoid setting precedent.
  - Alternative Compliance requests may be referred to the Design Review Board.

#### Lots Ineligible for ADUs

- Due to minimum lot size requirements, 397 lots in EN-1, 2, & 3 are ineligible for ADUs.

- Integrated ADUs would be allowed with these amendments.

#### Parking Changes

- ADUs in Established Neighborhoods 4, 5, & 6 may use one on-street parking space if:
  - Street parking is allowed in the adjacent r-o-w;
  - The street is not a collector, arterial, or snow route; and
  - Street dimensions can accommodate two drive lanes and on-street parking.
- The proposed amendments extend this allowance to ADUs in all zones.

#### Owner Occupancy Requirement

- Staff is not proposing to remove the owner occupancy requirement.
- Current code requires a notarized affidavit certifying owner occupancy every odd year, but this standard has not been enforced by staff.
- Proposed change would:
  - Require a notarized and recorded affidavit when the ADU is approved.
    - A recorded affidavit would come up in a buyer's title search.
    - New buyer must certify owner occupancy.
  - Simplify biannual recertification process- go digital.

#### Additional Recommended Edits

- Update the definition of an ADU as follows:

*...located inside of or attached to an existing single-family detached dwelling unit (the "principal dwelling unit"), or in a separate accessory building on the same lot as the principal dwelling unit;*

- Remove Section 2-3-2-3.K, *Required Usable Outdoor Area*
- Edit Section F to read as follows:

*Bulk and Intensity. The bulk and intensity standards for the parcel shall be as required by the underlying zone. Lots that are developed with ADUs should include a usable outdoor area located behind the principal building.*

#### LUDC Review Criteria

- The proposed amendment supports adopted plans and policies.
- The proposed amendment is consistent with the purposes, requirements, limitations, standards, and criteria of the Article being amended and/or other Articles, Divisions, or Sections within the LUDC.
- The proposed amendment furthers the health, safety, or general welfare of the community.
- The proposed amendment provides for community benefits, such as improved social or economic conditions or opportunities.

#### Alignment with Adopted Plans

##### 2021 Strategic Plan:

- Directed staff to update the LUDC to promote the development of housing through a review of existing standards.

##### Housing Plan:

- Includes the following recommended actions:

*Action 3.3: Evaluate the possibility of expanding ADUs to additional Durango neighborhoods.*

*Action 3.8: Evaluate and propose new parking standards for certain residential land uses.*

#### Comprehensive Plan:

- Anticipates LUDC amendments as growth occurs and market conditions change.
- Encourages workforce housing and a variety of housing types.

#### Public Comment

To date, three comments have been received: 2 in opposition, 1 encouraging more changes.

- Comments opposed to ADUs highlighted issues with overcrowding, parking, infrastructure, and privacy.
- Another comment suggested that the changes eliminate minimum lot sizes entirely, broadly states that the City should “let people in any area have ADUs.”

#### Conclusion & Recommendation

- The proposed amendments are incremental changes that will allow for greater flexibility for the approval of ADUs while preserving most restrictions.
- The limited number of new ADUs built indicates that restrictions are burdensome. Public feedback on ADUs indicates broad support for reducing these restrictions.
- Reducing regulations on new ADUs may help encourage home ownership and affordable rental units for residents.
- Proposed amendments help align the code with adopted City Plans and policies.

#### Recommended Motion:

*“Move to recommend approval of the proposed Text Amendments to Chapters 2, 3, & 7 of the LUDC as described in the staff report and discussed in this public hearing with the finding that the proposal complies with the criteria for text amendments as described in the City of Durango Land Use and Development Code.”*

Chair Payne asked how comments are processed regarding alternative compliance applications.

Mr. Armentano mentioned the process usually starts with a pre-application meeting to determine which parts of the proposal align with the LUDC. Once the deviations from code are identified, a public notice is posted onsite and mailed to all homeowners within 150ft. of the property. If there are many opposing public comments from the neighbors, staff will recommend further changes or possibly a meeting to discuss the expressed concerns.

Chair Payne also asked how changing the ADU code language will impact the density in those zones. Mr. Armentano mentioned that density would not change, as ADUs are allowed the same occupancy as a single-family residence. A maximum of five unrelated individuals are allowed on a property with a single-family residence, regardless of whether an ADU exists. Therefore, adding ADUs does not conflict with density requirements.

Chair Payne also asked if an applicant would be able to scrape a home and develop two small dwellings on the same lot, if one of the dwellings was an ADU. Mr. Armentano said “yes”, but the lot would still not be able to exceed the limit of 5 unrelated persons living on the property.

Chair Payne also asked what the national conversation is regarding how ADUs can have an impact on housing demand. Mr. Armentano mentioned that housing was a major subject covered at the national APA conference, and ADUs were a consistent piece of that puzzle. These units are a useful way to promote more infill development.

