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DEC 04 2018

LANCASTER COUNTY  
CLERK

December 4, 2018

David Cary  
Planning Department

**RE: County Text Amendment 18008** – Amend Article 2, Section 2.002 by adding a definition for “accessory dwelling unit”; Article 4, Section 4.007 to list accessory dwelling unit as a special permit; and Article 13, by adding Section 13.049 of the Lancaster County Zoning Regulations, to allow Accessory Dwelling Units (ADUs) by special permit in the AG Zoning District.

David,

On September 12, 2018, the Lincoln City-Lancaster County Planning Commission voted 7-0, as amended, to recommend approval of the above-referenced text amendment.

The public hearing before the Lancaster County Board of Commissioners on County Text Amendment No. 18008 has been scheduled for **Tuesday, December 18, 2018, at 9:00 a.m.**, in Room 112 of the County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska.

The Planning Department Summary Report and all other information regarding the above-referenced application is available in the Planning Department or can be accessed on the internet at [www.lincoln.ne.gov](http://www.lincoln.ne.gov) (Keyword = PATS). Click on the “Selection Screen” under “Featured Links”, type in the application number (i.e. TX18008), click on “Search”, then “Select” and go to “Related Documents”.

Please feel free to contact me if you have any questions or need additional information (402-441-6365) or [plan@lincoln.ne.gov](mailto:plan@lincoln.ne.gov).

Sincerely,

  
Geri Rorabaugh  
Administrative Officer

f:\DevRev\TX\18000\Hearing Notice\TX18008 County

cc: Tom Cajka, Planning Department  
Lancaster County Board of Commissioners  
Mark Hunzeker  
Terry Kathe, Building & Safety Dept  
Jenifer Holloway, County Attorney's Office




# COUNTY BOARD SUMMARY REPORT

RECEIVED

DEC 04 2018

LANCASTER COUNTY  
CLERK

TO : County Clerk: Attn: Monet McCullen

FROM : David R. Cary, Director of Planning 

RE : **County Text Amendment 18008**  
(Amend various articles and sections of the Lancaster County Zoning Regulations to allow for accessory dwelling units in the AG Zoning District.)

DATE : December 4, 2018

1. On September 12, 2018, the Planning Commission held a public hearing on County Text Amendment 18008, as requested by the Lincoln-Lancaster County Planning Director.
2. Attached is the Planning staff report and related exhibits for **County Text Amendment 18008**, requested by the Planning Director, to amend the Lancaster County Zoning Regulations to add a definition and a new special permit for accessory dwelling units. An accessory dwelling unit is a self-contained dwelling unit on the same lot as a single-family dwelling. The proposed text would allow an accessory dwelling unit only by special permit and only in the AG District. The staff/applicant presentation is found on pp.9-10.
3. The testimony of proponents is found on p.10. There was no testimony in opposition. Staff discussion with the Planning Commission is found on p.11.
4. The staff recommendation of approval is based upon the Analysis as set forth on pp.2-4, concluding that there are multiple reasons for someone to construct an accessory dwelling, including:
  - Living space for a relative
  - Alternative income for homeowner
  - Allow homeowners to "age in place"
  - Guest house / hobby house
  - Affordable housing option

Allowing accessory dwelling units by special permit with conditions would increase housing choices, allow a care giver to live nearby and protect the rural character of the County.

5. On September 12, 2018, the Planning Commission agreed with the staff recommendation and voted 7-0 (Hove and Edgerton absent) to recommend approval of Text Amendment 18008, as amended to include "restriction" following the word "deed" under Condition 4, for clarification purposes. The Planning Commission did not approve the proposed amendments of Mark Hunzeker as referenced in the meeting minutes as Exhibit "1". The Planning Commission also voted to revise the proposal to allow the Commission the ability to adjust conditions, except for Conditions 4 and 5.

The Planning staff is scheduled to brief the County Board on this amendment at their regular staff meeting on Thursday, December 6, 2018, in Room 113 of the County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska. The public hearing before the County Board has been scheduled for Tuesday, December 18, 2018, at 9:00 a.m., in Room 112 of the County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska.

