



Office of the City Manager

ACTION CALENDAR
September 29, 2015

To: Honorable Mayor and Members of the City Council
From: *DWR* Dee Williams-Ridley, Interim City Manager
Submitted by: Eric Angstadt, Director, Planning and Development
Subject: Zoning Amendments to Encourage Accessory Dwelling Units (ADUs);
Amending BMC Chapter 23D.10

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 23D.10 to modify the existing regulation of Accessory Dwelling Units (ADUs) to improve readability and correct a technical error.

FISCAL IMPACTS OF RECOMMENDATION

None. The proposed action makes the recently adopted ADU regulations more clear, and corrects overlooked language from previous iterations that created a conflict with approved regulations regarding waiver of parking requirements.

CURRENT SITUATION AND ITS EFFECTS

On July 14, 2015, the City Council adopted Ordinance 7,426-N.S. (with an effective date of August 19, 2015) which codified a new Chapter 23D.10 pertaining to Accessory Dwelling Units. While preparing informational materials to help guide homeowners through the process of submitting for building permits, it was discovered that the same language used for parking exemptions is also duplicated in the findings for parking modifications. This conflict precludes application for a parking modification by anyone who isn't already allowed a parking exemption. The proposed correction would be in keeping with staff's understanding of Council's intent at adoption, by removing the conflicting language from the findings. These revisions also include some renumbering in order to improve the readability and implementation of this new Chapter.

BACKGROUND

The proposed zoning changes result from further review of the Ordinance by staff in response to questions from the public. A conflict was immediately identified between Section 23D.10.040.C.5.a., which exempts parking for ADUs when the lot is within one-quarter (1/4) mile of a BART station and within an approved Residential Permit Parking (RPP) Zone, and Section 23D.10.060.B, which is the finding required to approve a waiver or modification of the otherwise required parking.

The language as currently written would only allow those lots within one-quarter mile of BART and within an approved RPP zone to apply for a waiver of parking, which is unnecessary as the ordinance does not require a parking space for lots meeting these criteria. This issue was corrected by deleting the conflicting language from the finding, Section 23D.10.060.B.

Staff also discovered that the manner in which Section 23D.10.050 was structured would allow two provisions in Section 23D.10.040 to be eligible for modification even though staff would never recommend approval. These provisions were regarding the prohibition of subdividing or enabling the sale or transfer of the ADU (Section 23D.10.040.C.6), and the requirement that either the primary unit or ADU be occupied by the owner of the property (Section 23D.10.040.C.8). By creating a new subsection titled Special Provisions (proposed Section 23D.10.040.A), these provisions are excluded from the regulations (proposed Section 23D.10.040.B) which may be modified by an Administrative Use Permit.

The final change is in response to questions from the public about the change in calculating height (maximum rather than average) and the reasoning for limiting the eave height to 10 feet. Based on previous discussions by the City Council, staff's interpretation is that there was a concern about the bulk of the structures situated close to the property line. Since a pitched roof would normally slope away from the height at the eave until it reaches the maximum height of 10 feet, staff proposes that the following sentence be added to Section 23D.10.040.B.4.b: "In the case of a shed or flat roof, no portion of the building may be more than 10 feet in height when measured at the required setback."

ENVIRONMENTAL SUSTAINABILITY

The proposed zoning changes are consistent with city goals pertaining to increased residential density near transit opportunities. Additionally, the proposed changes will further the intent of the ADU regulations to create new residential construction which is subject to more stringent energy efficiency standards, and will therefore assist in reducing per-capita greenhouse gas emissions from building energy use.

RATIONALE FOR RECOMMENDATION

The attached changes help to resolve internal conflicts, and improve the readability and implementation of the recently adopted ADU regulations.

ALTERNATIVE ACTIONS CONSIDERED

This is a proposed technical correction. As a result, no other alternative actions were considered.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development, 981-7410

Attachments:

- 1: Ordinance: Zoning Amendments, Clean-Text Format
- 2: Ordinance: Zoning Amendments, Strikeout/Underline Format

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23D.10, ACCESSORY DWELLING UNITS, TO IMPROVE CLARITY AND CORRECT A TECHNICAL ERROR IN 23D.10.060.B REGARDING FINDINGS FOR MODIFICATIONS TO PARKING REQUIREMENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23D.10, Accessory Dwelling Units, is amended to read as follows:

**Chapter 23D.10
Accessory Dwelling Units**

Sections:

- Section 23D.10.010 Applicability of Regulations**
- Section 23D.10.020 Purposes**
- Section 23D.10.030 Permit Requirement**
- Section 23D.10.040 Standards for by-right Accessory Dwelling Units**
- Section 23D.10.050 Accessory Dwelling Units may exceed or modify standards with a use permit**
- Section 23D.10.060 Findings**

Section 23D.10.010 Applicability of Regulations

The provisions of this Chapter shall apply to all lots that are occupied by one Single Family Dwelling Unit and zoned R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU.

