

## **ACCESSORY DWELLING UNITS**

*an ordinance review by Jessica A.S. Letaw*

In July 2016, the Ann Arbor City Council passed an ordinance permitting accessory dwelling units to be developed within city limits.

This action was prompted in part by recommendation in the *2015 Washtenaw County Housing Affordability and Economic Equity Analysis* as one of the top ten approaches the city could take to improve housing accessibility and reduce the community's economic inequity gap. This report was developed by *czb*, a community-planning practice specializing in econometric analysis, community engagement, and strategy and comprehensive planning, whose team spent more than a year gathering data and resident input from all over the city. In the end, residents seemed to express both support for legalizing this new housing type as well as concern that development might accelerate change or negative impact on existing, stable neighborhoods. In drafting the ADU ordinance that eventually passed, the City responded to these concerns by including a number of limitations on the development of accessory dwelling units hoping to mitigate their negative impact on neighborhoods.

Given that there have been no completed permits in the two years since the ordinance was approved by City Council in August 2016, one might say that those limitations were a little too successful. As a result, I held a series of five workshops in August 2018 intended to educate homeowners and local building professionals about what is possible under the current ordinance and how to create an attached or detached ADU. I formatted the workshops as a co-presentation between myself and Portland design/builder Holly Huntley, describing first the specifics of Ann Arbor's ordinance and its implementation, and then the specifics of how one designs and builds attached and detached units, ending with extended Q&A sections and one-on-one conversations with attendees. The workshops were made possible in part through a mini-grant through the DDA, in the form of reimbursing Ms. Huntley's travel costs, with the request that the event series be of some value to Downtown residents.

During the Q&As and conversations, attendees brought up many concerns about the ordinance and how it is being implemented, citing specific barriers that are keeping them from being able to develop their own ADUs. Homeowners, residential lenders, city staff, and building industry professionals came with a wide range of questions, ideas, and concerns.

Based on what we heard, I have distilled the attendees' feedback into a list of recommended amendments to the ordinance, supporting and respecting the outcomes of the original community engagement process that led to the passing of the ordinance, while freeing it up to accomplish its original intent: to permit more housing by encouraging the private market to incrementally increase our city's density. These suggestions include both amending the original ordinance and staff policy changes, increasing the accessibility and opportunity for this housing type in Ann Arbor without permitting indiscriminate development.

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## **Suggested ordinance amendments**

### **Remove first-floor requirement and maximum square footage and amend to relate to primary home's overall square footage**

*What the ordinance currently requires:* Accessory dwelling units that are no larger than 600 s.f. (for lots 5,000-7,199 s.f.) or 800 s.f. (for lots 7,200+ s.f.) or the size of the primary dwelling's first floor, whichever is smaller.

*Rationale for inclusion in original policy:* To prevent the development of too-large homes or structures and relate the size of an accessory dwelling unit to the size of the primary home.

*Why homeowners say this is a barrier:* Maximum size is addressed elsewhere in the code through requiring a maximum lot coverage of no more than 35% of a property's rear setback. This part of the ordinance is unnecessarily limiting as many Ann Arbor homes are more than one story; constraining an ADU's size to the ground floor of a two-story 1,200 s.f. home is very different than the same home's overall square footage and is still capped by the overall s.f. requirement. If the goal is to accomplish right-sized homes that are in proportion to the primary dwelling, it would be more consistent with existing code and the ordinance's intent to make that relationship explicit.

*Proposed amendment:* Remove the first-floor requirement and maximum square footage and amend the ordinance to say that an ADU can be no more than 80% of a home's overall square footage.

### **Remove the minimum lot size requirement**

*What the ordinance currently requires:* A minimum lot size of 5,000 square feet.

*Rationale for inclusion in original policy:* To prevent the development of too-small ("tiny") homes.

*Why homeowners say this is a barrier:* Minimum size is addressed elsewhere in the code through minimum structure and room sizes. Imposing this additional restriction unfairly excludes smaller lots, typically those in denser neighborhoods and closer to the center of the city; in other words, those neighborhoods which are ideal targets for incremental infill and which make it easy for residents to rely on transit and non-motorized transportation rather than requiring a car.

*Proposed amendment:* Remove the minimum lot size requirement.

### **Amend the zoning requirement**

*What the ordinance currently requires:* ADUs in zones R1A, R1B, R1C, R1D, R1E, and R2A.

