



MEMORANDUM

TO: Planning and Zoning Commission

FROM: Audree Juhlin, Assistant to the Director Community Development

DATE: May 22, 2008

RE: **Accessory Dwelling Unit Ordinance**

Meeting Date: June 17, 2008

At your May 15, 2008 work session, Commissioners discussed issues and possible options relating to a proposed Accessory Dwelling Unit Ordinance. The first portion of this memo outlines those issues and options discussed and the consensus of the Commission. The second portion highlights those issues and options still requiring Commission discussion and direction.

PLANNING AND ZONING COMMISSION CONSENSUS ITEMS:

Occupancy Requirements:

Concern about the impacts of too many occupants on a single property (e.g. parking, aesthetics, degradation of neighborhood character). Concern that the number of people allowed in the initial proposed ordinance (4 people) may be too many for such a small unit. Are occupancy requirements enforceable? Parking is also a concern as it relates to occupancy.

Commission Consensus:

- Restrict the total number of occupants in the ADU and the primary home (combined) to the maximum number established by definition of 'family'. This approach would not increase occupancy any more than is currently allowed. Recommended language: "The total number of people in the primary residential structure and the accessory dwelling unit cannot exceed the definition of 'family' as described in the Land Development Code." [No more than 4 unrelated adults with or without minor children, domiciled in a single dwelling unit and living together as a single housekeeping unit. NOTE: The definition for family includes one for Group Homes. Group Homes are a protected class and would be exempt from the occupancy requirements.]

Compliance and Enforcement of ADUs:

Concern about the difficulty of enforcement of ADUs. Two citizens suggested that the City should not create ADUs until it can enforce existing codes. One suggestion was to include a permitting process with conditions of approval. Concern that ADUs could be used as short-term vacation rentals. Concern that Code Enforcement is complaint based; should not rely on people reporting their neighbors.

Commission Consensus:

- Require ADUs to be subject to a conditional permitting process, not as of right, specifying criteria and allowing for the City to have administrative discretion. Include in the conditions of approval the ability to conduct random inspections, a revocation provision and a penalty for infractions.
- Require a periodic renewal or extension without an additional fee and include a questionnaire.
- Support allowing telephone complaints in addition to written complaints. Complaints could be anonymous, but given a lesser priority for investigation. As a middle ground, require those with complaints to supply their name to the City but allow the City to hold it as anonymous unless someone makes a request in writing.

Size:

Concern that the language proposed allows ADUs to be either too large or too small. Some concern was expressed that 400 sq ft is not large enough to be considered a livable space. Another concern was the calculation allowance of 33% of the main structure could produce a large ADU based on the trend to construct larger homes. Size is an important consideration to ensure that the ADU remains subordinate to the primary residence. Size limits are also aimed at minimizing visual impacts of additions or alterations to the residence. Size limits also tend to limit the number of tenants who can live in an ADU.

Commission Consensus:

- Change proposed language to say either 33% of the main structure or no more than 800 sq. ft., whichever is LESS.
- Supports some discretion for the Director to modify requirements in cases where strict adherence would be impractical or uneconomical. For example, a two-story home may be most economically converted by installing an ADU on the bottom floor, which may take up half of or nearly half of the entire space available, but would not meet the 33% or 800 sq. ft. requirement. The Director would have discretion to evaluate the situation for approval or denial.
- Felt that 400 square feet minimum size was sufficient.
- Include language that if a unit is larger than 800 sq. ft., it cannot be rented.
- Suggest that the administrative process for residential buildings under 800 sq. ft include a handout with the permit regarding the ADU rules in case an owner considers converting to an ADU in the future.

Setback Requirements:

Mixed comments regarding setback requirements. Some commissioners asked to look at reducing setback requirements to allow smaller lots more flexibility, while others did not support reducing setback requirements.

Commission Consensus:

- ADUs should be subject to existing zoning setback requirements. Does not support relaxing setback requirements.