If you need any further information, please let me know (402-441-6365).

cc: County Board  
Jenifer Holloway, County Attorney's Office  
Tom Cajka

Ann Ames, County Commissioners  
Kerry Eagan, County Commissioners



**Revised**

**LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT**

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Text Amendment #18008

FINAL ACTION?  
No

PLANNING COMMISSION HEARING DATE  
September 12, 2018

RELATED APPLICATIONS  
None

**RECOMMENDATION: APPROVAL**

**BRIEF SUMMARY OF REQUEST**

This application is to amend the Lancaster County Zoning Regulations to add a new special permit for accessory dwelling units. An accessory dwelling unit is a self-contained dwelling unit on the same lot as a single-family dwelling. The proposed text would allow an accessory dwelling unit only by special permit and only in the AG District.

**JUSTIFICATION FOR RECOMMENDATION**

There are multiple reasons for someone to construct an accessory dwelling, including:

- Living space for a relative
- Alternative income for homeowner
- Allow homeowners to “age in place”
- Guest house / hobby house
- Affordable housing option

**APPLICANT**

David Cary, Planning Director

**STAFF CONTACT**

Tom Cajka, (402) 441-5662 or  
tcajka@lincoln.ne.gov

Allowing accessory dwelling units by special permit with conditions would increase housing choices, allow a care giver to live nearby and protect the rural character of the County.

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The Comprehensive Plan states that the County should consider revising the zoning code to allow accessory dwellings where appropriate and adopt accompanying design standards. Accessory dwellings are compatible with multiple strategies found in the Comprehensive Plan, such as increasing housing diversity, providing special needs and affordable housing opportunities, and allowing for efficient use of existing infrastructure. The proposed conditions allow for site by site review to ensure compatibility with adjacent uses and not impact the rural area.

**KEY QUOTES FROM THE 2040 COMPREHENSIVE PLAN**

P. 2.7 Acknowledge the fundamental “Right to Farm.” Preserve areas throughout the county for agricultural production by designating areas for rural residential development—thus limiting potential conflicts between farms and acreages.

P. 7.2 Encourage acreages to develop in appropriate areas and preserve farmland.



- p. 7.2 Provide a wide variety of housing types and choices for an increasingly diverse and aging population.
- p. 7.4 ADUs allow for multiple generations of a family to live on the same property, provide smaller, more affordable units as part of an existing neighborhood fabric, and more efficiently and cost effectively utilize existing infrastructure and resources.
- p. 7.5 An Accessory Dwelling Unit (ADU) is an additional, self-contained housing unit that is secondary to the main residence. ADU's are sometimes referred to as "Granny Flats" or "Mother-In-Law Units" since many ADUs were initially constructed to provide for family members.
- P. 7.5 Examine opportunities to revise the zoning code to legalize new ADU's where appropriate and adopt design standards to facilitate the harmonious implementation of this housing choice.
- P. 7.12 LPlan 2040 supports the preservation of land in the bulk of the County for agricultural and natural resource purposes.

