Sunday, September 1st, 2019 DELIVERED VIA EMAIL

Eugene Mayor, City Council, and City Manager
City Manager's Office
125 East 8th Ave
Eugene, OR 97401

Re: CA 18-1, Accessory Dwelling Units

Dear Mayor, City Councilors, and City Manager:

As you prepare for your deliberations on changes to Eugene's code related to Accessory Dwelling Units in September, I would like to add some additional input to my two previous comments of May 15th and January 27th in light of two recent actions that will likely have impact on this matter. Notably, the State Legislature passed HB 2001, which provides additional information regarding reasonable regulations related to siting and design, and LUBA remanded the City's decision in the second Kamps-Hughes ADU zone verification request. Both of these actions could affect the decisions the Council makes regarding Eugene's ADU code.

The substance of my request remains the same as in previous comments—namely, that Council passes the ordinance removing owner occupancy, with modifications removing additional regulations which are either not related to siting and design or not reasonable. As always, I appreciate the opportunity to share my thoughts on this issue.

Parking

The draft code presented to Council retains Eugene's requirement for an additional off-street parking space associated with an ADU. The City finds that this is related to the siting and design of the ADU. However, HB 2001 clarifies that parking requirements are not regulations related to siting and design. Section 7 of that bill amends ORS 197.312 to include section 5(b)(B) which reads "'Reasonable local regulations relating to siting and design' does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking."

Therefore, the Council should modify the ordinance before it to strike 9.2751(17)(c)15 from the Eugene Code, and strike from table 9.6410 the 1 per dwelling minimum number of required off street parking spaces for accessory dwelling units. This will remove Eugene's requirement for additional off-street parking for ADUs, and ensure compliance with SB 1051 and HB 2001.

Owner-Occupancy

The draft ordinance already includes removing owner-occupancy requirements from the Eugene code; however, much of public testimony surrounding this ordinance has centered on if the City should retain its owner-occupancy requirement. It should not.

HB 2001 settled the question as to if owner-occupancy is a regulation related to siting and design. Section 7, cited above, clarifies that owner-occupancy requirements are not a regulation related to siting and design. However, an argument has been put forward that even if owner-occupancy is not a regulation related to siting and design, it is still permissible as part of the definition of an ADU—that owner occupancy is what makes a unit "accessory" or "connected," as opposed to just a second unit. The fact that the State Legislature chose to include owner-occupancy as one of two types of ADU

regulations it clarified in HB 2001 shows their clear intent that owner-occupancy should not a criteria for ADUs.

In addition, in Kamps-Hughes v. City of Eugene (II) (LUBA No. 2019-028), LUBA found that owner-occupancy is not a methodology to determine if a dwelling is "accessory" or "connected to" a primary dwelling. At issue in that decision was if the second dwelling that Mr. Kamps-Hughes wishes to build on his property is in fact an "accessory dwelling unit" under ORS 197.312(5). In this case, the City argued that Mr. Kamps-Hughes hadn't shown that the unit in question was "accessory to" or "used in connection with" the primary dwelling, in part because Mr. Kamps-Hughes didn't guarantee that he would live on the property. LUBA didn't provide an abundance of clarity as to what *would* demonstrate that a unit was used in connection with or accessory to a primary dwelling when it remanded the City's rejection of Mr. Kamps-Hughes ADU, and in fact issued a split decision (with the prevailing opinion being that the unit was used in connection with the primary dwelling, and the concurring opinion being that the unit was accessory to the primary dwelling.) However, both the majority and concurring opinion agreed that owner-occupancy was not necessary to show that a unit was accessory or connected to the primary dwelling.

From the majority opinion:

> "For purposes of ORS 197.312(5), residential use does not depend upon the identity of the residents or the residents' legal estate with respect to the residential dwelling structure. That is, neither residence must be occupied by the owner in order for the residential use of the two structures to be in connection with each other."

From the concurring opinion:

> "Traditionally, zoning does not consider whether a structure is occupied by a renter or an owner when describing a use category. A single-family residence is a single-family residence whether occupied by a renter or a homeowner. A multi-family unit is a multi-family unit whether or not the occupant owns or rents the unit. A single-family residence owned for investment purposes remains a single-family residence. The ownership structure is irrelevant to the nature of the use."

Council should remove owner-occupancy requirements for ADUs from the Eugene code, as outlined in the draft ordinance.

