



City of Ann Arbor

Formal Minutes

Planning Commission, City

301 E. Huron St.
Ann Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

Tuesday, April 19, 2016

7:00 PM

Larcom City Hall, 301 E Huron St, Second floor, City Council Chambers

10-a 16-0582

Proposed Amendments to the Zoning Ordinance (Chapter 55) of the Ann Arbor City Code. Accessory dwelling units (ADU's) are proposed to be a permitted use in part of the existing home (in the basement, attic or addition), as well as in an existing detached accessory structure such as a garage or carriage house located in the R1A, R1B, R1C, R1D, R1E (Single-Family Dwelling) or R2A (Two-Family Dwelling) Districts. To build an ADU, the minimum lot size would have to be 5,000 square feet for an ADU with a maximum size of 600 square feet. If a lot is 7,200 square feet or greater, the ADU could have a maximum size of 800 square feet. More information of the proposed amendments is available at www.a2gov.org/ADU Staff Recommendation: Approval

Chris Cheng provided the staff report.

Teresa Gillotti, Washtenaw County, continued the report providing the power point presentation.

PUBLIC HEARING:

Peggy Lynch, 805 W Huron Street, Ann Arbor, said she was strongly in favor of ADUs for the following reasons, the need for affordable housing in the City. She said her last stop before coming to the meeting was to help a Mom who had a couple of kids who go to school here, who has no affordable place to stay tonight, so they were getting her into a hotel for a couple of nights until her next paycheck, so she has personal experience on the benefits that ADUs would bring to Ann Arbor. She asked that the Commission consider extending ADUs to R3 and R4 Zoning because they are that important, and because Ann Arbor has an unfortunate reputation for economic inequality in housing, and the R3 and R4 Zoning tends to be more expensive and she wants them right where she lives to help mitigate the economic disparity in the same spirit of the amendments that are being discussed right now.

Ethel Potts, 1014 Elder Blvd., Ann Arbor, said she thinks the goals for which this is intended are excellent, but she is not sure these accessory units would be affordable. She said with this proposed amendment you

are in effect doing away with single-family dwelling in the R1 districts of Ann Arbor and another structure on an R1 lot does not presently conform to the R1 zoning and the zoning would have to be rewritten. She said a second structure like in a garage is not being required to conform to R1 setback requirements to any side and would be an eye-sore to the abutting neighbors being close up to the rear and side lot lines of neighbors, and few lots are large enough to have 2 required setbacks so she thinks we need to consider setbacks if it is a separate dwelling. She was also concerned with the enforcement of the owner occupied aspect of it, and she thought the owner occupied part of this was excellent, so these aren't just all rental houses, but she expressed it might be difficult if not impossible to monitor and enforce the owner-occupied aspect, given that the current rental housing inspectors check this every 2 years and that would not be enough to keep track, adding that they would need to be checked every few months. She noted that the City would never have enough inspectors on staff to verify this aspect given the amount of added units along with the current rental housing violations in the City. She said she didn't think this proposed amendment is known to the hundreds of homeowners in the R1 zoning all over the City and she felt they need to be individually notified that the zoning they count on is about to be changed and we are not ready for this.

Ellen Ramsburgh, 1503 Cambridge, Ann Arbor, said she went to 2 of the meetings where she heard lots of support for the goals and she supports those goals, but one of her concerns is the rather lenient amendments as it is currently written and will it achieve the goals. She noted the reference to the examples in Massachusetts and that the City needed to incorporate those things if they were truly going to find affordable units, such as the plans must receive site approval, so the City has some idea what is going in and where it is going in, and that they must be rented to persons or families whose income is 80% or less than the AMI, nor exceed rents that are established by HUD for low income and they must execute deed restrictions and restrict the use of 1 unit to persons that meet those affordability guidelines. She said if they are truly going to find affordability, especially in the R2A where you have lots of student rentals and you have that pressure of student rentals which is a competitive market and you can charge more for it. Other requirements, she noted, that are sadly lacking in the proposed language is that pre-existing non-conforming structures should not increase the non-conformity and that newly constructed detached ADUs shall comply with setback requirements, and that property owners shall submit applications. She said, what scares her is that this is a 'permitted use' and that there is no application for it and that when such an application would come in, a

public hearing should be held, because when you are changing R1 zoning use to essentially R2 zoning use and you don't have a public hearing you don't alert people to the changes around them, which she felt was unfair. She noted that in Portland the required setback for a detached unit are 60 feet from the front lot line, 6 feet behind the house with an 18-foot maximum height limit, and the combined lot coverage for a detached and local unit shall not exceed 15% of the total area of the site. She concluded that these are restrictions and requirements that we really need to consider.

