



## City of Raleigh North Carolina

To: Councilor Russ Stephenson, Chairperson  
Members of the Comprehensive Planning Committee

From: Travis R. Crane

Date: November 21, 2012 (Stephenson comments are in ***bold italics***)

Re: Backyard Cottages/CPC 21 November 2012

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The UDO contains provisions for backyard cottages, as detailed in Section 2.4.2. This was an item of discussion at the Comprehensive Planning Committee meeting on 14 November 2012. The Committee received public comment, and during the course of discussion, the Committee members asked questions about the proposed regulations. This memo provides background information on the topic.

### **Proposed Regulations**

The UDO would permit a backyard cottage in the R-1, R-2, R-4, R-6, R-10, RX, OX, NX and CX zoning districts. The backyard cottage is a physically detached dwelling located behind the front façade of the main dwelling. Backyard cottages are only permitted on lots where the principle dwelling is a detached, single-family house. The UDO contains development standards, which are based upon the size of parcel. Backyard cottages have a maximum occupancy of two persons. Minimum building setbacks, minimum building separation, maximum height and living area are all regulated. One additional parking space is required for each backyard cottage. The Planning Commission has recommended that the parking regulation be clarified so that any non-conforming parking situations for the primary structure need not be improved to meet current standards. The Planning Commission also recommends an increase to the side and rear yard setbacks.

The backyard cottage provision in the UDO is intended to implement the Comprehensive Plan. Comprehensive Plan policy H 2.8 states that the City should “promote the construction of accessory dwelling units above garages, or “granny flats,” and cottage/small lot ordinances, to provide affordable and workforce housing options and help accommodate future citywide residential demand.” Additionally, action item H 2.9 directs the City to explore the expansion of regulations to permit accessory dwelling units throughout the City.

Below is a summary of the regulations for backyard cottages.

| Regulation          | >40,000 s.f. | 20,000-39,000 | 10,000-19,999 | 6,000-9,999 | 4,000-5,999 |
|---------------------|--------------|---------------|---------------|-------------|-------------|
| Living area         | 800 s.f.     | 800 s.f.      | 700 s.f.      | 550 s.f.    | 450 s.f.    |
| Side yard setback   | 10'          | 10'           | 10'           | 10'         | 10'         |
| Rear yard setback   | 10'          | 10'           | 10'           | 10'         | 10'         |
| Building separation | 35'          | 35'           | 20'           | 16'         | 16'         |
| Height              | 25'          | 25'           | 25'           | 25'         | 25'         |
| Wall Plate Height   | 15'          | 15'           | 15'           | 15'         | 15'         |

The maximum living area decreases on smaller lots, as does the minimum building separation between the backyard cottage and main structure.

### Occupancy Standards

Occupancy of the backyard cottages has been discussed in recent meetings, and staff has advised that a provision requiring owner-occupancy runs afoul of recent case law. The current zoning code regulates the number of unrelated individuals (four) that may occupy a dwelling unit. Under the current draft of the UDO, a backyard cottage could increase the number of unrelated persons on a lot to six. While the City cannot mandate that either the backyard cottage or primary dwelling be occupied by the property owner, a regulation could be crafted to restrict the number of unrelated persons on a lot with a backyard cottage or other accessory dwelling to the same as a lot without an accessory dwelling. This would largely remove the economic incentive to build an accessory dwelling with the intent to increase the number of unrelated renters on a lot. The enforcement of this standard would be no easier or harder than the current standard.

### Parking Requirements

The UDO requires one additional parking space for a backyard cottage. During the last Committee meeting, there was discussion regarding parking requirements; specifically, the treatment of the parking areas. As written, the UDO would require an impervious parking surface for any parking in the front yard. This would permit pavement, asphalt, gravel, or any other hard surface. The City Council recently approved more strict parking surface requirements for the Parking Overlay District. These regulations permit either a maximum of 40% of the front yard to be paved, or a driveway and parking pad to be installed, whichever is less. There are no parking surface or area requirements for the rear yard. Regulations could be drafted that require a hard surface and establish a maximum parking area, regardless of location on the lot.

