

**CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
MINUTES OF THE
SEPTEMBER 12, 2023
MEETING**

MEMBERS PRESENT:

Mr. CJ Peters - Chair
Mr. Justin Verst - TPO
Mr. Jeff Schuchter
Ms. Sharon Haynes
Mr. Dennis Bass

MEMBERS ABSENT:

Mr. Troy Franzen
Mr. Michael Williams
Mr. Mark Turner

STAFF PRESENT:

Mr. Matt Smith, Legal Counsel
Mr. Kirk Hunter, Principal Planner
Ms. Kaytlin Lake, Clerk

Mr. Peters called the meeting to order at 6:38 PM. Following the Pledge of Allegiance, the clerk called the roll, and a quorum was found. Mr. Peters apologized for the delay in getting started. Mr. Peters reviewed standard procedure for a public hearing and the basic outline that the meeting would follow. Mr. Hunter noted that they were facing audio issues at the meeting. Mr. Peters asked the audience members to raise their hand if at any point they could not hear the Commission members speaking so that they could repeat what was said.

Mr. Peters asked for review and approval of the previous meeting minutes from July 11th, 2023. Mr. Verst moved to approve the minutes as submitted. Ms. Haynes seconded the motion. No discussion on the minutes. The clerk called the roll, and all present voted in favor except Mr. Bass who abstained. The motion passed, and the minutes were approved.

Mr. Peters introduced the first case as old business: PZ-23-017 applied for by the Campbell County Fiscal Court. The request was to reopen PZ-23-017 in order to approve additional proposed text amendments specific to the Zoning Ordinance regarding Flag Lots only.

Mr. Hunter delivered the Staff Report.

BACKGROUND: The following text amendments were presented and approved at the July, 2023 meeting of the Campbell County and Municipal Planning Commission:

Addition and deletion of text as underlined below for the following sections.

- Zoning Ordinance:
Article VII Section 7.0 Words and Phrases
- Campbell County and Municipal Subdivision Regulations
Article 2 Definitions
Article 4 Design Standards for Subdivision Review

Subsequent to that meeting, additional language in the Zoning Ordinance was discovered that was inconsistent with the amended zoning text.

Staff requests to reopen the case (PZ-23-017) specifically for the purpose of amending the additional text. No changes to the previously approved text are proposed.

PROPOSED TEXT AMENDMENTS:

Addition and deletion of text as underlined below for the following sections. (See attachment.)

- Zoning Ordinance:
Article IX Section 9.10 Application on Zoning Regulation

STAFF RECOMMENDATION:

To adopt the proposed text amendments to the Campbell County Official Zoning Ordinance and Subdivision Regulations.

SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION:

1. Per Kentucky Revised Statutes (KRS) 100.203, the Campbell County Fiscal Court has the authority to enact zoning regulations within its jurisdiction. This authority includes the provision to amend its zoning classifications, uses, etc.
2. Pursuant to the Campbell County Zoning Ordinance Article XVII AMENDMENT PROCEDURE, the Planning and Zoning Commission has the authority to amend the zoning ordinance.
3. Proper notice has been given in accordance with Article XVII Amendment Procedure of the Campbell County Zoning Ordinance and Campbell County Subdivision Regulations Section 130: Amendments.
4. The proposed changes are consistent with the 2008 Campbell County Comprehensive Plan Update and the Campbell County Subdivision Regulations.

Campbell County Zoning Ordinance
Article IX Section 9.10 Application on Zoning Regulation

...

B. . . . Flag lots shall only be used in those locations where due to geometric, topographic, and other physical features, it would be impractical to extend a publicly dedicated street to serve lots located in said areas ~~and in no case shall the required lot width of a flag lot be located further than two hundred fifty (250) feet from the publicly dedicated right of way from which the flag lot originates. The narrow portion of the lot extending from the right of way shall be physically capable of providing reasonable access to the flag lot. The minimum lot area and setback requirements for flag lots shall be two and one half (2 1/2) times the requirements for residential zones.~~

[end of Staff Report]

Mr. Peters asked for any discussion by the Commission or questions for staff.

