

The Evolving World of ADU Regulation



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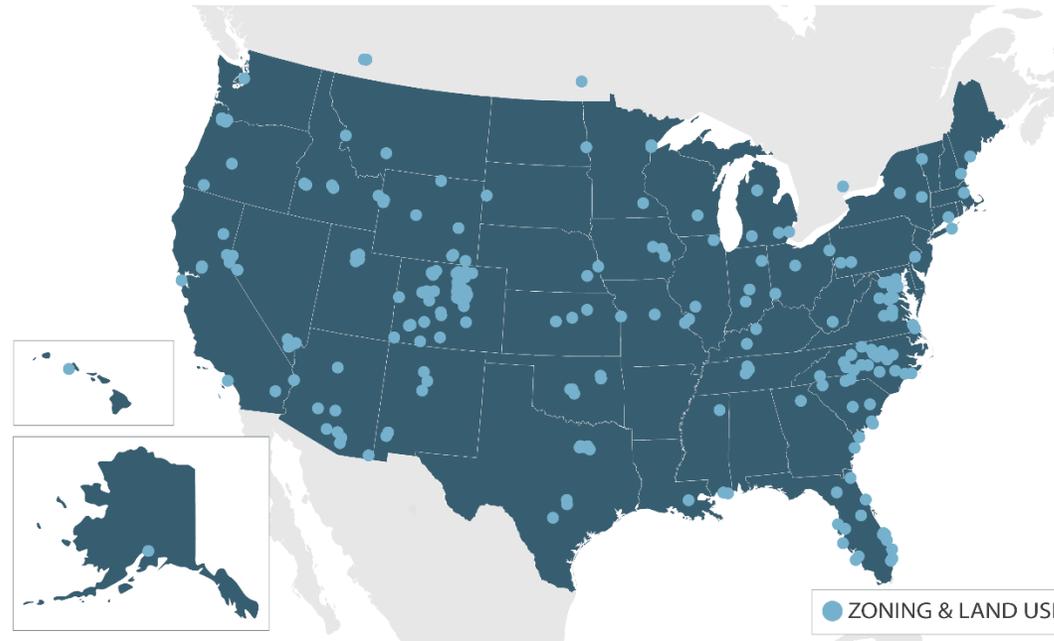
*Maryland Department of Planning
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Background

Don Elliott, FAICP, Director, Clarion Associates

- Lawyer/Planner with 30 years of experience zoning code experience
- Just completed six years on Denver Planning Board
- Clarion Associates has completed 220+ zoning projects for 200+ communities
- Maryland experience includes work for Prince George's County and Howard County



Why this Webinar?

1. It's a very hot topic
 - Dramatic increases in applications for ADUs
2. It's often a very heated topic
 - Seems to threaten “the American Dream”
3. Regulatory approaches differ widely across the US
 - You often don't know whether you have over- or under-regulated until the rules have been in operation for a while



Outline of the Webinar

1. What are ADUs?
2. What impacts may need to be regulated?
3. How have cities and counties been regulating those impacts?
4. What are the “poison pills” that discourage ADUs?
5. How have those regulations been changing over time?
6. What are the equity impacts of different approaches?
7. Questions and Discussion



1. What are ADUs?

- An “accessory” use of land – one that is secondary and subordinate to a permitted primary use land
 - Subordinate often – but not always – means smaller
- They can be “internal/attached” or “external/detached/freestanding”
- Generally created through construction or conversion of an internal attic, basement, or garage -- or a detached garage or “carriage house”



1. What are ADUs?

Sample definitions:

A subordinate dwelling unit added to, created within, or detached from a single-family residence, but located on the same lot or parcel as a primary residential structure, that provides basic requirements for living, sleeping, cooking, and sanitation.

An attached dwelling unit that is accessory in character and lesser in size and character to a principal building situated on the same lot or parcel, and that otherwise satisfies the requirements contained in this development code.

A separate living quarters contained within or detached from a single-family dwelling on a single lot, containing 800 sq. ft. of floor area or less, excluding any garage area or accessory buildings and sharing a single driveway with the primary dwelling; provided that no recreational vehicle or similar moveable vehicle or moveable storage container shall be an accessory dwelling unit.

