



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Planning Board

From: Kelly Wyatt, Planning Director  
Joseph Costello, Deputy Planning Director

Date: November 15, 2024

Subject: Potential Accessory Dwelling Unit (ADU) Ordinance Discussion

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#### **Updated Staff Report for November 19, 2024 Meeting**

At their October 15, 2024, meeting, staff provided the Planning Board with an update on the status of discussions surrounding Accessory Dwelling Units (ADUs) and summarized themes from the two public input sessions held in September. Planning Board members noted concerns about the perceived inequity in current ordinances, which allow partial-home short-term rentals for short-term stays only, precluding long-term stays. This limitation was highlighted as a barrier, particularly in addressing the community's workforce housing needs.

Additionally, the Planning Board expressed agreement that the current terminology surrounding short-term rentals and accessory dwelling units is confusing and should be clarified moving forward.

The term "Accessory Dwelling Unit" (ADU) encompasses both attached and detached units. Public input sessions revealed that community members generally felt more comfortable with attached ADUs (e.g., internal ADU, accessory apartment) compared to detached ADUs (e.g., backyard cottages). Creating separate terminology for these two types of units may help with clarity and public understanding.

Draft definitions are included below for consideration. Note that the proposed new language is shown in red.

- **Dwelling, accessory** means a secondary dwelling unit established in conjunction with, and clearly subordinate to, a principal dwelling unit. ~~, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot.~~ **An accessory dwelling unit may be part of the same structure as the principal dwelling (Attached ADU, Accessory Apartment) or a detached structure (detached ADU, Backyard Cottage) on the same lot. Only one ADU – either attached or detached – is allowed per single-family dwelling.**
- **Attached ADU or Accessory Apartment:** An accessory dwelling unit integrated within the principal dwelling. Examples include in-law suites, basement apartments, ground floor apartments, or guest suites. The property owner or long-term resident must reside on the property. Only one attached ADU is permitted per single family dwelling and no attached ADU shall contain more than two sleeping rooms/bedrooms. *Partial-home short-term rentals* are classified as attached ADU's or accessory apartments.
- **Detached ADU or Backyard Cottage:** An independent, standalone accessory dwelling unit on the same lot as the principal dwelling, meeting the principal structure setbacks for the

district in which it is located. A detached ADU must be situated behind the mid-point of the principal structure or within the backyard. The property owner or long-term resident must reside on the property. Only one detached ADU is permitted in conjunction with the principal single-family dwelling on the lot. No detached ADU shall contain more than two sleeping rooms/bedrooms.

- **Sleeping Room:** Any enclosed space within a dwelling unit that is intended or designed for sleeping purposes and meets the building code's minimum requirements for a bedroom. This includes rooms with features such as a bed, sleeping accommodations, closet, and privacy provisions but does not include areas primarily intended for other purposes such as living rooms, kitchens, or bathrooms.

Given that partial-home short-term rentals function similarly to attached ADU's, it is important to develop clear and concise language for these two terms moving forward. Revised definitions for consideration are below.

- **Short-term rental** means the rental of residential property for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days by a person who has a permanent residence to which he/she intends to return.
- **Short-term rental, partial house** means a resident occupied single-family dwelling that consists of the rental of up to two guest rooms for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days. The partial house short-term rental should be subordinate and incidental to the principal residential use of the dwelling. A residential use where an owner or long-term resident rents out a portion of their primary dwelling, such as an individual bedroom/sleeping room, or other private spaces, to guests for short-term stays, for fewer than 30 consecutive days. The rental space is integrated into the principal residence and may include amenities for independent living such as refrigerator, countertop appliances, and basic food preparation facilities. A private or shared bathroom may also be provided. The owner or long-term resident is generally present on-site during the rental period. Partial home short-term rentals may include shared access to common areas such as kitchens, living rooms, or bathroom, and must comply with local regulations. Partial-home short-term rentals shall be classified as attached ADU or Accessory Apartment.