Parking:

Several citizens are concerned about the potential for parking problems generated by ADUs. Opposition was raised to allow for on-street parking (aesthetic standards make on-street parking less acceptable). Concern that people will park all over yard, suggests requiring covered parking. One suggestion is that parking should be provided in a way that will not detract from the neighborhood – such as require covered parking, restriction on parking in front yard areas or landscaping requirements to limit visual impacts.

Commission Consensus:

- Support a minimum of 3 parking spaces overall for both single-family structure and ADU
- Application submittal for the ADU should include a parking plan
- Does not support ADU parking to be covered (as this provision is not required for single-family parking).
- Require a fence or wall to provide screening for neighbors if side-yard parking is proposed. Cannot rely on landscaping as a means of screening. Landscaping may die or be trimmed so as to no longer provide adequate screening.
- Look at options for material other than impervious surfaces for parking areas

Garage Conversions:

Several citizens indicated that they do not support garage conversions because of parking issues. Comment that garage space is too small to live in. Neighborhoods will be downgraded if garages are rented out.

Commission Consensus:

- Does not support conversion of garages for ADUs, except if another garage is being located on the same property or there already is sufficient garage space.
- In the case of existing ADUs in a garage, provide a mechanism to bring them up to code, to make them legal and safe, without banning them.

Phasing of ADU in Relation To Main Single-Family Structure:

Concern about the size of the ADU relative to the primary residence if ADU was built first.

- If plans for an ADU were submitted prior to plans for the main single-family structure, conditions of approval for that unit would need to spell out that they could not receive approval for the unit to be used as an ADU until the main single-family structure was

approved and constructed. (ADUs are subject to the owner-occupied condition, so the ADU can't be built and used as an ADU first)

- ADU under this scenario would be required to meet all applicable ADU requirements. Conditions of approval should include language informing them of the ADU rules regarding the size, etc., and that these rules would be enforced.

Infrastructure Impacts and Increased Density:

Concern about impact to infrastructure (sewer, septic tanks, traffic). Concern about increasing density. Concern that this is a tool for increasing density.

Commission Consensus:

- Include language that requires an automatic review of the ADU ordinance after a certain number of years or certain number of ADU permits have been issued. This would allow staff, Commissions and Council to evaluate the effectiveness of the ordinance and any associated impacts that may affect the health, safety and welfare of Sedona's citizens and businesses. Recommended language: At least three months prior to reaching (specified amount) limit on applications or (date specific), whichever is earlier, the Department of Community Development shall submit to the City Council a report regarding accessory dwelling units established, and if deemed necessary, recommendations for revisions to the regulations and procedures relating to ADUs. Within 6 months of receiving the report the City Council shall review the report and consider the recommendations proposed. If the City has reached or is nearing the (specified number) limit on applications, the City Council shall determine whether or not to authorize further permits or otherwise revise the ordinance.

Views, Design Standards and Property Values:

Concern about ADUs blocking views. Concern about lowering property values. Concern about increased property taxes.

Commission Consensus:

- Only one ADU per property.
- New construction of ADUs should be limited to a single story with a height limitation of 15'.
- Existing two-story structures or structures exceeding 15' in height would be exempt from the 15' height limitation.
- Do not allow existing one-story structures to add additional stories in order to create an ADU.
- New single-family construction or additions that exceed the 15' height limitation would be restricted from converting to an ADU within a specified period of time (e.g. 3-5 years). This is intended to prevent property owners from circumventing the one-story, 15' height limitation or designing units specifically for conversion at a later time which do not meet the new construction 15' height limitation but would qualify as an existing unit.

- Draft language outlining what is an attached or detached structure by defining the length of the connecting breezeway.

ITEMS STILL REQUIRING ADDITIONAL DISCUSSION & DIRECTION:

Owner Occupancy Requirements - Define “on site” property owner:

Owner occupancy is important to help ensure that the integrity of the home and neighborhood is maintained. The belief is that homeowners are more likely to maintain the property if they also live there. By limiting ADUs to owner-occupied homes, individual speculators are effectively prevented from building multiple units. Commissioners felt it is important to define what “on site” means.

