

**Work Session of the Planning Commission  
At Bandon City Hall  
September 27, 2018**

**COMMISSION:**

- David Kimes, Chair
- Sheryl Bremmer, Vice Chair
- Sally Jurkowski, Commissioner
- Donald Starbuck Commissioner
- Paul Fisher, Commissioner
- Gerald Slothower, Commissioner
- Blythe Tiffany, Commissioner

**STAFF:**

- John McLaughlin, Planning Director
- Fred Carleton, City Attorney
- Dana Nichols, City Planner
- Megan Lawrence, Planning Assistant

**1.0 CALL TO ORDER**

Kimes called the Work Session to order at 7:23 p.m. Roll Call was taken as indicated above.

**2.0 ACCESSORY DWELLING UNIT (ADU) ORDINANCE—PART TWO**

Incorporating the Commissioners' feedback from the previous Work Session, Nichols began a presentation to accompany the Staff Report provided to the Commissioners prior to this Work Session.

She began by discussing the application process for an ADU. One option is to follow the State requirement for outright permitted zoning compliance. Another option would provide some flexibility for a homeowner to do something slightly outside of what is outright permitted, such as constructing more than one ADU. For example, there could be an attic unit in the house and another unit outside. Or, if there is standard on-street parking available, an off-street parking requirement may be waived. If someone wants to build a unit that exceeds the size allowance, a plan review might be offered.

Nichols researched how other Oregon communities are assessing System Development Fees (SDCs) for ADUs. Some cities assess a flat rate for a single-family dwelling, such as Bandon's \$13,750. Some assess a standard impact fee; others, such as Ashland, use a per-square-foot model. Portland waives its SDC fees initially in an effort to encourage construction of ADUs.

In last month's Work Session, Commissioners felt a 900 square foot limit for an ADU would be too big, so the proposed ordinance language has been changed to reflect a maximum of 800 square feet or 65 percent of the primary dwelling's floor area, whichever is smaller. To provide a perspective on this amount of floor space, four business cards were placed on the Council Chambers floor to mark the corners of a 200 square foot area.

Nichols' presentation included photographic examples of different types of ADUs, showing both the exteriors and the interiors. The first example showed a two-floor conversion of a single-car

garage. A garage conversion could utilize the garage floor as part of the living space, or the living unit could be built above the garage, leaving the lower floor of the garage still available for parking space. The second example in Nichols' presentation was a 200 square foot tiny home studio, more appropriate for a guest home than a rental. The next example was a 480 square foot one-bedroom, one-bath ADU with flex space that could be used as a living room or second bedroom. The final example showed a 720 square foot, two-bedroom, one-bath unit.

Nichols reminded the Commissioners that the State bill allows cities to create clear and objective, reasonable standards relating to siting and design, in an effort to create more housing. These State guidelines are rather broad, and staff has tried to narrow down the options for the Commission, but remains open to more ideas before moving on to the public hearing.

Kimes announced that public comment and questions are not usually allowed at the Commission's Work Sessions, but in this instance public input is welcome before the Commissioners begin their discussion period.

**Jason Youmans, 1185 7<sup>th</sup> Street SW, Bandon, OR 97411**

Youmans does not oppose ADUs in the sense that they are intended for affordable housing. But he hasn't heard anything that guarantees they will be affordable. He thinks rents will still rise to as much as \$1,000 a month, making them out of reach for many people. His impression is that in vacation towns like Bandon the intent switches from affordable housing to an attitude that whoever can afford the most will get the most. Youmans would like to find a way to curb that bumping up of prices.

Youmans acknowledges that the ADUs in Portland look nice. Since he has personally designed and sold long and narrow lots with a cottage in the back, he does not view them unfavorably. But many of Bandon's lots don't fit that image. In considering the appropriateness of ADUs, he says we need to look at factors such as lot sizes, orientation of existing houses, and neighbors who want their privacy and will lose it with a two-story home looking down into their yard. Bandon's building codes have previously been so restrictive that many who planned their lives so they could end up here would never have seen this change coming.