Ms. Haynes requested copies of the final versions once approved by Fiscal Court. Mr. Hunter had no problem with that.

Mr. Peters asked for any public comment from the audience members, but there were none. There was no further discussion on the matter.

Mr. Verst moved to approve the text amendment as presented based on the Staff Report because he found it to be consistent with last month's meeting. Mr. Schuchter seconded the motion. No discussion on the motion. The clerk called the roll, and all present voted in favor. Motion passed.

Mr. Peters introduced the second case, also applied for by the Campbell County Fiscal Court. The request was for proposed amendments to the Zoning Ordinance regarding Accessory Dwelling Units in the Residential-Rural Estate (R-RE) and Agricultural-One (A-1) Zones.

Mr. Hunter gave the next Staff Report.

BACKGROUND:

An accessory dwelling unit (ADU) is a separate residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home. ADUs are sometimes referred to as in-law suites, secondary suites, multigenerational suites, etc. . .

The current zoning regulations in Campbell County only narrowly allow ADUs, and only in agricultural zones. The demand for additional accessory housing is increasing nationwide for a variety of reasons. Many families are seeing a need to keep separate spaces for their adult

children or aging relatives. The current regulations effectively prohibit ADUs with only one narrow exception for farm worker housing in an agricultural zone (A-1).

The regulations do not define the term "Accessory Dwelling Unit".

Accessory uses are listed in the Zoning Ordinance. Accessory uses that are specific to each individual zone are listed out in the respective sections in addition to "Customary Accessory Uses", a use found in all zones. The regulations define a "Customary Accessory Building or Use" as one which:

- A. Is subordinate to and serves the principal building or principal use;
- B. Is subordinate in area, extent, and purpose, to the principal building or principal use served;
- C. Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served; and
- D. Is located on the same lot as the principal building or principal use served, with the single exception of public parking buildings or garages as are permitted to locate elsewhere than on the same lot with the building or use served.

Is an ADU subordinate to, and does it serve the principal building or principal use?

Is it subordinate in area, extent, and purpose, to the principal building or principal use served?

Does it contribute to the comfort, convenience, or necessity of occupants of the principal building or principal use served?

Is it located on the same lot as the principal building or principal use served?

Staff concedes that an ADU can be:

- subordinate in area, extent, and purpose, to the principal building or principal use served(2); and
- located on the same lot as the principal building or principal use served(4).

However, the regulations are too vague to allow an ADU to be considered:

- subordinate to and in service of the principal building or use; and
- contributing to the comfort, convenience, or necessity of occupants of the principal building or principal use served.

Without an ADU definition, it is a slippery slope in applying the definitions of "Customary Accessory Structure" to ADUs. The standard interpretation of "Customary Accessory Structures" does not include habitable structures.

In the A-1 zone, "Living quarters for persons employed on a farm" is listed as an accessory use. By this definition, accessory dwelling units have been approved for agricultural land in agricultural zones.

As it is currently written, our ordinance can allow an *internal or attached* ADU within a single-family detached dwelling. Staff has been able to permit an ADU as an addition to or converted portion of an existing home. The suite may include its own separate kitchen, bathroom, sleeping and living areas. Building and zoning codes do not limit the number of kitchens, bathrooms and bedrooms in a single-family dwelling. As a part of a single family

dwelling, a secondary suite would not be required to have minimum fire separations between it and the rest of the house. It may have it's own entrance but must have indoor accessibility from the main area of the house. The suite must share the same address, utilities, and deeded ownership. The suite may not be used as an apartment for short term or long term rentals. Buildings with secondary suites must remain under one ownership and address, and that they may not receive separate utilities.

This application of the regulations does not permit a detached structure.

CONSIDERATIONS:

The demand for ADUs is increasing. In some cases, a land division is possible to create a new building lot for the new house. In the majority of cases, however, a land division is not possible due to lot area and frontage requirements.

Relaxed requirements for ADUs do create a potential for abuse. The ability to construct what is essentially multi-family housing in single-family zones may produce unwanted consequences. For this reason, staff proposes that ADUs be a *conditional use* so that they may be considered on a case-by-case basis in a public hearing with the Board of Adjustments.