Richard Norton, 524 Third Street, Ann Arbor, said his wife and he have been residents for about 15 years and they have just bought a house in the Old West Side. He said they bought their historic home with a garage that was caving in on itself so they had to tear it down and they are building a 2-car garage with a knee-wall so at the end of this they will have a very nice studio/office. He said if this proposal were adopted they would have a nice small efficiency apartment. Norton said the reason they want to do this is because they still have 4 living parents; his parents and his in-laws and he would truly like to use this, if possible, as a granny flat for their parents to be able to live with them. He said this was a good policy measure that he hoped he could personally benefit from. He said this proposal is being presented as a way of providing more affordable housing, and since he has been to a number of the public meetings on this issue, he has heard some of the objections from the public which include that this isn't going to solve all the problems or that it has problems itself. He said nothing ever is and we didn't get to the affordable housing problems we are facing now in one fell swoop, and it won't be solved in one fell swoop, so we should be asking if this proposal is a step in the right direction, which he felt it is. He thought this could have an effect on the market force housing and be a good step in that direction if nothing else. He said he understands the possible disruption that this could cause, especially when it comes to students in a college town, but he thinks the protections that have been built in are very thoughtful and have been crafted in a way that provide as much protection as one could hope for, especially the residency requirement, since no resident is going to rent out an ADU to an occupant whom is disruptive to the neighborhood because they are going to be disruptive to them, so he felt it was a very necessary protection to have in place. Norton said they hope to be able to use their detached garage as an ADU and if you pile on requirements for setbacks you will eliminate the possibility of detached ADUs; he explained that their side windows of their house are closer to their neighbors than any windows in their garage, and it won't be any more disruption to add an efficiency unit upstairs in their garage, than if they

turned their house into a detached home and rented it to students, which they could do. He felt this is a very well thought through proposal that has been crafted carefully and he encouraged the Commission to move it forward.

Lisa Jevens, 1312 Cambridge Road, Ann Arbor, asked the question, What is affordable? She said that has never been defined, and she didn't know what affordable is in Ann Arbor and she would like that to be answered, along with how this proposal ensures affordability; however it is defined. She thinks the City is grossly misrepresenting this whole ADU issue to the public as affordability when there is nothing in the presentation that relates to what rents can be charged or what the limits would be; there is no rent control . She said most students currently pay \$ 600-\$700 per bedroom per month in an old house and you can double that in the high-rises. She asked, what do you think an apartment or stand alone house is going to rent for? She said she knows people that pay \$ 200 a month to rent a parking space in Ann Arbor. She said this is the third meeting she has attended and has never heard the answer to how this proposal is affordable and she finds it very disconcerting that the City and the County are trying to portray this as an affordable housing initiative when it is in no way, shape or form any guarantee to be that, so she finds it very disingenuous and as previously stated it is completely wrong and unfair to up-zone people in the R1 to R2, who have no idea that this is even happening because they haven't even been notified. Jevens said this would be by-right and no one has a vote on it and there have been many meetings but apparently it is still going through. She asked for the affordability issue to be addressed and she would also like the people in the R1 and the R2A to be physically notified that they are going to be up-zoned and they don't have a vote.

