

TO:

**ADU Working Group** 

FROM:

Lilly Schinsing, Associate Planner

DATE:

August 27, 2012

SUBJECT:

Revised ADU Regulations

At the July 30, 2012 meeting the Working Group requested a meeting with the City Attorney to discuss the deed restriction requirement for proposed Accessory Dwelling Units (ADUs) greater than 700 square feet. Since that time, the City Attorney and outside counsel have reviewed the draft ordinance and have recommended some changes. The draft ordinance has been revised pursuant to the City Attorney's advice ("major" changes are highlighted below):

**Reformatting**. The entire draft ordinance has been reformatted to include three major sections of permit types. The first section (.050) describes the process for a ministerial (staff-level review) ADU permit to construct a new ADU. The next section (.060) describes the process for a ministerial amnesty ADU permit to permit an unpermitted ADU. The last section (.070) describes the process by which to get an exception from the ADU requirements from the Planning Commission with a Conditional Use Permit. This is a change from the previous drafts which listed the exceptions to each standard for a new ADU in the .050 section.

**Affordability.** The language in the document has been strengthened to make it clear that the maximum size of a new ADU is 700 square feet and that an applicant can request an exception to exceed the size limitations up to 1,000 square feet with the condition that a deed restriction for affordability be put in place.

**Views.** State law requires that a ministerial process for the approval of ADUs be established. Prior drafts of the ADU regulations included a requirement for story poles and noticing to gather comments on any view issues prior to a staff determination on a view impact. The concern was that by requiring noticing the project would be more likely to be reviewed at a discretionary level rather than a ministerial level. In order to balance this concern with legitimate neighborhood concern regarding view impacts, staff has identified a solution.

- No view impacts would be allowed with a staff-level ADU permit.
- In order to determine if there is a view impact there will be a Community Development Department policy which would require that story poles be installed (pursuant to the City's Story Pole Ordinance). Additionally, staff will send out a letter to property owners/occupants within 300 feet stating that they are trying to determine if there is a view impact and details for coordinating site visits to see any potential view impacts.
- If there is a view impact, as determined by staff using the definition of view in the Zoning Ordinance, the staff-level permit would not be able to be approved and the applicant would have to apply for a Conditional Use Permit for review by the Planning Commission.

Topics for Discussion—July 30, 2012 Page 2

**Light/Shadows.** Similar to the concern regarding views, staff's concern regarding a light/shadow determination was that there was too much subjectivity in the draft regulations and the ministerial intent of the state law was lost. The following is the recommended process to determine light/shadow impacts.

- To be approved under a staff-level ADU permit the ADU shall be designed so that there
  are no adverse light/shadow impacts on adjacent properties.
- If staff determines that there is the potential for light/shadow impacts staff will require a light/shadow study.
- If the light/shadow study shows that the incremental light/shadow impact impacts more than twenty-five percent (25%) of an adjacent parcel more than 30 days per year then the applicant would have to apply for a Conditional Use Permit for review by the Planning Commission.

**Vacation Rentals.** The draft regulations do not address vacation rentals. A Working Group Member has asked about how the ADU regulations work with the recently adopted Vacation Rental Ordinance. Vacation Rentals would be allowed pursuant to Ordinance 1206 during America's Cup events in 2012 and 2013. A permitted ADU could be rented as a vacation rental if a property owner secures a permit through the vacation rental procedures. The regulations specifically do not allow *unpermitted ADUs* to be rented as vacation rentals.

I:\CDD\PROJECTS - NON-ADDRESS\ZOA\2012\12-055 ADU Regs\ADU Working Group\Packets\8-27-12\memo.doc