PROPOSED TEXT AMENDMENTS:

Addition and deletion of text as underlined below for the following sections. (See attachment.)

- ARTICLE VII SECTION 7.0 DEFINITIONS
- ARTICLE X SECTION 10.1 A-1 AGRICULTURE ZONE
- ARTICLE X SECTION 10.2 R-RE RESIDENTIAL RURAL ESTATE

STAFF RECOMMENDATION:

To adopt the proposed text amendments to the Campbell County Official Zoning Ordinance and Subdivision Regulations.

SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION:

1. Per Kentucky Revised Statutes (KRS) 100.203, the Campbell County Fiscal Court has the authority to enact zoning regulations within its jurisdiction. This authority includes the provision to amend its zoning classifications, uses, etc.
2. Pursuant to the Campbell County Zoning Ordinance Article XVII AMENDMENT PROCEDURE, the Planning and Zoning Commission has the authority to amend the zoning ordinance.
3. Proper notice has been given in accordance with Article XVII Amendment Procedure of the Campbell County Zoning Ordinance and Campbell County Subdivision Regulations Section 130: Amendments.
4. The proposed changes are consistent with the 2008 Campbell County Comprehensive Plan Update and the Campbell County Subdivision Regulations.

Appendix A: Zoning Text

Deletions are in ~~red-line-strikeout~~. Additions are in blue-underline.

SECTION 7.0 WORDS AND PHRASES:

~~DWELLING UNIT: A building or portion thereof providing complete housekeeping facilities for one (1) person or one (1) family.~~

DWELLING UNIT, ACCESSORY (ADU): an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons. It must include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.

SECTION 10.1 A-1 AGRICULTURE ZONE:

...

B. ACCESSORY USES:

...

6. Living quarters for persons employed on a farm.

C. CONDITIONAL USES:

...

19. Accessory Dwelling Unit (ADU) with the following conditions:

- a. The principal use on the lot shall be a detached single-family dwelling;
- b. The accessory dwelling unit (ADU) shall be subordinate in area, extent, and purpose, to the principal building served;
- c. No more than one (1) ADU may be located on a lot;
- d. The unit shall be located on the same lot as the principal building served;
- e. The unit shall not be deeded separately from the principal building
- f. The total area of floorspace of the ADU shall not exceed fifty percent (50%) of the existing primary dwelling area or 1,200 square feet.
- g. Parking requirements for ADUs may be imposed but not exceed one parking space per unit or per bedroom, whichever is less.
- h. The unit shall not be used for a home-based business

SECTION 10.2 R-RE RESIDENTIAL RURAL ESTATE

...

C. CONDITIONAL USES:

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12. Accessory dwelling unit with the following conditions:

- a. The principal use on the lot shall be a detached single-family dwelling;
- b. The accessory dwelling unit (ADU) shall be subordinate in area, extent, and purpose, to the principal building served;
- c. No more than one (1) ADU may be located on a lot;
- d. The unit shall be located on the same lot as the principal building served;
- e. The unit shall not be deeded separately from the principal building
- f. The total area of floorspace of the ADU shall not exceed fifty percent (50%) of the existing primary dwelling area or 1,200 square feet.
- g. Parking requirements for ADUs may be imposed but not exceed one parking space per unit or per bedroom, whichever is less.
- h. The unit shall not be used for a home-based business

[end of staff report]

Mr. Peters opened up discussion from the Commission members.

Mr. Verst asked if the ADU would be permitted as a rental. Mr. Hunter replied that it would be difficult to control, but they would not be permitting to rent. It could still happen, though.

Mr. Verst confirmed that this was being recommended as a conditional use and that the conditional use, once approved, runs with the land in perpetuity. Mr. Hunter clarified that it runs with the land until it is in violation. Mr. Verst confirmed that the demand for this use was for kids or parents wanting to live at home. Mr. Hunter said that was the trend.

Mr. Verst asked what is stopping people from renting out the additional space. Mr. Hunter said it would be the conditional use permit process primarily because if it becomes a rental, they could lose their conditional use permit. If it was reported, it would be a zoning violation.