Youmans asked if a second dwelling is put on an R-1 lot, does it become an R-2 lot? Would it have two sets of utility meters if it has two families on it?

McLaughlin clarified that a property that adds an ADU still retains the same zoning. It would be an allowed use within a single-family zone to have an accessory dwelling.

Youmans responded that there are size limits on duplex lots, and he feels duplex lots should be used as criteria for establishing ADU zoning, because there would be less pressure on neighbors with ADUs in R-2 zones. He then proposed considering two tiers on ADU size, based on lot size.

Kimes noted that the 50% lot coverage limitation would apply regardless of lot size.

Youmans repeated that two-story ADUs threaten the privacy of neighbors. Originally an opponent of SDC fees on infill lots, which are priced higher than lots without systems, he came to accept the rationale that SDCs were needed because existing sewer lines wouldn't

accommodate those lots. Now, he questions the potential doubling of the demand on those lines without requiring a fee.

Youmans then asked where to find a copy of the State policy on ADUs. So, Bremmer read the names of the applicable State legislation: House Bill (HB) 2007, introduced in the House in 2017, and Senate Bill (SB) 1051, which addressed the House bill and was signed into law by Governor Brown on August 15, 2017.

Nichols pointed out that a guide based on the House and Senate bills was created by the Oregon Department of Land Conservation and Development (DLCD), and it was included in the packet for the Commission's August meeting. It also may be found on the City of Bandon's website. The bill states, "A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth area that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and designs."

Youmans urged caution with expansion, considering Bandon doesn't have curbs, gutters, and sidewalks like other cities and towns. He has witnessed many close calls between cars, bicycles, and people on 7<sup>th</sup> Street near Beach Loop because of this. He wondered about the timing of the City's taking up the ADU issue.

McLaughlin explained that the State law became effective July 1 of this year. It has been in the City's work plan since then, but other items have taken precedence. This is the second study session on the subject.

Youmans still feels that the City is rushing into a major decision on zoning that will affect development for years to come.

Kimes assured Youmans that this Work Session is just a preliminary step. It leads to a more formal process producing an ordinance proposal to be discussed at a public hearing before the Commission. After that, it goes before the City Council and receives public input there.

McLaughlin noted that in the past two years the Planning Department has only received one or two requests regarding ADUs. So there hasn't previously been a great demand for them. This law is a tool the City can use to help create more affordable housing.

**Judy Smilan, 761 12<sup>th</sup> Street NW, Bandon, OR 97411**

Smilan would like to limit the number of people living on properties that have a primary house and an ADU. She thinks an ADU should be limited to two people, unless it is a conversion that is a whole floor of a house, and she feels the property owner must live in either the primary dwelling or the ADU as a permanent primary resident. In her view, the property owner must not receive rent for the primary owner-occupied unit.

Smilan feels the ADU needs to be much smaller than the main building and needs to serve a good purpose—not just for the owners to make extra money from their property. The goal of SB 1051 is to have ADUs that are affordable housing for full-time residential living. Her reading of bills 1051 and 4031 is that they were both aimed at farmers, emphasizing compounds, multi-

family dwellings, and subsidized housing. In addition to farm workers, SB 1051 addressed affordable housing for people with low income.

Smilan thinks an ADU should not be used as a rental unless it is a long-term residential rental to one person or to one person and their immediate family. There should not be an unrelated group of people renting an ADU, such as caddies and hotel workers. There would be too many cars in neighborhood. She also believes the proposed ordinance should specify that an ADU must meet underlying requirements for lot size, setbacks, and height restrictions in its zone, and she fears the effect on neighborhoods if the City allows exceptions.

Smilan suggests the ordinance should limit ADUs to 25% of the primary dwelling and 400 square feet, whichever is less. She says two dwellings of a similar size on a property would not be appropriate, and off-street parking should be required for an ADU. In her opinion, SDC fees should not be waived for owners who are just trying to make extra money off their properties.

Fisher cited the ADU size restrictions of several Oregon cities, ranging from 25% to 40% of primary dwelling size, as listed in the Staff-prepared packet.