**ANALYSIS**

1. This proposed text amendment is to allow accessory dwelling units (ADU) in the AG District by special permit. Currently in the AG District the minimum lot size is 20 acres for a single family dwelling, with a few exceptions such as farmstead splits, AG Preservation and Community Unit Plans. Approval of this text amendment would allow a principal dwelling as well as an ADU on lots of 20 acres or more.
2. Information about Accessory Dwellings was presented to the Lancaster County Board of Commissioners at a briefing in April 2018. The County Board directed the Planning Department to explore the idea of an Accessory Dwellings text amendment. A working group of seven persons with varied interests was assembled to help develop this text amendment. The group met five times between May and June. In addition a public meeting was held on July 25<sup>th</sup>.
3. An ADU is an additional self-contained housing unit that is secondary to the main residence. An ADU can either be attached to the principal dwelling, be part of the principal dwelling, such as converting a basement, or be a separate building detached from the principal dwelling. The ADU contains its own kitchen, sleeping area and bathroom. ADU's are subordinate in size to the principal dwelling.
4. In addition to adding a new special permit for ADU to the zoning regulations, a definition for ADU is also part of this application.
5. The working group developed a "purpose and intent" statement to help guide proposed conditions. The purpose and intent of allowing ADU's is to:
  - a. Allow persons with special needs to live semi-independently, but within close proximity to family or care giver.
  - b. Provide a variety of housing types and choices for different age groups and economic conditions.
  - c. Ensure that an ADU remains clearly subordinate and permanently associated to the existing principal dwelling.
  - d. Protect the rural character of Lancaster County
  - e. Minimize impacts on adjacent properties, infrastructure and the general public.
6. The working group agreed to recommend ADU by special permit subject to the following:
  - a. The lot area shall be 20 acres or larger. For purposes of determining minimum lot area, abutting County section line and one-half section line road right-of-way is included in the total area.

*The minimum lot size for a dwelling in the AG District is 20 acres. By maintaining a 20 acre minimum for an ADU it limits the potential amount of increased density and helps maintain the rural character. The 2040 Comprehensive Plan strives to preserve the majority of land in the county for agricultural purposes.*



- b. The total square footage of the ADU shall not exceed the lesser of 800 square feet or 40% of the square footage of the principal dwelling, excluding garages and carports. The calculation for the principal dwelling shall be based on the floor area prior to the construction of the ADU.

*These conditions would limit the size of the accessory dwelling to make it clear that it is subordinate to the main dwelling. The idea is that an accessory dwelling would contain no more than one family, usually just one or two people. Eight-hundred square feet is the upper limit for a reasonably-sized accessory dwelling. This can easily accommodate a kitchen, living room, dining area, bedroom and bathroom.*

- c. No more than two (2) bedrooms are allowed in the ADU.

*Limiting the number of bedrooms limits the size of the ADU and reinforces that the ADU is not meant to be a second house.*

- d. The owner is required to live on the property in either the principal dwelling or the ADU.

The owner shall file a deed restriction against the property stating that the accessory dwelling cannot be sold separately from the main house. The deed restriction must be to the satisfaction of the County Attorney. This deed restriction shall be filed prior to any building permit for the ADU.

*Requiring the property owner to live on site will help to support and foster housing maintenance and reinforces the purpose and intent of an ADU.*

- e. The ADU must share the same access point to the public or private street as the principal dwelling.

*This will eliminate additional drives to county roads that the County would have to maintain. A shared drive enforces the intent that an ADU is subordinate to the principal dwelling and is not intended as a second house that could be subdivided onto its own lot.*

- f. The ADU must meet the same setbacks as the principal dwelling. The height of the ADU must meet the height limit of the district for a dwelling, but be no higher than the principal dwelling.

*The purpose of the setback being the same as the principal dwelling is so that the ADU cannot be in front of the principal dwelling and to further enforce that the ADU is accessory to the main dwelling.*

- g. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.

*This condition emphasizes the ADU's subordinate relationship to the principal dwelling.*

- h. Must share utilities with principal dwelling unless owner can demonstrate a practical problem with sharing due to topography or other unique site considerations.

*Sharing utilities emphasizes that the ADU is subordinate to the principal dwelling.*

All of the above conditions could be waived by the County Board except for d and f\_e.

7. The working group agreed that owner occupancy and having a shared access to the road were conditions that should not be waived. Owner occupancy helps to maintain the single family character of the area and fosters housing maintenance. Owner occupancy meets the purpose of having an ADU for a family member, care giver or for additional income. Allowing only one access to the county road reduces the number of culverts that the County must maintain.
8. The special permit for an ADU would be final action at Planning Commission unless waivers are requested. The only conditions that cannot be waived are owner occupancy and having a shared access point to the street. If waivers are requested the ADU special permit would go before the Lancaster County Board of Commissioners.

