



WASHOE COUNTY

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Clerk _____

STAFF REPORT

BOARD MEETING DATE: August 9, 2016

DATE: July 15, 2016

TO: Board of County Commissioners

FROM: Kelly Mullin, Planner, Planning and Development Division, Community Services Department, 328-3608, kmullin@washoecounty.us

THROUGH: William H. Whitney, Division Director, Planning and Development Community Services Department, 328-3617, bwhitney@washoecounty.us

SUBJECT: Hearing and possible action to conduct a second reading and adopt an ordinance amending Washoe County Code Chapter 110 (Development Code) to clarify when an accessory structure or use may be constructed on a parcel without an existing main structure or an existing principal use. The amendment focuses on circumstances where the subject parcel is adjacent to a parcel with an existing main structure or principal use and when both parcels are under the same ownership. The amendment includes updates to the following sections of the Development Code:

- Article 306, Accessory Uses and Structures, Section 110.306.15, *Main Structures Required* – to identify the circumstances under which an accessory structure or use may be established on a parcel without an existing main structure or an existing principal use.
- Article 410, Parking and Loading, Section 110.410.20, *Location of Required Parking Spaces* – to clarify that a dwelling’s required garage may only be located on an adjoining lot if it also meets the requirements of Section 110.306.15.
- Article 902, Definitions, Section 110.902.15, *General Definitions* – to update definitions for “Detached accessory structure,” “Lot” and “Parcel of land” to better reflect the proposed code amendments identified above.

(Bill No. 1768)

(All Commission Districts.)

SUMMARY

Clarify and codify the contents of Interpretation 96-4 (Location of detached accessory structures) by allowing for an accessory structure or use to be established on vacant land where there is an existing main use or structure on adjacent land under the same ownership; putting in place mechanisms to prevent the potential for associated code

AGENDA ITEM # _____

nonconformance situations by requiring the recordation of a deed restriction requiring that the parcels remain under common ownership unless they are brought into conformance with general rules regarding accessory structures; clarifying when a garage on an adjacent property can be used to satisfy a dwelling's parking requirements; updating associated definitions within the Development Code to reflect these clarifications; and, making other amendments necessarily connected therewith and pertaining thereto.

Washoe County Strategic Objective supported by this item: Stewardship of our community.

PREVIOUS ACTION

The Washoe County Planning Commission initiated Development Code Amendment Case Number DCA16-002, with changes to Article 306, *Accessory Uses and Structures*, Article 410, *Parking and Loading* and Article 902, *Definitions* on March 1, 2016 by Resolution Number 16-02.

The Washoe County Planning Commission recommended approval of DCA16-002 on June 7, 2016 by Resolution Number 16-07 (see Attachment A).

The Washoe County Board of Commissioners introduced and held a first reading of DCA16-002 on July 26, 2016.

BACKGROUND

In general, the Development Code does not allow accessory structures or uses on parcels without an existing main structure or existing principal use except under a few specific circumstances. As identified in Interpretation 96-4, *Location of detached accessory structures and garages*, one of those circumstances is when an accessory structure is placed on a vacant parcel adjacent to another parcel with an established principal use and both parcels are under the same ownership (see Attachment C). However, allowing the structure to be constructed under these circumstances can later lead to nonconformance and a code violation if either of the parcels is sold – thereby violating the requirement for same ownership established in the interpretation. Such a transaction would create a parcel with an accessory structure but no associated main structure or principal use on the parcel, which violates WCC Section 110.306.15, *Main Structures Required*.

This Development Code amendment seeks to codify and clarify the contents of Interpretation 96-4 as well as to put in place mechanisms to prevent the potential for the code nonconformance/violation situation identified above. Should the Board adopt the proposed code amendments, Interpretation 96-4 will be removed from the Development Code.

The proposed amendment modifies Development Code regulations within Article 306, *Accessory Uses and Structures*, Article 410, *Parking and Loading*, and Article 902, *Definitions* and includes the following changes:

1. Article 306, Accessory Uses and Structures

Clarify that, in order to construct an accessory structure on a parcel without an existing main structure or existing principal use, the following requirements must be met:

- the proposed accessory structure or use must be located on a lot adjacent to another lot that contains an existing main structure or principal use;
- both lots must be under the same ownership;
- both lots must have the same regulatory zone; and,
- a deed restriction must have been recorded stipulating that neither lot can be sold until any nonconformance or violation resulting from such a sale has been resolved.