Ms. Haynes confirmed that they would not be proactively preventing rentals, and it would take a neighbor reporting the rental violation in order to force the audit of the permit.

Mr. Peters asked what body of text prevents it from being a rental. Mr. Hunter said he was not sure because they can't stop people from renting out their house. The only way to prevent it would be the condition of a conditional use permit. Mr. Peters asked if it would just be a case by case basis at the discretion of the Board of Adjustment. Mr. Hunter said yes.

Mr. Hunter noted that this was only the beginning of the ADU process in Campbell County.

Mr. Verst asked where the phrase in the Staff Report "suite may not be used as an apartment for short term or long-term rentals," came from. Mr. Hunter was not sure.

Mr. Hunter suggested adding another condition up front to the Zoning Text that would prohibit rentals.

Mr. Schuchter asked how many requests for ADU's had been received by staff. Mr. Hunter said it is the volume of requests that has created this concern.

Mr. Hunter continued by saying the option exists to parcel out a piece of land for family members, but it is not always possible given the minimum lot size and road frontage requirements or landscape. Mr. Schuchter asked if the reason for such zoning requirements was to stop houses from being built on top of each other, would this be skirting those rules. Mr. Hunter said yes, in a way, which is why they are making it a subservient accessory dwelling unit. However, it does ease toward multi-family.

Mr. Schuchter asked about the separate sanitation requirement. Mr. Hunter said this refers to having its own bathroom; they could probably share a septic system. Mr. Schuchter noted this would depend on the size of the septic system. Mr. Hunter said that would be up to the Health Department

Mr. Schuchter asked about having the same address and utility bill. Mr. Hunter said this was a condition to prevent the ADU from becoming a separate home. This tries to control keeping it as single-family home with an independent space versus a multi-family that doubles the population.

Mr. Peters asked if two bills under same name would suffice. Mr. Hunter said it would need to be the same bill, same account.

Mr. Bass asked if there was anything grandfathered in as a preexisting ADU. Mr. Hunter said there are a few, but this would only apply to new ADU's.

Ms. Haynes asked how utility bills as a condition would be enforced. Mr. Hunter said he was not sure how to monitor that whether it would be self-reporting or following up with the utility company.

Ms. Haynes said the situation for needing an ADU would always arise from a transitional, temporary, financial relationship. To write in that a rental would not allowed is unrealistic and unenforceable, setting the community up for failure.

Mr. Peters said he shares similar concerns but also doesn't want it to end up a free-for-all.

Mr. Verst asked the Commission to focus on questions and not discussion at this point.

Mr. Verst asked about the parking requirement condition.

Mr. Schuchter asked if the language of condition (g) was intended to be “minimum” of one parking space versus what was written. Mr. Verst said it was unclear what the intention was.

Mr. Bass posed the situation of two people living in the ADU with two cars — would they only be allowed to have one car maximum?

Mr. Peters asked Mr. Hunter what the intention was. Mr. Verst asked if it was for enough parking without burdening the street. Mr. Hunter said yes, it was just to have a parking requirement considered but it could be changed or stricken and left up to the Board of Adjustment.

Mr. Verst said they could return to the issue in discussion later.

Mr. Schuchter asked if the ADU would be tied to the primary building/parcel perpetually. Mr. Hunter said yes. Mr. Schuchter asked if once grandma passes away, for example, what options do the homeowners have for this empty ADU. Mr. Hunter said it would just need to be repurposed. Mr. Schuchter asked if they could divide the ADU off as a separate parcel if they met the other requirements such as minimum lot size and road frontage. Mr. Hunter said yes, but it would be unlikely that they would meet those requirements.

Mr. Peters asked for any public comment from the few people in the audience.

Mike Listerman of 3000 Carthage Road introduced himself. Mr. Listerman thanked Mr. Hunter for his work and said that his biggest concern as an A-1 resident was to ensure that it doesn't become multi-family in nature.