9. Approval of this application would amend Section 2.001 by adding a definition for ADU, amend Section 4.007 by adding a new special permit for ADU in the AG District and amend Article 13, Special Permits by adding a new special permit for ADU.
10. ADUs in the county, outside of city limits, is not as common as ADUs within cities. There was limited information to be found when researching ADUs allowed in counties. A review of several counties throughout Nebraska found that no county allowed ADUs. In counties of other states that do allow ADUs the maximum floor area varied from 600 sq. ft. to 1,250 square feet. Requiring the owner to live on site and share one access to the street were common conditions.

Prepared by

  
\_\_\_\_\_  
Tom Cajka, Planner

Date: August 30, 2018 \_\_\_\_\_ Revised 9/12/2018

Applicant: David Cary, Planning Director

Contact: Tom Cajka, County Planner  
Lincoln-Lancaster County Planning Department

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### **13.049 Accessory Dwelling Unit (ADU)**

An accessory dwelling unit may be allowed by special permit in the AG zoning district under the following conditions:

1. The lot area shall be 20 acres or larger. For purposes of determining minimum lot area, abutting County section line and one-half section line road right-of-way is included in the total area.
2. The total square footage of the ADU shall not exceed the lesser of 800 square feet or 40% of the square footage of the principal dwelling, excluding garages and carports. The calculation for the principal dwelling shall be based on the floor area prior to the construction of the ADU.
3. No more than two (2) bedrooms are allowed in the ADU.
4. The owner is required to live on the property in either the principal dwelling or the ADU.

The owner shall file a deed restriction against the property stating that the accessory dwelling cannot be sold separately from the main house. The deed restriction must be to the satisfaction of the County Attorney. This deed restriction shall be filed prior to any building permit for the ADU.

5. The ADU must share the same access point to the public or private street as the principal dwelling.
6. The ADU must meet the same setbacks as the principal dwelling. The height of the ADU must meet the height limit of the district for a dwelling, but be no higher than the principal dwelling.
7. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.
8. Must share utilities with principal dwelling unless owner can demonstrate a practical problem with sharing due to topography or other unique site considerations.

The ~~County Board~~ Planning Commission may adjust the conditions, with the exception of Conditions 4 and 5.

Conditions 4 and 5 may not be adjusted by the County Board.

#### 4.007 Permitted Special Uses

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A building or premises may be used for the following purposes in the "AG" Agricultural District if a special permit for such use has been obtained in conformance with the requirements of ARTICLE 13:

- a. Academies, Private Schools, or Post-Secondary Education Facilities; (Resolution No. R-17-0040, May 30, 2017)
- b. Recreational facilities;
- c. Dwellings for members of religious orders;
- d. Broadcast Towers; (Resolution No. R-17-0040, May 30, 2017; Resolution No. 3958, August 21, 1984)
- e. Campgrounds;
- f. Veterinary facilities;
- g. Excavation; (Resolution No. R-17-0040, May 30, 2017)
- h. Sale barns;
- i. Garden centers;
- j. Facilities for the commercial storage or sale of fertilizer or toxic or flammable agricultural chemicals;
- k. Except as provided in Section 17.031, place of religious assembly steeples, towers and ornamental spires which exceed the maximum district height; (Resolution No. R-17-0040, May 30, 2017; Resolution No. 5408, November 19, 1996)
- l. Expansion of non-conforming use;
- m. Historic Preservation;
- n. Pet cemeteries; minimum area shall be five (5) acres;
- o. Clubs; (Resolution No. R-17-0040, May 30, 2017; Resolution No. 3569, March 10, 1981)
- p. Health Care Facilities, Residential; (Resolution No. R-17-0040, May 30, 2017; Resolution No. 3569, March 10, 1981)
- q. Non-commercial distillation and storage of fuel and fuel products produced in whole or in part from agricultural products raised within the County; (Resolution No. 3501, July 29, 1980)
- r. Mobile homes; (Resolution No. R-17-0040, May 30, 2017)
- s. Heritage center; (Resolution No. 4277, April 28, 1987)
- t. Airfields, Commercial Agriculture Airfields and Heliports; (Resolution No. R-17-0040, May 30, 2017; Resolution No. 5367, August 26, 1996)
- u. Storage of agricultural conservation construction equipment; (Resolution No. 5367, August 26, 1996)
- v. u) Race track, drag strip or motor sport facility; (Resolution No. R-07-0061, July 24, 2007)
- w. Expanded home occupations; (Resolution No. R-09-0076, September 29, 2009)
- x. Commercial Wind Energy Conversion Systems/Turbines; (Resolution No. R-11-0022, March 29, 2011)
- y. Market Garden; (Resolution No. R-12-0023, March 20, 2012)
- z. Commercial Composting Operation (Resolution No. R-14-0007, Jan. 28, 2014)