Note – to resolve potential nonconformance/violation concerns, property owners would have a wide variety of possible remedies, including, but not limited to: reversion to acreage combining the two lots into one; boundary line adjustment resulting in the main structure (or principal use) and accessory structure being located on the same lot; removing the accessory structure; constructing a main structure or establishing a principal use on the same lot as the accessory structure; converting the accessory structure into a main structure; or bonding for the removal of the accessory structure if the new owner does not establish a main structure or principal use on the property within a specified period of time.

2. Article 410, Parking and Loading

Clarify that a dwelling's required garage may only be located on an adjoining lot if it also meets the requirements of Section 110.306.15, *Main Structures Required*.

3. Article 902, Definitions

Update the definitions of "Detached Accessory Structure," "Lot," and "Parcel of Land" to better reflect the proposed code amendments identified above.

The language of the proposed amendments is provided in Attachment B.

Washoe County Code Section 110.818.35 requires the Board affirm, modify or reject the findings of fact made by the Planning Commission (PC) when adopting the ordinance for any Development Code amendment. The Board may also add any other findings of fact that they deem to be relevant as part of their adoption. The four findings of fact made by the PC during their recommendation for approval of DCA16-002 are included within Resolution 16-07 (Attachment A). Those findings of fact are included below:

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan.
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code.

3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones.
4. No Adverse Effects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

FISCAL IMPACT

No fiscal impacts are anticipated.

RECOMMENDATION

It is recommended that the Board of County Commissioners hold a second reading and adopt an ordinance amending Washoe County Code Chapter 110 (Development Code) within Article 306, *Accessory Uses and Structures*, Article 410, *Parking and Loading* and Article 902, *Definitions* to identify the circumstances under which an accessory structure or use may be established on a parcel without an existing main structure or an existing principal use; to clarify that a dwelling's required garage may only be located on an adjoining lot if it also meets the requirements of WCC Section 110.306.15; and to update definitions for "Detached accessory structure," "Lot" and "Parcel of land" to better reflect those clarifications.

It is further recommended that the Board affirm the four findings of fact that the Washoe County Planning Commission made on June 7, 2016 as recorded within Resolution Number 16-07 (Attachment A).

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

"Move to adopt Ordinance Number (insert ordinance number as provided by the County Clerk) and affirm the four findings of fact that the Washoe County Planning Commission made on June 7, 2016, as recorded within Resolution 16-07 and attached to the staff report for this item."

- Attachments:
- A. Planning Commission Resolution 16-07
 - B. Working copy, DCA16-002 (WCC Chapter 110 amendments)
 - C. Development Code Interpretation 96-4, *Location of detached accessory structures and garages*



RESOLUTION OF THE WASHOE COUNTY PLANNING COMMISSION

RECOMMENDING APPROVAL OF AMENDMENTS (DCA16-002) TO THE WASHOE COUNTY CODE AT CHAPTER 110 (DEVELOPMENT CODE) WITHIN ARTICLE 306, ACCESSORY USES AND STRUCTURES, AT SECTION 110.306.15, MAIN STRUCTURES REQUIRED TO ALLOW AN ACCESSORY STRUCTURE OR USE ON A PARCEL THAT DOES NOT HAVE A MAIN STRUCTURE OR USE, WHEN ADJACENT TO A PARCEL WITH AN MAIN STRUCTURE OR USE AND WHEN BOTH PARCELS ARE UNDER THE SAME OWNERSHIP, SUBJECT TO THE RECORDATION OF A DEED RESTRICTION; WITHIN ARTICLE 410, PARKING AND LOADING AT SECTION 110.410.20(C), LOCATION OF REQUIRED PARKING SPACES TO CLARIFY THAT A GARAGE ON AN ADJACENT LOT MAY ONLY BE USED TO SATISFY A DWELLING'S PARKING REQUIREMENTS IF IT IS ALSO IN COMPLIANCE WITH SECTION 110.306.15; WITHIN ARTICLE 902, DEFINITIONS AT SECTION 110.902.15, GENERAL DEFINITIONS TO UPDATE THE DEFINITIONS OF "DETACHED ACCESSORY STRUCTURE," "LOT" AND "PARCEL OF LAND" TO BETTER REFLECT THE CLARIFICATIONS IDENTIFIED ABOVE.

