



Town of Atherton
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January 11, 2022

David Zisser
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Local Government Relations and Accountability
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

Dear Mr. Zisser,

RE: Review of the Town of Atherton Accessory Dwelling Unit (ADU) Ordinance

Thank you for your review of the Town of Atherton's ("Town") Accessory Dwelling Unit ("ADU") Ordinance, Chapter 17.52 of the Atherton Municipal Code ("AMC"). As requested in your letter dated December 14, 2021, the Town has prepared the following written responses to the comments provided by the Department of Housing and Community Development, Division of Housing Policy Development ("HCD").

HCD Comment 1:

Allowed areas for the creation of ADUs: Municipal Code Section 17.52.020, Zones Allowed, notes that ADUs may be allowed in all areas zoned to allow single-family residential uses but is silent as to multifamily uses. As such, the code appears to constrain the development of ADUs on sites with a proposed or existing multifamily dwelling structure. State ADU Law allows ADUs to be created on sites that are zoned to allow single-family or multifamily dwelling residential use where a proposed or existing dwelling exists, regardless of whether it is a single-family or multifamily dwelling. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) Thus, the local ordinance is impermissibly narrow as to the location of ADUs and should be revised to expand the areas allowing the creation of ADUs.

Town Response: The Town of Atherton is currently divided into four zoning designations: Residential district R-1A (Chapter 17.32 of the AMC), Residential district R-1B (Chapter 17.32 of the AMC), Parks and open space district (POS District, Chapter 17.34 of the AMC), and the Public facilities and school district (PFS District, Chapter 17.37 of the AMC). Both residential districts, R-1A and R-1B, allow single-family residential uses, including accessory dwelling units, but prohibit multifamily uses. No type of residential use is permitted in the POS zoning district.

Parcels zoned PFS may be used by right for public libraries, public schools, Town corporation yards, Town hall (and associated uses), and emergency shelters. Additionally, parcels zoned PFS may, with a conditional use permit, be used for additional uses including but not limited

to churches, country clubs, and private schools. Finally, parcels zoned PFS may also be used for residential uses associated with the primary non-residential use of the property on the same site (such as dorms or teacher housing associated with a school site, or convent associated with a religious institution), and multiple-family residential uses that could accommodate housing for very low- and low-income households associated with primary nonresidential use of property on same site (such as where a master plan for a private school has been prepared and filed with the Town for public record that includes multifamily residential uses that could accommodate housing for very low- and low-income households, such multifamily residential uses shall be subject to planning commission public hearing and subject to issuance of a Conditional Use Permit).

Beyond the allowed use for multiple-family housing upon issuance of Conditional Use Permit for a primary nonresidential use in the PFS zoning district, no other zoning districts within the Town allow multifamily residential uses. Given these circumstances, the Town believes its ADU ordinance complies with Gov. Code, § 65852.2(a)(1)(D)(ii). Nevertheless, the Town proposes an amendment to its ADU ordinance to specify that ADUs may be constructed in association with multifamily residential uses that accommodate housing for very low- and low-income households associated with primary nonresidential uses in the PFS zoning district.

HCD Comment 2, paragraph 1:

Municipal Code section 17.52.040, Development Standards and General Requirement: Section 17.52.040.C.3.b refers to Chapter 17.40 Accessory Buildings and Structures and provides that ADUs are subject to the setback and development standards in that chapter. Although HCD has not comprehensively evaluated the Town's zoning code, it observes that Chapter 17.40 contains multiple constraints that cannot be imposed on ADUs under State ADU Law.

Town Response: It is unclear which provisions of Chapter 17.40 HCD is referencing in this comment. The Town respectfully requests clarification on this comment from HCD with citations to those portions of Chapter 17.40 of the AMC that violate state law and which state laws are allegedly violated.

HCD Comment 2, paragraph 2:

A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to Government Code section 65852.2, subdivision (e). Further, required setbacks may be no more than four feet from the side and rear lot lines for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) The Town's setbacks set out in section 17.40.040 exceed these provisions.

Town Response: The Town's setback provisions for the creation of ADUs is specified in Section 17.52.040 C (3) of the AMC. As noted within this subsection, specifically Section 17.52.040 C 3 a-c, newly-constructed attached and detached ADUs are allowed to have four-foot rear and side yard setbacks. These sections further specify that should such attached or detached ADU have greater than four-foot rear and side setbacks (i.e. meet the main building area setbacks for attached ADUs or the side and rear setbacks of Chapter 17.40, an additional

exemption from floor area limits may apply. Effectively, this language is intended to allow a development to voluntarily situate such attached or detached ADU more than four-feet from a side or rear setback in exchange for additional floor area exemption in addition to and beyond the first 800 square feet as mandated by State law. Nothing in this language explicitly requires either an attached or detached ADU to have more than a four-foot side and/or rear yard setback.