- aa. Commercial feedlot; (Resolution No. R-17-0040, May 30, 2017)
- bb. Community Unit Plan; (Resolution No. R-17-0040, May 30, 2017)
- cc. Health Care Facilities Non-Residential; (Resolution No. R-17-0040, May 30, 2017)
- dd. Private Recreational Activities; (Resolution No. R-17-0040, May 30, 2017)
- ee. Flood Plain Construction; (Resolution No. R-17-0040, May 30, 2017)
- ff. Personal Wireless Services Facility. (Resolution No. R-17-0040, May 30, 2017)
- gg. Accessory Dwelling Unit.

## 2.001. Definitions - General Provisions.

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For the purpose of this title, certain terms and words are hereby defined. Certain chapters contain definitions which are additional to those listed here. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "structure" shall include the word "building" and the word "shall" is mandatory.

Effective on: 1/1/1901

### 2.002. A.

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**Academies** shall mean education and instruction facilities including but not limited to dance or music academies, gymnastic or martial arts school. Academies shall not include early childhood care facilities, public schools, or private schools that meet the State of Nebraska requirements for elementary or secondary education, or industrial trade schools. (Approved Resolution No. R-17-0040, May 30, 2017)

An **accessory building** is a subordinate building or a portion of the main building, the use of which is incidental to that of the main building or to the main use of the premises. An **accessory use** is one which is incidental to the main use of the premises.

**Accessory Dwelling Unit.** An accessory dwelling is a subordinate building or portion of the main building for use as a secondary single-family dwelling which is incidental to use of the main building for a primary single-family dwelling.

**Agriculture** shall mean the use of land for the purpose of raising and harvesting crops; or for the raising, breeding, or management of livestock, poultry, fish or honeybees; or for dairying, truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use. (Resolution No. 4921, June 30, 1987)

**Airfield.** An area of land and/or water, publicly or privately owned, that is used or intended to be used for the landing and takeoff of aircraft, including general aviation aircraft, helicopters, seaplanes and ultra light aircraft or vehicles, but excluding air carrier aircraft, that may be open to the public for commercial or business purposes and shall meet State standards on the basis of Mean Sea Level (MSL) elevations. It may include appurtenant areas, facilities or buildings suitable to house, handle or service aircraft. Any such aircraft or vehicle operating from a private airfield shall attain safe and reasonable clearances over utility lines, poles, towers and appurtenances which may be located in the path of any runway. (Resolution No. 5367, August 26, 1996)

**Airfield, Commercial Agricultural** An airfield that is the permanent base of operation for an aerial applicator, under land ownership or lease, within the County, the operator of which is a certified applicator under the Rules and Regulations of the State of Nebraska, Department of Aeronautics. The Commercial Agricultural airfield shall be for the exclusive use and operation of the Commercial Agricultural airfield owner or lessee for their aircraft and shall not be open to the public. Any such aircraft or vehicle shall attain safe and reasonable clearances over utility lines, poles, towers and appurtenances which may be located in the path of any runway. (Resolution No. 5367, August 26, 1996)



# COUNTY TEXT AMENDMENT 18008

**COUNTY TEXT AMENDMENT 18008, TO AMEND VARIOUS PORTIONS OF THE LANCASTER COUNTY ZONING REGULATIONS TO ALLOW FOR ACCESSORY DWELLING UNITS BY SPECIAL PERMIT IN THE AG ZONING DISTRICT:**

September 12, 2018

Members present: Beckius, Corr, Finnegan, Harris, Joy, Scheer, and Washington; Edgerton and Hove absent.

