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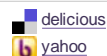
Sunday, October 4, 2009



COMMENTARY

A case against the city's companion unit ordinance

By **REBECCA MICHAEL**, Sullivan Wertz McDade & Wallace
Monday, May 16, 2005



Recently the Friends of San Diego Architecture held a design competition focused on "granny flats" (also referred to as "second units" and "companion units"). The competition was the subject of KPBS's "These Days" and featured in local publications. As one publication stated, the competition enabled more people to see that this desperately needed form of modest housing can enhance their property and neighborhood.

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The Friends of San Diego Architecture is absolutely correct in its position that companion units need to be part of San Diego's housing mix. These units can provide much needed affordable housing to our region. Some California cities have embraced companion units.

For example, the City of Santa Cruz's Accessory Dwelling Unit Program was recently presented with the American Planning Association's Outstanding Planning Program Award.

Unfortunately, those who support companion units in the city of San Diego have failed to win political support due to NIMBY (not in my back yard) opposition.

Instead of recognizing and supporting the benefits of companion units, the city has established laws that prevent the building of virtually any such units and, at the same time, conflict with California law.

The California Legislature has found and declared that second units are a valuable form of housing in California.

The state requires local agencies to permit second units meeting state-set standards unless the locality either (1) passes its own ordinance providing for such units [by ministerial permit] ..., or (2) totally precludes them But a locality cannot totally preclude second units unless its ordinance contains findings that the ban is justified by specific adverse impacts on the public health, safety and welfare that would result from allowing second units. If the local agency chooses to totally prohibit second units, it must also acknowledge that the ordinance may limit housing opportunities.

The state code goes on to say that any second-unit ordinances adopted by local agencies shall not be so arbitrary, excessive, or burdensome so as to unreasonably restrict the creation of second units.

In 2003, San Diego adopted amendments to its second unit ordinance, known as the "companion unit ordinance." The purported purpose of the amendments was to comply with state law.

Most of the amendments were reasonable, including requirements that (1) the property owner occupy either the primary unit or the companion unit; (2) parking for the existing unit be brought up to code; (3) a parking space for each bedroom in the companion unit be provided; and, (4) the companion unit not exceed 700 square feet.

The one unreasonable amendment was the requirement that "a companion unit is allowed where the existing lot area is equal to or greater than two times the minimum lot area required for the zone" ("Double Lot Requirement"),

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an amendment that essentially precludes building second units in San Diego.

There is a strong argument that this double lot requirement in reality totally precludes second units. An overwhelming majority of the city's single-family lots are no larger than the required minimum lot size and very few are twice the minimum lot size.

Additionally, if a parcel is twice the existing minimum lot size it can be subdivided into two parcels. Allowing another unit on the lot would be equivalent to creating another single-family dwelling, not a second/companion/accessory unit. Thus, the double lot requirement creates a de facto ban on second units.

In order to totally preclude second units, under state law the city was required first to have made findings that the ban on second units is justified due to specific adverse impacts on the public health, safety and welfare.

Additionally, the city would have had to acknowledge publicly that precluding second units may limit housing opportunities.

It would be difficult for the City Council to meet the first state requirement, finding specific adverse impacts from second units, in view of past staff opinions that such impacts would not occur. Furthermore, it would be even more difficult for council members to acknowledge that this de facto ban on second units may limit housing opportunities in San Diego at a time when overwhelming evidence shows a serious lack of affordable housing.

Additionally, the double lot requirement violates the state requirement that second-unit ordinances not be so "arbitrary, excessive or burdensome" as to unreasonably restrict their creation.

The very fact that few lots in San Diego can meet this requirement indicates an unreasonable, burdensome restriction. Additionally, arbitrary public statements made by some elected officials illustrate their clear intent to completely stop construction of any second units. The comments express a general position that "these homes are nothing more than rentals in disguise and we don't want a bunch of rentals stinking up our pristine single-family neighborhoods."

Everyone acknowledges that San Diego lacks affordable housing. In order to build one affordable housing unit a public agency has to spend on the average \$100,000. Why not let the private sector help by adopting reasonable companion unit regulations, instead of unreasonable and excessive regulations that all but halt the construction of a housing type critical to our housing mix?

Reasonable regulations are needed that ensure the companion unit's design is integrated into the neighborhood and that the house and its companion unit have adequate parking, reasonable regulations that get us, one unit at a time, closer to providing the housing needed for San Diegans.

The 14 award-winning entries can be viewed on line at www.friendsofsdarch.com/winningdesigns.htm.

Michael is a former shareholder now of-counsel to Sullivan Wertz McDade & Wallace. She practices in the areas of land use, natural resources and governmental relations.

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