Caleb Poirer, 805 W. Huron, Ann Arbor, thanked attendees for showing up after putting in a long days work or while being sick. He asked those who are fans, or are in favor of ADUs in Ann Arbor or who are friends of The Mission Non Profit, to stand up in the Chambers, adding that he was very proud of them for coming out and grateful for their support. He said if we don't include R3 and R4 zoning districts, we very well may be engaging in the unintended consequences of a policy change which would be the acerbating of the disparity between the wealth gap. He said if you just open up the ADUs to the R1, those folks typically have less expensive homes than the people who live in the R3 and R4 so if we have a couple of years of those lesser priced homes creating ADUs, someone who lives in an ADU, is also likely to have a lesser income, so he sees the action taken as accidentally making worse the wealth disparity. He

said some people live in the R3 and R4 and they have just 1 house; those folks who live in the R3 and R4 and could have up to 3 or 4 households, should be allowed to have an ADU in the same spirit that has been extended to R2. He said the R3 and R4 zoning which is for density it seems like a strange thing not to allow denser zoning categories to be occupied. He gave thanks for working through the lengthy process and the public input, noting that he had 8 public opportunities to speak on this as the Washtenaw Urban Planners were going around soliciting input.

Wendy Carmen, 2340 Georgetown Blvd, Ann Arbor, said she has lived on the northeast side for over 40 years, and while she understands the goals that being pursued and that people have dedicated a lot of time towards this goal, she agrees with many of the points being raised by the opponents. She said the proposed changes to Chapter 55 are not as satisfactory as they were described by the earlier presentation this evening and there are a number of attempts of the City to address public concerns but there are a number that still need further work. She noted that the new text is sometimes vague and inconsistent with other parts of the zoning, and there are still serious questions about the consequences of ADUs. She said in addition, what is the goal of the ordinance change can already be accomplished, or at least most of what is being proposed, by our zoning ordinances, the only real difference is that this will become a right in R1 for a property owner to turn their property into a duplex; a duplex where the second unit does not necessarily have to abide with the setbacks that are usually required between R1 lots. She said her biggest concern is that the process of trying to bring this about doesn't seem correct; in an attempt to participate in a social engineering opportunity the ordinance will have violated the primary tenant of single-family zoning that there is only 1 unit. Carmen said you will be de-facto zoning all single-family properties into duplexes without giving each property owner the individual right to protest, and the public will not, does not realize what is happening now. She said since she has been interested in planning issues for many years she knew about this issue but her next door neighbor knew nothing about it at all and the public does not realize and won't realize until, if it passes, someone tries to take advantage of it, and then it will be the surprise of their life that there is a new building and apartment being built in their backyard. She said she thinks the supporters of this change need to go back to the drawing board to determine a better approach than trying to re-zone without a re-zoning process, single family homes to duplexes.

Peter Nagourney, 914 Lincoln Avenue, Ann Arbor, said he was concerned because he was hearing unreasonable promises being made

tonight, which would result in many people being disappointed. He said when we think about the financial implications of creating an accessory dwelling unit for a home owner and transferring that into affordable rent, it is just not going to happen. He said last time this was presented it was \$45,000 and now it is \$80 or \$90,000 and then we add the permitting fees, and the cost for utility hook-ups, higher tax assessments on the property, the fact that now your property may be assessed for code violations, new mortgage, interest costs, changed interest rates, changed insurance rates, your maintenance and repair costs along with other unanticipated costs are going to make this something that is not affordable. He said people who want to build this for their parents or relatives and are not going to be charging rent is another category, and no doubt some of those people will feel that it is worthwhile to invest \$60-\$100,000 so their relatives can live with them. Nagourney said turning that into an affordable rent is just not going to be possible, so giving people promises that this is going to be affordable when it is not is an example of the City trying to transfer their burden of creating affordable housing, which the City says it is committed to doing, to the citizens and having them do the work for the City is just not going to happen. He said we have allowed the developers to buy off from creating affordable housing in their units and now we are asking the citizens and the homeowners to do the affordable housing building for the City. He said if the City wants affordable housing they should build it, but thinking that homeowners are going to do it and create affordable rents with these units is just not possible. He said in looking at the proposed specifications, they are much improved from last time, but he was hoping to see the promised worksheet for homeowners to be able to calculate all of the possible costs in order to get a true sense of the costs involved to see if they can offer a truly affordable rent, which he is concerned would be possible.

Noting no further public speakers, the Chair closed the public hearing unless the item is postponed.

Moved by Clein, seconded by Mills, that The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendments to Chapter 55 (Zoning), Section 5:1 (Definitions), 5.10.2 R1A, R1B, R1C, R1D, R1E single-family dwelling district.