1. What are ADUs?

- Yes, they have to meet residential building codes – or the manufactured housing code
 - Which are being amended to try to accommodate them
- Can a Tiny House be an ADU?
 - Generally Yes – IF it meets one of those two building safety codes, is mounted on a permanent foundation, and is connected to water, sewer, and electric utilities
 - Most codes do not name Tiny House as a specific type of land use – it's just a small house



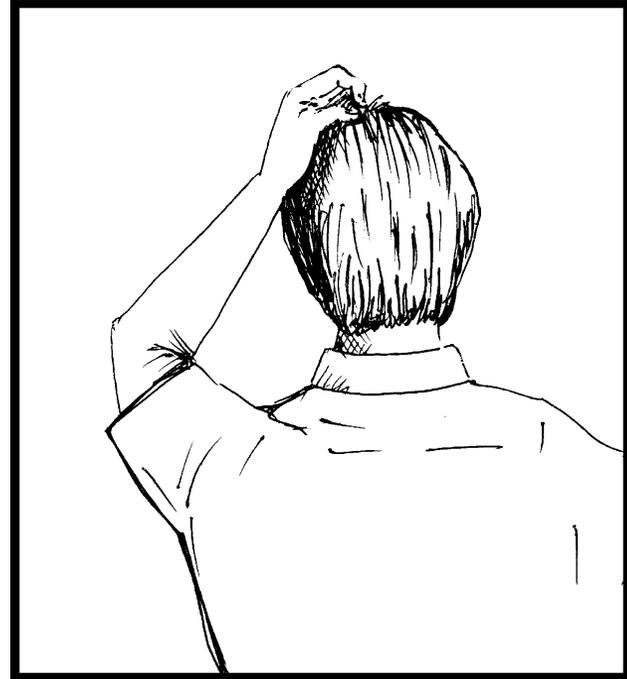
2. Potential Impacts to be Regulated

First – the Policy Debate:

Is this a no-brainer form of gentle density that only unreasonable people would object to

OR

Is it doubling the density of single-family zones, and the end of the American Dream as we know it.



2. Potential Impacts to be Regulated

PRO

1. They're smaller and more affordable – and we need to use every available tool to promote affordability
2. They're fair – because single-family neighborhoods (especially rich ones) should not be exempted from contributing to affordable housing solutions
3. They can help poorer residents stay in their homes by providing an additional source of rental income
4. They allow aging-in-place as owners of the primary home move to the ADU

CON

1. They're not always smaller or more affordable – construction is expensive – so the units will be expensive
2. They're not fair – because many single-family neighborhoods are not rich, and their residents have fought hard to buy in a less crowded neighborhood
3. Poorer people cannot afford to build ADUs, so they will sell out and the area will gentrify
4. This would be rare -- it is more likely the owners of the primary house will sell and move

2. Potential Impacts to be Regulated

Many planners – and an increasing number of cities and counties -- come down on the “Pro” side because:

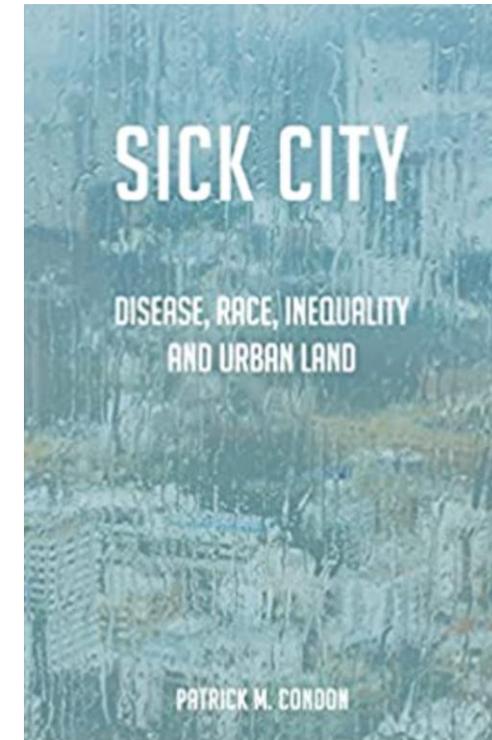
- Sf neighborhoods often make up 50+ % of urban land – so NOT allowing ADUs in SF neighborhoods means trying to increase affordability using only half of the available land
- General “Supply Side” thinking – although the new units themselves may not be affordable, each one (gently) increases supply, and only increased supply will bring down rents and sales prices
- Increasingly, exempting SFD neighborhoods feels like a use of land use laws to defend privilege – even if the neighborhood is neither white nor rich