Lot Size Minimums, Application of Density Maximums, Lot Dimensions, and Alley Access Lot Prohibition

HB 2001 did not specifically address if lot size minimums, density limits, lot dimensions, and prohibitions on particular types of lots (such as flag or alley access lots) were reasonable regulations related to siting and design, perhaps because Eugene is somewhat unique in applying these types of restrictions to ADUs. However, the language surrounding duplexes in HB 2001 provides some additional clarity for this question.

The City has argued that regulations that specify the characteristics of a lot that are necessary to permit an ADU qualify as "siting" regulations. In my previous comment, I contended that the legislature, by specifying that each detached single-family home shall be permitted at least one ADU, had intended that the necessary lot characteristics were the ones required to permit a single-family home. In Section

2 (part 2(b)) of HB 2001, the legislature said that cities such as Eugene shall allow the development of "A duplex on *each lot or parcel zoned for residential use* that allows for the development of detached single-family dwellings." (emphasis added)

Where duplexes are currently permitted in R-1-type zones around the state, a common requirement is to require a larger lot size for the duplex than is required for a single-family dwelling. Eugene requires that duplexes in R-1 be on corner lots of at least 8,000 square feet, compared to 4,500 square feet required for a single-family dwelling. By specifying that each lot that allows a detached single-family home must also permit a duplex, the Legislature is rejecting the idea that lot characteristics such as lot size minimums can be used to prohibit duplexes. This adds support to the interpretation that the language in SB 1051 allowing reasonable regulations related to siting and design was not indented to include lot characteristics such as lot size as regulations related to "siting."

If nothing else, at some point in the next three years, the City will need to revise its zoning code to permit two units (in the form of a duplex) on all lots in residential zones that allow detached single-family homes, regardless of lot size or density maximums. It seems unreasonable to allow two-homes-in-the-form-of-a-duplex on a 5,500 square foot lot but prohibiting two-homes-in-the-form-of-a-primary-and-accessory-dwelling on the same lot.

Therefore, the city should remove regulations that prohibit ADUs, but not single-family homes, based on the characteristics of the lot. This includes striking sections 9.2751(17)(a)1 and 9.2751(17)(c)5 (lot size minimums); striking the words "including secondary dwellings" from table 9.2740 in Residential Dwelling text, striking 9.2751(1)(a)1 and adding 9.2751(1)(f) "Accessory Dwelling Units are exempt from the minimum and maximum residential density standards set forth in Table 9.2750" (density); striking the words "except that new secondary dwellings are prohibited on alley access lots" from 9.2741(2) and the words "except that there is no allowance for a secondary dwelling" from 9.2751(18)(a)2 (alley access lots); and striking 9.2751(17)(c)2 (university lot dimensions.)

Renaming of ADUs in special area zones

In light of HB 2001 requirement that each lot that allows a detached single-family home also permit a duplex, the rational behind not allowing ADUs to be called ADUs in the S-C and S-JW zones becomes even weaker. This is discussed more in-depth in previous comments; however, the primary motivation appears to be to ensure that homes on lots between 2,250 square feet and 4,499 square feet in the medium-density S-JW zone--which currently allow one dwelling, but not two--would not be permitted to construct a second dwelling in the form of an ADU. Given HB 2001's mandate that all lots which permit a detached single-family home also permit a duplex, within three years these lots would be able to add a second dwelling anyway, regardless of what it is called. Therefore, it is recommended that this language not be reimplemented, as it just adds confusion to an already confusing and difficult discussion. *(Remove section 10 and section 17 from the proposed ordinance.)*

Sloped setbacks, size limits based on lot size, outdoor storage screening, separate lot coverage standards in the University area

Neither Kamps-Hughes II nor HB 2001 provided much additional clarity as to what types of regulations related to siting and design would be considered "reasonable." While I agree with the City's findings that sloped setback requirements, size limits on ADUs that are based on the size of the lot, outdoor storage/trash screening requirements, and the separate lot coverage standards in the University areas can justifiably be considered related to siting and design, I would disagree that they are reasonable, and

would urge the City to remove these regulations. My previous comments provide more in-depth rational and code citations.

Conclusion

The City has spent over two years wrestling with the requirements surround ADUs put forward in SB 1051. With the passage of HB 2001, we can no longer afford to drag the ADU debate out any further. Simply passing the ordinance before you to remove owner occupancy and other clearly impermissible regulations is a positive step, but it leaves many other steps undone. I urge you to remove the questionable regulations on ADUs from the Eugene code.

I thank you for your time and attention to this issue.

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