Mr. Frank Twehues of 61 Edgewood Drive introduced himself and said that he also appreciated Kirk and Cindy for the work they have put into this. Mr. Twehues' family approached Campbell County P&Z approximately six months prior with the request to build a carriage house for his aging mother in order to keep her on her land off Eight Mile Road that cannot be further divided. Mr. Twehues echoed the sentiment of Mr. Listerman saying the neighbors out there do not want rental units or overcrowded areas. Mr. Twehues said he and his wife have considered how they would repurpose the ADU because it is a long-term investment, and he felt other applicants would also be thinking past the short-term solution.

After no further public comment, Mr. Peters opened discussion back up to the Commission.

Mr. Verst said he thought this text change was well-intentioned and acknowledged a need for it, but his concern was creating a perpetual, revolving rental. In his experience, the apartment for mom becomes a regular apartment once mom is gone. Mr. Verst said he would be in favor with well-worded conditions preventing random rentals.

Ms. Haynes asked for item (g) parking to be fleshed out.

Mr. Peters asked to begin wordsmithing.

Mr. Schuchter asked for more clarity and consideration on the sanitation/utility conditions, specifically if the owner would have to increase capacity of existing sanitation/utilities. Mr. Verst said the building permit could require a septic permit the same as if building an addition, but said there could be a building code issue if a detached unit shares sewer connection.

Mr. Peters asked Mr. Hunter if he wanted to wordsmith now or take it back to staff for further revision. Mr. Hunter said it was up to the Commission if they wanted more time.

Mr. Verst wanted to talk through it and see if an agreement could be met.

Mr. Schuchter noted financing for a conventional loan buyer may be difficult in the future when trying to sell a lot with two dwellings on it, and that is something homeowners may not think about it in advance.

Mr. Peters thanked Mr. Schuchter for bringing that issue to light before asking the Commission for recommendations to staff.

Mr. Verst said he had no issues with the definition and thought it was appropriate as a conditional use, but he would like additional conditions in place.

Mr. Peters returned to condition (g) parking. He suggested simplifying the parking requirement to "may be imposed by the Board of Adjustment to ensure no undue burden is placed on the neighborhood" on a case by case basis. Mr. Verst and Mr. Bass agreed with this.

Ms. Haynes requested a statement with teeth that prevents rentals.

Mr. Verst suggested changing the condition to no rentals unless for a family member of the primary homeowner. Mr. Smith said there is legal issue with using the word "family," but suggested not being held out to members of the public for short- or long-term rental which would prevent public advertisement for such.

Ms. Haynes asked if the intent was no rentals. Mr. Verst clarified the intent was no commercial/public rentals.

Mr. Schuchter said he thought it would be hard to police.

Mr. Verst said it could burden staff, but may be worth the effort for the sake of the community.

Mr. Schuchter and Mr. Verst went back and forth on whether it was necessary to allow ADU's when the option to parcel land off existed.

Mr. Verst asked if, in the case that a conditional use permit would be revoked, what would be the consequence. Mr. Smith said it would open up the option for fines, injunctions, etc.

The Commission and Mr. Smith continued to wordsmith the condition. The final version was "the unit may not be held out to the public for short- or long-term rentals."

Mr. Verst proposed adding a condition that the ADU and primary dwelling be on the same utility service in order to limit rental potential. Mr. Peters still thought this should be reviewed by the Board of Adjustment. Ms. Haynes asked if the intent was to have the primary homeowner pay for utilities on both units, and Mr. Peters agreed with this. Mr. Verst suggested the condition be phrased as "the unit shall not be placed on separate utility services unless permitted by the BOA." Mr. Peters approved of the suggestion.

Mr. Verst said he was in favor of voting on the text change that night given their revisions.

Mr. Peters asked Mr. Hunter to review the revisions made.

Mr. Hunter asked if these revisions should be applied to the RRE zone as well. Mr. Peters and Mr. Verst said yes.

Mr. Peters asked for public comment on the revisions.

Mr. Listerman said the initial use would be good for the family, but he asked if it would be possible to add something to make the homeowner go back to the BOA with every change of use for reevaluation in order to prevent cycle of rentals and make it easier to enforce.

