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Cc: [Eliana Hassan](#); [Yvonne Dupont](#)
Subject: Project 19-V-01, 49 Lyell Street - Brewers" Proposed ADU
Date: Monday, February 04, 2019 10:56:44 AM

Dear Tom and Melody,

I read with concern your objections to our proposed Accessory Dwelling Unit ("ADU") and I think I can assuage your objections by providing some additional information.

First, if I may, I would like to offer you some context. The State of California has determined that we have a housing crisis. One of the efforts being made by the State to alleviate the housing crisis is the encouragement of ADUs. Initially the State was experiencing push-back from some cities and municipalities that were pursuing a not-in-my-back-yard ("NIMBY") resistance to this effort.

As a result, the State passed California Government Code § 65852.2, (a.k.a. SB 1069) specifically addressing ADUs and promoting their acceptance and construction. Government Code § 65852.2 is a so-called "back-stop" legislation that says that if cities do not pass their own ordinances allowing for ADUs, then the Government Code section will apply and will define the criteria under which ADUs can be built, and it imposes limitations on what restrictions cities can impose on ADUs.

Here is an excerpt from an article explaining the purposes and consequences of Government Code § 65852.2, (a.k.a. SB 1069):

"Designed to provide relief from California's housing shortage, Senate Bill 1069 and Assembly Bill 2299 (collectively "SB 1069," effective January 1, 2017) limit city authority to regulate accessory dwelling units. It also replaces city building, parking and use standards on this topic and imposes standards on cities that have not yet adopted their own regulations. There is language in SB 1069 that a city's entire accessory dwelling ordinance (if the city has one) will be null and void if it conflicts with these new standards, so the City should immediately review its existing code to determine if revisions are necessary.

Discussion

SB 1069, applicable to both general law and charter cities, **generally limits local authority to regulate the construction and use of accessory dwelling units.** It adds findings to the Government Code to provide that "accessory dwelling units" provide security to homeowners, offer lower cost housing to the public, and are an essential component of California's housing supply.[1] While SB 1069 does give cities the right to require rental terms be longer than 30 days,[2] the majority of its provisions reduce city authority over accessory dwelling units."

The State statute doesn't mess around. It says that a city's ordinance governing ADUs **must** include a "**ministerial approval process without any discretionary requirements** except as allowed in Government Code Section 65852.2(a). If cities don't comply, SB 1069 provides that the city's entire ordinance "shall be null and void."

In several places in the statute the "ministerial approval process" is explained to be, "without discretionary review" and the city may not require a hearing.

The State statute limits the restrictions that cities can impose on ADUs in many significant ways. It allows the construction of ADUs on any single-family or multi-family lot that has a single-family dwelling on it. The ADU can be attached to the main dwelling or independent of it. It can be rented, and cities cannot require occupancy by only family members.

In response to the State statute on July 10, 2018, the City of Los Altos amended its ordinances to comply with the State statute. The City states the purpose of the amendment is as follows:

The purpose of amending the City's ADU regulations is to achieve compliance with State Law and to implement Housing Element Program No. 4.2.1 and Program No. 4.2.2 that are intended to **facilitate** the development of ADUs and provide affordable housing in Los Altos.

Among other changes the amendments:

- Increased the allowable size of ADUs from 800 sq. ft. to 1,200 sq. ft.
- Eliminated minimum lot sizes for ADUs (previously 15,000 sq. ft.).
- Eliminated the requirement that an owner reside on the property.
- Relaxed parking standards for ADUs.

CONCLUSIONS FROM THE ABOVE: So, the point of all of the above is that I have a statutory right to build an ADU at 49 Lyell Street, and the City is required to approve it if it meets the requirements of their ordinance.

My application meets all the requirements of Los Altos's ordinance with one exception. That is that Los Altos's ordinance imposed a requirement that the ADU be no larger than 50% of the main dwelling.

So, the only thing to be determined at the upcoming hearing is whether I can be allowed a variance to build 624 sq. ft. instead of being limited to 504 sq. ft. In other words, the only allowable objection to my application is an objection to the additional 120 sq. ft. Let me make a couple of points about the additional 120

sq. ft.:

It is not entirely clear whether Los Altos's ordinance is legal and enforceable in respect to its limitation of detached ADUs to 50% of the area of the main dwelling. I say this because the State's "back-stop" statute makes a distinction between attached and detached ADUs that was not carried forward into the Los Altos ordinance. The State statute says:

(iv) The floorspace of an **attached** ADU shall not exceed 50 percent of the primary dwelling living area or 1,200 square feet.

(v) The floorspace for a **detached** ADU shall not exceed 1,200 square feet. [**Note:** That the State statute does NOT impose a 50% limitation on a **de-**tached unit]

The Los Altos ordinance failed to carry over this distinction and simply says:

1. The total floor area for an attached accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, exclusive of basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence.
2. The total floor area for a detached accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, inclusive of basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence.

