

To: Mayor Taylor and the City Council
Fr: Ron Chandler
Dt: March 6, 2014
Re: An Ordinance of North Ogden City Amending the Zoning Regulations of North Ogden City – City Code, Title 11, Chapter 7, Article A to Add an Accessory Dwelling Unit as a Second Residence to the List of Permitted Uses

During your last meeting you asked the staff to answer and concerns that were raised during the meeting. We have gone through the minutes to identify each question and possible policy changes. We have also compared these against the ordinances given to us by the Hartmanns. We've attempted to evaluate each policy; provide the pros and cons; and prepared language that can be added to the Planning Commission's proposed ordinance.

QUESTIONS

Question 1: Will the Hartmann's be required to have separate driveways? This was asked during a discussion of the required surface for a driveway.

Answer: No

Reasoning: Item 7 of the proposed ordinance states; "The parking standards of North Ogden City for a single family home will apply." The Hartmann's have two options that will meet the parking standards written in Section 11-17 of the City Code. Option 1: The Hartmann's can use the existing driveway as shown on the picture below if they extend the concrete the length of a parking stall. Option 2: The Hartmann's can install concrete, pavers or asphalt on the potential driveway as shown in the picture below.

The specific requirements Section 11-17 are as follows. My commentary is in italics.

- Location: Required off street parking shall be located on the same lot or parcel as the use it is intended to serve. *(The proposed ordinance permits the primary dwelling unit and accessory dwelling unit to be located on one lot.)*
- Surfacing: All parking spaces, driveways and accessways shall be surfaced with asphaltic concrete, pavement bricks or cement concrete. *(For option 1, the existing driveway on the picture below is made out of concrete. For option 2, the driveway must be constructed out of asphaltic concrete, pavement bricks or cement concrete)*
- The dwelling unit has the minimum number of required off street parking spaces as stipulated by section [11-17-4](#) of this chapter. *(2 parking spaces are required for each dwelling unit. For option 1, the existing driveway would be extended the length of a parking stall. This would provide the four parking stalls and the unencumbered access in the driveway to meet our requirement)*
- No vehicle shall be parked in the required side yard unless the parking area is improved with hard surface material such as concrete or asphalt. *(The existing driveway, including the section on the side of the house, is made out of concrete)*
- Location: Required off street parking shall be located within three hundred feet (300') of the building or use it is intended to serve, the distance being measured along the street line from the nearest point of the building or use to the nearest point of the parking lot. *(The distance from the existing driveway to the proposed accessory dwelling unit is 130')*



Question 2: Will the City require building and impact fees for the accessory dwelling unit?

Answer: Yes

Reasoning: The City charges the building permit and impact fees for all new construction. The fees are as follows.

Permit Fee	Calculated using the 1997 version of the Uniform Building code section 107.2, table 1A plus 20%.
Temporary Power Permit Fee	56.40
1% State Fee	1% of permit fee
Plan Check Fee	50% of permit fee
Water Connection Fee	307.00
Sewer Connection Fee	56.00
Storm Sewer Impact Fee	1,474.40
Water Impact Fee	3,312.29
Sewer Impact Fee	546.76
Park Impact Fee	2,677.00
Garbage	100.00
Central Weber Sewer Impact Fee	2,333.00
Construction Water Usage	54.08
Fire Service Impact Fee	293.43
Deposit, Offsite Improvements	500.00

Question 3: Can the Hartmann property be subdivided?

Answer: Yes

Reasoning If the property is rezoned to an R-1-10 zone, there will be enough street frontage for the main lot and the flag lot. In an R-1-1- the main lot is required to have 90' of street frontage and the flag lot is required to have 30' of street frontage.

POLICIES

Policy 1: Bountiful only permits the accessory dwelling unit as a conditional use and it automatically expires when ownership changes.

Discussion: Conditional uses are permitted uses with conditions. The conditions should be narrow, specific and applicable to all applicants. They should not be used to prevent an individual or use that otherwise meets City requirements. The proper use of conditions is to monitor requirements that can change. For example, set back requirements and maximum building size are easily established and do not need to be monitored from year-to-year or time-to-time. Conditions such as owner occupation and restricting occupancy of the ADU to family members can be changed from time-to-time.

Policy Language In Section 1 of the proposed ordinance – An accessory dwelling unit shall be conditionally permitted. The permit shall be reviewed by the Community Development Director on an annual basis.

Add to Section 4 of the proposed ordinance

1. An Accessory Dwelling Unit shall only be permitted when the property owner lives on the property within either the principal dwelling or accessory dwelling unit. *(This should be moved from Standards in the proposed ordinance to conditions)*
2. Those that reside in the accessory dwelling unit shall be members of the family as defined in North Ogden's City Code. *(This can be added if you want to restrict residents of the ADU to family members. This will be discussed in policy 3.)*

Pros If the intended purpose of ADUs is to provide housing for family members, then a conditional use permit which is reviewed will help the staff monitor these requirements.