2. Potential Impacts to be Regulated

But the “Con” arguments are pretty strong:

- People all over the world – even in poor countries – live in single-family-only neighborhoods, and there is nothing inherently “bad” about it (and it’s very unlikely to be eliminated)
- “Supply Side” thinking is not working very well – we have been working to increase housing supply for a long time now, and rents and prices are not falling
 - Perhaps value increases by allowing more housing are just being absorbed in land prices
- It’s not defending privilege, because your own income inequality figures show that the majority of SF neighborhoods cannot be occupied by the rich – the majority have to be occupied by lower and middle-income families who may want to keep them that way



2. Potential Impacts to be Regulated

What needs to be regulated?

- Only available to SFDs?
- Only one per SFD?
- Only internal/Only external
- Rezoning or special permit required?
- Maximum size of the unit?
- Minimum size of the lot?
- Who can live in the ADU?
- Income level of the ADU occupant?
- Owner occupancy of one of the units?
- Parking for the unit?
- Architectural design (no visible entrance or no change from SFD appearance)
- Cannot be divided or sold apart from SFD?
- Short-term rental – or not?
- Separate utilities and fees?



How have we been regulating?

- **Only available to SFDs?**
 - Almost universal
- **Only one per SFD?**
 - Almost universal – but CA is the exception
- **Only attached/internal/junior/limited?**
- **Only detached/external/freestanding?**
 - Most codes allow both, but there seems to be an even split between those that allow one but not the other
- **Individual rezoning or special permit?**
 - Very few require individual rezoning
 - Quite a few require special permit



How have we been regulating?

- **Maximum size of the unit?**
 - Almost universal, but size limits vary a lot – from 400 s.f to 1,200 or 1,500 sf (or the size of your attic or basement)
- **Minimum size of the lot on which the unit is located?**
 - Less than half
 - Tends to have a perverse incentive – it forces ADUs onto larger properties that are often located further from transit and services
 - But it could protect older neighborhoods with smaller lots from speculative investments



How have we been regulating?

- **Cannot be divided or sold apart from SFD?**
 - Almost universal so far
 - An ADU on its own lot is not “subordinate” to anything
 - But it does limit the opportunity for ADU residents to build equity
- **Owner occupancy of one of the units?**
 - Almost universal so far
 - Knowing the owner is on the property leads to better self-enforcement and easier neighbor enforcement
- **Who can live in the ADU?**
 - Pretty few these days
 - More rural areas sometimes limit to family members
 - Very intrusive to enforce
- **Income level of the ADU occupant?**
 - Almost none – due to the time and difficulty of enforcement



How have we been regulating?

- **Parking for the unit?**
 - Very common
 - Tends to prevent ADUs on smaller lots where they are most likely near transit and able to provide lower income households extra income
- **Architectural design of the unit?**
 - Not very common
 - Usually “no difference from appearance of SFD” or “no entrance facing the street”
- **Short-term rental – or not?**
 - A major concern
 - Still allowed by most regulations, as likely to get more ADUs built, even though they won’t provide more housing in the short run
- **Separate utilities and fees?**
 - A 50/50 split between those that require or prohibit separate utilities

How have we been regulating?

Examples – Aurora, CO

- Accessory dwelling units are permitted only on lots served by an alley.
- Each accessory dwelling unit must be detached from the primary dwelling attached accessory dwelling units are not permitted.
- Accessory dwelling units are permitted only on lots, or combinations of two or more contiguous lots, with a size greater than 6,000 square feet.
- The maximum size of an accessory dwelling unit is 650 square feet.
- At least 360 square feet of usable private common space must be provided for the accessory dwelling unit, and each dimension of the private common space measuring at least 10 feet.
- One additional off-street parking space, accessed from the alley serving the lot, is required.
- Each detached accessory dwelling unit shall comply with all setbacks applicable to other accessory structures, except that the required setback for an accessory dwelling unit located on top of an existing garage shall be no less than the setback of the existing garage.

How have we been regulating?