Thus, the Town believes the setback requirements contained in Section 17.52.040 for the creation of ADU's complies with Gov. Code sections 65852.2(e) and 65852.2(a)(1)(D)(vii.) and does not unduly constrain the creation of ADUs for the reasons as noted and cited. It is further noted that Section 17.52.040 C 5 b of the AMC is simply incentive language available for an applicant to voluntarily chose to develop an ADU with greater than four-foot side or rear setbacks. This proposed incentive approach, which does not constrain, nor prohibit, development of an ADU with four-foot side or rear setbacks was specifically explained and discussed with HCD staff on May 14, 2020.

HCD Comment 2, paragraph 3:

Other problematic restrictions relate to height, location, floor area ratio calculation, habitation, and window and skylight height limitations. These requirements appear to exceed the standards of State ADU Law and may be excessive and burdensome to the reasonable creation of ADUs. The Town should review and revise its code for compliance with State ADU Law to assure that local standards do not exceed state standards. As such, reference to Chapter 17.40 should be removed from the ADU ordinance. (Gov. Code, § 65852.150, subd. (b).) Standards applicable to ADUs should be clearly stated in Chapter 17.52 to avoid confusion.

Town Response:

- Height. Development requirements related to ADU height are specified in Section 17.52.040 C 2 of the AMC. The Town proposes to amend this subsection to remove reference to a maximum sidewall height of eleven feet. See subsection excerpt below, with language proposed to be removed struck through.

Height. The maximum height of an attached ADU shall meet the height requirements for the main residence of the zone in which the unit is to be located. The maximum height of a detached ADU shall be one story and shall not exceed a maximum overall height of sixteen feet and maximum sidewall height of eleven feet.

- Location. Development requirements related to location are specified in Section 17.52.040 B of the AMC. The Town proposes to amend this subsection to remove reference to requiring an ADU to be located within the habitable area of the existing main residence. See subsection excerpt below, with language proposed to be removed struck through.

Location. The ADU shall be attached to the existing main residence or located within the habitable area of the existing main residence or detached from the main residence and located on the same lot as the main residence.

- **Floor Area Calculation.** Development requirements related to floor area calculations are specified in Section 17.52.040 C 4 a-d of the AMC. The Town finds all floor area requirements to meet the standards of State ADU Law and not to be excessive and burdensome to the reasonable creation of ADUs. The Town respectfully requests HCD clarify the concerns with this subsection.
- **Habitation.** As it relates to habitation, see Town response to proposed amendments in response to the “Location” bullet point above.
- **Windows and Skylights.** Development regulations related to windows and skylights on detached ADUs are specified in Section 17.40.040 H of the AMC. There are no such regulations related to windows on attached ADUs. The 9-foot height limit on windows and skylights, and associated requirement that any opening of either skylight or window shall not face a side or rear property line is intended to maintain a reasonable degree of privacy between properties, does not limit the overall maximum allowable height of 16 feet for the construction of a detached ADU. The Town proposes to integrate the language of Section 17.40.040 H, directly into a revised ADU Ordinance.
- **Reference to Chapter 17.40.** The Town proposes to remove any reference to Chapter 17.40 within the ADU Ordinance, and any associated development standards noted above that the Town believes does not exceed the standard of State law, nor excessive and burdensome to the reasonable creation of ADUs, shall be clearly specified and stated within a revised ADU Ordinance.

HCD Comment 3:

Municipal Code section 17.52.040.A, Maximum Number: Although the ordinance limits ADUs to sites zoned for single-family residential use, ADUs are permitted to be created on sites zoned to allow both single-family and multifamily residential use. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).), In addition, multiple ADUs may be created on a site, with an existing multiple family dwelling structure (Gov. Code, § 65852.2, subds. (e)(1)(C) and (e)(1)(D).) Junior Accessory Dwelling Units (JADUs) are limited to one per single-family lot on sites zoned to allow single-family dwelling use and may be created with an ADU on the same site. (Gov. Code, §§ 65852.2, subds. (e)(1)(A), (e)(1)(B), and 65852.22, subd. (a).) The ordinance should be revised to permit ADUs on all sites that permit single-family or multifamily use and shall allow multiple ADUs on sites with an existing multifamily dwelling structure, which does include a duplex.

Town Response: Please see Town response to Comment 1 above.

HCD Comment 4:

Municipal Code section 17.52.040.B, Location: This section places impermissible limits on the location of ADUs. It provides: “The ADU shall be [1] attached to the existing main residence or [2] located within the habitable area of the existing main residence or [3] detached from the main residence and located on the same lot as the main residence.” (Bracketed material added.) Statute allows ADUs to be created with an existing or proposed primary dwelling, which may be either a singlefamily or multifamily dwelling structure. In addition, an ADU may be created from any area within an existing structure and is not

limited to being created from habitable space. (Gov. Code, § 65852.2, subds. (a)(1)(D)(ii), (a)(1)(D) (iii), and (e)(1)(A).) The ordinance should be revised to reflect locations allowed by State ADU Law.

Town Response: See Town Response to Comment 3, bullet point “Location” above.

