From: Ralph McKee <rmckee2258@gmail.com>
Sent: Tuesday, March 23, 2021 1:12 PM
To: Planning <Planning@a2gov.org>
Subject: TC1/ADUs

I am writing to comment on the proposed TC1 zoning district, and to provide a "post-mortem" on the ADU motion. While your discussion and decision on ADUs greatly informs my comments on TC1, I will save the detail for later in this email, because it is harsh and you might not read anything beyond that. Suffice it for now to just say that the ADU debacle (and the C1A/C1A/R fiasco before it), and previous discussions on TC1 and its predecessors (or whatever other name you might change it to) make clear that, regardless of the actual merits of the arguments made or the relative numbers of the public comments you receive, 1) you will seriously consider only public input which aligns with your ideological base, and 2) you will only ask staff to significantly change direction if the change is aligned with that base.

Given the above, it appears to be a waste of time to suggest actual policy positions or arguments supporting them. So I will focus mainly on predicting how the TC1 discussions will go and providing a critique.

Let's start with my summary take on how we got here.

In response to council's directive to re-start consideration of transit-oriented development, Alexis DiLeo presented a thoughtful plan focusing on re-development of the State and Eisenhower area. Her reasons were sound: 1) it's easier and likely more effective to focus on a particular area, rather than using a city-wide "one size fits all" approach, 2) that area is different than most other transit corridors in town, because it is dominated by commercial and office buildings and developments would thus be farther from single-family neighborhoods, providing an ideal opportunity for relatively dense development, 3) one would likely learn lessons from the initial area that would help decision-making re other areas later. There were some public commenters in favor of this approach, which would have had these additional benefits: 1) it would potentially lead to a community consensus, and 2) it would have allowed for a discrete, fairly quick and inexpensive master plan revision, which some residents contend is not only the better approach but legally required.

But at the working session held on 2/9, some "wonkers" (the local YIMBY group having renamed itself) advocated a city-wide approach. You commissioners jumped all over that and staff then changed course, to present a plan to allow development along additional corridors: Washtenaw, Plymouth, and Stadium. Since then, the discussions have focused on refining the approach: issues like height limits, setbacks, how much transparency (front windows) should be required, height of the first story, and whether mixed use should be required dominated. Comments suggesting that a master plan revision is required for this (in the opinions of some of us) major city-wide change have been summarily dismissed via quoting a few pieces of language from the current master plan. The detailed comment from Brian Chambers, supported by research, suggesting focusing on zoning changes around transit "nodes" such as the Blake Transit Center, has been completely ignored thus far. Suggestions that premiums should be "baked in" in some way, in order to get at least some money from developers into the affordable housing fund have also been pretty much ignored. This is unfortunate, because the owners of property affected by the up-zoning proposed are quite likely to be benefited, and it would be fair to ask for a portion of that benefit to go to affordable housing.

My prediction of what will occur today and at the April 6 public hearing is this: you will discuss tweaking the details of the approach discussed at the last ORC meeting, and you will hear some comments from wonkers suggesting further expansion of the approach into other transit corridors (you have already heard some re Packard, the flaws of which were pointed out adroitly by Ms. DiLeo; query whether you will adopt her logic) and advocating allowing residential tear-downs on corridors like Miller (this has already appeared on the wonker social media page). You will make some comments indicating your excitement on providing "housing choice" and you will insinuate that housing will become more affordable, despite the mixed evidence in that regard, and the statement by city council in support of the affordable housing millage that the free market has failed to provide affordable housing. You will ultimately recommend adopting an approach which would immediately rezone significant portions of the 4 transit corridors already suggested (State and Eisenhower, Plymouth, Washtenaw and Stadium). This last is ironic: wonker Kirk Westphal argued vehemently a year ago that opponents of TOD were fear mongering because there would be a thorough process involving individual re-zonings. I guess the political climate has changed; no longer a need to worry about the fear mongerers and master plan proponents.

Now let's return to the ADU discussion. The 4 main issues were : 1) the owner occupancy requirement, 2) giving more notice to residents, 3) setbacks, and 4) enforcement. A brief review of the owner occupancy issue: the original ordinance proposed by staff had an owner occupancy requirement. At the 2/9 working session the issue of eliminating the owner occupancy requirement was raised, based on an unsupported statement that banks would not finance ADUs if that requirement was retained. Tom Stulberg later refuted that argument by discussing it with a local banker who indicated that requirement would not prevent financing; local bank president Steve Ranzini agreed, on social media. The public commenters and writers said (my count was 25 to 9) that the owner occupancy requirement should be retained.

Many argued that eliminating it would incentivize investors to buy up lower-priced owner-occupied houses, build ADUs, and rent both the ADU and the house, thus reducing housing available for the sale/ownership market. This argument is supported by anecdotal evidence of recent house buyers being outbid by cash buyer/investors, as well as by articles in numerous publications indicating that investors have been buying up houses and turning them into rentals; one author has suggested that we are in danger of ending up like medieval "serfs". I will send citations via separate email later.

Some comments by commissioners on this issue demonstrate a severe lack of critical thinking. The most ludicrous: Comm. Clarke's statement that, essentially, investors would not find rental houses an attractive investment in A2 because strings of houses are harder to manage than apartment buildings. There are of course many landlords in A2 (and every town of any size) who own multiple rental houses; I am aware of two individuals who recently held more than 200 in A2 (I have heard that one currently holds 350+). Several STR owners have multiple houses (Heidi Poscher owns 15 plus the 65-bedroom building on Henry). McKinley (one of the principals of which is Ron Weiser, co-chair of the Michigan GOP), and Oxford Properties, each own dozens if not hundreds. (By the way, why did no one mention Won Lee's conflict of interest, since eliminating the owner occupancy requirement could greatly expand Oxford Properties' opportunities in the rental housing market?)