COMMISSION DISCUSSION:

Bona expressed special thanks to Teresa and Brett for all their hard work on this. She wanted to confirm a few things she had heard related to the

ADUs. She said in her initial understanding it was finding a way to do ADUs where we were not substantially changing what was possible on a site, possibly just different entrances into the primary structure and what would be allowed is allowed today, even if you didn't have separate entrances. She said particularly she heard a lot of concern relative to accessory structures and the number of occupants allowed on a site and the setback requirements, and she asked staff to explain what was different with this proposal compared with what you can do today.

Cheng explained, you have 2 different types of structures, one attached and one detached. With the attached, in the R1 zoning district you are going to put an addition onto your house it would still need to meet the R1 setbacks for side and rear. The difference with the detached is that it could be something along the size of an existing garage that is conforming, you could still under what is proposed, have a conforming setbacks for a detached accessory structure, and in this case though, it is typically 3 feet with a garage or 5 feet, if it is something that is going to be lived in, from the lot line, which is no different than if someone would build an accessory structure or garage on their site; so there are no proposed changes to any setbacks whether this is an addition or a detached type of structure.

Cheng said as to the proposed number of people they are proposing that it falls under the definition of Family, no different than it is proposed now. He said you could have a family living in your primary residence which would be considered 1 unit of the group of what is defined as a Family, and you could have 2 additional unrelated adults who may have an offspring that would be permitted to live in the accessory dwelling unit.

Bona asked about the total occupancy of the site.

Cheng said that's where it gets tricky because it is going to vary from site to site, depending on the current homeowners and how big is their family. He said typically if we are going to have an accessory dwelling unit we would permit up to 2 unrelated individuals.

Bona commented that what she heard from Teresa was that in the last 40 years, the number of occupants in Ann Arbor dwelling units has dropped by 1 full person. She said this would be allowing in essence some of those properties make up for lost ground.

Cheng said, statistically speaking yes.

Peters asked staff about rent control and AMI restrictions, noting that the State of Michigan forbids us to do rent control by law. He asked if AMI plays into these restrictions.

Brett Lenart, Washtenaw County, said yes, indirectly because the ban is to restrict rents in any way and the reason you care about Area Medium Income (AMI) is so that you are sizing the rent at appropriate levels to that household income, so by extension, it does have the impact if you achieve affordability by an AMI factor, you are restricting rents.

Peters asked even if we wanted to do it we couldn't do it because of State law.

Lenart said correct; the better way to approach it were if you had this prototype available then the next step is to look at how do you incent people to voluntarily seek affordability, possibly through fee waivers or other possibilities where you are not regulating it but you might incent a lower rent for those units.

Briere asked about the mentioned 2 people and their child in reference to the Accessory Dwelling Unit. She said she realized it was possible to be a single parent with multiple children, and it is possible for someone to be part of a couple with multiple children. She asked if on any level there was a restriction that would be enforceable that would say, more than 3 individuals cannot live in the accessory dwelling unit.

Cheng said yes, he believed that those with multiple offspring would be permissible per City code.

Briere asked if it would be legally permissible for someone to have 2 or 3 or 4 children in 1 accessory dwelling unit.

Cheng said yes, per our housing code standards, per our zoning definition of Family, they could have 4 plus offspring living in there. He said he wouldn't know how practical that would be, knowing the average size of the units being no more than 600-800 square feet.

Briere said she felt it was important to acknowledge that point even if the scenario might be very unlikely, because there aren't that many families that have quite so many children these days, while it's also true that the families that do have that many children are often financially strapped and have need for affordable housing.

Briere asked about the conceptual \$600 a month rent which nobody can say will ever really happen, would make this imaginary \$600.00 a month unit affordable for somebody making \$ 30,000 a year or more, but not for somebody making significantly less than \$30,000. She asked if there was any estimate what a homeowner might expect in return on their investment of an ADU as an external detached or internal attached unit if this could possible be affordable.

Lenart said, no, he didn't have that answer because of the variation of the cost of that unit in a variety of scenarios could be so different so pinpointing the unit cost is hard enough, let alone the financial return on that investment. He said currently in the City you do have the opportunity of creating these types of units for various circumstances to help an ailing parent or a child with a disability, situations which go beyond economics.