Commissioner Ulery asked whether ADUs are allowed in PDs, and if not, would they be possible now? Mr. Armentano stated that it depends on the PD zone, and that the proposed amendments would not change this. A PD amendment to allow ADUs would require the approval of 2/3 of the property owners, which would be a challenge for larger developments.

Commissioner Ulery also asked why Major Streets Impact fees are not applied to ADUs when a duplex would not? Mr. Armentano mentioned ADUs are required to pay impact fees, including Major Streets. He also mentioned any unit under 600 square feet pays half-priced water and sewer plant investment fees.

Commissioner Evans would like the new language about window height and privacy to say “and” instead of “either,” implying that windows overlooking a neighboring property line should use obscure glass and a minimum sill height. Mr. Armentano mentioned the Code Alignment Working Group provided feedback saying they were okay with decreasing the minimum windowpane height. Commissioner Evans would like to see language that requires the window to be obscured or to be set higher up for privacy. She would like to see any egress windows facing an interior lot line to be obscured. Commissioner Hickcox mentioned he would also like to see a requirement for obscure glass for these windows. He mentioned the Code Alignment Working Group produced the language for these changes to make sure different sill heights would not be required for different rooms of the home.

Commissioner Evans also asked if anyone who has a registered ADU would have to re-affirm owner occupancy when these changes are established. Mr. Armentano answered “yes”.

Commissioner Evans also asked what the definition is for usable outdoor space. Mr. Armentano mentioned the code currently says this area must consist of 600 square feet, with no dimension less than 10ft. Commissioner Evans also asked if that area could shrink through an alternative compliance request. Mr. Armentano described that staff is proposing to change this from a requirement to a recommendation, and that the size and existence of a usable outdoor area would impact whether alternative compliance could be approved for the site.

Commissioner Evans also asked if ADUs are considered when density is measured by dwelling units per acre. Mr. Armentano described again why ADUs are not factored into density calculations due to the limit of five unrelated persons who can reside in one single-family property. Commissioner Evans mentioned she noticed that her neighborhood has additional density beyond the 12-units per acre allowed if alley dwellings are included. Mr. Armentano stated that ADUs, as an accessory to the single-family use, are not factored into density even when detached. Duplexes are different, as they would allow up to five unrelated persons in each of the two parts of the duplex.



Vice-Chair Hickcox mentioned that Commissioner Evans' point is an interesting perspective regarding factoring ADUs into density, specifically as related to the number of structures containing dwellings that are allowed on a lot. Mr. Armentano mentioned that while it may be possible for every lot to be eligible for an integrated ADU with the proposed amendments, that is not likely to be the case. Minimum lot sizes for detached ADUs are remaining unchanged. Vice Chair Hickcox mentioned it could be valuable to factor the number of structures into the density rather than the number of people allowed.

Commissioner Devine clarified that duplexes are meant to be higher density and have a different review process than ADUs. Mr. Armentano stated that a duplex has a lesser review than ADUs. ADUs require a Limited Use Permit whereas Duplexes require a Special Use Permit.

ADUs have a more intense review than duplexes because there are more qualifying factors than just lot size. The 7500 sq/ft minimum lot size requirement for duplexes equates to a maximum density of 11.2 units/acre, which is within the parameters for a Medium Density Residential designation.

Commissioner Devine asked if he would need a land use permit to expand his existing home. Mr. Armentano said "no". Commissioner Devine clarified that he could have 5 unrelated people living at his single-family property, regardless of whether an ADU was present. Mr. Armentano stated that this was correct.

Commissioner Devine asked how staff will know if the text amendments have resulted in the creation of more ADUs. Mr. Armentano said that staff will track the applications and building permits approved for ADUs.

Commissioner Devine asked if City staff have a percentage goal to see ADUs makeup the overall housing stock. Mr. Armentano said "no".

Vice Chair Hickcox said that he doesn't believe neighbors should be tasked with reporting ADU violations. He would like to see the City's Code Enforcement Division receive more funding to track ADUs and land use violations proactively instead of reactively. He would like to see the proposed changes reference the code enforcement avenues that can be pursued for property owners that violate standards.

Vice Chair Hickcox agrees with the elimination for the requirement of useable outdoor space. He also wanted to clarify whether the useable outdoor space would be required of the ADU itself, or the whole property. He would like to see the language clarify that the usable outdoor space is not devoted to the ADU alone. He likes that the current language strengthens the Bulk and Intensity standards to allow for more scrutiny in the alternative compliance process.

Vice Chair Hickcox commented on the impacts new ADUs have on unimproved alleys. While he understands that paving alleys is an unreasonable burden to impose on property owners building new ADUs, he would like to see the City prioritize and bear some responsibility for improving alley accesses if additional residential units are to be allowed in areas served by alleys.