**Denise Frazier, 1259 Wavecrest Lane, Bandon, OR 97411**

Fraser believes the market will drive ADU rental prices. A renter will not pay \$1,000 for 200 square feet if an entire home is available for the same cost, so ADUs will end up providing affordable housing.

**William Beck, 1107 6<sup>th</sup> Street SE, Bandon, OR 97411**

Beck urged ADU guidelines that will help retain the charm, character, lifestyles, and privacy of Bandon and its citizens. An ADU should not compete in scale with an existing structure, and the property should still comply with existing maximum lot coverage rules for its zoning area, including all accessory buildings. Beck suggests setbacks of 10 feet for one-story ADUs and 15 feet for two-story units, with no exceptions for existing height limits.

**Karen Donaldson, 736 12<sup>th</sup> Street SW, Bandon, OR 97411**

Donaldson feels the entire text of SB 1051 should be provided to the public, rather than just the guidance summary. She doesn't think the proposed ordinance shows enough consideration to design elements. When you look at communities and subdivisions that work, they work because of design. They may have the same zoning as older neighborhoods, but they are designed as a subdivision and the plans of the homes are altered to protect privacy. Donaldson said it is important to design an ADU to acquiesce to the existing neighborhood, with attention to window placement that protects the privacy people are accustomed to and that attracted them to their neighborhood.

McLaughlin offered a clarification on SB 1051. The bill included a variety of land use changes for both cities and counties on a variety of issues. Section 6 amends ORS (Oregon Revised Statute) 197.312, which applies to city land use planning. In the exact language of the Senate Bill, the State mandates that the city shall allow ADUs. Much of the language of SB 1051 does not affect our city, but the ADU requirement does.

McLaughlin, Fisher, and Slothower discussed the interpretation of "shall" as used in SB 1051. It was concluded that the legislature uses "shall" as an imperative.

Nichols told the Commissioners they have three aspects of the ADU proposal to consider: the application process, the SDCs, and changes to limitation on limitations of use.

Kimes emphasized his desire to have firm and explicit conditions in the ADU regulations, so applicants will know there is a basis for a clear yes-or-no answer.

Jurkowski, Kimes, Slothower, and Fisher discussed suitable limitations on ADU size. Slothower debated what might be the appropriate percentage of a primary dwelling to allow, and then he proposed a 650 square foot limit. Fisher pointed out that twenty cities listed by DLCD set ADU limits at up to 40% of the primary dwelling floor plan or up to 800 square feet, whichever is less. Garibaldi, a beach town comparable to Bandon, has a 600 square foot maximum, or 33% of the size of the existing main dwelling, whichever is less. Additionally, 68% of Oregon communities in the DLCD document require the primary residence to be owner-occupied.

McLaughlin interjected that the language in the State legislation allows a city to adopt reasonable regulations that are related to siting and design. When ADUs were a new concept, there was initial cautiousness about their impact on neighborhoods, and that concern is reflected in the ordinances adopted prior to SB 1051 by cities listed in the DLCD document. At that time, some cities included language restricting the number and type of occupants in dwellings on properties with ADUs. Under new State law, McLaughlin said it's unclear if the legislature precluded cities from setting occupancy restrictions, and such restrictions haven't been litigated yet. Bandon doesn't currently limit who can occupy a home—owner, renter, family member, or non-family member.

Fisher noted that in last month's presentation on ADUs there was an emphasis on aging parents and caretakers, implying ADUs would commonly be built on owner-occupied properties.

McLaughlin responded that requests are coming far less from people looking at an investment opportunity than from those dealing with the needs of a family member, such as a child or an aging parent. Once it's built, the ADU may serve as a guest room or turn out to be an investment in their property that they may rent out.

Fisher, Slothower, and Kimes discussed how a property owner might work within maximum lot coverage, maximum dwelling height, and ADU size restrictions to build the largest allowable unit for the greatest potential rental income. Slothower stressed that most of the regulations in the DLCD document limit the size of an ADU to the lesser of its square footage or some fixed percentage of the floor size of the main dwelling.