Briere commented that the report from staff was nice in that it showed the proposed changes, but there was nothing about the R2 in the attachment.

Lenart said he believed you can do everything in R2, so it is inherent in that way.

Briere said currently to put 2 units in R2A requires 8,500 square feet of property, which is clearly significantly more than the required 5,000. She asked if we could achieve the same goal in R2 by reducing the number of square feet required for 2 units to 5,000 square feet.

Cheng said yes, you could but that would require going back in and changing the R2A minimum lot size standards to allow for additional units.

Lenart said it would probably still not allow for detached duplexes.

Briere said since you are opening up the ordinances you can make all kind of changes.

Lenart said they could take on R2A as their next project.

Gibb-Randall asked if you have a detached garage could you increase the footprint of the existing or could you only go up.

Cheng responded that you could do both, and the way they have written it is if you already have a legally conforming accessory structure then you could create an accessory dwelling unit or if you already have something

on your property that is at least a minimum 200 square feet, you could tear that down and rebuild. He said we do have zoning regulations on that you can't take up more than 35% of your rear yard, like any garage would be you would still have to meet the minimum setbacks.

Gibb-Randall asked if she had a gardening shed could she turn that into an accessory dwelling unit.

Cheng said it would depend on how big the gardening shed was; he noted that anything over 200 feet requires a building permit.

Carlisle said the reason they chose the 200 feet is that a typical garage is 20x10 feet, so not to allow garden sheds to be converted into an ADU.

Clein asked about the differences in R1 and R2 zoning districts.

Cheng said currently any homeowner living in a single-family home, regardless of lot size, can rent out to 3 unrelated individuals, and they wouldn't have to register it or get it inspected; so as for occupancy you currently can be 4 unrelated individuals living in a single-family home or R2, which is 2-family. He said as for changes we are not going to try to increase the occupancy of these neighborhoods. He noted that he wouldn't know how many people would be living as a functional family unit in the principal structure but they are trying to cap it with 2 and their possible offspring in any type of accessory dwelling unit.

Clein asked about the thought of inspecting potential ADUs, but not the owner occupied units.

Cheng said they would definitely have the Accessory Dwelling Unit registered and the Housing Department would also like to look in the main structure if there is anything that is shared or common areas, such as utilities, closets, laundry-rooms, to ensure they are safe.

Clein said as for owner occupancy, the discussion has been that the City is looking for the community to play a role in this if you are a neighbor and you feel you are not seeing who you think is the property owner, there might be a call that goes to the City to alert us, since we are not out there patrolling looking for these situations.

Cheng agreed, adding that the City is not out there looking for these types of code violations. He explained that most code enforcements begin with neighbors filing complaints which result in City staff making site visits and

inspections to verify if there are any code violations.

Carlisle commented that this question had been run by the City's Assessing Department that confirmed there are multiple ways to verify owner occupied status, so they were not worried about that being a condition of the ordinance.

Clein asked if that meant there would be extra monitoring of registered ADUs in this regard.

Carlisle said that would be a part of the inspection enforcement program.

Cheng read from an email from the City Assessor office noting they use the following information; State of Michigan tax returns, driver's licenses, voter's registration, and utility bills, as some of the ways they verify if owners are being honest with the City. He noted that they can go back for 3 years on these records.

Clein said he sees that by potentially increasing the number of units in any given area, it might help to marginally lower rents for people. It might also provide a little extra income for people who might want to age in place or a potential for people who don't need their big house anymore and want to live in the smaller unit and rent out the large house and still remain in the area. He said he didn't think this proposal was going to solve the affordable housing issue, but would probably be a step in the right direction. He agreed that we probably do have an affordable housing issue in Ann Arbor and while it is not insurmountable like in some places like San Francisco, it's probably beyond being solved without some huge effort but if these types of efforts help chip away at it, we might be able to help stabilize what we are seeing for housing prices in the next 10 to 20 years.

Mills asked about required notice on a zoning change.

Cheng said if this gets approved it is not like a site plan where we have public notification within 1,000 feet and public hearing notices within 300 feet. He said notification has been done through egov-deliveries, numerous meetings have been held, advertisements have been made, websites have been updated to include this, and in moving forward, we will continue to inform the public what the next step is, whether that is a postponement, or if it moves on to City Council for public hearing and discussion.

