

**POLK COUNTY
DEVELOPMENT REVIEW COMMITTEE
STAFF REPORT**

DRC Date:	September 19, 2024	Level of Review:	Level 4 Review
PC Date:	February 5, 2025	Type:	LDC Text Amendment
BoCC Date:	March 4, 2025	Case Numbers:	LDCT-2024-21
	March 18, 2025	Case Name:	Accessory Structures
Applicant:	Polk County	Case Planner:	Ian Nance

Request:	A County-initiated LDC Text Amendment to amend Chapter 2 to limit the size of Accessory Dwelling Units (ADUs) and provide for a variance process; to increase the setbacks for sheds to district standards; to provide exceptions for accessory structures on lakefront properties; and amend Chapter 9 to allow for a variance process for ADUs.
DRC Recommendation:	Approval
Planning Commission Vote:	Approve 7-0

Among the changes to Chapter 2:

- Section 206.A (Accessory Dwelling Units) – Providing limitations on the sizes of ADUs to not exceed 50% of the primary home’s square footage.
- Section 208.F (Accessory Structure Setbacks) – Eliminating zero-foot setbacks for utility shed.
- Section 209.D (Accessory Structures Location) – Providing allowances for non-habitable structures in the front yards of waterfront lots.

Among the changes to Chapter 9:

- Section 930 (Variances & Special Exceptions) – Add ADUs to the list of uses eligible for a variance.

Summary:

The intent of this amendment is to provide clarity to multiple existing policies found in Chapter 2 of the Land Development Code (LDC) as they pertain to accessory structures and have been identified as problematic by County staff for purposes of issuing building permits, equitable code enforcement, and public safety.

Since the adoption of Accessory Dwelling Unit (ADU) standards in October 2023, there has been confusion as to how large an ADU can be. As the Code is currently written, ADUs must simply be subordinate in size. This amendment will provide a definitive cap on the size allowances of these structures to 50% of the principal structure; however, in instances where a property owner wishes to have an ADU that exceeds that, staff is providing for a variance process to increase the size of and number of ADUs. Previously, staff recommended a cap on detached ADU sizes to 1,000 square feet or 50% of the primary home’s heated floor space whichever is less. This aligned

with standards found in other local jurisdictions and the County’s Impact Fee Ordinance. However, the Planning Commission found this to be too limiting for larger homes and voted that the 1,000 square-foot cap to be stricken.

In 2022, the LDC was changed to allow utility sheds up to 400 sq. ft. to be placed at the property line (zero-foot setback). This has created issues with stormwater run-off onto neighboring properties. This amendment will restore the setbacks to five (5) feet in most residential districts.

The Building Department has identified scenarios where waterfront properties are divided by public roadways and the application of accessory location standards has technically prevented building docks and other structures commonly associated with waterfronts. This amendment will allow this to occur.

In all, this amendment is a handful of small changes to accessory structures that will aid in a clearer understanding of County policy for staff and the community. Staff recommends approval.

Relevant Sections, Policies, and/or Regulations to Consider:

- Comprehensive Plan Policy 2101A-A1
- LDC Section 206 – Accessory Uses
- LDC Section 208 – Density and Dimensional Regulations
- LDC Section 209 – Accessory Structures
- LDC Section 221 – Principal Uses and Buildings
- LDC Section 912 – Code Amendments, Land Use District Modifications and Comprehensive Plan Amendments
- LDC Section 930 – Variances & Special Exceptions
- LDC Section 931 – Criteria for Granting Variances
- Florida Statutes Chapter 163.31771 (Accessory Dwelling Units)
- Florida Statutes 553.80 (Enforcement)

Findings of Fact

- *This is a County-initiated Land Development Code (LDC) Text Amendment to amend Chapter 2 to limit the size of Accessory Dwelling Units (ADUs) and provide for a variance process; to increase the setbacks for sheds to district standards; to provide exceptions for accessory structures on lakefront properties; and amend Chapter 9 to allow for a variance process for ADUs.*
- *Comprehensive Plan POLICY 2.101A-A1 states, “Polk County will implement and update the Land Development Code (LDC) whenever necessary to ensure the public health, safety, and welfare of the citizens of unincorporated Polk County.”*
- *This amendment applies to all residential lots or parcels within the unincorporated areas of the County regardless of the Future Land Use Map district.*
- *This amendment changes the regulations of residential properties in the Green Swamp Area of Critical State Concern.*

