


DATE: August 8, 2023
TO: Honorable Mayor & City Council
FROM: Planning & Zoning Commission
VIA: Eric Hill, AICP, Assistant Director of Planning acting as Secretary of the Planning & Zoning Commission
Christina D. Day, AICP, Director of Planning 
SUBJECT: Results of Planning & Zoning Commission Meeting of August 7, 2023

AGENDA ITEM NO. 4 - ZONING CASE 2023-011
PETITIONER: CITY OF PLANO

Request to amend Article 15 (Use-specific Regulations) and related sections of the Zoning Ordinance to amend backyard cottage regulations to ensure compliance with federal law after a recent legal decision. Project #ZC2023-011.

APPROVED: 7-0-1

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|-------------------------------|-------------------|------------------|-------------------|
| Speaker Card(s) Received | Support: <u>0</u> | Oppose: <u>0</u> | Neutral: <u>0</u> |
| Petition Signatures Received: | Support: <u>0</u> | Oppose: <u>0</u> | Neutral: <u>0</u> |
| Other Responses: | Support: <u>0</u> | Oppose: <u>0</u> | Neutral: <u>0</u> |

RESULTS:

The Commission recommended approval as follows (additions are indicated in underlined text; deletions are indicated in ~~strikethrough~~ text):

Amend Subsection 15.1800.4 (Occupancy and Permitting Requirements) of Section 15.1800 (Backyard Cottages) of Article 15 (Use-specific Regulations), such subsection to read in its entirety as follows:

.4 ~~Occupancy and Permitting Requirements~~

- ~~A.~~ The property owner must occupy either the main dwelling unit or the backyard cottage as a permanent residence, and must at no time receive rent for the owner-occupied unit. Prior to issuance of a building permit, the property owner must provide a signed and notarized affidavit affirming occupancy of either the main dwelling unit or the backyard cottage.
- A ~~B.~~ The building-permit applicant must provide to the city a covenant suitable for recording with the county, providing notice to prospective owners of the subject lot that the existence of the backyard cottage is predicated upon the occupancy of either the accessory dwelling or the main dwelling unit by an owner of the property for as long as the City of Plano requires

~~such occupancy to comply with the City's Code of Ordinances. The covenant must restrict the backyard cottage cannot be from being sold separately from the main dwelling unit. The covenant must require owners of the property to notify a prospective buyer of the limitations of this section. The covenant must also require all owners to remove the backyard cottage and restore the site to a single-family dwelling in the event that ~~any condition~~ of the covenant is violated. After city review and approval of the covenant, the applicant must record it. Proof of recording is required prior to issuance of a building permit.~~

To view the hearing, please click on the provided link:

<https://planotx.new.swagit.com/videos/268562?ts=10095>

MK/kob

cc: Eric Hill, Assistant Director of Planning
Christina Sebastian, Land Records Planning Manager
Melissa Kleineck, Lead Planner
Justin Cozart, GIS Technician
Jeanna Scott, Building Inspections Manager
Dorothy Alatorre, Sr. Administrative Assistant - Neighborhood Services

AGENDA ITEM NO. 4

PUBLIC HEARING: Zoning Case 2023-011

PETITIONER: City of Plano

DESCRIPTION: Request to amend Article 15 (Use-specific Regulations) and related sections of the Zoning Ordinance to amend backyard cottage regulations to ensure compliance with federal law after a recent legal decision. Project #ZC2023-011.

SUMMARY:

The purpose of this request is to amend the Zoning Ordinance to remove regulations for backyard cottages that do not comply with the 2022 federal legal decision *Hignell-Stark v. City of New Orleans*. This ruling from the Fifth Circuit of the United States Court of Appeals found that requiring the owners of residential rental properties to reside on the same property as their rental is in violation of the dormant Commerce Clause because it discriminates against interstate commerce. The ordinance must be amended to comply with federal law. Staff recommends approval as noted in the recommendation section below.

STAFF PRELIMINARY REPORT - REMARKS

On June 5, 2023, the Planning & Zoning Commission [called a public hearing](#) to amend the Zoning Ordinance regarding the existing requirement that a property with a backyard cottage be owner-occupied. This change was recommended based on legal assessment of *Hignell-Stark v. City of New Orleans*.

Current Ordinance Requirements

Backyard cottages are currently subject to the use-specific regulations detailed in Section 15.1800 (Backyard Cottages) of Article 15 (Use-specific Regulations) in the Zoning Ordinance. These regulations include the requirement that “[t]he property owner must occupy either the main dwelling unit or the backyard cottage as a permanent residence,” and must submit a signed affidavit affirming that this condition is met to receive a building permit for a backyard cottage. Furthermore, the ordinance currently requires a covenant to be recorded with the county providing notice to any future property owners that owner-occupancy is a requirement.

Hignell-Stark v. City of New Orleans

The Fifth Circuit court decision found that owner-occupancy requirements for rental activities violate the dormant Commerce Clause, which disallows states and municipalities discriminating against interstate commerce or imposing undue burdens on interstate commerce. The current regulations prohibit owners of residential property with backyard cottages from relocating their primary residence out of state without forcing a sale of their property, while local owners would be permitted to build and rent backyard cottages. Legal precedent states that if any available alternatives exist that could enforce the same policy goals without discriminating against interstate commerce, the law is invalid.

