

**Testimony by DC resident Richard Layman
Before the DC Zoning Commission
In favor of accessory dwelling units and apartments in zoning districts currently titled R1-R4 zones**

Wednesday, November 6th, 2013

Thank you Chairman Hood and members of the Commission for the opportunity to address you tonight on this matter before you, concerning changes to the DC Zoning Code which would expand the legality of accessory dwelling units and/or apartments in the city's single family housing districts.

Currently I live in Ward 4 and have also lived in the H Street and Capitol Hill neighborhoods in the 20+ years I have lived in the city. Starting as a citizen activist, including being one of the founders of the H Street NE Main Street revitalization program back in 2001, I became a commercial district revitalization and transportation planner, and I write frequently on urban revitalization matters. I have also testified before the Commission in the past on various matters.

- 1. I support the proposed change to the Zoning Regulations for many reasons which are articulated below.**
- 2. I recommend that the approval of ADUs and accessory apartments be expanded to include both types on a single lot, in those cases when the lot and building footprint can easily accommodate more than one unit. Below I argue that the Office of Planning recommendation for one or the other but not both is arbitrary and idiosyncratic and should not be supported.**
- 3. To address opposition to approval of two accessory units on one lot, perhaps (at least initially) such accommodations should be directed to those areas within neighborhoods—within the catchment areas of Metrorail stations—that enjoy high capacity transit service.**

DC's population is growing

Since World War II, the size of the average household has decreased, both nationally and in DC. This means that more housing is required to accommodate the same number of people. At the same time, the city is experiencing population growth after many years of decline.

To be able to add population, the city will need to add more housing stock. Multiunit housing accommodates a great deal of the new demand. However, some potential residents prefer different living options, including single family housing, as well as rental units within single family housing, such as carriage type housing and apartments in detached houses and rowhouses (such as English basements) but the supply of such housing is small.

The cost of owner occupied single family housing in DC continues to escalate, both for detached and attached dwellings

This is a function of at least four conditions: (1) increased demand for transit accessibility; (2) increased demand to live in the city; (3) limited supply, especially of "historic buildings" and single family housing units; and (4) the cost of land makes constructing new single family housing prohibitively expensive, except in out of the way locations.

As the cost of single family housing escalates, more people are closed out of the DC housing market

DC housing prices continue to escalate. Some residents can afford to buy because they have two incomes. Others benefit from the impact of the mortgage interest deduction from federal income taxes (as well as the deduction of local-state taxes), which provides "cash back" to higher income households especially. But many potential residents are pushed out to the suburbs.

In Canada, which does not have a mortgage interest deduction, in high cost markets like Vancouver and Toronto, increasingly property owners create legal income apartments within their property in order to generate additional cash flow to pay the mortgage. And carriage housing/laneway housing is a key element of development planning in Vancouver, in part to expand the capacity of households to own single family housing.

It makes sense to prepare for the possibility of changes to the federal tax code with regard to the deductibility of either or both mortgage interest and state taxes. Both are being considered in the context of changes to the federal tax code as discussed by *Washington Post* housing industry columnist Ken Harney, and others.

More rental housing market is being constructed but rents are still escalating

As demand to live in the city has increased, rents have risen. Why this is happening is obvious to anyone who has taken introductory economics. In response to greater demand prices go up. But this is the case even though more rental housing has been constructed, especially since 2004. This is because new housing rents at a price that covers the cost of construction, and construction costs today are higher than they were 10, or 20, or 30 years ago (etc.). Plus the demand still exceeds the amount of new housing production.

One way to contain costs is to subsidize property development through incentives, tax breaks, grants, etc. Another way is to offer a type of housing that costs less to construct than multiunit housing.

Most new housing constructed in the city is multiunit

With some exceptions, most of the new housing constructed in the city over the past 10 years, especially in the so called "L'Enfant City" or the core of the city, has been multiunit apartments and condominiums.

This housing has significantly expanded the opportunity to live in the city, especially in mixed use districts and/or at transit stations, such as Downtown, and has contributed to conditions that support neighborhood revitalization including in Downtown, Mount Vernon Triangle, 14th Street NW, Capitol Riverfront, NoMA, Columbia Heights, and U Street, and now is moving outward into areas further from the core in such neighborhoods as Brookland, Fort Totten, Petworth, and Takoma.

(Exceptions where new single family housing has been constructed are in locations far outside of the core, in Southeast DC, such as developments by WC Smith Company, in Far Northeast such as the Dakota Crossing development by Pulte Homes near Fort Lincoln, or the New Hampshire Homes development a couple blocks from the Montgomery County border by Comstock Homes, or the EYA development in Brookland on land that had been part of the St. Paul's College campus.)

Land and construction cost for multiunit buildings is higher than the cost of constructing alley dwellings or apartment conversions | Therefore ADUs/apartments within houses can be cheaper to rent

First, while the exact cost difference depends on whether or not a multiunit building can be constructed out of wood, requires underground parking, and/or must be constructed out of concrete, the cost of construction for a unit of housing in a multiunit building can be two to three times higher than either the cost of constructing a one- or two-story carriage house, or the cost of converting a basement or attic into a legal apartment.