For discussion purposes we have provided some options below for consideration with regard to how we may approach the allowance of Accessory Dwelling Units (ADU's) moving forward.

### **Option A**

Do not proceed with any recommendation to allow accessory dwelling units (ADU's) within the town. Instead, recognizing that partial home short term rentals effectively function as attached ADUs, focus on establishing regulatory parameters for short-term rentals to ensure that we are not continuing to permit them.

### **Option B**

Allow Detached ADU's/Backyard Cottages townwide, on (all lots/lots greater than 16,000 sq. ft. in area). Allow (short-term rental/long-term rental/both) Limit the area of the detached ADU to (percentage of the principal structure, a set maximum area limit, or both – for instance, no greater than 50% of the area of the principal structure, or 800 square feet, whichever is greater).

Allow Attached ADU's/Accessory Apartments townwide, no limitation on lot size. Allow (short-term rental/long-term rental/both) Limit the area of the attached ADU to (percentage of the principal structure, a set maximum area limit, or both – for instance, no greater than 50% of the area of the principal structure, or 800 square feet, whichever is greater)

### **Option C**

Allow Detached ADU's/Backyard Cottages east of US 158 only, same as above regarding lot size, short or long-term rental and size of cottage.

Allow Attached ADU's/Accessory Apartments townwide, same as above regarding lot size, short- or long-term rental and size of apartment.

### **Option D**

Allow Detached ADU's/Backyard Cottages east of US 158 only, restricted to long-term rental only, same restrictions as above regarding lot size and size of cottage.

Allow Attached ADU's/Accessory Apartments townwide, both long and short rental, leaving detached ADU's for long-term only, same restrictions as above regarding lot size and size of apartment.

### **Option E**

Detached ADU's/Backyard Cottages – prohibited townwide.

Attached ADU's/Accessory Apartments allowed townwide, short- and long-term rental, same as above regarding lot size and area of apartment.

### **Option F**

Detached ADU's/Backyard Cottages – prohibited townwide.

Attached ADU's/Accessory Apartments allowed east of US 158 for short-term purposes only. Those partial home STR's on the west side would become nonconforming for short-term use. East side partial home STR's could switch to long-term rental use, effectively becoming an attached ADU.

In NC we can currently regulate STR's however, Senate Bill 667 is lingering, if enacted it would prohibit local governments from adopting ordinances that regulate a variety of things – required to allow short-term rentals, could not restrict to long-term rental only, could not set limits on length of stay, could not require owner occupancy, etc.

We could consider developing a permit process/procedure to regulate short-term rentals understanding that short term rentals and attached ADU's would be treated synonymously, however that raises many questions. It seems in most places, attached ADU's and attached STRs, primary distinction revolves around the intended use (long-term residential and housing supply versus short-term rental and tourism management). However, due to our location and economy based on tourism, it seems that restricting to long-term only would be difficult.

In NC we can currently regulate ADU's, however House Bill 409 is still out there. The last action on NC House Bill 409 – referred to Commission on Rules and Operations of the Senate. This proposed legislation would prohibit requiring owner occupancy, regulating parking, regulating utility connections, etc.

Other considerations:

- Existing STRs and Legal Nonconformity:
  - STRs that exceed any newly established area restrictions would likely be considered legally nonconforming.
  - Enforcement of these nonconforming uses would be difficult and would require a comprehensive inventory and documentation process.
  - Legally nonconforming STRs could transition to long-term rentals but once transitioned, would not be permitted to revert to short-term rental use.
  