Section 15.1800 contains additional restrictions on backyard cottage development that advance the policy goals that the owner-occupancy restriction is intended to advance. These restrictions do not violate the dormant Commerce Clause and include a covenant requirement restricting the separate sale of the backyard cottage from the main dwelling unit; architectural and design standards that preserve neighborhood compatibility; and area and bulk standards to support a higher quality of housing.

Backyard Cottage Development to Date

Regulations permitting backyard cottages were added to the Zoning Ordinance in February 2019. Since permitting began, the Building Inspections department has received six permit applications for backyard cottages. Of the six, two were issued, and the corresponding cottages were built; two did not move forward (one stated financial reasons, one for code conflicts); and two are currently under review.

STAFF PRELIMINARY REPORT - CONFORMANCE TO THE COMPREHENSIVE PLAN

The proposed request has been reviewed for conformance with the Comprehensive Plan.

Guiding Principles – The set of [Guiding Principles to the Comprehensive Plan](#) establishes overarching themes that apply to all policies and actions and express values for Plano Today, Plano 2050, and Plano Together. Since the principles do not stand alone but are used in concert with one another and carry across the Plan as a whole, each principle must be judged through a lens that incorporates all other principles to be fully and accurately understood. As such, the Commission is encouraged to review the full list of Guiding Principles and judge zoning requests through the lens of all principles.

Land Use Action 1 (LU1) – *Review and evaluate the Zoning Ordinance and make appropriate amendments based on guidance from the Comprehensive Plan.*

The proposed amendment will ensure compliance with federal law in regards to this legal decision. This request is in conformance with this action statement.

Neighborhood Conservation Action 1 (NC1) – *Establish programs and initiatives that enable homeowners to maintain and enhance their properties and neighborhoods.*

Continuing the backyard cottage regulations gives homeowners opportunities to enhance their property through the creation of additional living space. This request is in conformance with this action statement.

Neighborhood Conservation Action 5 (NC5) – *Develop a plan to address housing gaps identified in the Consolidated Plan and review the recommended policy options outlined in the Housing Trends Analysis and Strategic Plan to compare and coordinate with the Comprehensive Plan.*

One of the recommended policy options from the [Housing Trends Analysis and Strategic Plan](#) is zoning modifications, including allowing “the production of Accessory Dwelling Units,” or backyard cottages. This request is in conformance with this action statement.

Neighborhood Conservation Action 6 (NC6) – *Review residential zoning to ensure housing standards allow residents to age in place, care for dependents, and meet special needs, while maintaining neighborhood integrity.*

Backyard cottages allow for an additional, compatible housing option within existing neighborhoods. This request is in conformance with this action statement.

Special Housing Needs Action 5 (SHN5) – *Review zoning regulations to provide reasonable opportunities for safe and healthy housing in support of special needs populations.*

Continuing the backyard cottages can provide an additional housing option to accommodate individuals with special needs. This request is in conformance with this action statement.

STAFF PRELIMINARY REPORT - RECOMMENDATION

SUMMARY:

The purpose of this request is to amend the Zoning Ordinance to remove regulations for backyard cottages that do not comply with the 2022 federal legal decision *Hignell-Stark v. City of New Orleans*. This ruling from the Fifth Circuit of the United States Court of Appeals found that requiring the owners of residential rental properties to reside on the same property as their rental is in violation of the dormant Commerce Clause because it discriminates against interstate commerce. The ordinance must be amended to comply with federal law. Staff recommends approval as noted in the recommendation section below.

RECOMMENDATION:

Recommended for approval as follows (additions are indicated in underlined text; deletions are indicated in ~~strike through~~ text):

Amend Subsection 15.1800.4 (Occupancy and Permitting Requirements) of Section 15.1800 (Backyard Cottages) of Article 15 (Use-specific Regulations), such subsection to read in its entirety as follows:

.4 ~~Occupancy and Permitting Requirements~~

~~A. The property owner must occupy either the main dwelling unit or the backyard cottage as a permanent residence, and must at no time receive rent for the owner-occupied unit. Prior to issuance of a building permit, the property owner must provide a signed and notarized affidavit affirming occupancy of either the main dwelling unit or the backyard cottage.~~

A ~~B.~~ The building-permit applicant must provide to the city a covenant suitable for recording with the county, providing notice to prospective owners of the subject lot that ~~the existence of the backyard cottage is predicated upon the occupancy of either the accessory dwelling or the main dwelling unit by an owner of the property for as long as the City of Plano requires such occupancy to comply with the City's Code of Ordinances. The covenant must restrict the backyard cottage~~ cannot be ~~from being sold separately from the main dwelling unit. The covenant must require owners of the property to notify a prospective buyer of the limitations of this section. The covenant must also require all owners to remove the backyard cottage and restore the site to a single-family dwelling in the event that any condition of the covenant is violated. After city review and approval of the covenant, the applicant must record it. Proof of recording is required prior to issuance of a building permit.~~