McLaughlin observed that there have only been maybe two property owners in Bandon who have pushed the limits on height and lot coverage. These homes look out of place, and most people would rather have yard space and be able to live there and enjoy it. McLaughlin said it's necessary to consider the theoretical extremes, but that shouldn't stop the City from meeting the underlying purpose of the ADU proposal, which is to put ADUs in the toolbox of housing options. It's not going to bring resolution to the problem of affordable housing, and in fact it will have a small impact, but the State has said we "shall" do this.

Fisher referred again to the DLCD document to note that some cities have imposed minimum lot size regulations for properties to qualify for ADUs—often 7,500 square feet—and he pointed out

there are many lots in Bandon that are only 40 feet by 100 feet with 50% lot coverage already, particularly in Bandon Heights. Fisher wondered if those lots would be too small for an ADU, or would something like a garage conversion be allowable? Would they be grandfathered in?

McLaughlin replied that the State has recommended that if a building already exists, there shouldn't be a penalty for converting it to an ADU.

Starbuck suggested looking at options to curtail efforts of property owners who are trying to minimize lot coverage and maximize floor space by building two-story structures.

Slothower pointed out that stairways take up a lot of livable space in multiple story dwellings. So, what is gained by building extra stories is lost in the staircase. Building codes do not allow a ladder to the second floor or loft, except in tiny homes, which was affirmed by McLaughlin.

Bremmer stated the intent of the law is to solve the housing crisis in Oregon. Bandon especially suffers from a lack of rental housing. The Purpose paragraph on page three of the Proposed Sample Ordinance Language states, "This ordinance is intended to encourage development that is consistent with existing residential requirements..." Should there also be occupancy requirements?

McLaughlin offered an explanation of the origin of occupancy requirements in the ordinance language of some communities. Initially, these stipulations arose from a concern that small rental units in single-family zones would have a negative impact on neighborhoods that were primarily owner-occupied. When he was in Ashland, the city required an ADU applicant to live on the property being developed before a building permit could be approved. After an ADU is built and occupied, enforcement of this type of restriction becomes difficult.

Kimes suggested someone who owns an existing rental dwelling might build a second rental unit on the same property and might be able to reduce the rent on the original unit, addressing the spirit of the affordability issue at the root of the ordinance.

Bremmer asked if it is assumed that property owners who apply to build an ADU are doing it for a "granny" house for an elderly relative, for a child returning home who can't find a place to live in the area, or for a place for someone who wants to live and work in Bandon. Can we trust they are doing it for the right reasons? Since allowing ADUs under current regulations will affect the R-1 zone, should there be occupancy requirements, too? She wondered about the tenor of the community on these issues.

Bremmer also described a situation of a large lot that could be split into two adjoining lots, with each having the potential for ADU construction. Nichols clarified that the Commissioners had decided at last month's meeting to limit the number of ADUs to one per property, and that each property must first have a primary dwelling to qualify for adding an ADU.

McLaughlin introduced a scenario in which someone who has purchased a property in Bandon but can only afford to build a garage with a small apartment above it, intends to come back someday and build a big house. Can they do that under the ADU ordinance? They already have a primary dwelling on the property. Can you start with an accessory dwelling and build a primary residence later?

Kimes recalled that under the old rules, you could live in an accessory dwelling while your primary dwelling was being built. Once you moved into the new building, you had to abandon the accessory dwelling.

McLaughlin concurred, adding that you would have to abandon the kitchen facilities and perhaps convert the accessory dwelling into a bedroom with a bathroom.

Kimes wanted to know how addresses are assigned if an ADU is added to a property. McLaughlin replied that two numeric addresses, not an A or B, would be assigned. Kimes said they would need to be separate to help direct emergency services to the correct location.

Bremmer noted that several of the ordinance examples in the DLCD material state that on a lot containing an ADU there can only be one entrance facing the street. McLaughlin indicated there could be a second entrance on a corner lot, so the ADU would have its own entrance.