*Rationale for inclusion in original policy:* To reinforce the zoning map.

*Why homeowners say this is a barrier:* Otherwise-eligible single-family homes have been grandfathered in to noncompliant zones. Several homeowners of single-family homes in R2B and R4\* districts indicated strong interest in developing ADUs but are prohibited from doing so. Given that their zones already specify greater density than their current single-family homes permit, it would seem consistent with the goals of both the ADU ordinance as well as the master plan to permit development of ADUs for any single-family home on a conforming lot.

*Proposed amendment:* Permit ADUs in all zones on lots with a single-family home.

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### **Remove expiration date for existing accessory structures**

*What the ordinance currently requires:* The ordinance currently prohibits detached accessory dwelling units from being built on lots which did not already have an accessory building by December 31, 2016.

*Rationale for inclusion in original policy:* To prevent neighborhoods from evolving too quickly.

*Why homeowners say this is a barrier:* Most people who are or will be interested in developing ADUs were not aware of the ordinance in time, and many do not already have an accessory structure on their lot, even though it may conform in every other way. Given that an existing accessory structure can be demolished and an ADU rebuilt on a different part of the lot, that part of the ordinance is not even nominally upholding its own original intent. It also entirely excludes new homes built 2017 and later from being eligible for a detached ADU, despite the fact that most such lots are eligible.

*Proposed amendment:* Remove the expiration or “sunset” date requirement.

### **Remove homeowner occupancy requirement**

*What the ordinance currently requires:* that the property owner live in either the primary or accessory dwelling unit.

*Rationale for inclusion in original policy:* the belief that an on-site owner would have a greater investment in the upkeep of the property and engagement in the community.

*Why homeowners say this is a barrier:* This unnecessarily restricts a property owner’s use of their own land, as well as devalues renters’ contributions and commitment to community. Attendees cited two circumstances which make ADUs untenable for them:

- Seniors who construct an ADU and then move in to an assisted care facility for health reasons would then have an ‘illegal’ home, or be compelled to sell when they may not want to;
- A homeowner who builds an ADU and then moves in with a romantic partner but prefers to maintain ownership of their property.

*Proposed amendment:* Remove the homeowner occupancy requirement.

### **Looking into the future**

In talking with workshop attendees and looking at well-established ADU programs around the country, it becomes clear that even after considering the above amendments, there will be room for our policy to grow and mature. Some potential future evolutions of our ordinance, pending community interest and supportive state legislation:

- An annual per-ward cap for ADU permits;
- Offering incentives to homeowners for making their dwellings available as affordable housing units to the city for a specified length of time;
- Offering incentives to homeowners for meeting ambitious sustainability standards.

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## **Suggested policy amendments**

### **Recommendation: Clarify property tax implications on the City's website.**

One of the first actions of any homeowner is to determine whether an ADU is financially feasible for their family. This starts with design and construction costs and extends to the ongoing costs of increased property taxes and homeowner insurance. As of now, it is unclear to homeowners and residential lenders whether the construction of an ADU – whether attached or detached, whether occupied by the owner, a family member, or a renter – triggers a reassessment of the primary dwelling. It is also unclear whether an ADU is eligible for the homestead exemption tax. Clarifying these policies with the City's Tax Assessor office, and then updating the City's ADU FAQ website and workbook, would be extremely helpful for homeowners and lenders.

### **Recommendation: Write a deed restriction template.**

The ordinance currently mandates a deed restriction upon completion of an attached or detached ADU, but the city has not yet offered further guidance on the matter. It would be helpful if the city attorneys could draft a template for that document that will guide homeowners and building industry professionals to assist homeowners in the successful satisfaction of their legal obligations.

### **Recommendation: Hold periodic public information sessions.**

There is a low level of public awareness around accessory dwelling units; residents are typically not familiar with what ADUs are, and if they do know, they are largely not aware that they are legal in Ann Arbor. This knowledge barrier is probably one of the most significant obstacles to ADUs being built in Ann Arbor: not that homeowners can't or don't want to, but that they simply don't know that this is an option for many people. Annual or semiannual information sessions led by city staff would be helpful, and also aid in reducing the challenge of homeowners finding bad information or not finding the right information by proactively promoting the responsible and efficient development of ADUs.