Possible Options:

- On site means that either the main dwelling unit or the accessory dwelling unit must be occupied by the owner of the property. Owner occupancy is defined as a property owner as reflected in title records, who makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration or similar means and actually resides at the site more than six months in any given year. (Waseca, MN)
 - Staff recommends this definition.
- To ensure compliance, some communities require that the homeowner sign an affidavit affirming that they will occupy either the primary or accessory residence.
- Some communities require that the owner occupancy requirement be recorded as a deed restriction.
 - Staff recommends this option.
- For added insurance that owner-occupancy requirements will continue to be met, some communities provide for termination of an ADU permit upon the sale of the property and require new owners to re-register.
- Some communities also require that owners must have lived in their homes for a certain number of years before they can install an ADU.
 - Staff does not recommend this option because it could impact the ability of young families who might need to rely on the rental income in order to purchase a home.

Flexibility:

Some Commissioners suggested staff should look at language for some flexibility for unique situations. Citizen concern: The Director should not be granted discretionary authority regarding ADU requirements.

Possible Options:

- Provide criteria or parameters for discretion. For example, the size limitation section says that the Director has the ability to approve a greater or lesser size if floor area is warranted by circumstances of the building. Add language that says the Directors can waive size requirements not to exceed 10% of the total size requirements. Look at similar parameters for other issues such as parking.
- Include a general section that discusses administrative discretionary authority of the Director.

How Will Neighbors Be Informed About ADUs?

Possible Options:

- Some communities require that a notice be sent to residents within a certain distance of a proposed ADU, either before approval to allow residents an opportunity to comment on the permit, or after the approval has been issued to notify them about the ADU and the requirements of the ordinance. A notice to neighborhood residents lets them know what to expect and what their enforcement options are if problems arise.

Will Owners of ADUs be Charged a Recurring Fee?

The City is providing the owners with a benefit. Shouldn't the City institute a fee?

The only fee contemplated at this time is a building permit fee similar to those that apply to guest homes. Currently, owners pay a \$75 deposit plus \$1.20 per square foot for a guest home permit. Adding additional fees could serve as a deterrent to the construction of ADUs and could also result in higher, less affordable rents. ADUs would be subject to sewer connection and development impact fees.

Existing Units Being Rented Out:

Inventory existing guest homes that are rented out. How to encourage already established guest homes being used as rental property to come forward and register their unit? Concern about existing units meeting standards. May be very difficult or costly to do so.

Possible Options:

- When communities adopt an ADU ordinance, some provide incentives for the owners of illegal units to legalize them and to bring them up to minimum fire and building safety requirements. One option for encouraging legalization of existing illegal units is to waive any applicable fines for homeowners who apply for a permit within a certain period (e.g. six months) following adoption of the ordinance. Allowing a grace period for homeowners to modify illegal units that do not meet minimum health and safety standards has also been used.
- That portion of a single-family residence which meets the definition of accessory dwelling unit which was in existence prior to (adoption date) may continue in existence provided the following requirements are met:
 - An application for an accessory dwelling unit is submitted within eighteen months of (adoption date).
 - The unit complies with the minimum requirements of the Building Code (Mercer Island, WA)
 - Owners of illegal units who apply for a permit within the grace period may also be given some leeway on minor violations of ADU size, setback, parking, and other requirements where full compliance would be impractical (Model Zoning Ordinance)
- The Director may waive the 800 square feet limitation in any accessory dwelling unit existing on (adoption date) if an application to legalize the ADU is filed within 18 months and if the Director finds that reduction of the floor area would be impractical.
- Experience in other communities indicates only limited success in getting owners to of illegal units to come forward and register them even when offered amnesty.

Will the City Regulate Rents?

If ADUs are supposed to create affordable housing, shouldn't rents be regulated?

City imposed regulations are not being proposed. Other communities have indicated that property owners are generally unwilling to construct ADUs if a City institutes ongoing regulations that are seen as intrusive. Monitoring rents can be staff-intensive, and, depending on the number of ADUs created, could require additional staff.