Section 23D.10.020 Purposes

The purposes of this Chapter are to:

- A. Increase the supply and range of housing options in Berkeley while maintaining the residential character of neighborhoods.
- B. Encourage new housing units to locate near transit and provide alternative transportation options to residents.
- C. Minimize the impacts of the new accessory dwelling units on neighboring properties.

Section 23D.10.030 Permit Requirement

The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this Chapter if all requirements of Section 23D.10.040 and other applicable requirements of this Title are met. The Zoning Officer may approve an AUP

to establish an Accessory Dwelling Unit that is not in compliance with Section 23D.10.040.B, as set forth in Section 23D.10.050.

Section 23D.10.040 Accessory Dwelling Unit Standards

A. Special Provisions:

1. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.
2. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found to be in non-compliance with this requirement.

B. Development Standards

1. The subject lot shall meet the open space and coverage requirements of the applicable zoning district.
2. The gross floor area of an Accessory Dwelling Unit shall be no less than 250 square feet, and no greater than 750 square feet or 75% of the gross square footage of the primary residence, whichever is less.
3. An Accessory Dwelling Unit may be created by conversion of floor area in a pre-existing primary dwelling unit, or by an addition thereto, subject to providing a separate entrance that is not located on the front of the primary dwelling unit and complying with the requirements of the applicable zoning district for residential additions.
4. An Accessory Dwelling Unit may be created within a new or existing Accessory Building or Structure, except that the following height limits and setback requirements shall apply:
 - a. In no case shall the building be located within the required front yard setback.
 - b. In no case shall the building be taller than 14 feet maximum height as measured at the highest point of the roof, taller than the main dwelling unit, or have an eave height higher than 10 feet. In the case of a shed or flat roof, no portion of the building may be more than 10 feet in height when measured at the required setback.
 - c. The building shall be set back four feet from the rear and side property lines.

- d. A legal Accessory Building or Structure existing as of July 14, 2015 located less than four feet from a rear or side property line may be converted to an ADU if the maximum building height is 10 feet or less and all other provisions of this Chapter are met.
5. The subject lot shall provide one off-street parking space for the Accessory Dwelling Unit in conformance with Chapter 23D.12, except as provided below:
 - a. Parking shall not be required for the Accessory Dwelling Unit when the subject lot is within one-quarter (1/4) mile of a BART station and within an approved Residential Permit Parking zone. In such cases, no Residential Parking Permit for on-street parking may be issued to the address of the Accessory Dwelling Unit.
 - b. Tandem parking may be used to satisfy the parking requirement. Tandem parking shall not be subject to the applicable standards of Section 23D.12.080, and may be located within the required front and side setbacks when located within an existing lawfully created driveway that does not comply with these standards.
6. An ADU may only be approved when located on a lot with access from a roadway that meets the fire apparatus access road requirements of the Berkeley Fire Code Section 503.2.1 (as it may be amended or renumbered from time to time), unless an AUP is approved.

Section 23D.10.050 Accessory Dwelling Units may modify standards with an Administrative Use Permit.

An Accessory Dwelling Unit that does not conform with the standards in Section 23D.10.040.B may be permitted with an Administrative Use Permit subject to the applicable findings in Section 23D.10.060.

Section 23D.10.060 Findings

- A. In order to deny an Administrative Use Permit under Section 23D.10.050, the Zoning Officer or Zoning Adjustments Board shall find that the Accessory Dwelling Unit would be detrimental to the residential character of the neighborhood, or would unreasonably obstruct sunlight, air, or views, or would introduce unreasonable privacy impacts to the immediate neighbors.
- B. In order to approve an Administrative Use Permit under Section 23D.10.050 to waive required Accessory Dwelling Unit parking, the Zoning Officer or Zoning Adjustments Board shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each

branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23D.10, ACCESSORY DWELLING UNITS, TO IMPROVE CLARITY AND CORRECT A TECHNICAL ERROR IN 23D.10.060.B REGARDING FINDINGS FOR MODIFICATIONS TO PARKING REQUIREMENTS.