Second, new housing developments require land, which can cost as much as \$70 to \$100 per developable square foot. High land costs are why most new housing being constructed today in the city is multiunit. (Some single family housing is being constructed in lower demand areas that tend to lack Metrorail proximity. To further cut costs, some of these properties are being developed with micro-lots, without backyards.)

By comparison, no additional land must be purchased to carve out an apartment from an existing house or a carriage house on an existing residential lot.

Both lower construction costs and no need to pay for additional land means that accessory dwelling units and in-building apartments can be constructed and therefore rented for a lower cost when compared to new construction of multiunit apartments.

Using existing infrastructure and land to add more housing is economically and environmentally sustainable and beneficial

The Mayor's Sustainability Plan provides the argumentation to support this point. But this concept is the basis of the idea of "smart growth," to grow where development already exists, rather than to build new and farther out.

Not all renters prefer multiunit buildings

Some residents would prefer to live in a detached or attached single family house, but may not be able to afford to buy or to rent an entire house. Options include sharing a house (group house), English basements, renting a room, and carriage houses.

DC's supply of apartments within single family dwellings is limited

DC was not a large city when the bulk of its single family neighborhoods were constructed. As a result, most of the housing that was built before 1950 is small, rarely taller than two-stories in height and many without basements. Single family buildings large enough to accommodate apartments is atypical, although there are patches of three-story rowhouses, large rowhouses, and a number of English basements in Capitol Hill, Dupont Circle, Columbia Heights, and Georgetown especially.

Other cities developed different types of housing that was more accommodating of a variety of household income levels, such as Montreal's plex housing of 5-6 units in the equivalent of two rowhouses, or the 6 unit flats typical in Greater Boston or Cleveland, or the large rowhouse buildings/tenements in New York City.

DC's supply of ADUs has been restricted by law and policy

Accessory dwelling units, alley housing or carriage housing built on the back of a property as a separate unit, are more typical of city neighborhoods constructed before 1900.

In the mid-1880s, developers began to figure out that it was more profitable on large blocks (certain blocks were designed by L'Enfant to be double- or triple-sized compared to typical blocks of about 300x300 feet in size) to not have interior lots but to put in an intervening street, such as how Wylie Street NE has been inserted between H and I Streets on the 1200 block or how Quintana Place NW has been inserted between Quackenbos Street and Rittenhouse Street in the Brightwood neighborhood. These meant that all lots were fronted to the street and were equally marketable. To fit more houses on each block, typically these blocks were constructed of rowhouses.

As is well known amongst community historians, at one time DC had a great number of ADUs—alley dwellings—usually rented to the impoverished. Much of the housing was substandard, and did not include bathroom facilities or hot running water. Rather than improve the housing, the various federal responses to these scandalous conditions focused on "slum clearance" and demolition, and the mostly African-American residents were displaced, without much concern by the authorities.

Simultaneously, laws were changed to make the provision of such housing illegal. Most existing city blocks lack the spatial conditions that new ADUs must meet in order to meet current zoning regulations and planning practices.

However, a handful of alley districts meeting basic sanitation, light and air conditions were spared demolition. But with a slight relaxation of current requirements, there are plenty of blocks located throughout the city that do have the right spatial conditions to support ADUs.

The economic, social, racial and ethnic diversity of DC neighborhoods is shaped by the nature of the available housing stock: most city neighborhoods are not economically diverse

Much of the housing in the city that has been built in most of the city's neighborhoods defined by the current R1 to R4 zoning categories is attractive and expensive.

In the most popular neighborhoods, especially in the L'Enfant City and in the Northwest Quadrant and certain Eastern quadrant neighborhoods such as Capitol Hill and Brookland, it is difficult to buy a house for less than \$600,000. Housing prices of a million dollars or more are increasingly the case in more DC neighborhoods. Last year, the *Washington Post* recounted a story of a shell in the H Street neighborhood selling for more than \$700,000, with as many as 100 bidders.

It is well known that housing regulations in the 1920s were designed to restrict lower income residents and African-American residents to certain parts of the city, especially the eastern quadrants. (For example, it was illegal to build rows longer than 3-units west of Rock Creek Park).

Restricting most neighborhoods to a limited range of housing forms—single family units, attached or detached, without the capacity to legally offer rentable units to non-related residents—ends up limiting the opportunity for households representing a greater range of income levels to live in attractive neighborhoods.

Expanding the housing types present within neighborhoods allows for the potential of greater economic and racial diversity within city neighborhoods.

Adding population to neighborhoods has many public benefits

Not only have household sizes decreased since World War II, how people get around and the nature of how the retail sector is organized and how people shop has changed as well. As a result of these changes, the population necessary to support healthy neighborhoods, residential turnover, school enrollments, local commercial districts, public safety, and transit frequency is larger than is typically present within DC neighborhoods today.

Most existing neighborhoods do not have undeveloped land that could be tapped for new housing, although there are exceptions in some commercial districts (where low scale commercial buildings can be converted to taller mixed use buildings with housing on upper floors), and at transit stations (housing has been constructed on land formerly owned by WMATA at U Street, Petworth and Fort Totten among other places).

