

For the first time in 55 years, the Zoning Commission is about to consider proposals by the Office of Planning (“OP”) to make historic changes in the zoning rules that affect virtually every aspect of life in the city. One such proposed change would allow homeowners in all R zones to maintain in their rear yards a separate building to be used as a residence. We strongly oppose this threat to a cherished way of life.

The District has traditionally maintained a variety of residential zones, accommodating different kinds of living arrangements. Many of us have chosen to live in “single-family” neighborhoods, and OP’s proposal would represent a significant change in the character of our communities and the legitimate expectations about land use that we had when we invested in our homes. Housing in our area has always been characterized by a single group of residents living in one household on a “single-family” lot; the only exception worth noting is that homeowners can currently create an accessory apartment within the primary dwelling (an internal accessory apartment, or let’s say “I-AA”), but only through conversion of the interior of the primary dwelling and without change in lot occupancy. Now, in a radical departure, OP wants to encourage the creation of “external” accessory apartments (call them “E-AAs”) as separate housing units on traditional “single-family” lots.

OP’s proposed rules would over time allow home-owners (1) to erect in their rear yards a new building (or use an existing or altered garage or carriage house) for residential living, and (2) to house in such structures anyone the owner wishes—family members, domestic employees, medical aides, construction employees, regular renters, etc. The E-AAs so envisioned could have a maximum footprint of 450 square feet and a height of two stories, thus providing living space of 900 square feet and rising as high as 20 feet tall (which, according to the District’s measuring method, can actually be 22 feet). A total of six persons would be allowed to reside in the two buildings on the lot (the homeowner must live in one of the buildings); accordingly, it would be legally possible for as many as five persons to live in an E-AA.

OP’s proposal, as finalized in September, provides that accessory buildings already in existence as of January 1, 2013, can as a “matter of right” be used as an E-AA, unless for residential purposes the existing building is expanded or otherwise renovated, in which case the homeowner must seek permission by “special exception.” It further allows the “matter of right” construction of a two-story 900 square foot accessory building after January 1, 2013, for any allowable non-accessory-apartment use such as a home business; this building cannot be used as an E-AA for a period of five years from the date its building permit was approved, but during that period the Board of Zoning Adjustment (“BZA”) can allow such use by “special exception,” and after that period, the homeowner, as a “matter of right,” may convert it to an E-AA.

To shed some light on the jargon: under zoning rules, certain actions can be taken as a “matter of right”—that is, once preliminary authorization from a permitting office to

proceed has been given, such actions can be accomplished without further formal governmental consideration. In other situations, however, after receiving a permit, an applicant will be required to submit his/her plan to the BZA, which will then hold a “special exception” hearing in order to investigate the appropriateness of the plan and to allow neighbors to participate in the proceeding.

Whew! Neighbors who have read this far may now sense why zoning is thought to be a special taste. But, as will be seen, land-use parlance cloaks important issues implicating human values, knowledge, capability, and economics.

OP advances two social welfare arguments for encouraging E-AAs. It contends that affordable housing is required for an assumed cohort of young people who may move to the District in the near future, and that this need dovetails neatly with the projected requirements of an older group of residents, who may wish to offer E-AA housing to others in return for extra income, or perhaps to shelter family or caretakers for needed personal assistance. A perfect fit indeed, so why do we think that this proposal is not a bed of roses? Our answer: it ignores the thorns.

Our single-family community has long been treasured for its quiet neighborliness. Section 202.10 (i) (2) of the current zoning rules stresses this history: “Any modification approved shall not conflict with *the intent of this section to maintain a single-family residential appearance and character in the R-1, R-2, and R-3 Districts*” (emphasis added), and even Subtitle D of the proposed regulations repeats this intent in so many words. In a single-family neighborhood, a neighbor’s decision to build a second house behind his own can despoil (perhaps for both adjacent neighbors) what may be decades of amity. And if the adjoining neighbors should feel compelled to oppose the permit in a “special exception” hearing before the BZA, the existing relationships would almost surely be damaged, and the ensuing controversy might as well infect the attitudes of more removed neighbors. Threats to home and property are wellsprings of human fear and anger, and BZA records abound with tales of bitterness unleashed between neighbors over claimed infringement of property rights.

Beyond such enmity, consider the possible effects of the tenants residing in that new structure. Of course, the young folks whom OP expects to move into a neighbor’s rear yard—possibly a 900 square-feet, 22-feet high building that soars above your common 6-foot fence--could turn out to be a fine addition to the block. But the (possibly five) tenants might also be—well, a bit more effervescent than you had envisioned when you moved in years before. Indeed, the extra measure of excitement that such new neighbors might bring to the block (after parking their (several?) cars on the street and then celebrating their late-night return to their home with their guests) might give any neighbor pause to question the overall value of an E-AA in the adjoining back yard.

And, of course, what might the result be if, say, a half-dozen neighbors here and there on the block chose to establish and rent out such buildings?