Chair Payne asked if ADUs being constructed along an unimproved alley could have an additional impact fee. Commissioner Ulery would like there to be a requirement of the City to use this type of fee to improve the alley infrastructure. Commissioner Devine is in support of an additional impact fee for alley infrastructure maintenance and improvements. Vice Chair Hickcox said he would like the fee to be the

same of every ADU applicant. He also asked if a fee of this nature could be added into this text amendment. Scott Shine mentioned that the use of fees would be best mentioned to City Council alongside the text amendments. The fee conversation could continue after the text amendments are adopted or rejected.

On the topic of outdoor space, Vice Chair Hickcox proposed to add the amendment language "The use of the outdoor space may be allocated to occupants of either dwelling at the property owner's discretion, with no requirement that occupants of the ADU have use of such space." Vice-Chair Hickcox also clarified that this language gives staff the ability deny or alter an alternative compliance request for these lots in the future, based on the recommended standards for "useable outdoor space".

Commissioner Evans mentioned that multiple City reports have listed different totals for ADUs than is being presented now. She says the total cited in 2019 was 323 units whereas the current total is 143. Mr. Shine mentioned the previous total was based on the voluntary program where property owners registered secondary units, though ultimately many of these were classified as duplexes rather than ADUs. Staff will work to be more precise as to which defined type of unit is being described in the future. Commissioner Evans believes all these multi-unit properties have a greater impact on the neighborhoods than is being presented. She would like the way the data is presented to be clearer and more consistent in the future.

Chair Payne opened the public comment period.

No public comments were received.

Chair Payne closed the public comment period.

Chair Payne mentioned his friend moved away from Durango since his lot was not eligible for an ADU, and that the rental income was the only way he could afford the mortgage on the property. He does not believe that these changes will result in a glut of ADUs. He also mentioned a recent study that found there are lower rates of depression in areas of higher density. There are also higher rates of wealth production.

Commissioner Evans is in support of some, but not all, of the proposed amendments. She is worried these changes will have an impact on the old Durango neighborhoods. She does not want to see changes in density within the neighborhoods. She also believes that the return on investment for ADUs averages a loss of 15% on the investment. She does not want to see the regulations relax until the City's code enforcement procedures can be upgraded. She also mentioned that over 600 rental units have been approved over the last year. Projects like River Roost will provide the ADU housing type that many are seeking. She is in support of the changes to the owner occupancy reporting. She is also in support of the changes regarding integrated ADUs.

Commissioner Devine stated that the proposed changes are incremental and that if anything, he feels that the proposed amendments do not go far enough to reduce restrictions on ADUs. He stated that he lived in what was likely to be an illegal multiplex when he first moved to Durango, and that he now owns and lives at a property where he rents out an additional unit onsite. He would not be able to live in Durango without the additional rental income.

Vice Chair Hickcox motioned to recommend approval of the proposed text amendments with the finding that the proposal is consistent with City policies and standards as amended. The amendments include edits presented by staff: deleting the word “detached” in two locations, striking subsection K on usable outdoor space, redefining subsection F “Bulk and Intensity” to reference useable outdoor space and add back language from subsection K about use of that outdoor space, amend subsection I.2.C to strike the word either, amend subsection I.2.C.1 to change the word “or” to “and,” and add subsection O regarding enforcement to read something to the effect of “enforcement of the above requirement shall be pursuant to the section of Land Use Development Code 6-4. Chair Payne seconded. The motion was approved by a vote 4-1.

**Roll Call:**

**Hickcox – Yes**

**Payne – Yes**

**Ulery – Yes**

**Evans – No**

**Devine – Yes**

This item will be presented to City Council on July 19<sup>th</sup>.

Vice Chair Hickcox asked that staff pass along the Commissions concerns regarding enforcement of the new provisions and the need for alley infrastructure funding to account for the added density.

## **6.5 City Council Agenda Documentation & Staff Report**



# AGENDA DOCUMENTATION

<Item Outline>

Meeting Date: July 19, 2022

**TO: DURANGO CITY COUNCIL**

**FROM: DAN ARMENTANO, PLANNER II  
COMMUNITY DEVELOPMENT**

**SUBJECT: A PUBLIC HEARING TO CONSIDER TEXT AMENDMENTS TO THE  
LAND USE AND DEVELOPMENT CODE**

## **PURPOSE/BACKGROUND**

This is a staff-initiated request to amend 3 chapters of the Land Use and Development Code (LUDC), mostly focused on standards for Accessory Dwelling Units (ADUs). Staff began reviewing standards for new ADUs last October in response to public feedback in opposition to the more restrictive aspects of the codes, specifically a provision rendering properties with existing or proposed ADUs ineligible for variances. Reviewing ADU standards more broadly was justifiably warranted by the very limited number of new ADUs that have been built since the program's inception in 2014, as well as the documented need for new housing units in the community. As only 45 new ADUs have been added to Durango's housing stock in the last 8 years, the proposed amendments have been crafted to improve flexibility in the standards for this accessory use. While the changes are incremental, they will increase the number of properties that are eligible to pursue adding ADUs and may help to promote home ownership and new rental housing opportunities in the community.