- *Florida Statute 553.80 Enforcement, states, “Lawn storage buildings and storage sheds bearing the insignia of approval of the department...that do not exceed 400 square feet may be delivered and installed without the need of contractor’s or specialty license.”*
- *On March 1, 2022, the Board adopted Ordinance No. 22-017 which allowed accessory storage structures less 10 feet in height and under and not exceeding 400 sq. ft. to be placed with a zero-foot setback.*
- *LDC Section 221.A states, “In a residential land use district one single-family dwelling unit and accessory structures shall be permitted on a single lot meeting the minimum requirements of this Code.”*
- *LDC Chapter 10 defines an accessory structure as, “A structure, which is customarily associated with, subordinate in size and incidental in use to the principal structure and located on the same site. For floodplain management purposes, the term includes only accessory structures used for parking and storage.”*
- *LDC Chapter 10 defines an accessory use as, “a use which:*
 - 1. Is clearly incidental to, customarily found in association with, and serves a principal use;*
 - 2. Is subordinate in purpose, area, and extent to the principal use served;*
 - 3. Is located on the same lot as the principal use, or on an adjoining lot in the same ownership as that of the principal use; and*
 - 4. Is not the principal use.”*
- *The Florida Statutes address accessory dwelling units in Chapter 163.31771 which enables local governments to allow accessory dwelling units and provides guidelines for using them to accomplish comprehensive plan affordable housing goals.*
- *On October 3, 2023, the Board adopted Ordinance No. 2023-064 which consolidated County policy for Accessory Dwelling Units.*
- *LDC Chapter 10 defines an Accessory Dwelling Unit as, “A residential living unit on the same parcel as a single-family dwelling or a parcel on which a single-family dwelling is present or may be constructed. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit, a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling. Mobile homes, recreational vehicles, or structures built in conformance with Florida Statutes, Section 320.823, as amended, shall not be deemed an accessory dwelling unit.”*
- *LDC Section 912 allows any property owner, BoCC, or agency to apply to the Department to amend the text of this Code, the text of the Comprehensive Plan, or the Future Land Use Map Series (FLUMS) in compliance with procedures prescribed by the Department.*

- *This application has been reviewed for consistency with applicable Comprehensive Plan and LDC policies.*

The Land Development Division, based on the information provided with the proposed text amendment application, finds that the proposed text change request is **CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan. Staff recommends **Approval of LDCT-2024-21**.

Planning Commission: *at an advertised public hearing on February 5, 2025, the Planning Commission voted 7:0 for APPROVAL of LDCT-2024-21 modifying staff's original recommendation that the maximum ADU size be 1,000 square feet or 50% the size of the primary dwelling whichever is less.*

Analysis:

Section 206.A (Accessory Dwelling Units)

Prior to October 2023, ADUs were split into colloquial terms such as Accessory Apartments, Garage Apartments, Guest Houses, and Mother-in-law Suites which confused staff when reviewing these applications. LDCT-2023-13 simplified them into one consistent term and provided standards for approval.

In the year since these changes were made, Building and Land Development staff have encountered questions from citizens pertaining to the size limits of an ADU. Lacking definitive benchmarks for limiting ADUs in size, an ADU had to simply be subordinate to the primary structure, meaning smaller in height and square-footage; however, this interpretation led to applicants hoping to place two dwelling units of the approximate same size on one lot, with one being slightly smaller (less than one square-foot smaller, in theory) than the primary home.

This interpretation subverts the intention of the ADU policy as well as the County definitions of accessory structures and uses. LDC Chapter 10 defines an accessory structure as, "A structure, which is customarily associated with, **subordinate in size and incidental in use to the principal structure** and located on the same site." Accessory uses are also to be subordinate in purpose, area, and extent of the principal structures.

In jurisdictions that allow them, ADU standards strive to thread a needle between providing affordable housing alternatives in a needy market while preventing the abuse of zoning or Future Land Use designations and prescribed residential densities. Allowing additional dwelling units which exceed certain thresholds can also create pressure on staff to approve lot splits in conflict with land use policies, despite policy stating otherwise.

As such, staff recommended a cap on detached ADU sizes to 1,000 square feet or 50% of the primary home's heated floor space whichever is less. This aligned with standards found in other local jurisdictions and the County's Impact Fee Ordinance. However, the Planning Commission found this to be too limiting for larger homes and voted that the 1,000 square foot cap to be stricken.