HCD Comment 5:

Municipal Code section 17.52.040.C.2, Height: Under State ADU Law, a local agency may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).) Although the Town’s ordinance does not limit the height of an ADU below 16 feet, it does limit the height of a sidewall to be not greater than 11 feet. The Town’s sidewall height requirement is more restrictive that the standards contained in State ADU Law and must be revised to not constrain design options that are 16 feet or less in height. (Gov. Code, § 65852.2, subd. (a)(6).)

Town Response: See Town Response to Comment 2, bullet point regarding “Height” above.

HCD Comment 6:

Municipal Code section 17.52.040.C.3.ii, 1 Setbacks: The ordinance establishes the same standards for detached ADU setbacks as those for Accessory Buildings and Structures in Chapter 17.40. These standards may exceed standards for ADU setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), and (e)(1).) The ordinance should be revised to remove the standards of this Chapter.

Town Response: See Town response to Comment 2 above related to setbacks, as the Town believes setback requirements for ADUs complies with section 65852.2, subdivision (e) and Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) and does not unduly constrain the creation of ADUs for the reasons as noted and cited in this response. See also Town response to Comment 2 above related to proposal to remove reference to Chapter 17.40.

HCD Comment 7:

Municipal Code section 17.52.040.5.ii, 2 Exemption from Maximum Floor Area Limitations: The section refers to Chapter 17.40 for side and rear lot line setbacks. As noted elsewhere, the setbacks noted in this Chapter greatly exceed the allowed setbacks of State ADU Law. In addition, local agencies shall not limit the maximum size of an ADU to be less than 850 square feet for a studio or one-bedroom and not less than 1,000 square feet for an ADU exceeding one bedroom. The creation of an ADU, constrained by lot size, lot coverage, floor area ratio or open space requirements, shall be allowed to be at least 800 square feet. As previously noted, Chapter 17.40 contains standards well in excess of that permitted by state law and cannot be applied to ADUs. The ordinance should be revised to remove the reference. (Gov. Code, § 65852.2, subd. (a) and (c)(2)(C).)

Town Response: See Town response to Comment 2 above related to setbacks. Again, the Town believes associated setback requirements for the creation of ADU’s to comply with section 65852.2, subdivision (e) and Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) and does not unduly constrain the creation of ADUs for the reasons as noted and cited in this response. The

maximum size allowed for an ADU in the Town of Atherton is 1,200 square feet per Section 17.52.040 C 4 b, which exceeds the minimum required for both one and two-bedroom ADUs by state law. The Town's ADU Ordinance allows for the creation of ADUs at least 800 square feet in size irrespective of floor area maximums (Section 17.52.040 C 4 c). The Town proposes to amend Section 17.52.040 C 4, to include clarifying language specifying that the maximum size of an ADU shall not limited to be less than 850 square feet for a studio or one-bedroom, and not less than 1,000 square feet for an ADU exceeding one-bedroom. See Town response to Comment 2 above related to proposal to remove reference to Chapter 17.40.

HCD Comment 8:

Compliance with Applicable Requirements: Municipal Code section 17.52.040.K. notes that ADUs and JADUs shall meet all applicable zoning and fire regulations and shall comply with local building codes. The inclusion of this language is confusing and overbroad. Although ADU statute requires ADUs and JADUs to comply with local building codes, local development standards shall not exceed state standards. (Gov. Code, § 65852.2, subd. (a)(6).) The ordinance (Chapter 17.52) must be revised to identify the specific, applicable codes and standards that apply to ADUs, consistent with state law.

Town Response: As applicable fire and building code regulations often change, this language was left intentionally open ended to remain current with the State of California's latest fire safety and building code requirements. The Town does not enforce any codes that exceed the standards required by the State of California, so there is no condition where local development standards would exceed state standards. There is no circumstance where any building may be constructed without conforming to necessary State of California fire safety and building code regulations. As such, the Town believes Section 17.52.040 K to comply with state standards. (Gov. Code, § 65852.2, subd. (a)(6).)

In addition to the specific responses to HCD's comments on the Town's ADU regulations, the Town notes that prior to presenting the City Council with the proposed amendments to the ADU Ordinance for final adoption on October 6, 2020, staff met with HCD staff both on May 14 and October 6, 2020 to review drafts of the ADU Ordinance and get HCD's feedback. Both drafts shared with HCD included the regulations regarding height, setbacks, and floor area exemptions noted in HCD's letter dated December 14, 2021. At both those times, HCD did provide guidance on necessary revisions to the draft ADU Ordinance which were subsequently incorporated, however, none of the issues noted in the letter dated December 14, 2021 were flagged as potentially problematic by HCD.

Please contact me at sbertollo-davis@ci.atherton.ca.us, or 650-773-7249 with further questions, comments, or concerns.

Sincerely,



Stephanie B. Davis, AICP

Principal Planner

Cc: Lisa Costa Sanders, Town Planner; Deputy Town Attorney