

INTRODUCED BY: Joanne Masten  
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DATE INTRODUCED: August 15, 2023  
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PUBLIC HEARING TIME: 7:00 p.m.  
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EFFECTIVE DATE: Upon Adoption

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**Ordinance 23-20**  
**Accessory Dwelling Units**

An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning, as amended by revising Article V, Permitted Uses, §205-53 Permitted Use Table and §205-55 Residential Uses; Article VI, Conditions of Approval, §205-68, Residential Uses, Item A, Accessory Dwelling Unit; and Part II, General Legislation to create a new chapter specific to accessory dwelling units, permit accessory dwelling units on all residential lots, and delete the use from the zoning regulations.

**THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:**

**Section 1.** That the Kent County Code, Vol. II, is amended by adding the following underlined language as a new Chapter 101 Accessory Dwelling Units:

**Chapter 101 Accessory Dwelling Units**

**§101-1 Purpose.**

The purpose of this ordinance is to promote the development of accessory dwelling units (ADUs) within Kent County, to accommodate changing housing needs, increase housing supply in a sustainable manner, and provide affordable housing options. This ordinance seeks to balance the need for additional housing while maintaining the character and integrity of existing neighborhoods.

**§101-2 Definitions.**

**Accessory Dwelling Unit (ADU)**

A self-contained dwelling unit that is secondary to the principal dwelling unit on a property and includes independent living facilities, such as a separate entrance, bathroom, and kitchen. The dwelling unit may be attached to the principal dwelling (accessory apartment) or detached on the same lot (cottage).

**Floor Area**

The sum of the gross horizontal areas of the several floors of a dwelling, exclusive of garages, basements, cellars, attics and open porches, measured from the exterior faces of the exterior walls.

§101-3. General Provisions

- A. Accessory dwelling units shall be permitted in all residential zones subject to compliance with other applicable regulations and building codes.
- B. Each property is limited to one accessory dwelling unit, either attached or detached.
- C. Manufactured homes shall not be permitted as accessory dwelling units.
- D. One dwelling unit on the property shall be owner-occupied. A notice and declaration of land use restriction to this effect shall be signed and recorded prior to issuance of a certificate of use and/or building permit for the accessory dwelling unit.
- E. Any request for an accessory dwelling unit shall conform to all provisions of the Delaware State Plumbing Code, and no dwelling unit that is served by an on-site wastewater disposal system shall be modified to create an accessory dwelling unit until a permit for such has been secured by the Department of Natural Resources and Environmental Control.

§101-4 Development Standards.

- A. The maximum size of the accessory dwelling unit shall not exceed 50% of the floor area of the principal dwelling unit. Square footage required to meet accessibility standards shall not count toward the total square footage limit.
- B. Detached accessory dwelling units shall be constructed on a slab or crawl space. Basements are not permitted.
- C. Setbacks
  - 1. Attached accessory dwelling units shall comply with the same setbacks as the principal structure.
  - 2. Detached accessory dwelling units shall be placed behind the principal structure and maintain one-half of the principal structure's side and rear setbacks.
- D. Total lot coverage (impervious cover) is limited to fifty (50) percent.

E. Applications for accessory dwelling units shall also include:

1. Full building plans for entire new structure or addition/renovation
2. Separate floor layout of all finished levels
3. Use of all rooms
4. All entrances/exits.

F. The Board of Adjustment may consider variances from these provisions in accordance with the standards and procedures established in Chapter 205, Zoning.

**Section 2.** Chapter 205, Article V, Permitted Uses, §205-53 Permitted Use Table is hereby amended by deleting the following bracketed language shown with strike-through marks:

USES	AC	AR	RS-1	RS-5	RM	RMH	BN	BG	OC	IL	IG
RESIDENTIAL USES											
<del>[Accessory Dwelling Unit]</del>	<del>[PC/C]</del>	<del>[PC/C]</del>	<del>[PC/C]</del>	<del>[PC/C]</del>	<del>[PC/C]</del>	<del>[PC/C]</del>					

**Section 3.** Chapter 205, Article V, Permitted Uses, §205-55 Residential Uses is hereby amended by deleting the following bracketed language shown with strike-through marks:

~~[ACCESSORY DWELLING UNIT (ADU)]~~

~~An accessory apartment or accessory cottage. To constitute an ADU a structure will have finished space with a kitchen and at least two of the following three facilities: sleeping area, laundry room, and bathroom. A kitchen is an indoor area used for food preparation.]~~