### Setbacks and Height

A backyard cottage is required to be at least 10 feet from the side and rear property lines. A minimum building separation must be maintained between the backyard cottage and the primary dwelling, based upon the size of the lot. Larger lots require a larger minimum building separation. A maximum height of 25 feet is permitted, regardless of lot size. The maximum height for the primary structure is 40 feet. The maximum wall plate height of fifteen feet for backyard cottages is less than the standard for wall height (22 feet) in an infill situation.

There was discussion about the minimum required setbacks at the last Committee meeting. These setback requirements can be adjusted to address any concern. The minimum building separation per Building Code requirements is 10 feet.

### Design Standards

The UDO does not prescribe any minimum design standards for backyard cottages. Building design, especially compatibility of materials, is typically regulated only in Historic Overlay Districts. The UDO can be revised to require that building materials and roof pitch for the backyard cottage be the same, or similar to, the principle dwelling. Staff also suggests a standard that would prohibit a backyard cottage entrance that faces the rear property line.

### Regulation by Overlay District

The Neighborhood Conservation Overlay District is an existing zoning district that permits additional regulatory control in neighborhoods with an established build character. This overlay can regulate lot size, lot width, building setbacks, building height, parking location, and entrance orientation. The overlay can be applied after an examination of the existing built character. Staff identifies the built context based on the selected characteristic, identified by predominance in the neighborhood. This predominance is measured as at least 75% of the properties in the neighborhood possessing the characteristic. Because backyard cottages are not prominent buildings, staff would never find that 75% of the neighborhood met the characteristic. Simply, the staff research could never show that backyard cottages are predominant in a neighborhood. The application of an NCOD to allow neighborhoods to “opt-in” to a backyard cottage regulation is not feasible. However, providing the ability for an NCOD to prohibit backyard cottages (i.e. “opt-out”) is feasible.

### Peer City Research

Staff did examine a few peer cities that have successfully included backyard cottage regulations in the zoning code. The table below summarizes the results of this research.

| Regulation        | Portland, OR                                                                      | Seattle, WA                                   | Santa Cruz, CA                                               |
|-------------------|-----------------------------------------------------------------------------------|-----------------------------------------------|--------------------------------------------------------------|
| Maximum size      | 800 s.f.                                                                          | 800 s.f.                                      | 500 s.f.                                                     |
| Maximum height    | 18 feet                                                                           | 18 feet; 25 if pitched roof                   | 22 feet                                                      |
| Side yard setback | N/A                                                                               | 5 feet                                        | 3 feet; 5 if two-story                                       |
| Rear yard setback | 6 feet behind house                                                               | 10 feet                                       | 3 feet; 10 if two-story                                      |
| Occupancy         | No requirement; cannot exceed maximum number of persons as defined in “household” | Owner occupied; maximum of eight per property | Owner occupied                                               |
| Appearance        | Same as house                                                                     | Design suggestions; not mandated              | Same as house; can be altered through administrative process |

### Recommendations

The discussion at the previous Committee meeting raised some questions regarding the UDO regulations. Staff proposes the following for discussion:

***RS: I am proposing 2 ADU (attached & detached) options for consideration:***

***Option 1 - UDO citywide ordinance for new and existing construction, except as restricted by covenant.***

***or***

***Option 2 - Council-initiated overlay/pilot district + BOA process for individual lots outside Overlay.***

***Either option (including BOA) would be subject to the same Development Standards outlined in annotated bullets #1 thru #7 below, along with Document Submittals similar to those required by Portland OR – outlined below.***

- **#1 Increase the rear yard setback requirement to 20 feet.** This is consistent with the standard for a primary structure.

***RS: Rear Yard setback should match primary dwelling (30' for R-1 thru R-4), and add alley exception.***

***Fire protection: RFD fire access standards require all sides of the ADU be within 150' hose distance from fire truck. We may want to include a requirement for RFD review if ADU is beyond 150'.***

***Side yard setback: Since neighbor shading & privacy is a consistent theme in other cities' BYC development standards, consider side setback related to height and roof orientation:***

- 1-story -- same side setback as principal dwelling (10' @ R-1 thru R-4; 5' @ R-6 & R-10)***
- > 1-story w/ flat roof or eave oriented to side line -- 10'***
- > 1-story w/ gable oriented to side line -- 15'***

***(note: these are in addition to the proposed 15' wall plate height standard)***

***Additional height considerations related to shading & privacy:***

- (1) For detached ADU, wall plate height standard based on average grade of building elevations facing rear lot line and nearest side lot line.***
- (2) Height encroachments intended for human occupancy (w/in Sec 1.5.7.D.2) may not exceed 25' height limit.***

- **#2 Decrease the building separation to 10 feet.** The building separation between the primary dwelling and accessory dwelling is currently based upon the lot size. This can be reduced to a static number for all lots.