Prior to updating the language regulating new ADUs, staff conducted two surveys through the Virtual City Hall platform: an ADU Owner survey and a Community survey. The goals of these two surveys were multifaceted: staff hoped to gain an understanding of how existing ADUs were used, while also gauging public knowledge of and support for this type of housing. The results of the ADU Owner survey were somewhat underwhelming due to a limited response rate, but did suggest that most ADUs are rented long term for relatively affordable rates. The community survey, by contrast, generated over 300 responses and demonstrated broad support for new ADUs. The feedback provided identified code standards which may hinder the construction of these units and highlighted which restrictions should remain in place. The community survey also indicated that many respondents would be interested in constructing an ADU if they owned an eligible property.

Staff utilized feedback from the surveys, the Code Alignment Working Group, and comparable municipalities to draft the proposed redlines. After much discussion, the Code Alignment Working Group provided an endorsement of the changes in advance of the Planning Commission's review. Specific code changes are included as an attachment to this agenda documentation, and the highlights are summarized in the bulleted list below.

1. Allow Alternative Compliance, an administrative variance process, for properties with existing and proposed ADUs.
2. Strengthen the owner occupancy standard and simplify its re-certification method.
3. Allow ADUs in the Residential High Density (RH) zone.
4. In all zones, eliminate the minimum lot size for integrated ADUs.
5. In all zones, allow properties with proposed ADUs to reduce required total parking by one space if on-street parking is available, subject to a few conditions.
6. Update ADU design requirements to enhance protections for neighbor privacy.

The proposed changes also include a number of minor clarifying edits to improve the readability, consistency, and flexibility of the ADU codes. A minor change to the calculation of Gross Floor Area is also proposed, which is not specifically applicable to new ADUs.

The Planning Commission heard this request during their June 27<sup>th</sup> public hearing. Unlike previous code revisions related to ADUs, there was no public comment before the commissioners and few written comments have been submitted to date. The Planning Commission's discussion was extensive and resulted in several minor changes to the proposed language. Enforcement of existing standards was encouraged. There were questions related to the City's determination that ADUs do not contribute to density. Commissioners also commented on the potential for ADUs to impact neighborhood character by adding architectural massing along alleys and in backyard areas. Impacts to unimproved alleys were mentioned, with commissioners suggesting that the City should be more proactive in paving alleys if additional units are to be encouraged. Despite these concerns, most commissioners agreed that allowing ADUs helps to subsidize home ownership and provide additional rental units, and expressed support for the changes. The Planning Commission ultimately recommended approval of the amendments on a 4-1 vote.

Attachments: Proposed Text Amendments with Planning Commission’s Edits (redlines)  
Planning Commission Staff Report  
Planning Commission’s 6/27 Meeting Minutes  
Public Comments  
Map of Existing ADUs  
ADU Survey Summary

**FISCAL IMPACT**

There is no direct fiscal impact anticipated from the proposed text amendments.

**APPLICABILITY TO STRATEGIC PLAN GOALS**

The Affordability and Economic Opportunity section of the Strategic Plan includes a directive to “create housing opportunities to support a multigenerational and mixed-income community workforce and increase affordability to bridge the disparity between income and home/rental prices.” This proposal directly addresses this goal by reducing the restrictions on a housing type that may encourage both home ownership and relatively lower rental rates. Anecdotal evidence, survey results, and feedback from community members suggests that most ADUs are offered for rent, and that the rental income allows residents to afford the increasing costs of home ownership.

**RECOMMENDATION**

It is the recommendation of the Planning Commission that the City Council, by motion,

**Approve the Text Amendments to Chapters 2, 3, & 7 of the Land Use and Development Code with the findings as stated in the June 27<sup>th</sup>, 2022 Planning Commission minutes and staff report and as discussed in this public hearing, and direct the City Attorney to prepare the enacting ordinance adopting these text amendments and incorporate them for a first reading at the next regularly scheduled City Council meeting.**



PLANNING COMMISSION STAFF REPORT COVER SHEET

PUBLIC HEARING DATE	PROJECT NAME	PROJECT STAFF
June 27, 2022	2022 ADU Text Amendments	Dan Armentano, Planner II
PROJECT NUMBER	PROJECT TYPE	APPLICANT (PROPERTY OWNER)
# 22-058	LUDC Text Amendments	City of Durango
PROPERTY ADDRESS/LOCATION		
City of Durango		

PROJECT SUMMARY

This is a staff-initiated request to amend four different sections of the Land Use and Development Code. Most of the proposed amendments consist of updates to regulations for Accessory Dwelling Units (ADUs) and are intended to reduce the restrictions on this use. The most significant updates include allowing properties with ADUs to be eligible for variances through the Alternative Compliance process, eliminating minimum lot sizes for integrated ADUs, allowing the use in the Residential High Density zone, allowing one on-street parking space to be used as required parking in most circumstances, and updating the way owner occupancy requirements are certified. Other minor edits to the ADU regulations will either simplify processes or improve clarity and consistency. The changes also update language in the section of code on Alternative Compliance, which is the administrative variance process, to imply that ADUs may be eligible. Finally, unrelated to ADUs, there is a minor change to how Gross Floor Area is measured, which is used to calculate Floor Area Ratio.

