

## **Memorandum to the Board of Zoning regarding Accessory Dwelling Units (ADU)**

I am a supporter of Smart Growth (notice my emphasis). However, I think in the past we have made a series of bad decisions - usually related to insufficient management of the overall development and streetscape plan, and by allowing developers to create the maximum built-environment possible in both commercial and residential areas. For me the issues around Accessory Dwelling Units (ADU) are two-fold: 1) should they be allowed, and 2) what are the circumstances around their approval and construction, i.e., whether they should be "matter of right." Since matter of right means no zoning approval at any level is necessary, the immediate neighbors, ANCs, and other concerned individuals are denied an opportunity to support or object to a significant change.

**1) Should external ADUs be allowed?** OP advances two social welfare arguments for encouraging these. It contends that affordable housing is required for a 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.

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, even if that unit contains an interior apartment.

Now, in a radical departure, OP wants to encourage the creation of "external" accessory apartments as separate housing units on traditional "single-family" lots. But to permit a householder's neighbor (or perhaps both neighbors) to create a house in their rear yards is little less than a taking of the property rights of the householder. The external ADUs clearly (by definition) transform single family zones into 2-family zones.

Most property owners purposely invested in a particular residential area because zoning guaranteed some degree of predictability regarding density and overall neighborhood character, it is dumbfounding that the Office of Planning would suggest changing the existing neighborhood density. The Comprehensive Plan states that in some neighborhoods low density is an element to be preserved, yet the proposed external ADU zoning code conflicts with the Plan.

I think that the potential needs which OP describes can more readily be met by continuing to allow homeowners to create internal ADUs--spaces inside their dwellings for renters, caretakers, or needy relatives. Internal ADUs have fewer externalized effects. The home owner experiences both the benefits and the negatives and since there are a lot of illegal units, it would be good to have them inspected, insured, and taxed.

Affordable housing is a key issue promoted by the Office of Planning, but to think that apartments in Northwest Washington will be available for less-than-market rates is foolish. The city should encourage affordable housing units for targeted young professionals and students as has been done successfully, instead of encouraging homeowners to open their homes and retrofit garages for this purpose.

## **2) Should ADUs be allowed as a "matter of right?"**

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 external ADU, 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 external ADU 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 external ADU. Thus immediate neighbors are denied an opportunity to support or object.

External ADUs present height, mass, and neighborhood character issues. A two-car garage could easily double in both footprint and height, reaching to just below the level of the streetlight bulbs on alley utility poles. The rules allow a 450 sf ADU footprint (20x22 feet) and computed height of 22 feet, which would allow 27 feet absolute height. The proposed rule would permit another house in neighbor's back yard with no setback at the alley. OP wants to raise the number of "affordable rental units" in DC without addressing neighborhood changes effected by an increase in the ratio of such rental units to family-oriented housing.

The complex problems attending such multiple-family lots necessarily raise questions about the quality of the planning that preceded OP's recommendation. OP has provided no evidence that they have 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 external ADU provisions would give rise to. We can only assume that OP has failed to explore such issues before undertaking this important change.

A series of pertinent questions that OP should present answers to before the Board approves any regulations affecting ADUs is presented at the end of the memorandum.

### **Summary**

I believe second residential buildings should not 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 external ADU by neighbors who oppose the building. (If the Zoning Commission chooses to favor the proposal, the number of these units allowed should be severely limited, as Arlington and Montgomery County have done, and treated as an experimental project for future consideration."

Time and again, in public meetings and other communications, OP has shown lack of consideration of rather simple, practical issues that intertwine the success of the ZRR with the well-being of our neighborhoods. OP sometimes strikes a pose of deflection to serious questions, needless omission, or seemingly disingenuous responses. As a result they cannot and are not bringing to the Board the highest and best proposals for zoning changes consistent with the Comprehensive Plan.

George Clark and others devoted thousands of volunteer hours in their assigned role as sounding board and advisors, but to no avail. The Planning Office seems a law unto itself.

What does it take for the Office of Planning to actually pay attention to the concerns of the public? At every public meeting OP attends, the public raises objections and concerns about provisions in the code, but with negligible impact. What does it take for the Office of Planning to use the Comprehensive Plan to guide development of the zoning code? The city invested considerable resources to put together the Comprehensive Plan. Intense discussions resulted in agreements then expressed in the Comp Plan. The Comp Plan should then become the guide for development of the zoning code.

We live in a city of neighborhoods. The Comprehensive Plan recognizes that Washington, DC has many neighborhoods; they are distinct and diverse, ranging from high-density communities (like the West End or Mount Vernon Square) to quiet low-density neighborhoods like Palisades, Spring Valley and Wesley Heights. The diversity of neighborhoods gives its residents a wide range of choices, and accommodates many different types of households and their preferences.

Yet OP has consistently supported proposals inconsistent with the Comprehensive Plan. The Plan carries special importance in that it provides overall direction and shapes all other physical plans that the District Government adopts. Its Implementation Element identifies recommended Comp Plan actions with links to zoning regulations to highlight the need for changes to ensure that "zoning is not inconsistent with the Comprehensive Plan as required by the DC Code. OP's proposals for ADUs violate the Comprehensive Plan and should be dismissed.

For many thoughts on this topic, I am indebted to, and have quoted from, Alma Gates, Bernard Ries, Linda Schmitt, and Allen Seeber.

### **Questions for OP**

1. Is there any reason to assume that a homeowner, motivated by the desire for income generation, would rent the unit at below-market rates?
2. How will DC government insure that homeowners who create matter-of-right units (a) don't rent prior to obtaining safety inspections and obtaining a certificate of occupancy? and (b) obtain business licenses and report rental income?
3. Does DCRA have a plan for bringing ADUs (current and future) into compliance?
4. If BZA hearings will no longer be required in most cases, what mechanism will DCRA and OTR have for identifying which properties have ADUs?
5. How does OP know people seeking housing of 900 SF or less want to locate in R-1 and R-2 zones?
6. The city is trying to build housing downtown. Why encourage these small houses in outer areas?
7. Shouldn't placement of small households be localized communities in areas where we need population growth, rather than inserted into larger lot communities?
8. Are there areas where infrastructure --e.g. schools, sewers, power grid -- would be further stressed by ADU development?
9. How do we envision water/power/sewer hook-ups working for external ADUs and are

those regulations ready for rollout simultaneously with the ZRR?

10. What kinds of regulatory structures have other jurisdictions put in place? What works? What doesn't?

11. When zoning restrictions have been removed in other areas, how many ADUs have been built? Where/by whom? What kind of ADUs were built (e.g. internal vs. external, size)?

12. How costly has construction of external ADUs been? How are they financed?

13. 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?

14. Will temporary ADUs be allowed (e.g. the modular granny flats currently being marketed)? How/will their value be reflected in tax assessments?

15. OP proposed that BZA approval will only be required in cases where a new accessory building is constructed (or where an existing building enlarged); simple conversions of outbuildings to residential use will become matter of right. Why eliminate a BZA review that encourages homeowners to work with/listen to their neighbors? How can OP encourage people to live closer together and at the same time insist they have no need to consult with neighbors?