Recognizing, though, the variety of residential lots in Polk County, staff is proposing a variance process through the Land Use Hearing Officer to allow ADUs to exceed 50% of the primary home

(up to 80%) and allow more than one detached ADU, if conditions warrant. This addition broadens the ADU capabilities for larger homes and larger parcels.

Currently, no more than one ADU may be permitted on any single-family lot or parcel. In addition to addressing the criteria in LDC Section 931, applicants for a variance must demonstrate that if more than one ADU is requested, the maximum density in the governing FLU designation is not exceeded. For example, the maximum density allowed by the Comprehensive Plan in Agricultural/Residential Rural (A/RR) is one unit per acre. To have a primary structure and two detached ADUs will require three acres.

Also, staff has concerns about overwhelming a residential lot with impervious surface, which can affect drainage and flooding both on and off the property. After consulting with the County Engineer, an average residential lot can be assumed to have a 0.60 Impervious Surface Ratio (ISR), or the square-footage of impervious surfaces relative to the acreage of the property. If the total number of buildings onsite and proposed exceeds 60%, the applicant is not eligible for a variance. Again, though, this is only when requesting more than one ADU and those that exceed the 50% threshold.

To summarize – one detached ADU will be permitted per residential lot in Polk County up to 50% of the primary home, regardless of density or ISR. ADUs must meet Florida Building Code, be in a side or rear yard, and cannot be used for short-term rental. To exceed the 50% limit or have multiple ADUs onsite will require further evaluation based on density, ISR, variance criteria, and public input through a LUHO hearing. This is a less restrictive policy than found in any of the fourteen jurisdictions surveyed in Table 1 to follow.

Section 208.F (Accessory Structure Setbacks)

On March 1, 2022, the BoCC adopted Ordinance No. 22-017 which allowed accessory structures used for storage to be set back to the rear and side property lines (zero-foot setbacks) without a variance. To allow this, sheds and similar structures cannot exceed 10 feet; must be limited to 400 square feet; and must not be placed within six feet of any neighboring structures.

The primary reasons for allowing this was to provide flexibility for small storage structures that do not have the impact other detached accessory structures might, such as those for gathering space or garages and workshops. Still, placed too close to the property has created issues with rainwater runoff and maintenance. Staff is proposing returning these structures to the district standards for accessory structures or five feet in most situations. On lots smaller than required by the FLU designations which would ordinarily have setbacks that exceed five feet (A/RR & RS), infill setbacks pursuant to LDC Section 208.E can be utilized.

Section 209.D (Accessory Structures Location)

In limited situations throughout the County, waterfront properties under common ownership are divided by a roadway. When a home is built on one side of the split, it generally faces the road and waterbody. The other side is vacant near the water. Technically, the placement of any structures on the vacant piece would be prohibited since it is in the front yard. Or, through a different interpretation, that property could be considered vacant without a primary structure and thus be ineligible for an accessory structure.

This change would allow accessory structures in such situations to be located nearest the water. These kinds of structures would be limited to docks, boat houses and cover, boardwalks, pergolas, gazebos, and other similar structures needed to enjoy the water. Habitable and storage structures would be prohibited.

Benefit-cost Analysis of the Amendment

Who does it help?

In a narrow view of this amendment, it is intended to facilitate a clearer understanding of LDC policies for both staff and the citizens of Polk County. When policy lacks clarity, it creates inequitable applications of those standards. The public expectation of development policy assumes the equal application of its practice.

Still, the LDC must provide flexibility as all properties are not alike. In the instance of waterfront properties, this change will likely affect a minute number of property owners in the County. Evaluation of the Code is also critical. When sheds were permitted at property lines, the intent was to provide flexibility for seemingly innocuous structures; however, in practice the reduction in setbacks became burdensome to neighbors. This restores assurance as to where accessory structures will be located relative to neighboring properties.

Who does it hurt?

Regarding ADUs, County policy allowing them has been set; this amendment tightens these regulations. Some homeowners fear this practice can intensify activity within their neighborhood, detracting from their overall quality of life. On the other hand, the property owner subject to an ADU approval might want more living space which this amendment will restrict. As described earlier, this amendment is a balancing act between allowing property owners to provide more living space while not subverting the public's expectation of land use and density regulations.

What is the cost?

For ADUs, property owners must consider the impact fees that will be imposed. Per Polk County Ord. 24-062, the rates for a Single-Family Detached Residence that exceeds 1,000 sq. ft. is \$15,394 - \$15,792, effective January 1, 2025.

