



Madison Parks Division

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MEMORANDUM

TO: Common Council
Board of Estimates
Board of Parks Commissioners
Plan Commission

FROM: Eric Knepp, Parks Superintendent

DATE: September 19, 2016

RE: Treatment of Accessory Dwelling Units Under the Proposed Updated Impact Fee Ordinance (Legistar File No. 43500)

Since it was introduced before the Common Council on September 6, 2016, the proposed updated impact fee ordinance has received public comment, both written and in person, relating to the treatment of accessory dwelling units by the Public Facility Needs Assessment and the Ordinance. I expect additional comments as the ordinance moves through Committee. In response to these comments, I felt it necessary to respond directly to the issue.

What is an ADU?

First off, it is important to define what exactly an Accessory Dwelling Unit (an ADU) is, and what it is not.

ADUs are a creation of the new zoning code that became effective on January 2, 2013. Under MGO Sec. 28.211 they are defined as follows:

Accessory Dwelling Unit. A second dwelling unit contained within a single-family dwelling or within a detached building located on the same lot as a single-family dwelling. This definition includes accessory buildings constructed in connection with a private garage or a private garage converted into a dwelling unit.

A dwelling unit is a residence with a complete kitchen and a bathroom, used by one family. ADUs are conditional uses in residential and some mixed-use commercial districts and add a second residential dwelling unit to a lot where only one dwelling unit previously existed. ADUs must meet certain size and design criteria (in some zoning districts they may be no larger than 700 square feet, in TR-P districts they are regulated by the bulk zoning restrictions). They can, generally, house one family, or up to two

unrelated individuals (in TR-P districts, they can only house one family and one roomer). To date, only a handful of ADUs have been built in the City.

Of note, because an ADU is an entirely separate dwelling unit, the costs to construct an ADU are not insubstantial. George Hank, the Director of the City's Building Inspection Division, has noted that building an ADU is as costly as building a similar sized single-family residence. One cannot simply put a bed in an unfinished garage and call it an ADU. Because it is a dwelling, it must meet the City's minimum housing code and be connected to City services. Moreover, like any other residential construction, the cost and quality of an ADU could vary wildly.

Generally, anyone can occupy an ADU. There are no income restrictions, or age-related restrictions on ADUs. Once built, these units can be rented, but they cannot be sold separate from the single-family house.

To summarize then, an ADU is a second, fully functional residence on an existing property. It may be smaller than a typical single-family residence, but it is no less expensive to construct or convert an existing space into an ADU than any other comparably sized project. An ADU is not, by definition, affordable housing, low-cost housing, or senior housing. It is simply another form of single-family housing.

Impact Fee and Land Dedication Standards

Under Wis. Stat. Sec. 66.0617(6)(a), an impact fee must "bear a rational relationship to the need for new, expanded or improved public facilities." Land dedication requirements have similar standards. In order to establish this "rational relationship", the City has long used the average number of persons per type of dwelling unit as a way to measure the demand the development has on the park system (the "service unit"). This method can be measured and corresponds directly with the actual users of the park system being added to the City.

Some of the ADU related comments against this ordinance and the Needs Assessment have suggested that the City should move toward a square foot based service unit, imposing a lesser fee on ADUs simply because they are smaller. Under this logic, a family living in a small apartment or an ADU has less need for City parks than a family living in a 2000 square foot home. Additionally, a family living in a 4200 square foot home would need six times as much park land and six times the parks infrastructure as a family of three living in a 700 square foot ADU. Given the nature of park impact fees, it would be difficult to provide objective data that would support his method. It would be impossible to do so in time to have a new park impact fee adopted in 2016. Similar logic would apply to efforts to base the impact fee upon the value of the home involved—and in that case, the impact fee would begin to resemble a tax, not an effort to recover the City's park related costs to serve the demand generated by the development. A City resident uses a park and is entitled to the same park space and park resources regardless of the size of their residence or the cost of the residence.

The City does not believe that basing the impact fee upon square footage or the cost of a development would meet the statutory and constitutional standards noted above.