In the best of all possible worlds, every E-AA created under OP's proposal could benefit all concerned. But we don't inhabit a Panglossian world, and there can be no doubt that E-AAs could trigger fraught relations between neighbors. Of course, homeowners inevitably take a chance on neighbors and their successors--but until now, they have not been threatened both with difficult neighbors and, as well, problem residents in a *second* house on the adjoining property.

OP might contend that even if a serious behavioral issue arose, the owner of the E-AA would quickly silence or remove the tenants. Perhaps, but perhaps not. After all, a homeowner opposed by neighbors in a special exception hearing may no longer care much about the attitude of the neighbors; or the lease or tenant rights law may make eviction a nightmarish process; or the E-AA owner may be hard of hearing and undisturbed by the noise, or is simply not as capable of handling difficult situations as he/she was thirty years ago. Depending on the offending neighbor to resolve the problem would be a chancy bet.

The complex problems attending such multiple-family lots necessarily raise questions about the quality of the planning that preceded OP's recommendation. Has OP done the kind of research, analysis, and planning that justifies breaking with the familiar and prized past; has it explored and prepared for the likely issues that the new E-AA provisions would give rise to? A perspicacious member of our community investigated this subject earlier this year. Breaking down the foreseeable problems into five broad categories and 21 parts, she found to be seriously wanting OP's effort to study, explain, and prepare for important corollary aspects of its E-AA plan, only a few of which we mention here:

Affordability: "Wouldn't adding [E-AAs] to single-family homes actually increase the price (and appraisals/property taxes/insurance premiums) of single-family homes?...Will people who don't want to be landlords risk being priced out of the single-family housing market in some areas?"

Enforcement Issues: Tax and Safety: "How will the DC government insure that homeowners who create matter-of-right units (a) go through the required safety inspections and obtain a certificate of occupancy for the [E-AA] and (b) get business licenses and report rental income?"

Managing Growth: "Do we risk diverting population that, in the absence of more [E-AAs], would move to the multifamily housing we're trying to build downtown?"

Infrastructure: "Are there areas where infrastructure—e.g., school, sewers, power grid—would be further stressed by [E-AA] development?"

Becoming a developer and landlord at any age, much less an advanced age, with all the attendant issues—capital decisions, building code mandates, landlord property and income questions, the intricacies of landlord-tenant relationships—presents many ancillary questions which demand consideration. OP has failed to explore such issues

before undertaking this important change. In the absence of such answers (or even such questions), OP exhorts us to roll the dice in the blind hope that E-AAs might accomplish a good which outweighs their probable disadvantages.

Most pertinent here, moreover, is a finding by an OP consultant about the approach to E-AAs adopted in other large cities, as reprinted in a 2009 report: “More cities allow [I-AAs] located within an existing structure than allow [E-AAs] in detached structures such as garages and carriage houses.” The clear indication is of a prevailing national understanding that building a second house in your back yard constitutes an unacceptable intrusion upon your neighbor’s property rights. OP’s proposal, without discussion, has rejected that basic majority view.

Here’s what we think. E-AAs—including not only new buildings, but also existing garages and carriage houses—are potential threats to the harmony and well-being of communities in which residents have long chosen, and invested in, single-family living and its promise of relative privacy. To permit a householder’s neighbor (or perhaps both neighbors) to allow habitation in their rear yards is little less than a taking of the property rights of the householder. To enact such a law would be a high-stakes gamble for all neighbors (including those who might choose to take advantage of it); and, in the end, as between an owner who would create an E-AA to serve his own needs and an innocent neighbor who is thereby disserved, a balancing of equities clearly favors the latter. We find at least ironic the following statement in OP’s blog discussion of E-AAs: “[W]e want to make sure that any new construction fits into the fabric of single-family neighborhoods.” What, while arguably rending that fabric to shreds?

We also believe, moreover, that the potential needs which OP describes can more readily be met by continuing to allow homeowners to create I-AAs--spaces inside their dwellings for renters, caretakers, or needy relatives. Including newcomers in the same structure as the homeowner should result in more considered selection of tenants and inherent restraints than would prevail with independent E-AAs.

In our view, no second residential buildings should be permitted on a property, not even with a “special exception” requirement imposed upon the neighbor wishing to build. Given the clear basic intent of the proposed rule change, such special-exception proceedings would seldom if ever result in the outright defeat of the E-AA by neighbors who oppose the building. We further think that should the Zoning Commission choose to favor the proposal, the number of E-AAs allowed should be severely limited, as Arlington and Montgomery County have done, and treated as an experimental project for future consideration.

If you agree with us, please contact the Zoning Commission and let them know that you oppose allowing “external accessory apartments” to be built (or converted) on residential property. If the Commission hears from enough folks, a substantial amount of future headaches, loss and unhappiness might be avoided.

The message immediately below this one explains the method for communicating your views to the Zoning Commission. It takes a few minutes. It's worth doing.

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