



MEMORANDUM

SUBJECT: Staff review of public comment on the 1-4 Unit Infill Housing Zoning Study PHASE 1

TO: Comprehensive and Neighborhood Planning Committee

FROM: Michael Wade, Emma Siegworth, Josh William, Luis Pereira
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DATE: November 3, 2021

SUMMARY

This memo examines public comment on the proposed 1-4 Unit Housing Study PHASE 1 amendments, and offers staff recommendations to the Comprehensive and Neighborhood Planning Committee.

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1. Public Testimony

On October 15th, 2021, a public hearing on the proposed 1-4 Unit Infill Housing Study PHASE 1 zoning text amendments was held during the regularly-scheduled Planning Commission meeting. The period to submit written comment was open from September 3rd to October 18th, during which time twenty-two letters or emails were received at the study email address 1to4housingstudy@stpaul.gov. One letter was sent from a community organization (Sustain Saint Paul) and two came from district councils (Macalester-Groveland Community Council and Summit Hill Association).

Several common themes emerged from the public comment:

- This is a good first step, but the City should be bolder and go farther to allow more housing opportunity;
- The owner-occupancy requirement for establishment of an accessory dwelling unit (“ADU”) should be removed;
- Dimensional barriers to establishment of ADUs (5,000 square foot minimum lot area, for example) should be removed or addressed;
- Some dimensional zoning text, such as the proposed average front setback calculation, is too complicated in either substance or wording.
- Additional housing types should be allowed citywide, including three- and four-unit residences or other “Missing Middle”-type residential buildings;
- Other barriers to additional housing (height maximums, slow government processes) should be removed or addressed.

Twenty-one of the twenty-two letters explicitly supported the text amendments, some offering preferred edits; one letter did not explicitly support or oppose the amendments, but offered caution against allowing more density. One letter offered additional comments on the clarity of the regulations and formatting suggestions for improved readability.

2. Analysis of Public Comment

Generally speaking, Phase 2 of this zoning study will answer calls for additional amendments that will permit greater amounts and varieties of housing in Saint Paul, including dimensional standards around accessory dwelling units and new regulations around 1- to 4-unit housing types. Summit Hill Association’s Zoning Committee submitted a letter with a nuanced critique of the proposed amendments toward the goals of greater clarity and sensibility. While these comments are helpful



in evaluating the proposed amendments, these suggestions and their implications will be better considered during the more comprehensive Phase 2.

One item deserves further discussion and a revision of the originally proposed text amendments; that is the owner-occupancy requirement for accessory dwelling units.

This requirement had been intended for study in this Phase 1 of the 1-4 Unit Housing Study, but moved to Phase 2 at the suggestion of some Planning Commissioners. Phase 2 will include further amendments to the City's ADU ordinance as a part of its broad study of 1- to 4-unit housing types. However, due to the high proportion of public testimony requesting consideration of this requirement's removal during Phase 1, in addition to support from some Planning Commissioners, staff has undertaken a review of this requirement and prepared a recommendation during Phase 1.

This requirement is seen as a major barrier to ADU construction in Saint Paul, and its removal has been promoted nationally as an opportunity to gently increase neighborhood-scale housing in – as well as reverse the historic exclusivity of – single-family-only neighborhoods. Accessory dwelling units have been recognized as uniquely opening doors both for renters for whom an apartment building may be less comfortable, economical, or culturally appropriate; and for property-owners, who could gain agency in addressing Saint Paul's housing crisis through sensitive construction of appropriate housing choices on unused land.

Currently, § 65.913. – *Dwelling unit, accessory* defines an accessory dwelling unit as

*A secondary dwelling unit, subordinate to a principal one-family dwelling, within or attached to a one-family dwelling or in a detached accessory building on the same zoning lot, **with the property owner of record occupying either the principal dwelling unit or the accessory dwelling unit as their permanent and principal residence.** [Emphasis by author]*

Standard (d) *Unit Occupancy* numbers (2) through (4) require a property owner to submit a declaration of restrictive covenants, guaranteeing that an owner occupies some part of the property, in order to receive a building permit for the ADU. The owner must then certify their occupancy of the property annually. If the owner moves away from the property, the ADU may no longer be occupied as a dwelling unit.

The reasons for this requirement are mentioned obliquely in staff memos preceding the original 2016 ADU ordinance (allowing ADUs along University Avenue) and 2018 ordinance update (allowing ADUs city wide). The 2016 memo included three sentences justifying this requirement:



In addition [to sharing the occupancy maximum in the term Family], many ADU ordinances require that the property owner reside in one of the units. The logic behind this requirement is that if the property owner lives on the property with their tenant, they will find tenants that will not be disruptive. Other pitfalls of absentee landlordism might also be avoided.

The 2018 memo mentioned the owner-occupancy once, saying the “owner occupancy requirement was included to mitigate issues associated with landlords who do not live on the premises.”