A public hearing notice was printed in the Washtenaw Legal News as well as being sent to all registered neighborhood groups in the City, and neighboring jurisdictions and those required to be notified of proposed zoning amendments.

Mills asked if there were a large rezoning, what type of notice would be required.

Cheng said they would then notify every household within 1,000 feet of the area being affected.

Cheng clarified that this is not a rezoning, and that these parcels are staying R1 zoned, and this proposal is a text amendment, and there will not be individual mailings sent out; he encouraged everyone to follow the next steps by going to the City's webpage.

Carlisle explained that this is considered a zoning text amendment just like the Premium Downtown Zoning amendments that will also be heard tonight and not all residents in the downtown were notified but we have tried our best to send out as much notification as possible in regards to this. He said since he is a member of Next Door, he is aware of a number of posts on there from his neighborhood, related to this proposal, as well as at the grass roots level of these zoning amendments.

Mills said she was satisfied that this would happen in incremental steps and that it might be more palatable to stick with the zones that we currently have, then potentially expand this, is her hope in the future if this moves forward, that single-family homes in R3 and R4 would have this opportunity in the future.

She said this was something that they did discuss and this was a pragmatic choice to hopefully make this palatable so this could happen in baby steps.

Bona asked about existing penalties that are part of the Rental Housing process.

Cheng said staff tries to work with owners first, sending them a warning letter, talk with them and try to rectify the situation. He explained that if it gets to the ticket proceedings, it's a maximum of \$500 as a civil infraction from the Courts. He said his experience is that it is rare that we get up to the \$500 fine because we usually get it resolved before it goes that far as a court appearance, but hypothetically if it is something that goes on, the City can issue tickets on a daily basis, which is enough to deter someone

from saying it's only a \$500 ticket and is something that they would like to nip in the bud.

Carlisle explained that there had been a long discussion with the City's Rental Housing Department regarding enforcement in which they felt very confident in being able to enforce and monitor the situation from a staffing level and they did not want that to be a limitation on why this should not move forward.

Bona asked about noted future steps if the amendments were adopted as outlined in the staff report; the development of a guide for homeowners as well as possible incentives as they are related to affordability. She said she felt these were extremely important and she wasn't sure she felt comfortable adopting this without those two items in place and being included in the motion.

Carlisle responded that right now they are looking for a motion from the Planning Commission on the text amendment language to go to the City Council, and it has always been our intention to put that document together because we understand how valuable it is. He said the Commission could add that in their suggestion to Council that they require staff to do that if this does get adopted.

Briere said she echoed what Bona said and suggested that if this moves on to Council that at least draft text be available for both of those things before first reading. She noted that while staff is short staffed she gets the hours that are involved in this, but Council will be uncomfortable with discussing something where we don't know how we are going to implement it and it will be really important not to have the final information, but to have some concept of framework that is more precise than this right now.

Carlisle said we can certainly have a draft available for first reading for City Council if this does move forward.

Bona suggested regarding communicating with the public that Council communicate with their constituents which would be one more avenue to make sure people are aware of this and those most interested would be easy to reach in that way.

Clein concurred with Bona and Briere on the importance of having the information ready for Council and will help in that discussion. He commended City and County staff for working together on this, noting that

it is an important thing that needs to happen and probably more so in the future, not only in Ann Arbor but everywhere to help do things more efficiently and effectively.

Woods noted a comment from a public speaker, about this being a step in the right direction. She said in working on this over the past few months that is what she is taking away from this that while it is not perfect, it is a step in the right direction and she realizes there will be things that staff will still have to do but she commended City and County staff for all their hard work and all the meetings held and for answering all their questions. She said she was certainly in favor of moving this forward.

On a voice vote, the Chair declared the motion carried. VOTE:8-0

Yeas: 8 - Wendy Woods, Kenneth Clein, Sabra Briere, Jeremy Peters, Sarah Mills, Bonnie Bona, Alex Milshteyn, and Shannan Gibb-Randall

Nays: 0

Absent: 1 - Sofia Franciscus