Mr. Verst said it may be burdensome to present every change of use.

Mr. Hunter said the homeowner could formally abandon the use as a separate dwelling if desired, but usually it would benefit them to keep their conditional use permit for flexibility.

Mr. Verst said he thought Mr. Listerman's intent was for the conditional use to only be valid for the original tenant. Mr. Smith said statute would not allow for that kind of restriction.

After no further public comment or discussion from the Commission, Mr. Verst moved to approve the text amendment as submitted by staff and modified at the meeting based on the change being consistent with the Campbell County Comprehensive Plan and supported by testimony provided at the meeting. This was seconded by Mr. Bass.

Mr. Peters asked if there was any further discussion.

Mr. Schuchter asked if they could table the issue to consult the Comprehensive Plan.

Mr. Verst said the Comprehensive Plan does not speak directly to the matter, but the text change fits within the overall framework.

Mr. Smith said the motion is only required to be a reasonable recommendation, and it is not statutorily required to be consistent with the Comprehensive Plan.

Mr. Schuchter wondered if they were rushing into the text change too fast and suggested staff may need to do more wordsmithing.

Ms. Haynes agreed the idea did not feel fully thought out and that they were rushing. She noted that the Commission had missing members that night, and she could not support as is.

Mr. Peters and Mr. Schuchter asked Mr. Hunter if there was any way for someone to apply for an ADU on their property without the text change. Mr. Hunter said there was no provision for an ADU permit as of right now.

Mr. Peters said he thought this was a step in the right direction and better than nothing. He reminded them that the Commission can always revise what was approved at the meeting.

Mr. Verst said he felt more comfortable with the ADU's being a conditional use because they have to go to BOA for review which created another layer of protection.

Mr. Verst asked Mr. Hunter what other jurisdictions have done with this topic.

Mr. Hunter said a lot of them are in larger, urban areas, so it works out differently for them. The topography of Campbell County prevents a lot of subdividing of land for second dwellings, especially in the rural areas. Mr. Hunter said it was a challenge to draft with intent to preserve rural character and low density of area while also giving residents the opportunity to age in place or have family members nearby.

Mr. Verst confirmed only A-1 and RRE zones would be affected right now.

Mr. Hunter said yes — more people want to age in place, work from home, etc. so it could become a trend in more urban parts of the county in the future. However, for now, only the largest lots are being considered.

Mr. Bass echoed Mr. Verst's statement about the conditional use review by the BOA.

Mr. Schuchter asked if by the time a case is being presented to the Board of Adjustment, it has already gone through the Planning & Zoning Department. Mr. Hunter said yes, they would have met and reviewed the project options. Occasionally, people want to go to the Board regardless of staff recommendation, but usually by that time, they have worked out a solution.

Mr. Schuchter conceded that Mr. Verst made a good point about having to go to the BOA for review.

Mr. Verst said if the same issue keeps coming up to the Board of Adjustment, that specific issue can be kicked back to the Planning Commission for revision.

Mr. Peters asked the clerk to call the roll after no further discussion. All present voted in favor except Ms. Haynes who voted against. Motion passes 4-1.

Mr. Peters asked for the Administrator's Report, and Mr. Hunter said there was none. Scheduling for the next meeting was briefly discussed.

Mr. Smith requested the Commission go into executive session per KRS 61.810 (1) (c) to discuss pending litigation with the Planning Commission.

Mr. Verst moved to go into executive session which was seconded by Ms. Haynes. There was no discussion on the motion. The clerk called the roll, and all present voted in favor. Motion passed. Mr. Peters thanked the audience members and asked them to please step outside.

[executive session commences]

Ms. Haynes moved to leave executive session which was seconded by Mr. Verst. All voted in favor with none opposed, and the motion passed.

Mr. Peters exited executive session at 8:09 PM, and noted that no action was taken.

Mr. Verst moved to adjourn, and Ms. Haynes seconded the motion. All voted in favor, and the meeting was adjourned.

Respectfully Submitted,


Cindy Minter
Director

Approved:


Justin Verst
Temporary Presiding Officer