Examples – Fairfax County, VA

With Administrative Permit Approval

- An accessory living unit must be wholly contained within the structure of a single-family detached dwelling unit and must have direct access to the principal dwelling through an interior space that is finished, temperature controlled, and fully enclosed.
- Any new external entrance proposed for an accessory living unit must be located on the side or rear of the dwelling.
- Any proposed garage or carport must be located directly adjacent to any existing garage or carport, and the associated driveway and curb cut must be the same as that which serves the principal dwelling.
- The accessory living unit must not exceed: (a) 800 square feet of gross floor area or 40% of the gross floor area of the principal dwelling, whichever is less; or (b) the entirety of the basement or cellar may be used, up to the size of the basement or cellar as of July 1, 2021.
- Either the accessory living unit or the principal dwelling unit must be owner-occupied.

How have we been regulating?

Examples – Fairfax County, VA

- The accessory living unit may not contain more than two bedrooms.
- The accessory living unit may be occupied by no more than two people.
- A dwelling with an accessory living unit must provide the number of on-site parking spaces required for the principal dwelling unit, plus one additional space. Only one space serving the lot must provide convenient access to the street.

With Special Permit approval

- The BZA may approve a special permit for an accessory living unit in a freestanding structure, but only on a lot of at least two acres
- The area devoted to a detached accessory living unit must not exceed 1,200 square feet of gross floor area and must be clearly subordinate to the principal dwelling.
- The BZA may require the provision of off-street parking spaces in addition to those for a single-family detached dwelling.

How have we been regulating?

Examples – Columbia, MO

The lot must be a minimum of 5,000 square feet, and lot width must be a minimum of 50 feet.

A detached accessory dwelling shall be located a minimum of 10 feet behind the principal dwelling, and a minimum of six feet from any side or rear lot line.

An accessory dwelling shall not exceed 75 percent of the total square feet of the principal dwelling, whichever is less.

A detached accessory dwelling shall not occupy more than 30% of the rear yard.

When an accessory dwelling is attached to a principal dwelling, only one entrance may face the front lot line.

A minimum of one additional off-street parking space shall be provided for accessory dwellings having not more than two bedrooms, and two additional parking spaces shall be provided for accessory dwellings having three or more bedrooms.

How have we been regulating?

Examples -- Albany, NY

For the purpose of providing adequate fire protection access, the distance from the nearest street frontage to the center of the rear wall of the accessory dwelling unit shall not exceed 150 feet of travel distance.

An accessory dwelling unit shall not exceed 800 square feet of gross floor area, and shall not occupy more than 30 percent of the rear yard.

A detached accessory dwelling unit shall not exceed the height of the principal dwelling or 24 feet, whichever is less.

An attached or detached accessory dwelling unit shall not be accessed via a driveway separate from that serving the primary dwelling structure.

When an accessory dwelling unit is attached to a principal dwelling structure, only one entrance structure may face the front lot line.

Within 30 days following the approval of a zoning clearance, the property owner shall mail notice of the approval to the owner of each abutting.

How have we been regulating?

Examples – Norfolk, VA

- No accessory structure shall impede the access to or function of a parking lot (off-street parking area).
- No accessory structure shall be located in a required front yard or corner lot side yard.
- An accessory structure shall comply with the minimum setback standards and structure height limits applicable in the zoning district where the structure is located.
- Exterior stairways on an accessory structure are prohibited.
- An ADU shall also maintain the architectural design, style, appearance and character of the principal dwelling to which it is accessory by incorporating design elements of the principal dwelling like compatible materials, similar façade treatment, colors, window style and treatment, and roof design and pitch.

How have we been regulating?

Examples – Middlesex County, VA

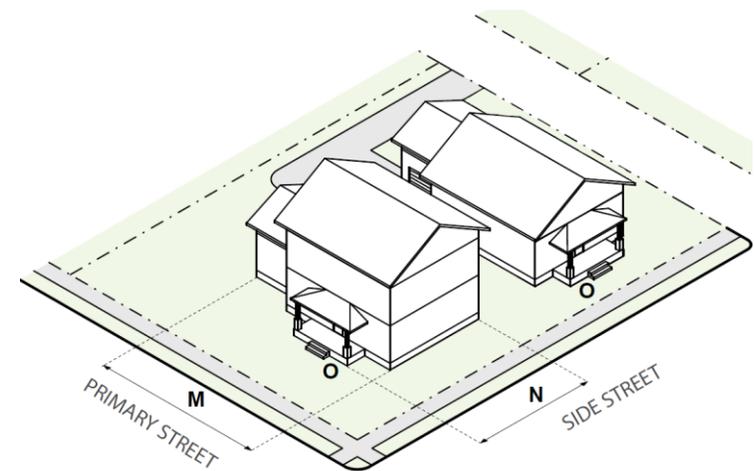
- Only one accessory dwelling unit shall be permitted per lot.
- The accessory dwelling unit shall not contain a total living space greater than 1000 square feet.
- The accessory dwelling unit shall be constructed entirely within the existing building footprint.
- Two additional parking spaces shall be required in addition to that required for the business use.
- A manufactured home shall not be used as an accessory dwelling unit.