Additionally, housing within the interior of blocks adds "eyes on the street" and strengthens public safety in those areas of a block which typically lack the regular natural surveillance present on face blocks.

Recommendation: expand the legality of rentable accessory dwelling units and/or apartments in single family housing districts

As recommended by the Office of Planning and the draft regulations before you, I support expanding the legal uses of accessory dwelling units and/or apartments in single family dwelling districts as part of the revision of the Zoning Regulations.

This is beneficial for many reasons:

- It expands the inventory of rental housing
- It allows for lower cost rentals because conversion or creation of apartments and ADUs is less expensive compared to multiunit housing
- It better uses existing infrastructure and resources
- It makes renting in the city potentially more affordable
- It expands the stock and type of housing available to potential renters
- It expands the number of neighborhoods in which rental housing can be made available
- It expands the opportunity to live in the city for a greater number of households, especially those of lower income
- It makes property ownership more affordable for some segments of the marketplace
- It allows for more population to be added to the city, which strengthens the city economically (income, property, and sales tax revenues)
- It allows for population to be added to neighborhoods, contributing to the social and public welfare including improvements in public safety and the viability of local retailers, retail districts, and transit service

Response to opponents of this change: most concerns expressed are spurious

Others have testified in response to the opposition expressed to this proposed change, such as by the group “Neighbors for Neighborhoods DC”, so I will not respond to their arguments in great detail

The opposition seems to believe that mixing renters and owners within neighborhoods is categorically bad, that renters would not take care of their units, that somehow owners would find it to be in their best interest to rent to “bad tenants,” and create nuisance properties, that the negative experiences in the past with “slum alley housing” are relevant to consideration of this issue today.

With regard to the issue of slum alley housing from 100 years ago, back then, the right response would have been to fix the problems present in substandard housing—especially in terms of sanitation—but instead the housing was demolished and the tenants were displaced.

The main problem 100+ years ago is that the interests of the owners of the interior properties (alley housing) were not congruent with the property owners of the properties on the exterior streets of the block. Since the owners of the alley housing didn’t live in or adjacent to the properties, they didn’t care about the conditions or impacts on other residents on the block. They were the classic definition of a slumlord.

The proposal to approve ADUs/accessory apartments is tied to occupation by the owner of the primary dwelling unit on the property. Accessory units will be legal only when the property owner continues to live in the primary dwelling unit.

This means that the property owner should remain motivated to be a good property manager—it does not make sense for a property owner living with an apartment or an ADU to create or maintain a nuisance tenant or property. Therefore the interests of the owners of ADUs/accessory apartments are congruent with the owners of adjacent properties, because for the most part, the interests are identical.

As for mixing owners and tenants, there is research that shows that renters can be equally motivated and participate in community and civic affairs. I would argue that most neighborhood associations have not worked to engage renters in their activities, which results in reduced participation on the part of renters. I intend to conduct more research on this element of the opposition to accessory unit approval.

One big problem with the proposed change: having both an ADU and an accessory apartment on one property should be legal in some situations, while the Office of Planning recommendation says no to this

I do disagree with one key provision of the proposed change to the regulations. The proposed change allows one or the other—a property can have either a separate ADU building or a legal apartment within the primary dwelling unit—but not both. This is a totally arbitrary recommendation—although I recognize that it was made as a sop to opponents.

Whether or not a property can accommodate both an ADU and an apartment should be a function of the size of the lot and the size of the existing dwelling unit. For example, there are dozens and dozens of large rowhouses on East Capitol Street in Capitol Hill that also have carriage houses, the combination of the house and the lot is large enough to accommodate both an apartment and an ADU.

Similarly, my Takoma-Manor Park neighborhood has many hundreds of houses and lots on dozens of blocks which can accommodate both ADUs and accessory apartments with minimal negative impact. For example, my seemingly small bungalow in Manor Park has 1,000 s.f. on the main floor, a semi-finished attic that could be a separate 600-700 s.f. unit, and a full walk out basement that is about 900 s.f. Additionally, our backyard is about 90 feet long and not quite 50 feet wide and could easily accommodate the conversion of our underutilized garage into an ADU.

Many other neighborhoods possess similar conditions.

Why should properties like these be overly restricted and allowed to have only one additional rental unit? This is not the policy followed in cities like Vancouver, BC. Rather than ignore best practice in other jurisdictions, DC should adopt best practice.

To assuage concern, perhaps approvals of two accessory units on a single property can be targeted to areas within high frequency transit districts

One way to balance the concern of residents about having too many ADUs/accessory units within their neighborhood and the potential for negative impact, along with my recommendation that two units be approvable on one property, would be to focus such approvals to areas within neighborhoods that that are easily walkable or bike-able to Metrorail stations, up to a 1 mile radius from a station.

Residents in high frequency transit catchment areas are more likely to use sustainable modes, which reduces the mobility impact on neighborhoods from adding residential density that would otherwise be accompanied by additional automobile use.

Conclusion

Thank you for the opportunity to address you this evening. I am happy to submit references, footnotes, and images to further support the arguments laid out above, which I did not include in this document recognizing the limited time I have to present.