***RS: agree***

- **#3 Cap the number of unrelated persons per lot regardless of the existence of an accessory dwelling unit, and retain the cap on the number of unrelated in the cottage at two.** Staff suggests that a maximum of four unrelated persons could occupy a lot. This would permit a family to occupy the primary dwelling and two unrelated persons to occupy a backyard cottage. Conversely, a family of two could occupy the backyard cottage and up to three unrelated persons could occupy the primary dwelling.

***RS: The maximum occupants for attached & detached ADUs should be 2 total, not 2 unrelated***

- **#4 Modify the PROP ordinance to include accessory dwelling units.** This would ensure any violations of the ordinance would be subject to the PROP regulations. Owners of rental properties that include

backyard cottages would also be required to register with the City's Rental Dwelling Registration program.

***RS: agree – for attached & detached ADUs***

- **#5 Increase parking design standards for accessory dwelling units.** Require impervious surface for the required parking space.

***RS: require non-erodable surfaces, edges, and screening - similar to Front Yard Parking Overlay District standards. This would apply to front, back or side yard, depending where the space was provided.***

- **#6 Require similar building materials and roof form for the backyard cottage.** This would ensure compatibility with the primary dwelling.

***RS: Compatibility of materials and forms may work. A less design-oriented standard might only specify materials of greater or equal quality and durability, except masonry would not be required. (BOA variance option in either case)***

- **#7 Insert primary entrance standards.** Require that the primary entrance face the front property line. If the primary entrance faces the side property line, the side yard setback should be increased to 15 feet. In no event should the entrance face the rear property line.

***RS: agree. Since privacy is a consistent theme in other cities' BYC development standards, consider (1) windows be located to orient most views away from the nearest side lot line and (2) no decks, porches, balconies or outdoor stairs permitted in side setbacks.***

- **#8 Modify the NCOD characteristics to include accessory dwellings.** The built environmental characteristics can be expanded to include accessory dwelling units. This would allow neighborhoods to select the characteristic to be analyzed by staff. If the characteristic is not prevalent in the neighborhood, accessory dwellings would not be permitted.

***RS: Alt proposal: see my Option 2 above.***

If these suggestions are acceptable, staff will present the revised language to the City Council for review and approval.

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## ***Document Submittals***

***The proposed submittal list below is a small subset of ADU submittals required by Portland, OR (one of the very few cities that – like Raleigh – has no owner-occupancy requirement for ADU approval).***

***<http://www.portlandonline.com/bds/36676>***

### ***1. Scaled site plan w/ fully dimensioned & labeled elements:***

- setbacks
- footprints of existing & proposed structures
- existing and proposed off-street parking, driveways & required screening

**2. Scaled, dimensioned & labeled ADU floor plan(s) and principal elevation**

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**Additional Notes**

**1. Grandfathered Units**

**Existing backyard cottages (pre-UDO) will be grandfathered non-conforming uses that may continue to be used as before. (rebuild after calamity via BOA approval)**

**2. Unrelated Persons**

**Existing code permits attached ADUs, with a maximum of 6 unrelated persons (4 max in principal unit and 2 max in accessory unit). These proposed UDO changes would limit the number of unrelated persons to 4 max per lot for attached & detached ADUs. The 2-person max for ADUs is total, not unrelated.**

**3. What distinguishes a habitable space versus a dwelling unit in an accessory structure?**

**Based on NC Building Code definition for dwelling unit - "A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation."**

**4. Why create a BCOD (Backyard Cottage Overlay District) rather than use the NCOD?**

**Unlike the NCOD, which is initiated by neighborhood petition to protect existing characteristic form, the BCOD boundary selection and adoption would be by Council, with stakeholder engagement similar to the recently-adopted Front Yard Parking Overlay District.**

**5. New residential and redevelopment areas outside Option 2(opt-in) bounds**

**Those areas which do not fall within the acreage and adjacency provisions of Sec 2.2.7.B (Residential Infill Compatibility) could provide backyard cottages by right, subject to the development standards above.**