

TO: Jennifer Steingasser, Deputy Director Office of Planning
CC: Elisa Vitale, OP
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DATE: May 25, 2022

RE: Recommended zoning changes to reduce barriers to accessory apartment construction

As you consider updates to the zoning regulations to facilitate accessory apartment construction, we wish to provide these revised recommendations. Thank you for your consideration.

Summary

1. Eliminate the five-year delay for construction and occupancy of a second dwelling in an accessory building in Residential Flat (RF) zones.
2. Revise the 450 square foot footprint limit for an accessory building used for a dwelling to permit up to 650 square feet.
3. Lift restrictions on third units in the RF zones for a basement and accessory building.
4. Allow more flexibility for non-conforming properties.
5. Eliminate the owner occupancy requirement in the R zones.
6. Permit cellar/basement accessory apartments to use the full footprint of the principal dwelling even if the size of the accessory unit exceeds 35% of the gross square footage of the principal dwelling.
7. Remove special exception requirements for accessory apartments in the R-19 and R-20 zones.
8. Eliminate the requirement that an accessory apartment can only be permitted on the second story of an accessory building in R-19 and R-20 zones.
9. Eliminate parking replacement requirements.

Full recommendations

The following suggested changes to the zoning regulations could facilitate the production of additional accessory apartments and second dwellings while still respecting the intent of the zoning regulations and Comprehensive Plan.

- 1. Eliminate the five-year delay for construction and occupancy of a second dwelling in an accessory building in Residential Flat (RF) zones.**

In RF zones, the zoning regulations require a five-year waiting period before an expanded or new accessory building can be used as a dwelling (DC Zoning Regulations of 2016, [Subtitle U-301.1\(e\)](#)). This is especially confusing because the RF zones typically permit two dwellings as a matter-of-right.

The five-year limit unnecessarily and arbitrarily restricts the ability to construct and occupy a new accessory building, including constructing a living unit in a new garage which itself can be built as a matter-of-right. While the Board of Zoning Adjustment could waive the requirement by approval of a special exception, the delay, cost and unpredictability of the special exception process is generally prohibitive for homeowners. RF zones, given their similarity to R-3 zones, should be given the same allowance for new construction of an accessory building that otherwise conforms to the zoning regulations.

2. Revise the 450 square foot footprint limit for an accessory building used for a dwelling to permit up to 650 square feet.

The maximum building footprint for an accessory building is limited to 450 square feet or 30% of the square footage of the required rear yard area, whichever is larger (DC Zoning Regulations, [Subtitle D-5006.1](#)). In most cases, 450 square feet will be larger.

A 450 sq. foot building area allows for a studio apartment that can provide minimal accessible clearances for wheelchairs. The limit undermines a key benefit of ADUs -- providing a space to age in place or a new home for a person with physical disabilities. Revising the 450 square foot requirement would be consistent with the Office of Planning's original recommendation of 900 square feet. Many lots offer room for footprints of 900 square feet, and other zoning regulations would restrict the total permitted lot occupancy of all occupied structures on the property. We recommend a 650 sq. foot building area as a matter of right to provide flexibility to provide a one-bedroom unit that could accommodate conditions such as an aging-in-place couple or a parent and child with a disability.

Permitted as a matter of right, this action could incentivize accessible, universally designed units. This facilitates preparation for increased housing options for those with mobility impairments and assistive devices. Removing the 450 square foot restriction for dwellings in an accessory building while relying on existing lot occupancy limits would allow greater design flexibility and the ability to meet the needs of occupants.

3. Lift restrictions on third units in the RF zones.

The RF-1 zone only permits a third unit as a special exception and when the property has sufficient space (900 square feet of land area per unit). This means a homeowner will most often choose between providing a basement apartment or a living unit in an accessory building. If an RF-1 lot can accommodate two additional units within the current footprint of existing buildings, or lot occupancy and square foot of land area per unit, a second additional unit could provide a dwelling for one more household. This would have negligible negative impact, and advance DC housing goals by fitting additional housing opportunities in areas already provided with public services.