How have we been regulating?

Examples – Denver, CO

- Blocks and lots with existing ADUs were mapped to permit them in 2010
 - Additional ADUs require individual rezonings
- In zone districts where an Accessory Dwelling Unit is permitted, it must be accessory to a primary Single Unit Dwelling, except that an Accessory Dwelling Unit use is not permitted as accessory to a Single Unit Dwelling use in a Tandem House building form.
- Accessory Dwelling Units established in a detached accessory structure shall comply with the Detached Accessory Dwelling Unit Building form standards in the applicable zone district.
- Mobile homes, recreational vehicles, and travel trailers shall not be used as Accessory Dwelling Units.



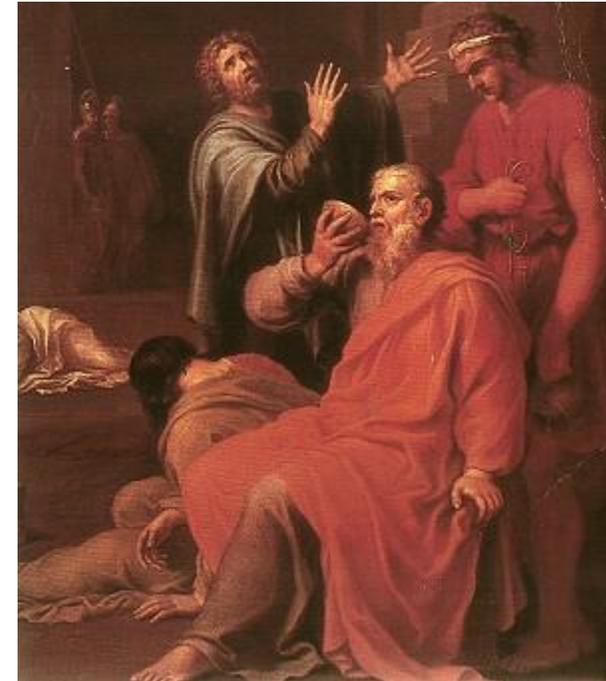
How have we been regulating?

Examples – Denver, CO

- The primary Single Unit Dwelling use shall not be altered in any way so as to appear from a public street to be a multiple-unit dwelling use.
- The structure housing an Accessory Dwelling Unit shall not be served by a driveway separate from that serving the primary Single Unit Dwelling except to use a new access from an alley.
- The Accessory Dwelling Unit may be accessed by a separate outside stairway, except outside access stairways shall not be located on the front facade of the building housing the primary Single Unit Dwelling use.
- Roof and exterior wall materials and finishes for a detached structure housing the Accessory Dwelling Unit use shall be comparable in composition and appearance to that of the primary single unit dwelling structure on the zone lot.
- Wherever feasible, water and sewer shall be supplied to both the primary Single Unit Dwelling use and the Accessory Dwelling Unit use through single taps, and electric and/ or gas utilities shall be supplied through a single meter.

4. What are the “Poison Pills”

- The answer to the question depends a bit on how badly you want to promote ADUs
- Every barrier is not a “poison pill”
- At least three perspectives:
 1. Advocates
 2. Contractors
 3. A Short List