ZONING DISTRICTS AFFECTED	APPLICABLE LAND USES	SURROUNDING ZONING & LAND USES	SIZE OF PROPERTY	APPLICABLE LUDC SECTIONS
All EN zones, RA, RM, RH, & MU-N	Residential	N/A	N/A	2-3-2-3, 3-1-5-1, 3-1-3-6, 7-2-1-2

<b>COMPREHENSIVE/STRATEGIC PLAN COMPATIBILITY</b> The proposed LUDC Text Amendments meet the intent of the City's Comprehensive Plan and broadly align with the recommendations of the Housing Plan and Strategic Plan.	<b>PROJECT DESCRIPTION &amp; HISTORY</b> The current Land Use and Development Code, including the standards for ADUs, was adopted in 2014. The ADU regulations have been amended a few times since this date. Following substantial public processes including multiple neighborhood meetings, ADUs were expanded from EN-1 & 2 to EN-3, and finally to EN 4, 5, & 6 in 2019. Despite this, relatively few ADUs have been constructed since the inception of the program. Staff have heard many comments from the public about the restrictions that the code places on this accessory use. The proposed amendments remove some of these restrictions and clean up language from other sections of code.
<b>LUDC COMPLIANCE</b> The proposed changes to the Land Use and Development Code meet the criteria used in evaluating text amendments. Staff has provided an analysis of the applicable LUDC criteria for text amendments in the body of the staff report.	

STAFF RECOMMENDATION		
<div>APPROVE</div>	AMEND AND APPROVE	CONTINUE

RECOMMENDED MOTION	
Move to recommend approval of the proposed Text Amendments to Chapters 2, 3, & 7 of the LUDC with the finding that the proposal complies with the criteria for text amendments as described in the City of Durango Land Use and Development Code.	

ATTACHMENTS	<input checked="" type="checkbox"/> STAFF REPORT	<input type="checkbox"/> CONTEXT MAP, ZONING MAP & SITE AERIAL	<input type="checkbox"/> APPLICANT NARRATIVE	<input checked="" type="checkbox"/> SURVEY RESULTS
	<input checked="" type="checkbox"/> OTHER MAPS & PHOTOS	<input checked="" type="checkbox"/> PUBLIC COMMENTS	<input checked="" type="checkbox"/> LUDC REDLINES	

## **HISTORY/BACKGROUND**

### **History**

Accessory Dwelling Units, commonly called ADUs, have been legal within the City of Durango since 2014. The allowance for ADUs was initially approved for EN-1 and EN-2 only, before being expanded shortly thereafter to EN-3 and other residential zones with very similar standards. In the three EN zones, lots needed to qualify for ADU eligibility based on minimum lot sizes, which varied somewhat dependent on the area. In early 2019, following a recommendation from the City's Housing Plan, the LUDC was amended to allow properties in ENs 4, 5, & 6 to add an ADU, though again with somewhat modified restrictions. In these zones, ADUs were required to be integrated with or attached to the principal structure, though the minimum lot size requirement did not apply. In addition, parking standards were modified to allow for the use of one on-street parking space if certain qualifying requirements were met. The resulting code is somewhat of assortment of standards for this use, where certain restrictions will apply depending on the zone.

Following the 2014 amendments to the LUDC that legalized ADUs, staff initiated a registration period for the many pre-existing ADUs and second units that existed throughout Durango's neighborhoods. The Community Development Department received over 300 requests to legalize additional dwellings on single-family parcels within a two-year period. Ultimately, less than half of these dwellings were classified as ADUs, with many others qualifying as duplexes. Legalization of pre-existing yet unpermitted multiplexes or multi-unit properties was also requested during this time frame, though staff did not have a method for approving these uses.

As of the writing of this staff report, there are 142 permitted ADUs within the City. Of this number, 98 are pre-existing ADUs that were legalized through the registration period described above. Since 2014, only 44 new ADUs have been built. In the face of a significant housing shortage and home ownership affordability crisis, staff have proposed amendments to the LUDC that will eliminate some of the restrictions that may be limiting the number of ADUs that are being built. The amendments will increase consistency in the standards for ADUs across the zones where they are permitted.

### **Public Input**

The City's public processes to legalize Accessory Dwelling Units in 2014 was met with substantial opposition from a subset of property owners within the Established Neighborhood zones, despite the fact that ADUs had existed within those neighborhoods for decades. Staff and City Council heard the feedback that many of these individuals described and compromised by including several provisions within the code that provided some degree of certainty in how ADUs would be designed. The most significant example of this is the inability for variances to be considered for any property that contains an ADU. In nearly all circumstances, this extends to both the single-family home on the parcel and any proposed ADU, whether integrated or detached. Staff have discussed this provision with many members of the public who are impacted by this code language, including those who would be interested in building an ADU, but are unable without some flexibility. Staff have also heard from property owners who have an ADU and would like to expand their primary homes, but cannot because of the need for a variance.