Resolution Number 16-07

WHEREAS

- A. Development Code Amendment Case Number DCA16-002, came before the Washoe County Planning Commission for a duly noticed public hearing on June 7, 2016; and
- B. The Washoe County Planning Commission heard public comment and input from both staff and the public regarding the proposed Development Code amendment; and
- C. A public workshop was held May 12, 2016 in order to seek feedback from the public regarding the proposed Development Code amendment; and
- D. The Washoe County Planning Commission gave reasoned consideration to the information it received regarding the proposed Development Code amendment; and
- E. Pursuant to Washoe County Code Section 110.818.15(e), the Washoe County Planning Commission made the following findings necessary to support its recommendation for adoption of the proposed Development Code amendment, Case Number DCA16-002:
 - 1. Consistency with Master Plan. The proposed amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
 - 2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will

promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;

3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,
4. No Adverse Effects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.


NOW, THEREFORE, BE IT RESOLVED that pursuant to Washoe County Code Section 110.818.15(d) and (g):

1. The Washoe County Planning Commission does hereby recommend APPROVAL of DCA16-002, an amendment to the Washoe County Code at Chapter 110 (Development Code) within Article 306, *Accessory Uses and Structures*, at Section 110.306.15, *Main Structures Required* to allow an accessory structure or use on a parcel that does not have a main structure or use, when adjacent to a parcel with an main structure or use and when both parcels are under the same ownership, subject to the recordation of a deed restriction; within Article 410, *Parking and Loading* at Section 110.410.20(c), *Location of Required Parking Spaces* to clarify that a garage on an adjacent lot may only be used to satisfy a dwelling's parking requirements if it is also in compliance with Section 110.306.15; within Article 902, *Definitions* at Section 110.902.15, *General Definitions* to update the definitions of "Detached Accessory Structure," "Lot" and "Parcel of Land" to better reflect the clarifications identified above; and,
2. A report describing this amendment, discussion at this public hearing, this recommendation, and the vote on the recommendation will be forwarded to the Washoe County Board of Commissioners within 60 days of this resolution's adoption date.

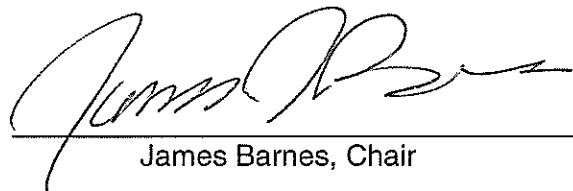
ADOPTED on June 7, 2016.

WASHOE COUNTY PLANNING COMMISSION

ATTEST:



Carl R. Webb, Jr., AICP, Secretary



James Barnes, Chair

DRAFT: May 23, 2016

DCA16-002

**WORKING COPY
INFORMATION ONLY**

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT:~~ DELETED LANGUAGE

BOLD TEXT: NEW LANGUAGE

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: *Clarify and codify the contents of Interpretation 96-4 (Location of detached accessory structures) by allowing for an accessory structure or use to be established on vacant land under specific circumstances; put in place mechanisms to prevent the potential for associated code nonconformance situations by requiring the recordation of a deed restriction; clarify when a garage on an adjacent property can be used to satisfy a dwelling's parking requirements; and update associated definitions within the Development Code to reflect these clarifications.*

BILL NO. _____

ORDINANCE NO. _____

TITLE:

An ordinance amending the Washoe County Code at Chapter 110 (Development Code) within Article 306, *Accessory Uses and Structures*, at Section 110.306.15, *Main Structures Required* to allow an accessory structure or use on a parcel that does not have a main structure or use when adjacent to a parcel with a main structure or use and when both parcels are under the same ownership, subject to the recordation of a deed restriction; within Article 410, *Parking and Loading* at Section 110.410.20(c), *Location of Required Parking Spaces* to clarify that a garage on an adjacent lot may only be used to satisfy a dwelling's parking requirements if it is also in compliance with Section 110.306.15; within Article 902, *Definitions* at Section 110.902.15, *General Definitions* to update the definitions of "Detached Accessory Structure," "Lot" and "Parcel of Land" to better reflect the clarifications identified above; and other matters necessarily connected therewith and pertaining thereto.