**Staff Recommendation:** Approval.

There were no ex parte communications disclosed.

**Staff Presentation:** Tom Cajka of the Planning Department stated the text amendment is to allow Accessory Dwelling Units (ADUs) in the AG District. A similar amendment was recently made to the City codes. An ADU can be described as a self-contained, attached or detached dwelling on the same lot as the principal dwelling. It would typically contain a kitchen, bath, small living area, and one or two bedrooms and would always be subordinate to the main house. The County Board directed staff to look into this, so staff formed a working group which consisted of stakeholders and one representative from Planning Commission, Christy Joy. Five meetings were held. The discussions concluded on July 25<sup>th</sup> with a public meeting. Around ten members of the public attended and six of the seven from the working group were present. The intent of an ADU is to allow persons with special needs to live semi-independently, but in close proximity to a care giver, and to provide a greater variety of housing options for various age groups and economic situations.

To protect the rural character and to minimize impacts to neighbors, the group came up with several conditions. The lot must be 20 acres or larger. The ADU can be up to 800 square feet or 40% of the principle dwelling and no more than 2 bedrooms. The owner of the property shall live on the site, in either the ADU or principal dwelling and the ADU cannot be sold separately from the main house. The two will share an access point. The same setbacks and height requirements for the district will be followed, with the limit that the ADU will not exceed the height of the principal dwelling. The ADU will be no greater than 200 feet from the main house, and will also share utilities, unless some practical problem prohibits this. All of these conditions can be waived with except for owner occupancy and the shared access point, which County Engineer was very specific about.

Approval of a special permit for an ADU in the County would be Final Action by Planning Commission unless there are waiver, then the application would automatically move on to County Board.

Harris asked why the group decided on making ADUs a specially permitted use versus a conditional use. Cajka said it was the consensus of the group that because this is a new use, it should have the extra public review process, at least initially. If we find that several of these are approved with no fuss, the code can be amended to make it a conditional use.

Harris expressed her dismay at creating this additional hoop for private citizens making use of their land. She wondered if there are examples of other situations that require this extra

oversight why ADUs rise to the need for this level of additional review. Cajka said that this was a condition agreed upon by the working group. We do not know yet how neighbors will react to this use, so the extra review is to provide some recourse for them to express their concerns, if necessary. Harris noted that it would not be outlandish that a lot might create a situation where an applicant cannot comply with the conditions. It seems reasonable that Planning Commission should be able to make a final decision in that type of situation. Cajka said that Planning Commission might decide that it is appropriate to have final say on special permits. That would require approval of the County Board. Other than that, he has no argument beyond the fact that the working group decided this was the best practice at this time, until it is established that there is no outcry from County residents about this use.

Corr asked why the AG-R District is not included in this proposal. Cajka said in the City, it was decided that a property must have the same lot area as is required for a duplex in order to avoid increasing density. In the County, that would mean 40 acres. That seemed extreme to the working group, so 20 was decided upon. In the AG-R district, with 3-acre lots, that could mean a more significant increase in density.

Harris questioned whether this would really be the case since national trends say ADUs are often for an aging homeowner or adult children who remain on the same property. She acknowledged that there could be some cases where it is a true rental unit with new residents. Cajka said he has no way to confirm that would be the case. There could be those who rent out the ADU for extra income. **Steve Henrichsen, Development Review Manager, Planning Department**, added that it is important to keep in mind that the ADU could stay in place permanently, so even if the first person living there is a relative, the second could be a renter. The special permit will run with the land and protect the subordinate status of the ADU and the density of the overall area.

