

Ordinance #14

Basis for proposed revisions

The original version of this ordinance, adopted in March 2008, documented the process by which existing ADUs in the Village of Arden were certified in accordance with New Castle County Code Chapter 40, also known as the Unified Development Code (UDC).

Particularly noteworthy in this process is the one-time certification of multiple ADUs per leasehold for ADUs which existed prior to May 1, 2007. Ordinarily the UDC only allows one ADU per leasehold. The exception in question is documented as Amendment 07-153 to the UDC. Certification of pre-existing multiple domiciles is specifically addressed in Section 2 of the March 2008 version of Ordinance 14.

The only reference in the ordinance to actions beyond the certification process is as follows.

Leaseholders who wish to build ADUs after this process is completed will need to obtain approval by the Trustees, the Village and go through the normal process with the county to obtain legal approval.

Recommendations/Action Items

- Since this ordinance served to document a one-time event, and specifically to document an exception to the New Castle County UDC to certify multiple ADUs in existence prior to May 1, 2017, the ordinance should be rewritten to document the current ADU certification process in effect now.
- Amend Ordinance 14 by replacing it with the language below.
- The original Ordinance language is also included for reference. It should be filed in the village office with the March 2008 ADU Records.

Proposed Ordinance #14

Ordinance -# 14

Process for ADU Certification and Decertification

Proposed Revision February 2023

Background

The original version of this ordinance, adopted in March 2008, documented the process by which existing ADUs in the Village of Arden were certified in accordance with New Castle County Code Chapter 40, also known as the Unified Development Code (UDC). Particularly noteworthy in this process is the one-time certification of multiple ADUs per leasehold for ADUs which existed prior to May 1, 2007. Ordinarily the UDC only allows one ADU per leasehold. The exception in question is documented as Amendment 07-153 to the UDC.

A record of all ADUs certified as of March 2008 is on file in the Village Office. All of these listed ADUs have the right to rebuild.

ADU Certification and Decertification

Per the March 2008 version of Ordinance 14, leaseholders who wish to build ADUs after this process is completed will need to obtain approval by the Trustees, the Village and go through the normal process with the county to obtain legal approval. Establishment of a new ADU will require a permitting process with New Castle County. The required documents and procedures can be found by searching “New Castle County ADU Requirements”. Once approved and constructed, ADUs are documented with the Recorder of Deeds.

Decertification of an ADU follows essentially the same process as certification. After permit application, approval and physical modifications are completed, the Recorder of Deeds will update the ADU records.

Current Ordinance #14 – Included here for reference

Ordinance -# 14

Certification Process for Leaseholds with ADUs

Adopted March 2008

Section 1 — Introduction and statement of purpose.

The purpose of this ordinance is to specify the notification and procedure to leaseholders of this one time opportunity which will be used by the Village of Arden to certify preexisting Accessory Dwelling Units (ADUs). In order to be eligible for certification a leaseholder's pre-existing multiple domiciles must comply with the following requirements: [a] the domicile meets the New Castle County ADU definition and [b] the domicile was built prior to May I, 2007. Leaseholders who wish to build ADUs after this process is completed will need to obtain approval by the Trustees, the Village and go through the normal process with the county to obtain legal approval.

Section 2- Notification to Leaseholders and New Castle County Department of Land Use about certified pre-existing Multiple Domiciles.

The Village and the Trustees shall notify leaseholders in writing of the procedure to certify existing ADUs and provide a declaration of eligibility within 90 days of County Council approval of amendment section 13 to Chapter 40 of the New Castle County Code and approval by the Village of this ordinance. Leaseholders must sign and submit the declaration of eligibility to the Village Secretary within 30 days of the date of the notification letter in order to be considered for certification. Once certified, a written notification of leaseholds shall be made to New Castle County Department of Land Use via a joint written communication by the Town Assembly Chair and at least two Village of Arden Trustees.

Section 3 — Procedure of Leaseholds with pre-existing ADUs for certification.

The Village Secretary will notify the Village, the Trustees and the Community Planning Committee of those leaseholders who have signed the declaration of eligibility letter.

Members of the Community Planning Committee will verify that they have met the requirements as defined in section I. Leaseholder's that meet the requirements in section I and fall in one of the four categories listed below will be certified by the Village Chair and the Trustees. A final list of leaseholders with the privilege of having a certified ADU will be sent to the Board of Assessors.

An acceptable situation of current categories for certification of pre-existing ADUs whether or not they have obtained county approval is as follows:

- I. Current leaseholders who have an ADU and paid the B rate assessment 2006-2007 and have an active ADU.
2. Current leaseholders who have an ADU and have not paid the B rate assessment for 2006-2007, but have paid for another year and have an inactive ADU.
3. Current leaseholders who have an ADU and have not paid the B rate assessment 2006-2007 or any year and have an inactive ADU.
4. Current leaseholders who have an ADU and have not paid the B rate assessment for 2006-2007 and have an active ADU.