- Enforcing Long-Term Rentals:

- Enforcement would be relatively straightforward if annual lease agreements are required as proof.
- However, monitoring rentals with minimum durations of 91 days could be labor-intensive and challenging to enforce.
- Detached ADUs/Backyard Cottages:
  - If detached ADUs are allowed town-wide, should a minimum number of architectural design points be required to ensure consistency with neighborhood character?
  - Detached ADU applications should require Dare County Health Department (DCHD) approval, particularly for septic system compliance.
- Parking Standards:
  - A review of existing parking standards will be necessary to account for any new ADU and STR options.
- Create threshold for "subordinate". As an example, we have used 50% of the area of the principal dwelling, or 800 square feet, whichever is greater, but this needs further discussion. Depending on the direction given, staff could gauge what is currently in the town in an effort to create minimal nonconforming scenarios.

Deputy Planning Director, Joe Costello has provided an analysis of lots within the town that are equal to, or greater than 16,000 square feet in area. This may be helpful as part of your considerations.

Zone	<16,000	>=16,000	Grand Total
C2	509	187	696
C3	0	18	18
C4	6	9	15
C5	35	30	65
CR	58	374	432
R1	50	80	130
R2	1921	599	2520
R3	631	21	652
SED80	3	40	43
SPD20	145	111	256
<b>Grand Total</b>	<b>3358</b>	<b>1469</b>	<b>4827</b>

Staff will be available at the Planning Board's November 19<sup>th</sup>, 2024 meeting to continue the discussion.

**Previous Staff Report from October 15<sup>th</sup>, 2024 Meeting Below as information**

In November 2023, during their retreat, the Board of Commissioners directed the Planning staff to explore the development of an Accessory Dwelling Unit (ADU) ordinance that incorporates a range of optional provisions and regulatory standards to build community support. This initiative is identified as Action Item #2.2 under the Development Goals of the 2024 Strategic Plan. The range of options for consideration includes permitted zoning districts, geographic areas, minimum lot size requirements, maximum unit size limitations, height restrictions, deed restrictions, and parking considerations.

The Planning Department had previously researched and presented a draft ADU ordinance to the Board of Commissioners in September 2019, though it was not adopted at that time.

To advance discussions on a potential ADU ordinance, staff presented the Board of Commissioners with an overview on July 3, 2024, highlighting the similarities and interconnections between ADUs, partial-home short-term rentals, and duplexes. This same presentation was also shared with the Planning Board on July 16, 2024, and is attached.

Staff would like to emphasize that many of the existing partial-home short-term rentals within the town share similar characteristics and functions with accessory dwelling units. Both provide additional living spaces that can be rented as separate, independent units, with comparable operational features. Additionally, many of these existing partial-home short-term rentals, along with attached ADUs if permitted, would resemble duplexes in terms of structure and use.

In order to better understand the potential impact of an ADU ordinance, staff believes it is critical to openly discuss and clarify what is currently allowed within the town, the definitions and regulations governing these uses, and the overlap between these uses. Ensuring regulatory consistency is key.

At their August 20, 2024 meeting, the Planning Board emphasized the importance of community awareness and engagement on this issue. As a result, two public input sessions were scheduled: Tuesday, September 17th, at 9:00 AM, in the Board Room at 5401 S. Croatan Highway, and a second session on Wednesday, September 18th, from 6:00 PM to 7:30 PM, to accommodate those unable to attend the morning meeting.

Staff began each session with a brief informational presentation, followed by a demonstration of a survey with live results, and lastly an open forum was held to hear feedback from attendees.

Planning staff will be available at the Planning Boards October 15, 2024 for continued discussion and guidance on next steps.

### **Public Input Session – Discussion Points**

- What are Accessory Dwelling Units (ADU's)

Accessory Dwelling Units are smaller, secondary housing units located on the same property as a primary residence. ADU's can include detached units, garage conversions, or in-home apartments.

- Why ADU's?

Accessory Dwelling Units can help address local housing needs, providing more affordable rental options or housing for family members.

Accessory Dwelling Units can offer a way for older family members to live independently and age in place.

Accessory Dwelling Units can allow homeowners to generate rental income, which can help with mortgage payments or property upkeep.