#### Proponents:

1. **Mark Hunzeker, Baylor Evnen Law Firm, 1248 O Street, Suite 600**, stated he appears on behalf of the Home Builder's Association (HBAL) to present proposed changes to the amendment proposed by Staff (See Exhibit "1"). The recommended text amendment is too restrictive. Twenty acres is too large. There are a number of pre-existing lots where people may want to add an ADU, but there is not such a huge demand that it would substantially increase density. It should be available to smaller lots given the other constrictions in place. We suggest going down to the 3-acre lot size. 800 feet is also too small, particularly for those clients who wish to age in place and are accustomed to a larger living area and being able to entertain guests and grandchildren. The deed requirement is not the proper instrument to tie the ADU to the main dwelling. Height limits should be kept as they are; there is no reason to limit the height of the ADU as long as it meets the limit for the zone. The distance between the main unit and the ADU will mostly be addressed by topography and proximity to utilities. Further, the permit application process is enough to draw attention to the fact that activity is occurring on a property.

There was no testimony in opposition.



**Staff Questions:**

Harris asked Staff to address the comments made by Mr. Hunzeker. Cajka said staff does not support decreasing lot area. The main purpose and intent as determined by the working group is to preserve rural character; basically, it is important to keep the density as close to 1 house per 20 acres as possible. The charge was not to find a way to allow a second full home on 20 acres, though there are a few exceptions, such as the farmstead split and ag-preservation that would allow that. Even a CUP with clustered lots is based on one lot per 20 acres. The 800-foot size limit also meets the intent and purpose of an ADU.

Corr asked if the City version of the ADU was also limited to 800 square feet. Cajka said that is correct.

Cajka went on to say that in general, they agree with the deed restriction. There needs to be something on file that prevents the owner from selling the ADU separately. The City has the same condition. Washington asked if the City version says "deed restriction". Henrichsen said that it does, and agreed that it should say "deed restriction". Cajka said that they prefer to stick with the language proposed by Staff, except add the word "restriction" after the word "deed" on Condition No. 4.

Cajka said the height limit is again to keep the ADU subordinate to the main structure. The ADU should not be more prominent than the principal home in any way. The distance requirement is to prevent an ADU being added off in a remote area of a property.

Harris asked if access to utilities would naturally restrict that. Cajka said that would be the case if shared, but there could be a separate well. Joy noted that it may be cost prohibitive to add a new well or septic system, so that condition can be waived.

Corr asked if the Home Builder's Association was represented in the working group. Cajka said Mr. Dan Klein was a member, though not an official representative. Staff reached out to them to ask if they wanted a presentation but their agenda was full; their next meeting was after this hearing.

**COUNTY TEXT AMENDMENT NO. 18008**  
**ACTION BY PLANNING COMMISSION:**

September 12, 2018

Harris moved for Approval, seconded by Corr. Corr asked for clarification that the motion included adding the word "restriction" to Condition 4. Harris agreed that it did.

Harris stated she is a proponent of ADUs, especially in urban areas. They are a great idea in the County, as well. There is a global trend of personalizing living spaces and allowing families to stay in place.

Harris proposed an amendment to allow Planning Commission to grant waivers; seconded by Finnegan.

Harris said she objects to the extra "red tape" that homeowners are being asked to undertake. There is already a public process for concerned citizens to be heard and there is still talk that this might even be appropriate as a conditional use, so we are already being conservative by asking for the special permit. She believes most homeowners will be good



neighbors and will simply have some aspect of their property that makes them out of compliance, causing them to request a waiver. It is better to plan for that more-likely scenario. There is always the appeals process. Conditions may be adjusted as we learn what is wanted, but there is no need to slow down people who just want to improve their land.

Corr noted this was the process in place for the City so she supports doing the same in the County until all parties have a handle on what types of requests will be made.

Finnegan said that Harris has proposed a good compromise. There is no need to slow down a process by being extra cautious. She will support the amendment.