Earlier this year, staff conducted two surveys to gauge the public's knowledge of and interest in ADUs, as well as to improve staff's understanding of how these units are used. One survey was provided to existing ADU owners only, and a second survey was put out to the community at large. While the response rate to the owner survey was disappointingly low, the community survey had over 300 responses. Broadly, the community survey results were in support of more flexible standards for new ADUs, and included the following findings:

- Broad (>75%) support for code amendments that promote the construction of new ADUs.
- Support (64%) for amending the code to allow variances for new ADUs.
- Support for existing regulations requiring owner occupancy and prohibiting the use of ADUs as short-term rentals.



- Over 80% of respondents indicated that they would either want to or would consider adding an ADU if they owned an eligible property.
- Over 50% of respondents indicated that parking requirements were one of the 3 largest barriers to ADU construction.

The survey results, particularly those highlighted above, have contributed to staff's recommended edits to the ADU language in the Land Use and Development Code. A summary of the two surveys that was provided to the Code Alignment Working Group in April has been included with this report.

### **ADUs versus Duplex**

When considering amendments to ADU standards, it is important to also understand how an ADU is defined and regulated, particularly in comparison to detached duplex units. An ADU is defined by the LUDC as follows:

***Dwelling Unit, Accessory*** means a dwelling unit that is:

1. *Located inside of or attached to an existing single-family detached dwelling unit (the "principal dwelling unit"), or in a separate accessory building on the same lot as the principal dwelling unit;*
2. *Clearly subordinate in size and scale to the principal dwelling unit.*

*Accessory dwelling units are intended to provide alternative living arrangements for one family on a single-family residential lot. Accordingly, the approval or presence of an accessory dwelling unit does not authorize the occupancy of the lot by more than one family.*

While this definition is helpful, it is perhaps unintentionally broad due to the number of additional restrictions which apply to ADUs that are not specifically listed above. For example, by this definition, any secondary detached living unit that is smaller in size and scale from the main home could be considered an ADU, but this is not always the case. Per the LUDC, lots greater than 7500 square feet in the EN-1 and EN-2 zones are eligible for a duplex classification. A duplex in these areas can be built either as 2 units in a single structure or as two detached units. A detached second unit, if located behind the principal structure, must be built to accessory structure dimensional standards. These units are therefore "clearly subordinate" to the primary dwelling. Detached duplex units are quite prevalent throughout the older parts of Durango and are very easily confused with ADUs.

There are some crucial distinguishing characteristics and restrictions placed on ADUs that do not apply to a detached duplex unit. These include:

- The size of an ADU may not exceed 550 square feet, unless the ADU is contained entirely within a basement.
- The requirement for an ADU property to be owner occupied.
- The prohibition of vacation rentals on properties that contain an ADU.
- The inability to pursue variances.
- The requirement for public noticing to neighbors with the ADU approval process.

If the proposed amendments are approved, there will be one change to the items listed above. Staff is proposing to allow Alternative Compliance for new ADUs with the proposed text amendments up for consideration.

### **Alternative Compliance**

The Alternative Compliance process provides a way for staff to allow for flexibility to code standards without sacrificing compatible residential design. Applications for Alternative Compliance are reviewed by staff quite frequently, with 13 applications having been received to date in the 2022 calendar year alone. The Alternative Compliance process is a design-based review that considers the neighborhood's context, the EN Design Guidelines, and public comments prior to the final decision, which is usually made by staff without a public hearing. Often, staff negotiate with applicants in an attempt to compromise on design while still achieving most of the applicant's goals. The ability for staff to provide flexibility to adopted code standards while still ensuring that a project's design aligns with adopted policies and is considered by neighboring property owners has made the Alternative Compliance program very popular and successful.

Applying this process to ADU requests will not be substantially different from how it currently works in any other scenario. Staff will utilize the policies described by the EN Design Guidelines, which are quite robust, to determine what deviations from code standards may or may not be appropriate. In circumstances where staff and an applicant cannot compromise, or if there is substantial public opposition, staff may choose to refer the matter to the Design Review Board for their decision. Over the first few years implementing the Alternative Compliance program for properties with ADUs, staff will carefully consider which types of proposals may set a precedent for future reviews and will draft findings for Alternative Compliance approvals accordingly. This is a process that has played out numerous times since Alternative Compliance was first offered.

## **PROPOSED AMENDMENTS**

The proposed Text Amendments apply to four different sections of code across three chapters. Specific changes are summarized below, and the exact language of the Text Amendments is attached to this report. Staff will go over the proposed Text Amendments in detail at the public hearing.