Accessory Dwelling Units typically use less land and resources as compared to a new development.

- What is some PRO's of ADU's?

ADU's can create more affordable housing options.

ADU's offer flexibility for multi-generational living or accommodating family members, caregivers, or tenants.

ADU's can help house local workers who may otherwise struggle to afford housing in the area.

ADU's can encourage long-term rentals over short-term options, supporting housing stability.

- What is some CON's or CONCERNS of ADU's?

Some residents might be concerned about increased traffic, inadequate parking, or noise – especially in quiet areas.

There may be worries about enforcing regulations, such as ensuring ADU's are not turned into unregulated short-term rentals.

There may be concerns about local infrastructure, such as water, septic capacity, and handling increased housing density.

Some homeowners may be concerned about the proximity of ADU's to their own property and potential impacts on privacy.

- Goals for Allowing Accessory Dwelling Units

The primary goal is to increase the housing supply of workforce housing.

- Location of ADU's?

If the Town were to allow Accessory Dwelling Units, are there locations within the Town that you believe are more suitable than others? Specific zoning districts, geographical areas of the Town?

# Post-event feedback survey

29 Responses

08:18 Average time to complete

Active Status

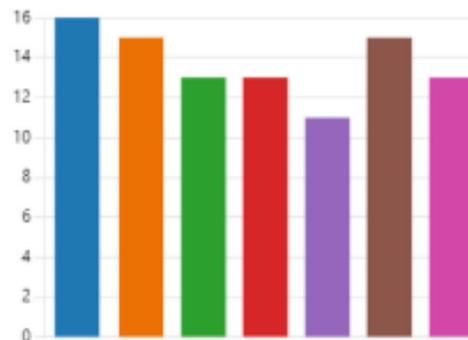
1. Why are you interested in this topic?

- Currently rent a portion of my h... 6
- Currently rent all my home as a ... 1
- Concerned about possible ADUs... 14
- Other 10



2. What are your concerns with ADUs, short term rentals, if any?

- Density (additional structures or... 16
- Traffic 15
- Parking 13
- Noise 13
- Sanitation 11
- Over Occupancy 15
- Other 13



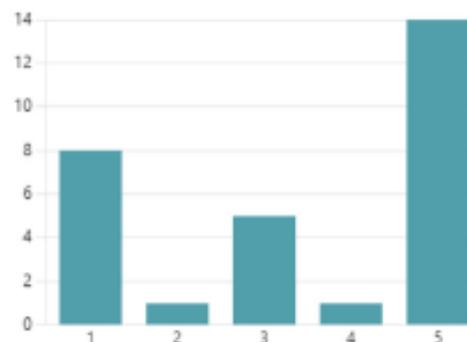
3. What are the potential benefits of allowing ADUs, check all that apply

- Affordable/Workforce housing ... 19
- Financial benefit/income for ho... 18
- Multi-generational/Aging in Pla... 21
- Flexibility in how you utilize the ... 14
- Other 7