WHEREAS :

- A. The Washoe County Planning Commission initiated the proposed amendments to Washoe County Code Chapter 110, Development Code, by Resolution Number 16-02 on March 1, 2016; the amendments and this ordinance were drafted in conjunction with the District Attorney; the Planning Commission held a duly noticed public hearing for DCA16-002 on June 7, 2016, and adopted Resolution Number 16-07 recommending adoption of this ordinance; and,
- B. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Board of County Commissioners desires to adopt this Ordinance; and
- C. This Board of County Commissioners has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, and is therefore not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Section 110.306.15 is hereby amended to read as follows:

Section 110.306.15 Main Structures Required. ~~Except as otherwise provided in Section 110.330.55, Agricultural Buildings,~~ it is unlawful to construct, erect or locate private garages or other accessory structures and/or uses in any Rural, Suburban or Urban Residential Regulatory Zone, including the General Rural Agricultural (GRA) Regulatory Zone, **on any lot** without an existing main structure and/or existing principal use as provided for under Article 302, Allowed Uses, **except under the following circumstances:-**

- (a) The structure complies with the provisions of Section 110.330.55, Agricultural Buildings;**
or
 - (b) The proposed accessory structure or use is located on a lot adjacent to another lot that contains an existing main structure or principal use, is under the same ownership, has the same regulatory zone**
- and

A deed restriction has been filed with the Washoe County Recorder's Office stipulating that neither lot can be sold separately until the accessory structure or use otherwise allowed under this section is removed, terminated, or any nonconformance resulting from such a sale has been resolved. The deed restriction shall be executed on a form provided by the County through the Planning and Development Division, and the deed restriction shall make the County an intended third party beneficiary with the right, but not the obligation, to enforce its provisions. No accessory structure or use otherwise allowed under this section is allowed until the required deed restriction is executed and recorded

against the property that will contain the accessory structure or use and against any other adjacent parcel under the same ownership that is used to satisfy the provisions of this paragraph, as well as any adjacent parcel under the same ownership that will be served by the accessory structure or use. For the purposes of this section, a parcel is under the same ownership if at least one of the owners of each parcel involved is the same.

SECTION 2. Section 110.410.20 is hereby amended to read as follows:

Section 110.410.20 Location of Required Parking Spaces. Required parking spaces shall be located as set forth in this section.

- (a) On Same or Adjacent Lot. For dwellings, motels, automobile-oriented services, and elementary, junior high, and high schools, required parking spaces shall be provided on the same lot as the main building(s) or on an adjoining lot or lots zoned for the main use of the property.
- (b) Other Uses. For uses not listed in Subsection (a) above, required parking spaces shall be located within three hundred (300) feet of the lot on which the main building is located.
- (c) Adjacent and Off-site Lots. If an adjacent or off-site lot is used to satisfy the parking requirements, the lot(s) shall be secured in such a manner that will provide parking for the life of the project. This Requirement does not preclude the use of reciprocal parking agreements, so long as the agreement is in a form acceptable to Washoe County. **A garage on an adjacent lot may only be used to satisfy a dwelling's parking requirements if it also complies with the provisions of Section 110.306.15.**

SECTION 3. The definitions of "Detached Accessory Structure," "Lot" and "Parcel of Land" as found in Section 110.902.15 are hereby amended to read as follows:

Detached Accessory Structure. **Except as provided for under Section 110.306.15,** "Detached accessory structure" means a building or structure on the same lot as the main residential structure and devoted to a use incidental to that main residential structure. A detached accessory structure is not designed, configured, or used for human habitation. The detached accessory structure may be connected to water and wastewater systems subject to the recordation of a deed restriction prohibiting the use of the structure as a dwelling unit. Installation of both a kitchen and a toilet in a detached accessory structure shall render the structure as a dwelling unit and subject to the accessory dwelling unit provisions contained in Article 306, Accessory Uses and Structures. Typical uses include storage buildings, sheds, barns, and detached garages.