Cons a) If the conditions are not specific and specified in the ordinance, the conditional use permit can be misused. b) An annual review requires greater administration by the staff.

Policy 2 Draper requires a deed restriction that is recorded on the property and as the property passes to subsequent owners so do the deed restrictions.

Discussion A deed restriction can be used to inform subsequent owners that the ADU can only be occupied under certain conditions.

Policy Language Add to Section 3 of the proposed ordinance:

Prior to the City issuing a Certificate of Occupancy, the owner shall record against the deed restriction limiting the occupancy of either the primary dwelling or accessory

dwelling unit and other standards and conditions as stated in the North Ogden City Code.

Pros A deed restriction provides subsequent owners with a “Buyer’s beware” before they purchase the property and may prevent it as an investment property or with the idea that the ADU can be rented. *(This point assumes you want to restrict the ADU to family members only)*

Cons a) Deed restrictions are one more step that staff would need to go through; b) When someone is buying property, they should be aware of what’s allowed in the zoning ordinance; c) deed restrictions won’t notify neighbors; and, d) an annual review of a conditional use permit will identify if the property has changed hand. The annual review though would not notify someone in advance of purchasing the property.

Policy 3 The accessory dwelling unit is restricted to family members.

Discussion The owner occupied and family member restrictions seem to address the concern that ADUs will deteriorate neighborhood properties because, without these restrictions, landlord speculators will buy both units and rent both of them. The fear is that neither the landlord nor the tenant will maintain the unit and this will have a detrimental effect on neighboring properties.

North Ogden defines a family as “An individual, or two (2) or more persons related by blood or marriage, or a group of persons not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.” (North Ogden Code 11-2-1)

Policy Language Add to section 3 of the proposed ordinance

Those that reside in accessory dwelling unit or principal dwelling unit shall be family members, as defined in the North Ogden City Code Section 11-2-1, of the property owner.

Pros This may prevent the deterioration of the property as stated above.

Cons This may be overkill and act as a deterrent to building ADUs. The owner occupancy requirement may be sufficient to prevent landlord speculators from buying the property and renting it. The following are possible reasons for leaving this provision out of the proposed ordinance.

- a) Family situations change. Parents pass away. Children move. The property owner living on the property may be left with a dwelling unit that can’t be occupied.
- b) If the property owner finds themselves in the situation described above, the incentive will be to subdivide the lot, create a flag lot and either sell or rent the property. If this is done, the standards of the ADU ordinance will not apply to either property.
- c) We don’t apply this standard to any other single-family home owners in the City. If my parents and I live next to one another and my parents pass away, I can rent their home without limitation.

- d) If the City is concerned about landlord speculators, a more effective method to address this may be to eliminate flag lots. Under our current zoning ordinance, a landlord speculator can buy property with an ADU and subdivide it. He/she would then be free to rent both units – one in front and one in back. Eliminating flag lots would still allow ADUs but would prevent them from being subdivided and sold off separately.

Policy 4 Annual certification.

Discussion This can be done through a conditional use permit that is reviewed annually as discussed in policy 1. There was some discussion about using the recertification process or annual review to inspect sanitary conditions and other utilities. We don't conduct these inspections on other housing types. As mentioned in the policy 1 discussion, the annual review should be limited to conditions specified in the ordinance.

Policy 5 The model ordinance and some of the documentation implies that there is no way to limit the ability of a property owner from selling an accessory dwelling unit as a condominium.

Discussion During the meeting Jon Call stated that "Under any State or Federal law zoning can regulate land use, but would not allow us to regulate land ownership. If the purpose of this regulation is to prevent landlord speculators from buying the property and renting both units, the owner-occupancy regulation may suffice.

In 2005 the Utah Supreme Court ruled on Anderson v Provo. The City of Provo amended a zoning ordinance governing residential neighborhoods near Brigham Young University to allow only those homeowners who reside in their homes to rent out "accessory" apartments. A group of homeowners brought suit challenging the amendment, and the district court granted summary judgment to Provo. In the appeal of that decision, the homeowners argued that the amended ordinance (1) exceeds Provo's legislative authority by regulating land ownership than land use, (2) violates the equal protection guarantees of the United States and Utah Constitutions, (3) is an invalid restraint on the alienation of property, and (4) unconstitutionally burdens the right to travel.

The Supreme Court affirmed the lower court's decision with the following conclusion.

In allowing property owners in some single-family residential zones near BYU to rent accessory apartments on condition that the owner resides in the primary dwelling, Provo has struck a balance between providing more housing alternatives and availability in these neighborhoods and preserving their single-family residential character. The provision at issue here places no restriction on owners' right to rent their primary residence but merely regulates a secondary use that could otherwise not be available at all. We hold that the owner occupancy requirement for accessory apartment rental is within Provo's zoning power, does not violate owner's constitutional rights to the uniform operation of laws, to equal protection, or to travel, and is not an invalid restraint or alienation.