The proposed changes to the code include:

1. Eliminating language prohibiting variances for properties developed with ADUs. Instead, the code will specify the standards to which ADUs may be allowed some flexibility, subject to an Alternative Compliance review. All code language implying that principal structures are not eligible for variances are removed.
2. Removing the requirement for ADU property owners to re-certify owner occupancy by filing a notarized affidavit with the Community Development Dept every two years. This is replaced with the requirement for a notarized, recorded affidavit when the ADU is approved, and a simpler biannual recertification process which will be determined by staff.
3. Allow ADUs in the Residential High Density (RH) zone.
4. In all zones, eliminate the minimum lot size for integrated ADUs.
5. In all zones, allow properties with proposed ADUs to reduce their required total parking by one space if on-street parking is available, subject to a few conditions.
6. Updating design requirements for windows and decks on detached, second story ADUs and duplex units to protect neighbor privacy.
7. Several minor clarifying edits to improve the readability, consistency, and flexibility of the ADU codes.
8. References to the ADU standards in the section of code describing the applicability of Alternative Compliance.
9. A minor change to how Gross Floor Area is calculated implying that covered patios or decks will count towards this measurement if they are enclosed by two or more walls.

## **LUDC Review Criteria Analysis**

Per Section 6-3-13-3 of the LUDC, the following criteria are used in evaluating proposed amendments prior to approving the new code language.

1. *The proposed amendments support adopted plans and policies.*
2. *The proposed amendment is consistent with the purposes, requirements, limitations, standards, and criteria of the Article being amended and/or other Articles, Divisions, or Sections within the LUDC.*
3. *The proposed amendment furthers the health, safety, or general welfare of the community.*
4. *The proposed amendment provides for community benefits, such as improved social or economic conditions or opportunities.*

Staff finds that the amendments meet the criteria outlined above. The proposed changes represent incremental updates that align with City policies, including those from the Housing Plan, Comprehensive Plan, and the Strategic Plan. The updates improve consistency in ADU standards across the zones where they are permitted, specifically by eliminating minimum lot sizes for integrated ADUs entirely and expanding the on-street parking space allowance from ENs 4, 5, & 6 to all zones. The changes also align design standards for second story ADUs and second story living space in accessory structures with

Building Code requirements. This change applies similar design standards to a detached duplex that would apply to a detached ADU.

Since the proposed changes reduce restrictions on a housing type that many members of the public have expressed interest in building, there may be substantial community benefits as related to housing availability and affordability. The proposed changes may encourage the construction of new ADUs by relaxing eligibility standards on parking and lot size.

Eliminating the minimum lot size for integrated ADUs is a great example of how these amendments could improve social & economic conditions for the community. Integrated ADUs are currently limited to lots of a certain size in ENs 1, 2, & 3. Because integrated ADUs can be converted from existing living space within a home, new utility connections are not required and new construction may be limited to interior refinishes. Therefore, this type of ADU is much cheaper to build than a detached unit. While home prices in Durango are cost prohibitive for many families, the opportunity to add an inexpensive ADU for a reasonable cost could help prospective buyers offset their mortgage with ADU rental income. The community benefit is enhanced further if the renter is a local who would otherwise struggle to find housing.

### **PUBLIC COMMENTS**

As of the writing of this report, staff have received three written comments related to the proposed amendments. Two comments broadly expressed opposition, while one comment implied that the changes have not gone far enough. The comments in opposition to the changes highlight issues with privacy, increased density, infrastructure capacity, parking, and traffic. These are all matters that have been discussed at length with each iteration of code amendments that expanded the ADU program. The one comment that staff received implying that the proposed changes do not go far enough suggests eliminating lot size requirements across the board, including for detached ADUs. Staff have considered this option but prefer to take a more incremental approach to the amendments.

### **SUMMARY AND RECOMMENDED ACTION**

The proposed amendments to the ADU regulations have been debated and discussed amongst staff and members of the Code Alignment Working Group for nearly a year. The public hearing to consider the amendments was pushed back a month so that the Code Alignment Working Group could provide an approval recommendation for the updates. The final redlines represent incremental changes that reduce restrictions on a use that has ultimately had a lesser impact on neighborhood character than many in our community initially feared.

In the eight years since ADUs were legalized, fewer than 50 units have been built. In a City with some 8,500 residential dwellings, expanding the opportunity for homeowners to pursue building an ADU represents a reasonable regulatory update that is unlikely to cause major issues in our neighborhoods. Communities across the country with housing affordability and availability crises have looked to ADUs as a part of the solution. While these updates are far from a silver bullet solving Durango's housing issues, they may help to promote home ownership opportunities and provide affordable housing for the local workforce.

### **ALTERNATIVE ACTIONS:**

The Planning Commission may:

1. **Recommend approval** of the proposed Text Amendments with the finding that the proposal is consistent with City policies and standards.
2. **Amend** the proposed Text Amendments and recommend approval as stated in #1.
3. **Continue** the item with specific direction to staff.