Beckius said he will also support the amendment. The issues being discussed are things that can be tackled by Planning Commission. The issues fall appropriately under the purview of Planning Commission.

Washington said that the Planning Commission manages waivers in other cases and this is not a stretch.

Joy said that, for the working group, it came down to the fact that the City had placed the extra burden until we knew what was being requested with ADUs. This is challenging, but the item will go on to County Board so they can overrule this motion and add the second step back in, if they deem it appropriate.

Henrichsen came forward to offer a language clarification that in addition to what is proposed by Harris, a new sentence be added stating that even the County Board may not adjust Conditions 4 and 5 related to the owner-occupancy, and the shared access. Harris agreed that is a good clarification. Finnegan said her second still stands.

Joy stated for the record that she would like to see the County Board look at adding the AG-R District. There were a lot of site comments related to lots that did not meet the standards that would require waivers.

Corr reiterated that she is not against saving a step for the applicant and County Board, but she worries about the effect this could have on the City version. She knows neighborhoods fought for that extra oversight in the City version. She believes that if they knew this was being proposed for the County, they would be here to express their concerns.

The motion to amend carried, 5-2: Beckius, Finnegan, Harris Washington, and Scheer voting 'yes'; Corr and Joy voting 'no'; Edgerton and Hove absent.

Rorabaugh called the main motion as amended. Scheer entertained comments.

Corr said that when there is a working group, Staff does a good job of getting appropriate stakeholders involved and making sure groups are represented. She is glad that the amendment proposed by Mr. Hunzeker was not approved since it may not be appropriate for a special interest to come forward with an amendment at the public hearing when they had their input on the committee.

Scheer said he appreciated the suggestions of Mr. Hunzeker and found it appropriate to bring them up. The working groups are a long process with lots of input and they guide the Commission in understanding the vision and intent of what an ADU should be. This has been a good process.

Harris said it is never too late to bring in amendments from any point of view.

Beckius agreed that the public hearing is a time for any special interest or concerned citizen to come forward. He appreciates that part of the process. The main concern with the City amendment was adding density. He would always consider proposed waivers to any site given the existing conditions of each case.

Corr clarified that she said that working groups often spend months on topics, in greater detail, and come up with compromises before this body sees the final proposal. It is important to take that recommendation seriously because it was well thought out.

Motion carried, 7-0: Beckius, Corr, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Edgerton and Hove absent.

MOTION TO AMEND

13.049 Accessory Dwelling Unit (ADU)

An accessory dwelling unit may be allowed by special permit in the AG zoning district under the following conditions:

1. The lot area shall be ~~20~~ 3 acres or larger- with proper approval from NDEQ or Lancaster County Health Department for well and septic system. For purposes of determining minimum lot area, abutting County section line and one-half section line road right-of-way is included in the total area.
2. The total square footage of the ADU shall not exceed the lesser of ~~800~~ 1,200 square feet, ~~or 40% of the square footage of the principal dwelling, excluding garages and carports. The calculation for the principal dwelling shall be based on the floor area prior to the construction of the ADU.~~
3. No more than two (2) bedrooms are allowed in the ADU. The owner is required to live on the property in either the principal dwelling or the ADU.
4. Prior to issuance of a building permit for the ADU, the owner shall file a deed restrictive covenant against the property stating that the accessory dwelling cannot be sold separately from the main house. ~~The deed must be to the satisfaction of the County Attorney. This deed shall be filed prior to any building permit for the ADU.~~
5. The ADU must share the same access point to the public or private street as the principal dwelling.
6. The ADU must meet the same setbacks as the principal dwelling. The height of the ADU must meet the height limit of the district for a dwelling, ~~but be no higher than the principal dwelling.~~
7. A detached ADU ~~shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.~~
8. Must share utilities with principal dwelling unless owner can demonstrate a practical problem with sharing due to topography or other unique site considerations.

The County Board may adjust the conditions, with the exception of Conditions 4 and 5.