**Section 4.** Chapter 205, Article VI, Conditions of Approval, §205-68, Residential Uses, Item A, Accessory Dwelling Unit; is hereby amended by deleting the following bracketed language shown with strike-through marks and renumbering accordingly:

**§205-68. Residential Uses**

~~A. [Accessory Dwelling Unit~~

- ~~1. The purpose and intent of the provisions concerning accessory dwelling units, which shall include accessory apartments and accessory cottages, is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods. Accessory dwelling units shall be permitted in accordance with the following criteria:~~
  - ~~a. One dwelling unit on the property shall be owner-occupied. A notice and declaration of land use restriction to this effect shall be signed and recorded prior to issuance of a certificate of use and/or building permit for the accessory dwelling unit.~~
  - ~~b. Two off-street parking spaces shall be provided for each dwelling unit.~~
  - ~~c. Any request for an accessory dwelling unit shall conform to all provisions of the Delaware State Plumbing Code, and no dwelling unit that is served by an on-site wastewater disposal system shall be modified to create an accessory dwelling unit until a permit for such has been secured by the Department of Natural Resources and Environmental Control.~~
  - ~~d. Outside stairways (either open or enclosed) that service accessory apartments on upper stories are permitted, if they are integrated into and consistent with the architecture of the building, as opposed to having a tacked on, obtrusive appearance.~~
  - ~~e. Only one accessory dwelling unit (either apartment or cottage) shall be permitted per lot.~~
  - ~~f. Outdoor kitchens as part of a legally constructed porch or patio shall not be considered an Accessory Dwelling Unit.~~
- ~~2. Accessory apartments:~~
  - ~~a. The single-family dwelling unit shall have only one main entrance, and all other entrances shall appear subordinate~~

~~to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted.~~

~~b. The floor area of an accessory apartment shall not exceed 40% of floor area of the single-family dwelling unit to which it is accessory. This floor area shall be exclusive of garages, porches, or unfinished basements.~~

~~c. If the accessory apartment is to be located within a basement, there shall be no size restriction. It may incorporate the entire available area of that basement.~~

~~d. Any exterior modifications to the single-family dwelling associated with the construction or installation of an accessory apartment shall be consistent with the architectural style of the single-family dwelling in terms of exterior materials, roof form, and window spacing.~~

~~e. Applications shall include:~~

~~(i) Full building plans for entire new structure or addition/renovation~~

~~(ii) Separate floor layout of all finished levels~~

~~(iii) Use of all rooms~~

~~(iv) All entrances/exits.~~

### ~~3. Accessory cottages~~

~~a. In no case shall a manufactured home be used as an accessory cottage.~~

~~b. An accessory cottage must be located on a lot having direct legal vehicular access onto a numbered state or county road.~~

~~c. The maximum living area of an accessory cottage is 800 sq. ft. except that if the accessory cottage is solely located on the second story of a detached building, there shall be no size limitation.~~

~~d. The total size of a detached building must be consistent with the size limits of §205-86.A(4).~~

- ~~e. Building plan review shall be required with the application submittal to show compliance within this section. The exterior of the accessory cottage shall complement the exterior of the single-family dwelling.~~
- ~~f. Accessory cottages shall comply with the principal structure setbacks for applicable zoning district and be located behind the principal structure.~~
- ~~g. Applications for accessory dwelling units shall also include:~~
- ~~(i) Full building plans for entire new structure or addition/renovation~~
  - ~~(ii) Separate floor layout of all finished levels~~
  - ~~(iii) Use of all rooms~~
  - ~~(iv) All entrances/exits.]~~

**Section 5. Severability.**

The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Section 6. Effective Date.**

This Ordinance shall be effective upon the date of adoption.

ADOPTED BY THE LEVY COURT OF KENT  
COUNTY, DELAWARE

\_\_\_\_\_  
President, Kent County Levy Court

This 26<sup>th</sup> day of September, 2023

ATTEST: \_\_\_\_\_  
Clerk of the Peace

**Synopsis:** The ordinance permits an accessory dwelling unit on all residential lots subject to certain conditions, creates a new chapter 101 of the Kent County Code specific to accessory dwelling units, and removes accessory dwelling units from Chapter 205, Zoning.