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Section 23D.10.040 Standards for by-right Accessory Dwelling Units

Section 23D.10.050 Accessory Dwelling Units may exceed or modify standards with a use permit

Section 23D.10.060 Findings

Section 23D.10.010 Applicability of Regulations

The provisions of this Chapter shall apply to all lots that are occupied by one Single Family Dwelling Unit and zoned R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU.

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Section 23D.10.030 Permit Requirement

The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this Chapter if all requirements of Section 23D.10.040 and other

applicable requirements of this Title are met. The Zoning Officer may approve an AUP to establish an Accessory Dwelling Unit that is not in compliance with Section 23D.10.040.B, as set forth in Section 23D.10.050.

Section 23D.10.040 **Standard for Accessory Dwelling Units Standards**

~~Accessory Dwelling Units in conformance with the following standards shall be allowed as of right:~~

A. Special Provisions:

1. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.
2. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found to be in non-compliance with this requirement.

B. Development Standards

- ~~A. The gross floor area of an Accessory Dwelling Unit shall be no less than 250 square feet, and no greater than 750 square feet or 75% of the gross square footage of the primary residence, whichever is less.~~
1. The subject lot shall meet the open space and coverage requirements of the applicable zoning district.
 2. The gross floor area of an Accessory Dwelling Unit shall be no less than 250 square feet, and no greater than 750 square feet or 75% of the gross square footage of the primary residence, whichever is less.
- ~~B. 3. An Accessory Dwelling Unit may be located within the main building created by conversion of floor area in a pre-existing primary dwelling unit, or by within an addition thereto, and shall have subject to providing a separate entrance that is not located on the front of the main building primary dwelling unit and complying with the requirements of the applicable zoning district for residential additions.~~
- ~~C. 4. An Accessory Dwelling Unit may be created located within an new or existing Accessory Building or Structure that is permitted as of right under Chapter 23D-08, except that the following height limits and setback requirements shall apply:~~

1. a. In no case shall the building be located within the required front yard setback.
2. b. In no case shall the building be taller than 14 feet maximum height as measured at the highest point of the roof, taller than the main dwelling unit, or have an eave height higher than 10 feet. In the case of a shed or flat roof, no portion of the building may be more than 10 feet in height when measured at the required setback.
3. c. The building shall be set back four feet from the rear and side property lines.
 - ad. A legal Accessory Building or Structure ~~or building~~ existing as of July 14, 2015 located less than four feet from a rear or side property line may be converted to an ADU if the maximum building height is 10 feet or less and all other provisions of this ~~Section~~Chapter are met.
- ~~4. The subject lot shall meet the open space and coverage requirements of the applicable zoning district.~~
5. The subject lot shall provide one off-street parking space for the Accessory Dwelling Unit in conformance with Chapter 23D.12, except as provided below:
 - a. Parking shall not be required for the Accessory Dwelling Unit when the subject lot is within one-quarter (1/4) mile of a BART station and within an approved Residential Permit Parking zone. In such cases, no Residential Parking Permit for on-street parking may be issued to the address of the Accessory Dwelling Unit.
 - b. Tandem parking may be used to satisfy the parking requirement. Tandem parking shall not be subject to the applicable standards of Section 23D.12.080, and may be located within the required front and side setbacks when located within an existing lawfully created driveway that does not comply with these standards.
- ~~6. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.~~
- ~~7.~~6. An ADU may only be approved when located on a lot with access from a roadway that meets the fire apparatus access road requirements of the Berkeley Fire Code Section 503.2.1 (as it may be amended or renumbered from time to time), unless an AUP is approved.
- ~~8. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up~~

~~to three years are allowed before the property will be found to be in non-compliance with this requirement.~~

Section 23D.10.050 Accessory Dwelling Units may modify standards with an Administrative Use Permit.

An Accessory Dwelling Unit that does not conform with the standards in Section 23D.10.040.B may be permitted with an Administrative Use Permit subject to the applicable findings in Section 23D.10.060.

Section 23D.10.060 Findings

- A. In order to deny an Administrative Use Permit under Section 23D.10.050, the Zoning Officer or Zoning Adjustments Board shall find that the Accessory Dwelling Unit would be detrimental to the residential character of the neighborhood, or would unreasonably obstruct sunlight, air, or views, or would introduce unreasonable privacy impacts to the immediate neighbors.
- B. In order to approve an Administrative Use Permit under Section 23D.10.050 to waive required Accessory Dwelling Unit parking, the Zoning Officer or Zoning Adjustments Board shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter. ~~In addition, the Zoning Officer or Zoning Adjustments Board shall find that the use is located within one-quarter (1/4) mile of a BART station and within an approved Residential Permit Parking zone.~~

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