Regarding the prevalence of the requirement, most ADU ordinances in the Twin Cities metro region do require owner-occupancy. In February of 2019, a Family Housing Fund survey of local cities’ ADU ordinances showed that only Crystal and Stillwater did not require owner-occupancy. In 2021, Minneapolis removed their owner-occupancy requirement for detached and attached ADUs, but left it in place for internal ADUs. (Minneapolis staff’s justification for excepting internal ADUs is that, due to an interpretation by the Minneapolis Building Official, a space in a single-family house could be converted into an ADU with relaxed residential code requirements if the property was owner-occupied, as certified by the same kind of declaration Saint Paul currently requires. This is not the Saint Paul Building Official’s interpretation.)

Outside of the Twin Cities, central cities in comparable metro areas differ in their regulations. Austin, TX; Vancouver, BC; Portland, OR; and Seattle, WA do not require owner-occupancy, while Columbus, OH; Philadelphia, PA; Dallas, TX; and Nashville, TN do require it. Chicago, IL requires owner-occupancy only in some geographical areas. The State of California prohibits cities from requiring owner-occupancy for ADU’s, but allows the requirement for Junior ADU’s. (“JADUs” are smaller in size, are interior to and integrated closely with the principal home, and can be paired with a full ADU on a single-family property. Los Angeles, Oakland, and San Francisco follow this distinction, requiring owner-occupancy for JADUs.)

Regarding the impact on a neighborhood of a second rental unit on a property already containing one rental unit, data does not exist for staff to adequately evaluate the claim that any certain number of additional ADUs in a neighborhood would significantly impact the stability and quality of life in that neighborhood. Several factors may mitigate concern over disturbances and neglect of these properties. Rental ADUs would fall under the City’s residential certificate of occupancy program, meaning they would receive regular inspection. ADUs may also serve the function of “eyes on the street” applied to the property itself, deterring disturbing or unlawful behavior in the paired unit. Lastly, production of ADUs is not expected to create a dramatic influx of new units in the near-term. Judging from Twin Cities precedent, a more permissive ADU ordinance is expected to produce additional rental units slowly and dispersed citywide due to the relatively high cost of construction and the relatively low amount of parcels that would meet dimensional requirements



such as maximum percent of rear yard area and maximum square footage allowed for accessory buildings.

During review, staff considered removing the owner-occupancy requirement only in areas identified by the Comprehensive Plan for focused residential density (per Policy LU-1 and LU-30); namely, this would affect parcels with some portion within one quarter mile of either a Neighborhood Node or an existing or funded fixed transit route (which would include the Green Line light rail, A Line aBRT, and the future B Line aBRT and Gold Line BRT). Property owners in that area would be able to establish an ADU without occupying either the principal or accessory dwelling unit, while on properties outside of that area, property owners would need to apply for a variance. Currently the owner-occupancy requirement may not be varied by anyone, as it is in the definition of the land use.

However, the resulting area around Neighborhood Nodes and fixed transit lines would cover almost half of Saint Paul’s land area, minimizing the difference between the impact of this partial removal and that of full removal. Additionally, subjecting owner-occupancy to the variance application process for the remaining area is expected to greatly increase the administrative burden on City staff and appointed officials in the Board of Zoning Appeals and Planning Commission. Due to strong public support for removal of this requirement, and for the potential contribution of needed housing units that ADUs on non-owner-occupied lots could bring, staff is recommending full removal of this requirement.

The text amendment to § 65.913 (shown below) would entail removing owner-occupancy from the definition of *Dwelling unit, accessory*, and deleting any requirement for the recording of declaration of restrictive covenants to certify occupancy. The occupancy maximum of one *Household* for the principal and accessory unit together will remain.

Sec. 65.913. – Dwelling unit, accessory

A secondary dwelling unit, subordinate to a principal one-family dwelling, within or attached to a one-family dwelling or in a detached accessory building on the same zoning lot, ~~with the property owner of record occupying either the principal dwelling unit or the accessory dwelling unit as their permanent and principal residence.~~

Standards and conditions:

...

~~(c)(4)~~ *Unit occupancy.* The total occupancy of the principal dwelling unit and accessory dwelling unit shall not exceed the definition of *Household* in [section 60.209](#).



- ~~(1) The total occupancy of the principal dwelling unit and accessory dwelling unit shall not exceed the definition of household in section 60.209.~~
- ~~(2) Using the form provided by the city, the property owner shall execute a declaration of land use restrictive covenants and owner's warranties creating certain covenants running with the land for the purpose of enforcing the definitional requirement of owner occupancy and standards and conditions of this subsection and file the same with the county recorder. The property owner must deliver an executed original of the declaration, which shall display its date and document number of record, to the zoning administrator before any city building or zoning permits required for the accessory dwelling unit can be issued.~~
- ~~(3) The property owner shall file an annual affidavit with the zoning administrator verifying continued owner occupancy of the property as their permanent and principal residence, and identifying the owner-occupied dwelling unit. A fee shall be collected in accordance with section 61.302.~~
- ~~(4) At the request of the property owner and upon inspection finding the accessory dwelling unit has been removed, the zoning administrator shall record a release of any previously recorded covenant for that accessory dwelling unit. Any and all filing costs shall be the responsibility of the property owner.~~

3. Staff Recommendation

Staff recommends that the Comprehensive and Neighborhood Planning Committee forward the attached draft Planning Commission resolution to the Planning Commission with a recommendation for City Council adoption of the attached text amendments.

4. Appendices

- a. Appendix A: Planning Commission resolution with revised proposed text amendments**
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