Leaseholds with existing ADUs who choose not to obtain certification and are not approved by the county will not be recognized as a legal Accessory Dwelling Unit by New Castle County and the Village.

SECTION 40.03.410 ACCESSORY USES, RESIDENTIAL

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

1. **General standards.** Unless otherwise provided in Subsections B through L of this section, all accessory structures (e.g., detached garages, sheds, pergolas, and similar structures) shall meet the following standards:
 1. For lots less than two (2) acres, freestanding accessory structures shall not be permitted in front of the principal structure or within the street or front yard setback. Lots two (2) acres or larger may locate one (1) freestanding accessory structure in front of the principal structure, so long as the freestanding structure is not within the front or street yard setback. Lots ten (10) acres or larger may locate a freestanding accessory structure(s) in front of the principal structure, so long as the freestanding structure(s) is not within the front or street yard setback.
 2. Freestanding accessory structures shall not be located in any side yard setback or any required bufferyard.
 3. Freestanding accessory structures may be located in the rear yard provided any such structure is located at least three (3) feet from the side lot line and rear lot line.
 1. Where a detached garage is facing an alley, the setback for garage doors facing the alley shall be at least three (3) feet.
 2. For attached dwelling units, freestanding accessory structures shall have a setback from the rear lot line of at least three (3) feet and shall be at least two (2) feet from each side lot line. Garages that share a common wall with an adjacent garage shall have a setback of at least two (2) feet from the side property line on the unattached side.
 3. Walled units, patio houses, and atrium houses shall contain all accessory structures within their walls.

4. Not over thirty (30) percent of the required rear yard setback area may be covered by freestanding accessory structure(s). Detached garages served by an alley are exempt from the calculation.
 5. No freestanding accessory structure shall be permitted in any street yard setback except as may be specifically permitted elsewhere in this Chapter.
 6. On lots less than one (1) acre, the gross floor area of any one (1) freestanding accessory structure shall not exceed the square footage footprint of the principal dwelling unit.
 7. No freestanding accessory structure shall exceed twenty (20) feet in height. However, free standing accessory structures located on lots greater than one (1) acre may be constructed to a height equal to that of the principle building provided that the structure is not within any front, street, side or rear setback.
2. **Private stables.** Stables are permitted on lots a minimum of two (2) acres, and on lots of record existing as of December 31, 1997 which legally had stables located on them. Stables shall have a setback of fifty (50) feet from all property lines.
 3. **Yard ornaments and play structures.** Yard ornaments, play structures, fountains, flagpoles, cloth lines, and similar objects may be permitted in all yards and all yard setbacks. Any such structure or object which exceeds six (6) feet in height above ground level shall be at least six (6) feet from the front, street, side or rear lot line.

4. **Neighborhood book exchange boxes.** Neighborhood book exchange boxes may be permitted in all yards and all yard setbacks, subject to the following parameters. Any such structure shall be no taller than six (6) feet in height above ground level, which shall be the maximum height for such structures, and shall be at least six (6) feet from the front, street, side or rear lot line. Neighborhood book exchange boxes are further subject to the following, and must:
 1. Be no wider than 30 inches or deeper than 30 inches;
 2. Be anchored to the ground;
 3. Be marked in such a way to clearly indicate that the box is part of a book exchange;
 4. Be no more than a single neighborhood book exchange box per parcel; and
 5. Not be situated in a public right-of-way or public easement.
5. **Fences.** Fences may be permitted in all yards and all yard setbacks and shall be constructed of materials specifically designed for fences and may not include barbed or razor wire. Fence panels and fence materials may not exceed six (6) feet in height. To account for installation on sloping ground and any necessary space between the ground and the bottom of the fence panels or materials, the top of the fence panels, materials, and posts may not exceed seven (7) feet in height when measured from the ground, except as permitted in Subsection F.
6. **Satellite dish or antenna.** Satellite dishes (over three (3) feet in diameter) or antennas, including amateur ham radio antenna, over three (3) feet in diameter shall be mounted on the ground in the rear yard. If location in the rear yard is not possible, then the structure may be located in the side or front yard, subject to setback requirements. These dishes shall be screened from view with an evergreen hedge or shrub and understory trees. The dish shall be located so that the screening protects neighboring homes. Evergreen trees shall be used to block other views from neighboring homes to the dish's front where plantings cannot be placed close to the dish. This Subsection shall not apply where the satellite dish or antenna are located in a rear yard and would not be visible to neighboring homes.