4. Do you think ADU's should be allowed in the Town of Nags Head?

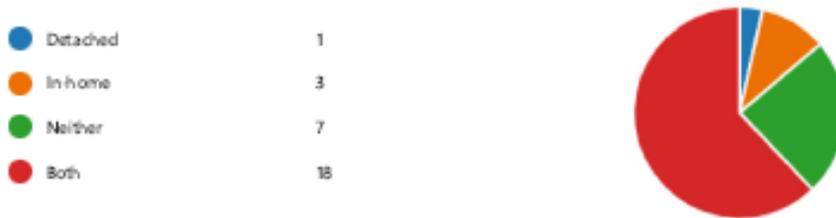
3.41  
Average Rating



5. If ADUs were allowed in Town, would you prefer them to be utilized as long-term rentals?



6. If ADUs were allowed in Town, would you prefer them to be in-home or detached?



7. How likely are you to consider adding an ADU if allowed?



8. Do you have any specific feedback you would like to provide as we consider text amendments related to ADUs?

- Destabilize communities
- If the need is for housing of our hospital staff, teachers etc why wouldn't we only allow long term rentals
- Destabilizing peaceful communities
- Don't KDH Nags Head!!
- Existing neighborhoods should not be changed to allow additional development. The sound side neighborhoods were intended for local year round residents. Extra apartments, dwellings, etc in these areas should not be allowed.
- I believe who ever owns the proposed ADUs should be held responsible for maintenance of outside perimeter, and be responsible to displace anyone who creates excessive noise, traffic: as you see with drug traffic and anyone who brings trouble with the law.
- Do not turn our beautiful town into KDH. We love Nags Head the way it is!
- Long term rentals should be encouraged over short term rentals across the board where possible - incentivized, even, to improve the housing crisis.
- Please stop restricting people from employing the highest and best use of their property as they see fit.
- Yes
- Lot size, traffic concerns, storm water management

- ADU is an essential need to our community. Providing housing and income sources for homeowners
- Please consider the financial impact to your constituents if you disallow STR's. We need to apply creative thinking to allow for affordable housing and additional income for the people of Nags Head
- ADU's are not permitted within the Village at Nags Head
- Bad policy. In a single family home community
- Consider the livelihood of local families that rely on STR/Airbnb income.
- Allow owners to do with their property as they see fit
- Too much focus on development. I moved here because it didn't have all the things that other coastal communities had. It was more raw. That is an value that is being forgotten. KDH 🙄
- Keep ADUs available for STR
- Need more housing options

### **Themes During Workshop**

1. Majority of respondents felt ADUs should be allowed in Nags Head and that they would prefer them to be long term rentals.
2. People have concerns about ADU's changing the character of Nags Head.
3. People were more supportive of attached ADUs then detached ADUs

### **Public Comment Summary**

- Don't really need to do anything, if we do something keep it simple. Don't need detached ADUs. Double the density of units on the lot foreign to Nags Head.
- Concerned with safety for young families, speeding, a lot of illegal apartments in North Ridge. Concerned about septic, enforcement around it and it falling on Westside neighborhoods.
- People like Nags Head because it is not super developed, plenty of homes, possibly limiting Airbnb's with lottery system, open up dwellings we already have.
- Currently have partial home Airbnb but can't rent as long term. A lot of people who have homes and like renting a portion of it don't want to change. Some need Airbnb to pay bills, mortgage, etc. What is on the books is not well defined, lets define what an ADU is. Tough to get to morning meetings, but happy for the evening meeting opportunity. Need to have affordable housing in Nags Head.
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- Do not put deed restrictions on property, prevent highest and best use of property, limits equity gained from investment.
- Don't harm single family homeowners.
- Hard to live here for young people, multiple jobs can't make it work. Want to add an ADU but can't. Do not understand the difficulty of long-term renting vs. short term, since there is more vetting and control.
- If the property allows for it via septic and parking, ADUs should be allowed. I believe in property rights.
- Family rents Airbnb during summer and uses space for in-laws during off season. Locals are hardworking but no place to live. Depend on income from Airbnb to sustain.

- Everyone loves Nags Head; property rights are huge. Allow people to long term rent in their house.
- Feels ADU is essential need to provide housing for local and workforce housing and a huge benefit to property owners helps them afford it.
- Development takes away a little bit of the magic of the Outer Banks, ADUs are density. Changes flavor of the neighborhood with density.
- Have an Airbnb but has become saturated not doing as well as during COVID. Is there middle ground, put disagree on survey but mind is changed, older population moving in with children needs somewhere to live, solution may be ADU.
- Agree we need more housing in workforce, but ADU conflicts with covenants of HOA, HOA covenants supersede (if adopted).
- Agree with earlier comments on ADU doubling up and density is bad, but people should be able to rent long term in their home. Absentee owners cause issues.