4. What are the “Poison Pills”

An Advocate’s List

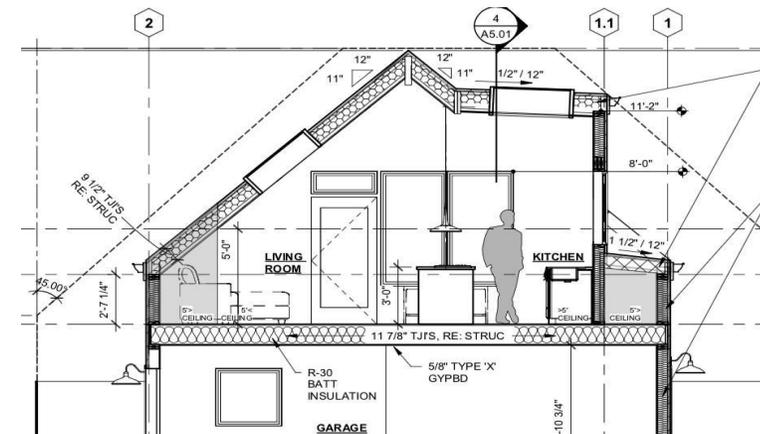
- Owner-occupancy requirements
- Minimum parking requirements
- Limits on who can live in an ADU
- Age and disability requirements
- Limits on number of occupants
- Maximum size limits
- Limiting to ADUs that exist when the ordinance is adopted



4. What are the “Poison Pills”

A Contractor’s List

- Owner occupancy requirements
- Minimum parking requirements
- Bulk planes that make small lots virtually unworkable
- Infrastructure repair requirements
- Banning STRs
 - “Most ADUs would not be built if they could not be used for STRs”



4. What are the “Poison Pills”

A Shorter List

- Minimum parking requirements
 - Because they disqualify most of the older housing stock – and expanding the use of those already zoned lots and structures is the whole point
- Rezoning or non-administrative permit requirements
 - Because of time, expense, and reluctance to run afoul of your neighbors
- Requiring new utility connections and tap fees
 - Very expensive, and the actual impact on utility use is no different than if you grew your family or doubled up in the existing SFD



5. How are Regulations Changing?

“Recognizing that regulations banning or restricting the construction and use of ADUs serve little to no public health or safety purpose and serve as a significant barrier to people looking for affordable housing options, municipalities are beginning to amend their existing ordinances or enact new ordinances that make it easier for homeowners to construct and rent out ADUs on their property.”

Jaclyn McBain
Public Health and Equity Zoning Strategies
ADU and Missing Middle Housing Report



5. How are Regulations Changing?

Fewer restrictions on who can occupy an ADU

Seattle 2019 removed owner occupancy requirement

Vancouver, Portland, do not require owner-occupancy

West Hartford CT repealed restrictions to guests of the owner and household workers

Fairfax County, VA repealed requirement that occupants be elderly or disabled



5. How are Regulations Changing?

Fewer ordinance require a separate parking space

- Seattle, WA 2019 ordinance removed parking requirement
- Portland, OR; Vancouver, BC; Burnaby, BC; Denver, CO do not require
- Santa Barbara County, CA 2021 ordinance removed parking requirement