Comparisons to other Jurisdictions:

Staff commonly surveys counties on the I-4 corridor for regulatory comparisons because they are most like Polk. Some of the abutting counties are reviewed along with the two largest cities within the County. Alachua and Duval are also reviewed because of similar demographic and urban-rural mixture. The cities of Winter Haven and Lakeland were also surveyed for comparison. This method of selection creates a survey of 14 total local jurisdictions.

Eleven (11) of the jurisdictions surveyed specified maximum size limits to ADUs both relative to the size of the primary and a finite dwelling size limit. Details of this survey are found in Table 1 to follow.

Table 1

Jurisdiction <i>(Code citation)</i>	Are ADUs permitted?	What are the size limitations?
Alachua County <i>Sec. 404.24</i>	Permitted by-right as accessory to a single-family home.	50% of principal or 1,700 SF whichever is greater.
Brevard County <i>Sec. 62-1332 thru</i>	Not permitted in 4 du/ac and above but one single-family garage apartment is accessory to a single-family residence in multi-family zoning classifications.	50% of principal; no kitchen unless parcel is > 1 acre
Duval County <i>Sec.656.403</i>	Permitted by right with single-family residence.	25% of the gross floor area of principal structure on the lot or 750 sq. ft., whichever is less.
Hardee County <i>Sec. 2.03.00</i>	Only permitted in single family and agricultural districts.	No more than 40% of primary up to 800 sq. ft.
Highlands County <i>Division 2 & 3</i>	Only on conforming lots in large lot districts (AU, EU, and R-1A).	Subordinate to primary
Hillsborough County <i>Sec. 6.11.02.</i>	Permitted on lots 7,000 SF and greater	900 sq. ft. but may request a variance if lot is ≥14,520 sq. ft. Not to exceed an ADU of 1,000 SF or 25% of principal, whichever is less.
Lake County <i>Sec. 10.01.00</i>	Permitted one for owner-occupied lots (owner may live in the ADU).	1,200 sq. ft. or 70% of principal whichever is greater.
Manatee County <i>Sec.511.18</i>	Permitted in A, A-1, RSF, PD, and within the Village Zoning Districts. Prohibited in other districts.	750 sq. ft. or 80% of principal whichever is less in RSF, PD, VIL 1,000 sq. ft. in A, A1
Orange County <i>Sec. 38.1426</i>	Permitted on lots that meet the zoning district minimum lot size only.	50% the primary or 1,000 sq. ft. whichever is less. 1,500 sq. ft. if lot is 2 acres or more.
Osceola County <i>Sec. 3.6.1.A</i>	Permitted only in Residential districts on lots meeting the minimum lot size of the district. Not permitted on non-conforming lots.	60% of primary
Seminole County <i>Sec. 30.1345</i>	Permitted by right under size and architectural standards on lots above 5,000 sq. ft.	Residential lots have a maximum impervious standard based on the district and the ADU size is limited by that.
Volusia County <i>Sec. 72-277</i>	Permitted in residential districts but only on Owner Occupied lots.	50% of the Primary
City of Lakeland <i>Sec. 4.3, 5.25</i>	Permitted on lots that meet the zoning district minimum lot size only if it is more than 5,000 sq. ft.	800 sq. ft. or 40% of principal dwelling, whichever is less.
City of Winter Haven <i>Sec.21-102</i>	Permitted in Agricultural and Single-family districts.	Subordinate.

Finding a common thread through ADU size limits between jurisdictions is challenging, as each maintains novel approaches to how they are permitted and up to what degree. Many, such as Hillsborough and Seminole counties require minimum lot sizes to have an ADU, which the County does not require. Seminole County further allows development up to the maximum Impervious Surface Ratio (ISR) on residential lots.

Most, however, agree on setting a maximum size limit. As shown in the table above, limiting ADUs in Polk County to 50% of the primary structure is a compromise between the policies in surrounding jurisdictions.

Limits of the Proposed Ordinance

This ordinance will apply to all residential lots within Polk County.

Consistency with the Comprehensive Plan & Land Development Code

The request is consistent with the Comprehensive Plan and the Land Development Code. Policies within the Comprehensive Plan and LDC allow for changes and amendments to these plans as directed by the BoCC.

Comments from Other Agencies: Land Development Engineering, Code Enforcement, and the Building Division contributed to drafting this amendment.

Draft Ordinance: Under separate attachment