7. **Ball courts.** Ball courts shall not be permitted on lots of less than one (1) acre and shall be setback from side and rear property lines a minimum of six (6) feet. Any fence around the court may be over six (6) feet in height provided it is not within any required minimum yard setback.
8. **Private swimming pool.** A private swimming pool may be located in the rear yard provided the pool, including all appurtenances such as, but not limited to, the decking, pool filter and pump, shall be at least six (6) feet from any side or rear property line. A private swimming pool may be located in a side yard provided the pool, including all appurtenances shall not encroach into the side yard setback. In the case of a corner lot or multiple frontage lot, the pool shall not be located in the street yard setback. All fencing requirements contained in Chapter 6 shall be followed.
9. **Accessory dwelling unit (ADU)**
 1. Only one (1) ADU is permitted per single-family residential detached lot. The ADU may be constructed within the home or as an attached addition to the home.
 2. Only one (1) home occupation is permitted per residential lot.
 3. Once an ADU is established, the primary structure shall not be used for apartment conversion and only one (1) of the dwelling units may be rented.
 4. The property owner shall occupy and reside in either the principal dwelling unit or the ADU as his or her principal legal residence. An affidavit (available from the Department) of owner occupancy shall accompany the application for a building permit for the ADU.
 5. Prior to the issuance of an ADU building permit, the property owner shall provide the Department with a copy of a document (available from the Department) that has been recorded in the New Castle County Office of the Recorder of Deeds stating that residency by the property owner is required in one of the dwelling units as a condition of having an ADU on the property.
 6. One (1) additional off-street parking space is required for the ADU, in addition to the number of spaces required for the existing single-family detached dwelling.

7. On any lot greater than two (2) acres, one (1) freestanding accessory structure may be constructed or used as an ADU. The free-standing dwelling unit may be located in any yard, provided that it meets the same front, street, side and rear yard setbacks as required for the principal dwelling.
8. Annual report. The Department shall provide County Council with an annual report on the use and effectiveness of the ADU provisions.
9. Rental code registration. If the ADU is to be rented and prior to the issuance of a certificate of occupancy, the property owner shall register the ADU pursuant to the requirements of Chapter 19.
10. Adequate sanitary sewer or septic capacity must be available to accommodate the ADU.
11. The ADU shall be in conformance with Chapter 6 and Chapter 12.
12. The total number of building permits issued for ADUs in unincorporated New Castle County shall not exceed four-tenths (0.4) percent of the total of single-family detached homes in the unincorporated area of the County based on assessment records.

13. Ardens exception for existing ADUs. All ADU's existing in the Ardens prior to May 1, 2007 and which have been individually certified in writing as permitted by the respective Village Trustees from Arden, Ardencroft and Ardentown, shall be considered a permitted use notwithstanding the requirements for an ADU in this section. Certified ADU's shall not be subject to the provisions of Article 8. In addition, each ADU certified pursuant to this section shall be permitted to rebuild, restore, replace, or repair the ADU as necessary in the event the structure is destroyed or rendered uninhabitable for any reason. The restoration, replacement or repair must be completed within the existing footprint of the structure. All repairs, restoration or rebuilding shall be in conformance with Chapter 6. For purposes of this exception and certification process, an ADU in the Ardens, constructed prior to May 1, 2007 may include more than one (1) attached or detached subordinate dwelling unit on the leasehold property and which provides living, sleeping, eating, cooking, and sanitation facilities.
14. The Department of Land Use shall advise New Castle County Council in writing ADUs reaching the cap; the Department at that time shall render a recommendation to Council on whether the cap should be raised and if so, by how much.
10. **Temporary roadside stand.** A roadside stand for the sale of agricultural products grown on the premises may be located in the street or front yard and is subject to the following limitations.
 1. Any structure or display area shall not be located in any right-of-way.
 2. No permanent structure or building or parking associated with the roadside stand shall be constructed or maintained.
11. **Garage/yard sales.** Garage/yard sales are permitted provided they occur on no more than four (4) occasions per year and are of no more than three (3) consecutive days in duration.
12. **Mulching and composting.** Mulching and composting conducted by the resident using material (both yard waste and kitchen waste) found and generated on-site and not to include material for other property.

13. Solar energy system, accessory.

1. A ground-mounted accessory SES shall be considered a free-standing accessory structure. The SES shall be located a minimum of six (6) feet from any side or rear lot line.
2. A rooftop SES shall not extend more than five (5) feet above the surface of the roof and shall be considered when evaluating maximum building height. Any component of a rooftop SES located on the ground shall be located behind the principle structure and a minimum of six (6) feet from any side or rear lot line.

(Ordinance 02-075; amended July 13, 2004 by Ordinance 04-059; amended September 26, 2006 by Ordinance 06-060; amended April 13, 2007 by Ordinance 07-001; amended December 11, 2007 by Ordinance 07-124; amended February 26, 2008 by Ordinance 07-153; amended November 10, 2009 by Ordinance 09-068; amended January 18, 2011 by Ordinance 10-113; amended October 25, 2017 by Ordinance 17-044; amended July 10, 2018 by Ordinance 18-021; amended August 25, 2020 by Ordinance 20-038)