



ADU Questions - DRAFT

January 21, 2020

This document includes questions asked by jurisdictions. It will be updated as new questions come in. Please note: These are best attempt to answer questions. The language of the law is unclear and at times contradictory. Please confirm your understanding with your city attorney.

Questions

1. Setbacks

- a. Do 4 feet side and rear setbacks apply to attached and detached?
- b. Does side refer to only interior side or are exterior sides next to the street subject to this setback as well?
- c. What happens when an existing nonconforming building is in the setback and the property owner wants to build an ADU by expanding the footprint of the building?
- d. If city allows 2 stories, can upper floors have greater setbacks?

2. Duplexes

- a. Are duplexes considered multi-family for the purposes of assessing total allowable ADU's on a single lot?

3. Garages

- a. Please confirm that state law no longer requires jurisdictions to allow ADUs over detached garages.

4. Sheds

- a. Does State ADU law, allowing conversions of accessory structures into ADUs, include sheds?

5. 150 foot additions

- a. What's up with that 150 addition language?

6. Future Legislation

- a. Is clean up anticipated? What do you think it will include?

7. Other Rules

- a. Can a local jurisdiction apply localized development standards to ADUs just as they would apply to other structures such as steep slopes or environmentally sensitive areas?
- b. Can a local jurisdiction prohibit an ADU from being accessed from a secondary driveway, requiring an ADU to be accessed from the primary driveway?

8. Lot Size and FAR

- a. Can a local jurisdiction require a minimum lot size for detached ADUs, while still allowing attached ADUs on any lot size?
- b. If a site is already maxed out on floor area, does the jurisdiction still have to allow an ADU?
- c. If a jurisdiction allows 2 ADUs on many properties, would they get the "free" square feet for a 2nd ADU since the jurisdiction allows 2 ADUs someone already has one ADU and are maxed out on floor area?

9. Height and Size

- a. Can a height limitation of less than 16 ft be imposed on ADUs?



- b. What is the absolute maximum size an ADU may be for attached and detached ADUs?

10. jADUs

- a. What is the definition of jADU?

1. Setback rules

- *Do 4 feet side and rear setbacks apply to attached and detached?*
Yes. Homeowners can also convert existing structures if they have smaller setbacks. If a homeowner demolished a garage that was built in the setback, they could build an ADU in the setback, with the same footprint, but if they wanted to extend the ADU, the extension would have to follow setback rules.
- *Does side refer to only interior side or are exterior sides next to the street subject to this setback as well?*
Assuming this question is about corner lots. There is no definition of side setback so one interpretation is that it would apply to any setback that a city defines as a side setback. HCD takes a more conservative approach and says to treat both sides of the house as sides for setbacks.
- *What happens when an existing nonconforming building is in the setback and the property owner wants to build an ADU by expanding the footprint of the building?*
Cities must allow existing building in setbacks to be converted to ADUs. Cities also must allow new ADUs with four foot setbacks. These two principals can be combined. Take for example the case of an existing legal non conforming building (ELNCB) that has a 2 foot setback and the owner wants to build on that same footprint and then expand. The jurisdiction must permit the homeowner to build on that 2 foot setback tracing the ELCNB's footprint and then jog out to the 4 foot setback for the rest of the new construction.
- *If city allows 2 stories, can upper floors have greater setbacks?*
There are no exceptions mentioned for the setback rules. If a jurisdiction allows two story ADUs, you have to follow the setback rules. Cities could potentially loosen the rules around duplexes to allow two story buildings with greater setbacks.

2. Multifamily

- *Are duplexes considered multi-family for the purposes of assessing total allowable ADU's on a single lot?*
Yes, likely. The ADU law does not define "multifamily". The ADU law divides the world into single family and multifamily, so the consensus opinion is that duplexes are multifamily.

3. Over Garages

- *Please confirm that state law no longer requires jurisdictions to allow ADUs over detached garages.*
Homeowners likely have the right to convert existing space above a garage to an ADU. The reference to ADUs above garages has been removed from the law, so cities likely do not need to allow homeowners to *add* a new building on top of a garage if nothing exists there currently.

4. Definition of Accessory Structure



- *Sheds are enclosed structures. Does State ADU law, allowing conversions of accessory structures into ADUs, include sheds? We assume that something like a tuff-shed could not be converted into an ADU because it would take extraordinary means to convert it to meet fire and building codes. What about other sheds? Seems like some would be fine, others not. This is a particularly challenging type of accessory structure because sheds don't need to meet setbacks, rarely require permits, etc. and can be poorly located to be used as ADUs. They make for a tricky starting position. In many cases it makes much more sense to just start fresh. ADUs can now be accommodated on almost all sites.*
- State ADU law defines an accessory structure as "a structure that is accessory and incidental to a dwelling located on the same lot," so would include most sheds. Some communities limit these conversions to structures that were legally built. Homeowners can convert accessory structures to ADUs or incorporate the structure's footprint into an ADU. Likely the cost of meeting building codes will deter conversion of existing sheds, but homeowners may be able to use the footprint of the shed to claim the right to build part of an ADU where it would not otherwise be allowed. HCD takes a more pragmatic view, saying that the intention of the law was to include legally permitted units and not buildings like Tuff Sheds. They caution that older buildings built before permits were issued may be covered under the bill's rules.