5. How are Regulations Changing?

Fewer restrictions on home occupations in ADUs

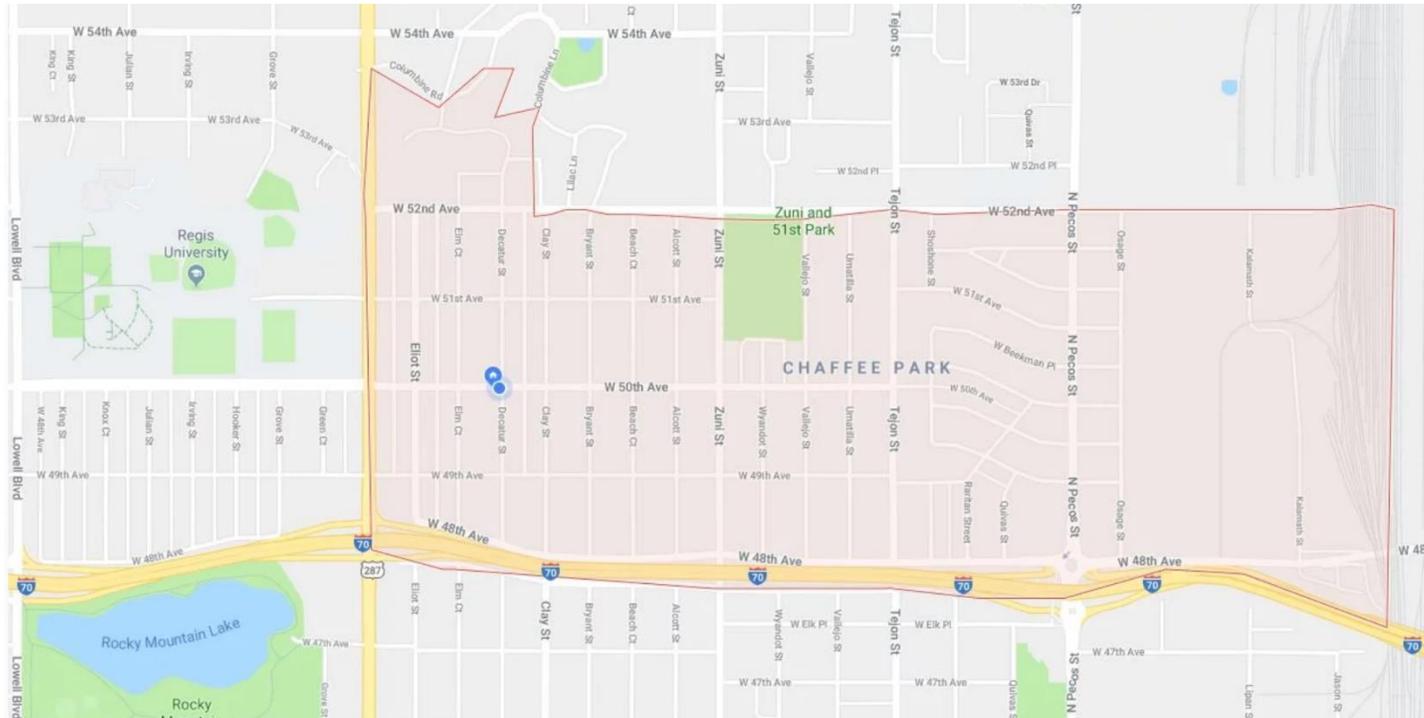
- Fairfax County, VA allows in some
- Portland allows non-client serving home occupations (but not others)
- Vancouver BC does not allow ADUs in homes with HO
- Woodland Park CO allows HO in primary or ADU but not both
- Denver allows in both



5. How are Regulations Changing?

More text amendments to allow ADUs in more zoning districts, and more area-wide rezonings

Denver Chaffee Park – 1,400 SFDs



5. How are Regulations Changing?

Changes in limits on short-term rentals in ADUs

- Spokane, WA and Vancouver BC allow STRs in ADUs
- Boulder, CO limits STRs in ADUs to 120 days/year
- Denver, CO allows STRs in ADUs if the owner occupies the SFD
 - Otherwise, the owner could reside elsewhere and rent out both the SFD and ADU



5. How are Regulations Changing?

More programs offering assistance to low- and moderate-income households wanting to build an ADU

- Seattle, WA, 2019 amendments include several assistance programs
- West Denver Renaissance Collaborative
 - Helps moderate- and low-income qualified homeowners to design, finance and build ADUs
 - Identifies ADU barriers for the City



5. How are Regulations Changing?

Other

- Snohomish County, WA, amended its ordinance to allow ADUs on substandard lots
- Santa Barbara County, CA, amended its ADU ordinance to reduce permit processing times to 60 days
- Chicago, IL, amended its ordinance to require that a percentage of ADUs be affordable at defined levels
 - But also limited ADUs in some areas to 2 per block per year for 3-year trial period to evaluate impacts
- Raleigh, NC, removed requirement to obtain overlay zoning for an ADU
- Seattle, WA, (and others) have adopted pre-approved ADU plans to simplify the approval process

6. What are the Equity Impacts?

Particularly concerned with those who have fewer options or resources

- That includes lower-income populations – regardless of whether they are looking for housing or they have housing and don't want their neighborhoods to change in ways that threaten their current housing
- And lower income is significantly correlated with households headed by persons of color, women, and the disabled (among others) – again, that includes both those who want to move in, and those who don't want to have to move out
- Impacts that raise or lower the costs of housing affect these groups disproportionately



6. What are the Equity Impacts?

Potentially several

Does zoning for ADUs “by right” lead to speculation and displacement?

- A. Investor sees the added value and pays more to buy a property from a willing occupant-owner and redevelops with an ADU.
- B. Investor sees the added value and pays more to buy a property from a non-occupant owner who evicts the tenant to redevelop with an ADU.
- C. New household sees that they can afford the mortgage with ADU income (in spite of costs) and buy to occupy the property.