Lot. "Lot" means a distinct part or parcel of land divided with the intent to transfer ownership or for building purposes, ~~and~~ which abuts upon a permanent means of access **and is assigned a single parcel number by the Washoe County Assessor's Office.**

Parcel of Land. "Parcel of land" means any unit or contiguous units of land ~~in the possession of or recorded as the property of one person~~ **assigned a single parcel number by the Washoe County Assessor's Office.**

SECTION 4. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

Passage and Effective Date

This ordinance was proposed on _____ by Commissioner _____.

This ordinance was passed on _____.

Those voting "aye" were _____.

Those voting "nay" were _____.

Those absent were _____.

Those abstaining were _____.

This ordinance shall be published and shall be in force and effect from and after the _____ day of the month of _____ of the year _____ as set forth in NRS 244.100.

Kitty K. Jung, Chair
Washoe County Commission

ATTEST:

Nancy Parent, County Clerk

Interpretation 96-4

LOCATION OF DETACHED ACCESSORY STRUCTURES AND GARAGES

Pursuant to Article 910, Section 110.910.05 of Chapter 110 of the Washoe County Code, the Director of the Department of Development Review has the authority to enforce the provisions of the Development Code. In order to appropriately enforce the Development Code, the Director finds it necessary to provide the following interpretation concerning the location of detached accessory structures and detached garages.

A detached accessory structure must be located either on the same lot as the main structure, or on a lot that is defined as the same parcel of land that the main structure is or is intended to be located. An exception to the detached accessory structure location interpretation is that detached garages associated with a use may be located on an adjacent parcel of land that is zoned for the same uses as the parcel of land on which the main structure is located.

BACKGROUND

The location of detached accessory structures (which excludes a detached accessory dwelling) and detached garages relative to a main structure is not clearly identified in the Development Code. For example, a detached garage is identified as an example of a detached accessory structure. Yet, when a comparison of the location of detached accessory structures and detached garages relative to the lot that a main building (which is required for both detached uses) occurs, there is a distinction drawn in the Development Code. This interpretation is intended to establish the rule for the location of both types of detached uses.

The definition of a detached accessory structure (110.304.15(3)) states that "A detached accessory structure refers to a building or structure on the same lot as the main residential structure..." Therefore, it is clear from the definition that a detached accessory structure must be located within the same parcel line boundaries as the main structure. The question then is raised whether a detached accessory structure must be within the same boundary lines as a main structure. The answer is no. The reason is found in the definition of Lot (110.902.15). "Lot means a distinct part or *parcel of land* divided with the intent to transfer ownership or for building purposes and which abuts upon a permanent means of access." (*emphasis added*) Parcel of land is defined as "...any unit or *contiguous units of land* in the possession of or recorded as the property of one person." (110.902.15) (*emphasis added*) It is, therefore, possible for a detached accessory structure to be located on land with distinct boundaries separate from the land that the main structure is located, but which is contiguous and is considered as part of a parcel of land on which the main structure is located. The most effective way of determining if a detached accessory building meets the location guidelines is to determine if the main structure and the detached accessory building are located on land with the same parcel number as assigned by the County Assessor's Office.

Although detached garages are defined as an example of a detached accessory structure, separate rules for their location are enumerated in 110.410.20(a). This section states "For dwellings, motels, automobile-oriented services, and elementary, junior high, and high schools, required parking spaces shall be provided on the same lot as the main building(s) or on an adjoining lot or lots zoned for the main use of the property." Unlike the detached accessory

structure's location rules, a detached garage can be located on a separate parcel of land as long as it is adjacent to the main structure's parcel of land and is zoned for the same use as the parcel of land on which the main structure is located.

Limitations of Interpretation

This interpretation shall supersede all previous interpretations of Chapter 110 of the Washoe County Code concerning the above referenced subject and be in effect unless and until a subsequent interpretation concerning the above referenced subject is made by the Director of the Department of Development Review, the interpretation is reversed through a successful appeal pursuant to Article 808, or the Washoe County Code is amended to include the subject matter referenced in this interpretation.

Michael A. Harper, AICP, Director
Department of Development Review

Dated: May 7, 1996