The State statute also says:

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit. **No additional standards shall be utilized or imposed**, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

It also says:

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. **No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance** for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards.

So, I am not persuaded that Los Altos's ordinance complies with the State statute, and to the extent it does not it could be invalid and may invalidate the entire ordinance. The ordinance appears to be more restrictive than the State statute allows, and the ordinance may operate to prohibit an efficiency unit.

With all that backdrop in mind, let me turn my discussion to your objections and see if those objections are pertinent to the additional 120 sq. ft. of living space that we are requesting. You make eight (8) points, the first of which is not an objection. I will paraphrase and then address each of the remaining seven objections.

1. Not an objection.
2. ADU on a small lot contributes to density. (Presumptive intent of ADU "code" was to put on larger lots).
3. ADU on this lot would render it two income units which would discourage tear down and replacement with a new SFR.
4. Contribute to congested parking.
5. A SFR could accommodate more people, thereby better achieving the ostensible purpose of ADUs.
6. Why allow an increase over size prescribed by ordinance.
7. Proposed unit will "eliminate" the backyard and diminish the enjoyment of your backyard because you will have to look at it.
8. There are other multi-family opportunities in the neighborhood to the South.

Some of your concerns may be mitigated by understanding what our intentions are for the ADU. As you know, I own both 49 Lyell Street and the adjacent house at 33 Lyell Street. Additionally, I own an office building in Palo Alto that houses my law firm. I am still actively involved in that law practice and have developed a wide base of friends and clients in the 50+ years that I resided in the Bay Area. This is to say that I have properties to manage and relationships to nurture in the Bay Area. I have found it inconvenient and expensive to have to pack a suitcase, make arrangements for my pets, and pay for a hotel room in the Bay Area on each and every one of the many occasions I have returned for business or social purposes.

I want the ADU as my own pied-a-terre so that I can enjoy stays in the Bay Area to visit my friends, connect with clients, operate my law practice, and manage my real estate. I do not intend to rent the ADU and only intend it for personal use and my own convenience to keep up my connections in the community, maintain my properties, and service my clients.

With regard to your objection (2), if you have read this far by now you realize that our government at the State and local levels have decreed that greater housing density has advantages to society as a whole, and is to be encouraged, not discouraged. It is incorrect to assume that ADUs were intended for larger lots. Moreover, the existing house together with the proposed ADU only equate

to about 61½% of the allowable footprint on that lot, and far less than your own lot coverage.

Addressing (3), the ADU will **not** become a second income unit, and with or without the ADU I have no intention of scraping the existing bungalow/doll-house in favor of a newer and bigger structure, nor do I have any intention of selling this property that I have owned for the past 38 years.

As to (4), parking, my lease with the tenants in the main house does not include the garage, which I have always retained for my own use and would intend to continue to do so. More than twenty years ago I widened the driveway to allow vehicles, if tandem parked, to be able to squeeze past one another, so as to avoid having to jockey cars around to get them out. I intend to continue this, and, once in residence there, will be better able to supervise my tenants' parking habits.

Re: (5), it is irrelevant that zoning would allow for a house that could accommodate a family of four or five, because no such house exists, in reality or in my ambitions. Moreover, more occupants does not equate to more housing. The intent of the laws is to encourage housing for more families, not to promote larger families. Mega-houses do not advance the public policy that is being encouraged by the promotion of ADUs.

As to (6), the reasons why an additional 120 sq. ft. should be allowed include that the statute prohibits tying the square footage limitations to a percentage of the main dwelling, the Los Altos ordinance failed to carry over the State's intent that only attached ADUs should be limited to 50% of the main dwelling, and finally because the State requires that at a minimum an efficiency unit must be allowed. Moreover, because as is spelled out in the staff report, we meet all the criteria for granting the variance that we seek.

(7) We situated the proposed ADU to be as far from your property as possible. Whereas a five-foot (5') side setback is required, our ADU will be about fifteen feet (15') from our common boundary and no further forward on the lot than your garage. So far as "having to look at it" might diminish your enjoyment of your back yard, our plans do include adequate landscape screening, and the exterior fit and finish will be of colors and materials consistent with the existing structure. Moreover, the height of the structure will not exceed twelve feet (12') and it meets all daylight plane requirements. Finally, the huge oak tree between the proposed ADU and your property will continue to conceal the ADU from your view.

(8) The addition of an ADU is expressly allowed by statute in single-family zoning, so it will not be inconsistent with the zoning or character of the neighborhood as it is presently, and as it will continue to evolve in the future.

I hope this additional information will provide you comfort and allow you to

adopt a more favorable outlook on our plans. We also look forward to spending more time in the Bay Area and continuing our neighborly relationship with you and your family.

Please don't hesitate to reach out to me directly should any of this benefit from further discussion.

Thanks,
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