6. What are the Equity Impacts?

Does zoning for ADUs “by right” lead to speculation and displacement?

- Obviously depends on the market, but the “low-hanging fruit” for investors may well be to buy in lower- moderate income/less expensive neighborhood (which often has more renters) to reduce the investment they have to cover through the combination of SFD and ADU rentals
- Counter-argument is that buying and renovating in a higher-income could allow you to charge more rent due to higher neighborhood quality
 - But not much evidence that is that is happening

6. What are the Equity Impacts?

... of ending ADU parking requirements

- Reductions in minimum parking have greatest benefit for those who want to – and can afford to – live close to their workplaces and other activities
 - Those less concerned about quality of schools (pre- or post-child-raising years)
 - Those who can work from home
 - Those with more money
- Those with fewer location choices may need to have more cars – and may not be able to use an ADU without parking



6. What are the Equity Impacts?

. . . of increasing the size of ADUs and the number of people who can occupy them?

- Good – since households with children are among the most underserved by most housing programs
- And sometimes it takes 3 gig-based incomes to pay the rent
- Many cities have occupancy codes that prevent overcrowding based on health and safety (not neighborhood character) factors



6. What are the Equity Impacts?

. . . of removing age, disability, family, and other limits on who can live in ADUs

- Good – because a broader group of the housing challenged can now exercise locational choice
- And expanding the housing supply while limiting occupancy (for reasons other than low income) is kind of like driving with your foot on the gas and the brake at the same time



6. What are the Equity Impacts?

. . . of limiting occupancy to low-income households

- Good – because affordability is the challenge we’re trying to address –
- But at a very high cost of administration, enforcement, and potential misuse
- Many smaller-to-medium and rural communities do not have the capacity to monitor and enforce income limits
- Even big cities struggle to do that, and smaller properties may fall through the cracks

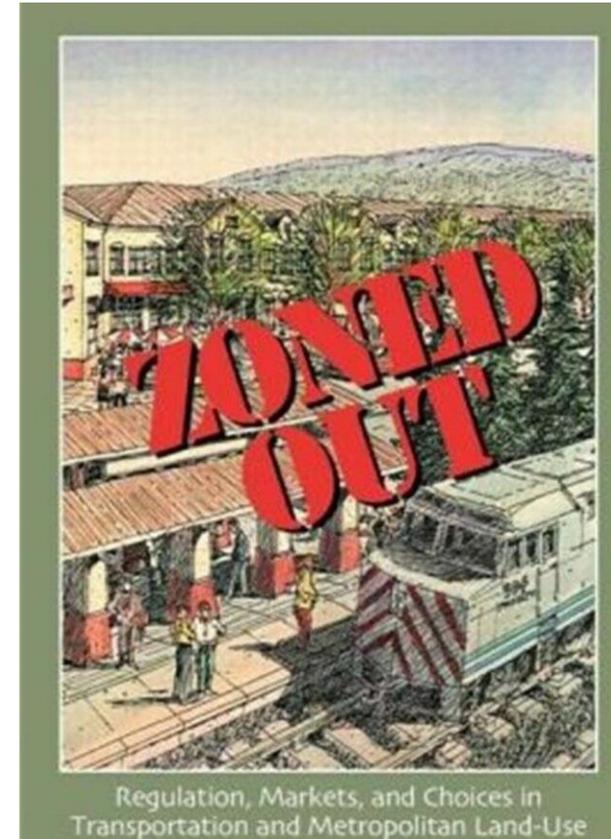
6. Take-Aways

- ADUs are increasingly seen as a valuable contributor to increasing housing supply and (hopefully) affordability
- More communities are allowing them – few are narrowing or repealing ADU allowances
- ADU regulations are generally getting less restrictive
- Negative impacts appear to be highly localized (meaning immediate neighbors) – few neighborhood or citywide stories of negative impacts
- Some states are stepping in to force acceptance of ADUs happen faster



6. Take-Aways

- Be careful! Zoning was designed to exclude – so initial ADU (and other) ordinance often over-regulate
- You have to work harder to make zoning work to include – and it only works within the limits of market forces (unless you add subsidies)
- Every restriction you add increases the likelihood that the provision can only be used by with more money (or access to money)



Questions and Discussion



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