

RE: ZC case number 08-06A, Subtitle D Written Testimony re Accessory Dwelling Units

The Short Version

- Certificates of Occupancy should be required for all accessory apartments, whether internal or external. COOs should be granted only after the unit has passed the required safety inspection(s) and the owner has acquired a valid business license for renting out the property. Notification that a COO has been approved should be accompanied by a statement outlining the legal, tax, and insurance implications of renting out an apartment. A significant penalty should be imposed for renting out a unit without a COO. A well-publicized amnesty program, designed to bring existing illegal units into compliance, should precede the imposition of penalties.
- Internal ADUs could be matter-of-right if COOs were required and the requirement was enforced.
- If you're going to allow external ADUs (whether conversions or new construction), then they need to be permitted by special exception only. These units require a more complex balancing of potentially conflicting interests than internal ADUs do – tenants' safety is no longer as closely related to landlord's (because the two households will be living in separate structures) and the neighbors' interests in privacy, property values, quiet enjoyment, etc. are more likely to be at stake. Matter-of-right is a really bad idea in this context.
- Because 1606.4(c) says a total of 6 persons may occupy the "house," the provision would appear to apply to internal accessory apartments but not to external apartments (which would be located outside the house). If the intention is not to allow up to 12 people to live on a property with an external ADU, then "house" should be replaced with "lot." Alternatively, limit the number of residents in an ADU to two or three. That's what some other jurisdictions (e.g. Fairfax) do.

The Long Version

I'm not inherently pro- or anti-accessory apartments. In fact, I've actually lived in both external and internal ADUs. But I think that the ZRR provisions on accessory apartments are poorly-conceived and that the most likely outcomes are a few real nuisances, an occasional tragedy, lots of tax evasion, and no real increase in the production of affordable housing (as well as a likely decrease in the affordability of already expensive houses). And, at the level of process, I think that the approach being taken is very destructive of community. At the same moment we're being urged to live closer to each other, OP is moving away from the one mechanism (BZA review) that gives homeowners who want to be landlords a powerful incentive to listen to and to address the concerns of their neighbors. Instead of "work together to find a mutually agreeable outcome before you ask us to let you do this" the new message is "just maximize your profit and let the chips fall where they may." This approach gets even nastier if we're creating a situation where the only way to insure compliance with tax and safety regs is to have neighbors turn in neighbors to the authorities.

An intelligent and well-crafted ADU policy would be based on answers to a series of questions like those which follow -- none of which OP seems to have asked.

Affordability

- Is there any reason to assume that homeowners, motivated by the desire for income generation, would rent these units at below-market rates?
- Wouldn't adding ADUs to single-family homes actually increase the price (and appraisal/property taxes/insurance premiums) of single-family homes? Presumably, the new dwelling adds value to the home (and more value than a non-income-generating addition would). Will people who don't want to be landlords risk being priced out of the single-family housing market in some areas?
- If the affordability of external ADUs is primarily a function of their small size (450-900 SF), wouldn't it make more sense to offer some kind of homesteading or sweat equity option with free land offered in exchange for building a small residence that will be owner-occupied? Could a pilot project be done on public land?

Enforcement Issues: Tax and Safety

- How will DC government insure that homeowners who create matter-of-right units (a) go through the required safety inspections (b) get business licenses and report rental income (c) understand the legal and insurance implications of their decisions? Requiring a certificate of occupancy is crucial step, but OP would eliminate it, as well as BZA oversight.
- Does DCRA have a plan for bringing ADUs (current and future) into compliance? If BZA hearings will no longer be required in most cases, what mechanism will DCRA and OTR have for identifying which properties have ADUs? Will DCRA be given additional resources to devote to ADUs?
- How will we ensure that external ADUs are sited in ways that provide quick and effective access to firefighters? Presumably, that could be a criterion for BZA approval of special exception requests (though it doesn't appear to be one included in the proposed regs), but what about conversions of existing outbuildings to ADUs, many of which could be matter-of-right if OP's proposal were adopted?
- Allowing garage conversions encourages cash-strapped do-it-yourselfers to convert what are potential hazmat sites into habitable space. Without effective oversight, this is a recipe for disaster. How can matter-of-right be justified for such projects?

Managing Growth

- Where do we want people seeking housing of 900 SF or less to locate?
- Where will ADUs put population? Where are building lots, housing stock, income levels conducive to the development of ADUs? How does the answer differ depending on whether we're talking about internal or external ADUs?

- Do we risk diverting population that, in the absence of more ADUs, would move to the multifamily housing we're trying to build downtown? Or that might buy and renovate small houses in areas that need investment if the external ADUs weren't available as a rental option?
- If our goal is to restore lost population, should ADUs be a targeted intervention in areas that have actually lost population?

Infrastructure

- Are there areas where infrastructure --e.g. schools, sewers, power grid -- would be further stressed by ADU development?
- How do we envision water/power/sewer hook-ups working for external ADUs and are those regs ready for rollout simultaneously with the ZRR?
- Are we willing to allow ADUs that are "off the grid"?
- Are there any advantages to external ADUs that cannot be achieved simply by allowing internal ADUs? Certainly the creation of affordable housing and opportunities to age-in-place could be achieved with a policy that limited ADUs to internal units.

Experience Elsewhere

- What kinds of regulatory structures have other jurisdictions put in place? What works? What doesn't?
- When zoning restrictions have been loosened or removed in other areas, how many ADUs have been built? Where/by whom? What kinds of ADUs were built (e.g. internal vs. external, size)?
- How costly has construction of external ADUs been? How are they financed? Do we risk (or how do we prevent) another kind of foreclosure crisis if elderly people in gentrifying neighborhoods are induced to add ADUs in an attempt to hang on to their homes as property taxes rise, yet end up unable to pay off the additional debt incurred in building such units?

Thinking Ahead

- What will we do if a new owner chooses not to use an ADU as a source of income-generation? Should the tax assessment on the property be lowered?
- What happens if the renters of an external ADU want to own it (but can't afford the primary house) and the seller has a buyer for the primary house who doesn't want to be a landlord? Will we allow lot divisions?

- Will temporary ADUs be allowed (e.g. the modular medicalized granny flats currently being marketed)? How/will their value be reflected in tax assessments?
- Is the 6 person total limit really enforceable or sensible? Other local jurisdictions typically just restrict the number of residents in the ADU to 2 or 3. This seems like a less problematic approach since it means that changes in the landlord's family (elderly parents move in, twins are born) don't create a situation where the choice is between evicting tenants or violating the law.

We need and deserve better planning than we've seen on this issue. When I compare the work that other jurisdictions have done on this issue with the work OP has done, the contrast is striking. And when I raised the question of accessory apartments at the DCRA oversight hearing last winter, it was clear that there had been no coordination between DCRA and OP on this issue. If the rationale for making ADUs matter-of-right is that the BZA is overburdened, then sloughing off the BZA's work onto DCRA, a notoriously underperforming agency, is hardly an improvement.

The responsible approach here would be to require Certificates of Occupancy for internal ADUs and allow them as a matter of right, but to remove external ADUs from the revised code until OP, in coordination with DCRA, WASA, DCFD and other agencies, has developed detailed guidelines and a pilot program for introducing such units into our housing mix.