

Monday, March 5th, 2018

DELIVERED VIA EMAIL

Eugene Planning Commission
Eugene Planning Division
99 W. 10th Avenue
Eugene, OR 97401

Re: SB 1051 Compliance

Dear Planning Commissioners:

At your meeting on January 22nd, City Staff discussed a two-phased approach to addressing regulations surrounding Accessory Dwelling Units (ADUs)¹. Phase two would involve a community discussion regarding reasonable requirements on ADUs in our community; phase one would be a limited-scope code revision to bring Eugene in compliance with the ADU portion of SB 1051 prior to the July, 2018 implementation deadline stated in the law. The proposed phase one revisions are the subject of a March 6th public hearing. WE CAN is resubmitting its comments for inclusion in the record. WE CAN has concerns that the limited-scope revisions proposed by staff will not, in fact, bring Eugene into full compliance with SB 1051.

SB 1051 is new legislation, and there remain open questions surrounding its interpretation. However, it is clear that the intent of SB 1051's provisions on ADUs is to increase the rights of homeowners to develop ADUs on their property, and to limit to ability of local jurisdictions to prohibit ADUs within their UGB. Or, as Ellen Miller of the Department of Land Conservation and Development summarizes it in her report describing 2017 land use bills, SB 1051 "Prohibits [cities].... from prohibiting building accessory dwelling units in areas zoned for single-family dwellings."²

Staff has proposed to make minor modifications to the code to permit ADUs in areas that permit single family dwellings but do not currently permit ADUs. This is a necessary step to ensure that Eugene is in compliance with the ADU provisions of SB 1051, and we thank staff and the City for moving forward with this in a prompt fashion. Staff has also proposed a community process to discuss additional modifications to regulations surrounding ADUs in Eugene; we agree that a community discussion is required to balance different perspectives as to what types of regulations surrounding the design and siting of ADUs are reasonable, especially considering that what is "reasonable" is frequently in the eye of the beholder. We look forward to participating in that discussion.

However, staff has not included two important elements of current Eugene code surrounding ADUs in their proposal for compliance surrounding SB 1051. In particular, regulations surrounding owner-occupancy and lot size are not design and siting regulations. Prohibiting a homeowner from developing an ADU if they so desire based on an occupancy requirement or lot size falls outside of the allowance in SB 1051 for reasonable restrictions based on design and siting of the ADU.

¹ In SB 1051 and many jurisdictions, such dwellings are referred to as "Accessory Dwelling Units." In the Eugene zoning code, these dwellings are termed "Secondary Dwelling Units." As the terms are generally considered synonymous, this document will consistently use "Accessory Dwelling Units" or ADUs.

² <http://www.oregon.gov/LCD/docs/legislative/landusebills2017.pdf>

1. **Owner Occupancy Requirements:** Eugene's Code places substantial regulations surrounding owner-occupancy when creating ADUs. Among other things, it indicates that a building permit cannot be issued unless the property owner has provided proof a deed restriction indicating that the property will be the principle residence of the owner. In addition, it requires that the property owner provide ongoing verification of continued residence to the City, prohibits them from vacating the property for more than six months for any reason other than an employment, educational, or volunteer opportunity, or a medical need. In those situations, it requires the owner provide the City with proof of the temporary leave status from the employer, educational institution or medical provider, and must provide a notarized document that they intend to resume occupancy after one year. Properties with ADUs are unique in the Eugene zoning code both in requiring owner-occupancy and the level of documentation required.

While the reasonableness of requiring a homeowner to provide a doctor's note to the City in the event they wish to rent out their home while undergoing medical treatment can be discussed, what is clear is that this regulation is not related to design or siting of the ADU. Under SB 1051, each detached single-family home *shall* be permitted at least one ADU, subject to reasonable design and siting regulations. Design and siting regulations are understood to mean regulations about the structure itself, not characteristics of the property owner such as their place of residence. If the City of Eugene denied a property owner a permit to develop an ADU based solely on the lack of a deed restriction related to owner-occupancy, it seems that this would be counter to SB 1051 allowance for each single-family homeowner to develop an ADU.

2. **Lot-Size Minimums:** Prior to 2014, Eugene permitted attached ADUs on lots greater than 4,500 square feet, and detached ADUs on lots greater than 6,000. As part of a package of code revisions approved by the Eugene City Council on July 28, 2014, this was changed so that no ADU, regardless of design, siting, or designation of attached vs. detached, would be permitted on lots smaller than 6,100 square feet. Staff's analysis at the time indicated that this change would disallow ADUs from 4,780 lots that previously would have allowed them.³

SB 1051 says that the City shall allow the development of at least one ADU for each detached single-family dwelling, subject to design and siting regulations. Due to the lot size minimums, the City is prohibiting the development of ADUs on thousands of properties containing detached single-family dwellings, irrespective of any design or siting criteria of the structure itself. More targeted regulations that addressed the form of an ADU (i.e. the allowance for attached ADUs on smaller lots, which could take the form of a basement, garage, or attic apartment in an existing structure without substantive change to the design and siting of the structures) was replaced with a blanket prohibition on ADUs on approximately 10% of the properties that previously would have allowed them.

Until such a time as the more robust discussion can happen related to the reasonableness of particular design and siting requirements, the City should remove the lot size minimum for, at a minimum, attached ADUs, so that each owner of a single-family home is permitted to create a legal ADU if they so desire, as SB 1051 states. The construction of ADUs would remain subject to existing height limits, setback requirements, lot coverage restrictions and other requirements currently in the zoning code.

³ https://ompnetwork.s3-us-west-2.amazonaws.com/sites/134/documents/agenda_packet_53.pdf, P184

In light of the growing housing crisis in Oregon and in Eugene, SB 1051's clear purpose was to enhance the rights of homeowners to create additional housing in our urban communities, and to prevent local jurisdictions from prohibiting this.

Even if further clarification and guidance or future legal decisions determines that these regulations surrounding lot size and owner occupancy are permissible under SB 1051, Eugene is not likely to be found out of compliance with state regulations for being more permissive regarding ADUs than the law requires. On the other hand, erring on the side of being less permissive than the law requires would bring Eugene out of compliance.

We understand this topic is a contentious one in our community, and we respect staff's desire to navigate these difficult waters without creating too much turmoil. It is more politically safe to interpret the requirements of SB 1051 extremely narrowly. However, this course is also the more legally risky interpretation, at least until such a time as further guidance is provided by the State or through the appeals board.

We therefore respectfully request that the Eugene Planning Commission recommend to City Staff and City Council that they include a removal of the owner-occupancy language and the lot size requirements in their revisions to the code necessary for compliance with SB 1051.

Respectfully,
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