4. Allow more flexibility for non-conforming properties.

The zoning regulations do not allow expansion of existing non-conforming structures or non-conforming uses without Board of Zoning Adjustment approval. However, many properties

are non-conforming or have other limitations. This requirement creates a substantial burden on single family homeowners because the cost of processing a Board of Zoning Adjustment case can exceed \$20,000. Office of Planning should assess and standardize legalization of existing non-conforming properties given how common they are.

5. Eliminate the owner occupancy requirement in the R zones.

National experts consider the owner occupancy requirement a leading constraint to ADU production.^[1] This requirement has support among some residents who believe that requiring owners to live in close proximity to the ADU tenants will ensure good tenant behavior. However, it is already the case that a homeowner could rent out their entire house and not live nearby. While our recommendation is to eliminate this requirement, in the case that this does not occur, we recommend eliminating the requirement or providing flexibility for special circumstances such as providing affordable housing.

6. Permit cellar/basement accessory apartments to use the full footprint of the principal dwelling even if the size of the accessory unit exceeds 35% of the gross square footage of the principal dwelling.

[Subtitle U-253.7\(b\)](#) states, “The accessory apartment unit may not occupy more than thirty-five percent (35%) of the gross floor area of the house.” However, in some cases, the footprint of the basement exceeds 35%. This rule would result in an arbitrary loss of space for the basement living unit. Excluding a small portion of the footprint is arbitrary since the lower level unit will continue to not exceed the equivalent of one story of a dwelling below the first floor of the main dwelling, thus maintaining its subordinate relationship. The restriction could reasonably be amended to permit the lower level unit to occupy the full footprint of the principal dwelling if it exceeds 35% of the gross floor area of the principal dwelling.

7. Remove special exception requirements for accessory apartments in the R-19 and R-20.

Allow R-19 and R-20 zones to follow the same rules as the R-3 zone. Every other R zone, including R-3, allows accessory apartments as of right. Restricting R-19 and R-20 to special exception requirements unfairly curtails housing opportunities in zones that are similar to R-3. In addition, most of the R-19 and R-20 zones are already covered by the Georgetown Historic District, which provides additional opportunity for public input and review to ensure consistency of change with historic preservation policies. Further, most of the remainder of R-20 in Burleith recently voted against historic designation. Burleith is more similar to Glover Park, which is zoned R-3.

We understand that some Georgetown residents have argued that they need special restrictions in their exclusive zone to further regulate accessory apartments out of concern that a number of students can rent a home and be bad neighbors. However, ADUs can be a solution to this concern. Homeowners might be more incentivized to stay in their home and rent an accessory unit to one or two students. With a resident homeowner on the property, reasonable noise levels

and yard maintenance would be more likely. This offers an alternative way for the homeowner to earn income on the property rather than moving away and renting the entire home to a group of students. Thus, ADUs could encourage a better balance of different types of residents in these residential neighborhoods.

8. Eliminate the requirement that an accessory apartment can only be permitted on the second story of an accessory building in R-19 and R-20 zones.

Remove Subtitle U section 253.9 “(a) *It [an accessory apartment] shall only be permitted on the second story of a detached accessory building.*” The restriction that an accessory apartment can only be permitted on the second story of an accessory building is obsolete and is not imposed on accessory apartments in other zones. This restriction is in conflict with the intention to encourage accessible units.

9. Eliminate parking replacement requirements.

The zoning regulations do not require a new parking space for the accessory or second unit. However, the zoning regulations do require that every single family dwelling have at least one parking space. Few rowhouse lots have enough room for both a ground floor living space and a parking pad. For the high number of narrow and small lots, the only possible space to locate the accessory dwelling is in the rear, on the existing parking space. This creates design and cost challenges, requiring the accessory structure to accommodate parking on the ground floor, significantly reducing living space, and forcing a second story for the dwelling.

^[1] For example see: Spevak, E. and Stanton M. (2019). [ABCs of ADUs](#). Washington, DC, AARP.