Policy Language The owner-occupancy provision is already in the proposed ordinance. It states “An Accessory Dwelling Unit shall only be permitted when the property owner lives on the property within either the principal dwelling or accessory dwelling unit.

An owner occupant is defined in the proposed ordinance as “An individual as shown by registered deed who has fifty percent (50%) or more ownership in a dwelling unit on subject property.”

As stated in policy 1, an annual review of the conditional use can be used to review the ownership provision of this ordinance.

Pros/Cons See Policy 1.

Policy 6 Regulation of building architecture

Discussion This type of regulation becomes a matter of degrees. An architectural regulation can be as simple as regulating colors as we do in our commercial zones or as complicated as regulating the materials used in construction. Some Cities use architectural review committees to review and regulate building construction. These committees are normally used in historic preservation zones.

The proposed ordinance does not regulate architecture except height.

Policy Language If the City wants to regulate color only, the following regulation from the City’s commercial zone requirements can be added to Section 3.

External surfaces of the accessory dwelling unit shall be predominantly natural, muted earth tones (Non-bright colors representing natural, earth colors and values, including browns, blacks, grays, greens, rusts, etc. . . .). White may be used as an accent color only. The Community Development Director may allow contrasting accent colors.

If the City wants to regulate the materials used in construction, the following regulation from the City’s commercial zone requirements can be added to Section 3.

All applicants for an accessory dwelling unit shall include a color board or renderings indicating the colors and materials to be used onsite. Proposed materials should typically harmonize with existing, surrounding development.

Pros In as much as the proposed ordinance requires the ADU to be located in the rear yard of the principal dwelling, regulations dealing with construction and color can prevent overbearing buildings and colors. The regulations above are minimal and give the property owner flexibility when constructing the ADU. The color regulation in particular has created a pattern in North Ogden’s commercial district.

Cons North Ogden City does not apply these regulations to other residential housing types. The term “harmonize” is ambiguous and gives the Community Service Director wide latitude for enforcement.

Policy 7

The ADU size

Discussion

The proposed ordinance states that “the maximum floor area of the Accessory Dwelling Unit shall not exceed the above ground living space of the primary dwelling.”

The above ground living area of the Hartmann primary dwelling unit is 1,290 square feet.

The total square footage of the Hartmann PDU, including the garage, is 2,580.

The livable area of the ADU is 1,035 square feet or 81% of the PDU.

The garage area in the ADU is 765 square feet.

The total square footage of the ADU, 1800 square feet, is 70% of the total square footage of the PDU.

The ADU size restriction in the proposed ordinance was designed to meet the Hartmann’s needs. If the size restriction is less than 81% the Hartmann could not use their second building as an ADU.

By limiting the maximum floor area of the ADU to the square footage of the above ground living space, the Hartmann’s ADU is either 41% of the PDU’s total square footage (this does not count the square footage of the ADU garage), or 70% of the PDU’s total square footage (this counts the square footage of the ADU garage).

The language in the proposed ordinance is a little unclear as to what is counted in the square footage. The following examples may clarify this.

Policy

Add the following to the definition section

Language

Definition of Maximum Floor Area

Option 1: Maximum Floor Area: The total floor area inside the building envelope, including the external walls, garage and excluding the roof.

Option 2: Maximum Floor Area: The total floor area inside the building envelope, including the external walls and excluding the garage and roof.

Definition of Ground Living Space

Option 1: Above Ground Living Space: The total floor area inside the building envelope above ground, including the external walls, garage and excluding the roof. (Note of interpretation – This includes the square footage of the ground floor and upstairs.)

Option 2: Above Ground Living Space: The total floor area inside the building envelope above ground, including the external walls, and excluding the garage and roof. (Note of interpretation – This includes the square footage of the ground floor and upstairs.)

Pros/Cons

Even though the maximum floor area standard in the proposed ordinance was designed to accommodate the Hartmann’s ADU, limiting the maximum floor area to the living

area above ground has the effect of reducing size of the ADU. The limitation of the other ordinances is a percentage of the total square footage of the PDU. Excluding the garage when calculating maximum floor area and the ground living space allows for the trend of larger, multi-vehicle garages for the ADU, (this may be a pro or a con). Including the garage when calculating the maximum floor area and the ground living space prevents the trend of larger, multi-vehicle garages for the ADU, (this may be a pro or a con)

If the property is subdivided into a flag lot, the standards of the proposed ordinance would not apply and the owner could build or expand the ADU according to the RE-20 provisions. The RE-20 zone requires that the minimum vegetative opens space per lot shall be fifty percent (50%). If flag lots are not permitted then the ADU size will be restricted to the proposed ordinance.

Policy 8

In the model ordinance there are limits on how many adults and how many children are allowed in relation to the size of the facility.

Discussion

A family is defined in NOC's zoning ordinance as "an individual or two or more persons related by blood or marriage or a group of persons not related by blood or marriage living together as a single household group in a dwelling unit."

This definition is typical for zoning ordinances and seems to accommodate the different types of households.