As a hypothetical case, Fisher asked if a 14-foot by 57-foot manufactured home would qualify as an ADU. McLaughlin said it would. Fisher then wondered if someone walked in tomorrow with a request for a manufactured home as an ADU, would the City have to go with the State mandate? McLaughlin said yes. Slothower countered that the new State law allows for compliance with local zoning laws, and in most areas of Bandon that are zoned R-1, you are not allowed to put a trailer on your property. Kimes stated that under the City's code, you cannot build an ADU today. However, McLaughlin reiterated the State's mandate that as of July 1, 2018, the City must allow ADUs. The cities listed by DLCD had their ADU ordinances in place in 2015-2016, before the Senate bill.

McLaughlin repeated that in the last two years there have only been one or two requests that have tested Bandon's existing regulations to determine what they could do on their property to house an aging parent. At that point, the option of duplexes was discussed. If someone comes in now with such a request, the City would try to accommodate, based on the State mandate and using the Commission's directions as interim rules.

Kimes urged the Commissioners to come up with numbers for maximum ADU size. Fisher favored 40% of existing dwelling area, or up to 800 square feet, to adjust for larger primary homes and yards. Slothower liked 650 square feet and felt 800 would be too imposing on some lots. He agreed on 40% of the primary dwelling, as did Jurkowski, who was uncertain about the square foot limit, considering the variety of lot sizes. Starbuck concurred with 40% and was leaning toward agreeing with 650 square feet. Bremmer expressed concern over forcing everyone into a small size limitation that might, for example, preclude converting one floor of a two-story home into an ADU. She thought the original 800 square foot limit was fair, and that most of the ADU requests in Bandon would be for converting an existing garage or building a unit on top of a garage and would not reach 800 square feet. Building a free-standing structure might be more expensive than converting an existing structure. Kimes, Fisher, and Slothower discussed what might be involved in modifying an existing garage to convert it to a living space and bring it up to codes.

Kimes asked if a detached garage is factored into determination of 50% lot coverage. Nichols answered that lot coverage applies to any structure and any impervious surface. McLaughlin added that a garage does not count as living space.

Kimes asked Staff to work up a draft ADU proposal specifying 650 square feet or 40% of existing primary dwelling floor space. Fisher wondered if language requiring primary dwellings to be owner occupied could be inserted. Kimes suggested there could be an owner-occupied restriction with a conditional use waiver for certain specified circumstances. McLaughlin cautioned that such limits should be clearly defined, and that the Commissioners could be inhibiting the creation of these units by limiting them to owner-occupied properties.

McLaughlin decided to have Staff prepare the ADU proposal with alternative language for an option that requires owner occupancy, after researching current ordinances elsewhere. Owner-occupied requirements have not been litigated since the State law went into effect, so their future in ADU ordinances is unclear. McLaughlin also stated that compliance would be difficult, because there would be no way to monitor which dwellings were being used as rentals until there was a neighborhood complaint.

Kimes then turned the Commissioners' attention toward the question of SDC fees. Slothower favored SDC fees to cover the extra strain on water, sewer, and power. Bandon's current SDCs actually cover sewage, water, and storm drains. Nichols clarified that the City charges a flat SDC rate of \$13,750 regardless of lot size, dwelling size, or impervious surface. Fisher enquired about SDC fees for duplexes, and Nichols replied that they are around \$2,000 less than the regular single-family rate.

Fisher expressed concern for the strain additional housing units might place on some older sewer lines and wondered if homeowners would be forced to upgrade laterals to 6 inches or if they might be able to tie into the existing laterals that serve their primary dwellings.

Jurkowski agreed on having an SDC fee for ADU construction, saying it would be more equitable if done by square footage. Starbuck was in accord. Bremmer also felt square footage should be a factor.

Slothower asked if you just want to rent out a floor of your house, can you just do it without calling it an ADU? McLaughlin replied that you can, as long as it doesn't have a separate kitchen. If it has a kitchen, then it's a separate dwelling.

McLaughlin told the Commissioners that Staff will take their directions, along with additional research into current practices in other communities, and develop a revised proposal that will lay the framework for a public discussion and further review by the Commission.

### **3.0 ADJOURN THE WORK SESSION**

Kimes adjourned the Work Session at 8:58 p.m.