Further, why would it be unlikely for investors to buy up properties here, given that it is happening in many other places? Do we live in a bubble somehow insulated from investors? And this "inference" that "it won't happen here" is inconsistent with Commissioner(s)' citation of studies from elsewhere, and actions taken elsewhere, like "cool cities" Portland and Seattle. I guess if a study or action from elsewhere supports your position use it, but if it doesn't, just say A2 is immune from market/investor forces. Intellectual honesty seems in short supply here.

Then Comm. Milshteyn argued, plausibly at first blush, that investors wouldn't invest in $200K+ ADUs because the gross rent multipliers would be higher than the desired 11-12. I would agree that his example of a flat above a garage would not rent for $1700+ (roughly a 12 multiplier on $200K). But this is IMO a badly flawed "straw man" premise; I would argue that a brand-new house (rather than a flat above a garage) of at least 750' would often rent for more than $2000. It would in many A2 neighborhoods. And this is what an investor would build.

Comm. Disch attempted to deflect the threat of investor buy-ups by saying the city can't stop investors from buying up houses, and that some result in super-sized houses. She is right in saying the city can't stop that (though it might be able to discourage it by passing stricter lot use requirements). However, that argument simply does not support further incentivizing buy-ups for the purpose of converting existing lower-price-point houses into lots with two more expensive rental houses on them.

Comm. Abrons discussed the AARP model ADU ordinance, which does not contain an owner occupancy requirement. Fair point. But she neglected to note that the same article says that owner occupants are less likely to raise rents. So much for maximizing affordability for tenants renting from investors. She also relied heavily on related "talking points" included in the AARP article. On affordability, AARP repeated, with no real factual basis, the same tired trickledown Econ. 101 supply and demand trope we have heard again and again, that increasing supply of "market-rate" (read "expensive") units will eventually bring down or stabilize prices, thus helping affordability and reducing segregation. First, even if your wildest dreams of new ADUs are realized, we're not talking about the thousands of units here which would be necessary to test the supply and demand theory. Next, have the new expensive condos at the edge of Water Hill, in Kerrytown, etc. brought prices down? Please. Further, this "anti-racist" "strategy" conveniently ignores the possibility of investor buy-ups reducing supply of lower-priced houses for modest-income buyers to live in and build home equity, which of course is one of THE major racial injustices of both the past and now. Simply put, an argument can be made that removing the owner occupancy requirement not only will fail to help affordability but could also result in worsening racial and class injustice.

She also argued that the "compact growth" of ADUs would help achieve sustainability. This ignores the major carbon emissions of new ADU construction and the inevitable loss of tree canopy and permeable surface that would accompany it.

She correctly noted that ADUs could enable extended family arrangements, thus helping older folks in primary residences have caregivers in the ADU, or vice-versa. But these arrangements of course were designed with owner occupancy in mind.

Perhaps the weakest argument she made was that older homeowners wouldn't have to be rich to benefit from an ADU because they could tap their home equity to finance the ADU and supplement their retirement income with rent from it. As a long-time bankruptcy lawyer, I see the potential disaster from this a mile away. Given the size of the loan here (say $200K), if such homeowners don't have a major cash reserve to protect against a construction delay, an unexpected vacancy, or an overly optimistic rent projection, they will likely lose their existing home (and the equity they used to have) to foreclosure. Not exactly a smart move for a cash-strapped older homeowner. Again, ADUs are primarily for rich people (or investors).

Comm. Sauve argued that the ordinance doesn't increase occupancy limits. This ignores the fact that most houses aren't currently occupied by 4 unrelated adults; actual "effective" occupancy on a given property would almost certainly increase. And isn't one of the goals of having more ADUs "gentle densification"? So if her argument was correct, it means that that goal won't be achieved. Nice consistency there.

Comm. Mills argued that the 2016 ADU ordinance “greenlighted” “ADU 2.0”. This is nonsense. The 2016 ordinance only allowed owner-occupied ADUs in existing structures (plus a very short time window in which to build), and only in some areas. The “revision” or “tweak” you passed allows an additional detached house right up to the lot lines on virtually every lot city-wide, and ownership by investors.

Her second argument, essentially that “if there are problems we can fix them later”, is borderline ludicrous. Every ADU built under this revision would be a permanent “legal non-conforming use”, impervious to any later ordinance revisions.

Comm. Disch (and several other council candidates and their supporters) argued in their campaigns that those who said that SFZ was being threatened were fear-mongering. That sophistry continues here: saying that these ADU changes are just minor “tweaks” which don’t compel actual notice to affected residents ignores the reality that every SFZ lot will now be a “double-family” lot, and both structures can be owned and rented by an investor. As John Floyd said, essentially, in his public comment, if it quacks like a duck it is a duck.

And your discussions of giving a simple postcard notice to homeowners, the setback requirements, and enforcement can be succinctly described: polite discussion and then complete rejection. This despite the city recently sending postcards to all city residents re snow removal, at the end of winter, and to landlords advising them to file proof of STR operation.

To sum up, I will expect you to continue to evaluate pros and cons of proposals, and the public comment that you receive, through a strict political/ideological lens without applying serious critical thought or intellectual honesty. That does not bode well for good governance.