### **STAFF RECOMMENDATION:**

By motion, Alternative Action #1 or #2.



## 7. References

- City of Durango. (2018, January). *Durango Housing Plan - Durangogov.org*. Durango Housing Plan. Retrieved January 2022, from <https://www.durangogov.org/DocumentCenter/View/9032/Durango-Housing-Plan?bidId=>
- Coppage, J. (2017). (rep.). *Accessory Dwelling Units: A Flexible Free-Market Housing Solution*. Washington, DC: R Street.
- Davidoff, T., Pavlov, A., & Somerville, T. (2022). Not in my neighbour's Back Yard? laneway homes and neighbours' property values. *Journal of Urban Economics*, 128, 103405. <https://doi.org/10.1016/j.jue.2021.103405>
- Fainstein, S. S., & DeFilippis, J. (2016). *Readings in planning theory*. Oxford.
- Fesler, S. (2019, July 3). *Legal hurdles cleared, Seattle is advancing accessory dwelling reform*. The Urbanist. Retrieved July 3, 2022, from <https://www.theurbanist.org/2019/06/05/legal-hurdles-cleared-seattle-is-advancing-accessory-dwelling-reform/>
- Flint, A. (2016, May 17). *How One Colorado City Instantly Created Affordable Housing*. Bloomberg.com. Retrieved May 9, 2022, from <https://www.bloomberg.com/news/articles/2016-05-17/how-one-colorado-city-instantly-created-more-affordable-housing-by-relaxing-rules-on-accessory-dwelling-units>
- Garrick, D. (2021, May 18). *San Diego's Granny Flat Campaign Faces first major backlash*. Tribune. Retrieved July 26, 2022, from <https://www.sandiegouniontribune.com/news/politics/story/2021-05-18/san-diegos-granny-flat-campaign-faces-first-major-backlash>
- Gray, M. N. (2022, June 26). *Four 'low-hanging fruit' zoning reforms*. Planetizen Features. Retrieved July 3, 2022, from <https://www.planetizen.com/features/117584-four-low-hanging-fruit-zoning-reforms>
- Hadden Loh, T. (2019, February 25). *Accessory apartments in Montgomery County: Still looking for the secret sauce*. Greater Greater Washington. Retrieved July 3, 2022, from <https://ggwash.org/view/71004/accessory-dwelling-units-in-moco-still-looking-for-the-secret-sauce>
- Haug, J. (2013, October 15). *Council approves accessory dwellings*. Durango Herald. Retrieved July 3, 2022, from <https://www.durangoherald.com/articles/council-approves-accessory-dwellings/>

- Hirt, S. (2015). *Zoned in the Usa: The origins and implications of American land-use regulation*. Cornell University Press.
- Janzer, C. (2020, August 4). *San Diego aims to spur more backyard homes with free floor plans*. NextCity.org. Retrieved July 3, 2022, from <https://nextcity.org/urbanist-news/san-diego-aims-to-spur-more-backyard-homes-with-free-floor-plans>
- Lo, L. R. P., Noble, E., Levy, D. K., & Pendall, R. (2020). (rep.). *Land Use Reforms for Housing Supply*. Urban Institute. Retrieved July 2022, from <https://www.urban.org/research/publication/land-use-reforms-housing-supply>.
- Parolek, D. G., & Nelson, A. C. (2020). *Missing middle housing: Thinking big and building small to respond to today's housing crisis*. Island Press.
- Ramsey-Musolf, D. (2018). Accessory dwelling units as low-income housing: California's faustian bargain. *Urban Science*, 2(3), 89. <https://doi.org/10.3390/urbansci2030089>
- Rosen, A. (2021, July 12). *For years, in-law apartments have been discouraged in Greater Boston. the housing shortage is changing that - the Boston Globe*. BostonGlobe.com. Retrieved July 3, 2022, from <https://www.bostonglobe.com/2021/07/11/business/years-in-law-apartments-have-been-discouraged-greater-boston-housing-shortage-is-changing-that/>
- Slagter, L. (2018, November 12). *Ann Arbor looks to make it easier to build accessory apartments*. mlive. Retrieved July 3, 2022, from [https://www.mlive.com/news/ann-arbor/2018/11/ann\\_arbor\\_accessory\\_apartments.html](https://www.mlive.com/news/ann-arbor/2018/11/ann_arbor_accessory_apartments.html)
- Vance, S. (2020, May 19). *Chicago's Adu Ordinance was introduced - see what you could build*. Chicago Cityscape - Blog. Retrieved July 3, 2022, from <https://www.chicagocityscape.com/blog/chicago-s-adu-ordinance-was-introduced-see-what-you-could-build-583f436600>
- Volker, J., & Thigpen, C. (2022). Not enough parking, you say? A study of garage use and parking supply for single-family homes in Sacramento and implications for adus. *Journal of Transport and Land Use*, 15(1), 183–206. <https://doi.org/10.5198/jtlu.2022.1947>