5. 150 Foot Additions

- *Streamlined ADUs: State ADU law provides for a type of streamlined ADU that is wholly/ mostly within existing development (either the main dwelling or an accessory structure). It also allows for up to a 150 sq. ft. addition to the accessory structure proposed for conversion, but does not provide for a similar addition to the main dwelling. An ADU mostly within the main dwelling with an addition could still be established, just not streamlined. Did we read this right? Is this the intent?*
The intent of this language was to allow an exterior staircase to a house or structure to accommodate an ADU, but the language does not reflect this intent. This may be cleaned up this year. Procedurally, an option for jurisdictions would be to allow homeowners to add the stairs and still treat the ADU as if it were covered under section (e). Otherwise, jurisdictions have to make an argument that the homeowner is allowed to build the ADU, just not allowed to have a stairs to get to it.

6. Clean Up Legislation

- *Is clean up anticipated? What do you think it will include?*
Yes, the authors promise clean up with no additional changes (see AB 953 and SB 773). However, one of the cleanups is specifying that an ADU and a jADU are allowed on every property, which many would consider a significant change. (The authors would argue the original intent was to do this.) Specific topics mentioned are fixing typos and fixing the 150 sf rule staircase language. While the current bills are not urgency ordinance, many believe this will change. The conventional wisdom is to expect a fast process, .Ab 953, SB 773. 60 days now deemed approved.

7. Other Rules

- *Can a local jurisdiction apply localized development standards to ADUs just as they would apply to other structures, such as: Prohibition on developing on steep slopes of a certain percentage; Prohibition on developing in locally designated stream corridor areas or other environmentally sensitive areas; and, Prohibition of*



developing in an area required to remain as “Natural State”, if a property has maxed out the “developable area”?

Areas where ADUs are allowed can only be limited due to public safety, traffic flow, or the availability of water and sewer. If slope is so steep that it present a threat to public safety, ADUs can be prohibited. Jurisdictions may limit building in environmentally sensitive areas but somewhere on the lot, the person has to be able to build a special (e) ADU. ADUs must also conform with any Local Coastal Plan, wetland laws, etc.

- *Can a local jurisdiction prohibit an ADU from being accessed from a secondary driveway, requiring an ADU to be accessed from the primary driveway? Many jurisdictions may not run into access issues, but on very large properties Fire Departments will usually require some type of emergency vehicle access, which could deny an ADU if they cannot provide access off the primary driveway.*

Generally, cities are free to additional standards as long as they do not prevent the development of special (e) ADUs.

8. Lot Size and FAR

- *Can a local jurisdiction require a minimum lot size for detached ADUs, while still allowing attached ADUs on any lot size;*

Lot size cannot be a criteria.

- *If a site is already maxed out on floor area, does the jurisdiction still have to allow an ADU? Regardless of FAR, any homeowner can build a special (e) ADU.*
- *If yes, would we apply this “free” SF to all lots, or only those that are maxed out on floor area? Meaning is someone already had an ADU, they would not get the “free” SF to add somewhere else, giving maxed out properties a distinct advantage to develop additional SF.*

That is a policy decision. It’s true that some property owners will get more FAR than others, but some jurisdictions might be ok with this.

- *If a jurisdiction allows 2 ADUs on many properties, , would they get the “free” SF for a 2nd ADU since the jurisdiction allows 2 ADUs someone already has one ADU and are maxed out on floor area?*

Single family homeowners are only entitled to trump local standards for the first ADU, and only for an ADU up to 800 square feet, no more than 16 feet high, with 4-foot side and rear setbacks.

9. Maximum size

- *Can a height limitation of less than 16 ft be imposed on ADUs?*

For ADUs over 800 sf, you could have lower height limits. For existing buildings being converted or 800 or less sf new buildings, you must allow 16 feet. HCD reports that they believe the minimum height should be 16 feet.

- *What is the absolute maximum size an ADU may be for attached and detached ADUs?*

Although state ADU law provides that the maximum ADU size is 1200 sf for a detached ADU and 50% of the main house for an attached ADU, agencies are also allowed to be more permissive rules than the state law specifies.

10. jADUs

- *What is the definition of jADU?*



Often, cities base their definition on the State definition, but it might be helpful to have a separate section of the zoning code to expand in more detail. For example, see San Mateo City Municipal Code, Chapter 27.19, article 2.

The State definition is, ““Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.” San Mateo defines junior ADU as follows: (c) “Junior accessory dwelling unit” means an additional, independent living unit created through the conversion of an existing bedroom in a single-family dwelling subject to defined standards, as specified in Chapter 27.19 of this Title. Junior accessory dwelling units are distinguished from accessory dwelling units in that they: (1) must include the conversion of an existing legally permitted bedroom(s) within an existing single-family dwelling (no new or additional building area); (2) are smaller in size (maximum size of 500 square feet); (3) contain either independent or shared bathroom facilities with the existing primary residence; (4) contain a small “efficiency food preparation area”; and (5) are subject to unique standards that are not applicable to accessory dwelling units, as specified in Chapter 27.19.