Treatment Under the Existing Ordinances

Under the current impact fee and land dedication requirements, ADUs are treated as single-family/two-family dwelling units since they do not meet the definitions of multi-family units (which requires three or more dwelling units) or rooming houses. As noted above, they create another single-family dwelling unit on a lot with an existing residence. This categorization places ADUs in the highest tier for park related impact fees and land dedication requirements, based upon a service unit of 2.6 persons/unit. Because ADUs came into existence after the land dedication and park impact fee ordinances were established, the only way to address these developments differently under the impact fee ordinance would be to update the ordinance. That is one of the goals of the ordinance update.

Treatment Under the Proposed Ordinance

Based upon the conclusions detailed in the Public Facility Needs Assessment, ADUs will no longer be in the same tier as single-family dwelling units for park related impact fee and land dedications, but rather will be placed in the same tier as multi-family dwelling units (they are being defined as “multi-family” for the purposes of the ordinance, even though under the zoning code they do not meet this definition). This is a lower tier than single-family residences. While the Needs Assessment notes that “[n]o data [is] available on occupancies for accessory dwelling units”, by applying the multi-family rate for ADUs, they are determined to have an average persons/unit of 1.67 resulting in a 32% reduction from the single-family rates (based upon a service unit of 2.45 persons/unit). This is a significant reduction, considering that an ADU is a (smaller) form of a single-family dwelling. With only a handful of ADUs in the City, such a determination appears reasonable. In ten years, the City might have better data available to it on ADU occupancy, but for now, it does not appear that the consultant’s conclusion that this treatment is reasonable is unfounded.

ADUs Can Still Qualify as Age-Restricted or Low-Cost Housing

ADUs are a form of single-family housing that are being treated as multi-family under the ordinance. As such, a property owner seeking to build an ADU could follow the City’s procedures to have the unit designated as age-restricted or income restricted. This would require meeting certain conditions, and would require a deed restriction on the title to the property. However, if a property owner did this, they would be eligible for either the reduced age-restricted multi-family rate based upon a service (ADUs being defined as multi-family for the purposes of the new impact fee), or the low-cost housing exemption from park impact fees. If a property owner does not want to deed restrict the property and limit the use of the ADU, there is no reason why that person should not pay the impact fee that everyone else creating a dwelling unit must pay in the City.

The City, by Law, Cannot Create an Exemption or Special Reduction for ADUs

Critics seem to suggest that the City should create some sort of policy exception that favors ADUs over other housing options by either waiving impact fees for ADUs or giving them reductions. However, the state law on impact fees does not allow this sort of disparate, policy based treatment.

As noted above, under Wis. Stat. Sec. 66.0617(6)(a), an impact fee must “bear a rational relationship to the need for new, expanded or improved public facilities.” In order to establish this “rational relationship”, the City uses the average number of persons per type of dwelling unit. Using this established methodology, the only way the City could impose no impact fees upon ADUs or give them substantial reductions is if it found either that ADUs had no residents or less than the 1.67 persons/unit that is being applied. Clearly, ADUs will have more than zero occupants, otherwise they wouldn’t be built at all. In addition, only data can support a reduced impact fee. The City cannot simply set a lower rate on one type of development in order to promote that type of development (i.e., say that ADUs only have 0.5 persons/unit). Doing so could undermine the entire impact fee ordinance.

Rather, the *only* exemption to impact fees that may be provided under state law is for “low-cost housing.” The ordinance update will create, for the first time in Madison, a low-cost housing impact fee exemption, based upon existing City standards pertaining to affordable housing (i.e. for owner-occupied units, whole gross income may not exceed 80% of the Area Median Income). If an ADU satisfies the ordinance requirements, it may be exempt from park impact fees altogether. It is expected that this change will, contrary to criticism, make affordable housing less costly in Madison, even if, on its face, it will not make ADUs less costly to build. However, if an owner is truly creating an affordable housing alternative, they may take advantage of this option and have the park impact fees waived for the development.

Summary

The pending ordinance updating the City’s park related impact fees and land dedication requirement has come under misleading criticism from advocates of ADUs. City staff feel that the treatment of ADUs as multi-family units is reasonable and a significant change from the current impact fee. ADUs may still take advantage of other opportunities to obtain even lower park impact fees, including deed restricting the unit based upon age or income. However, despite invitations to do so, the City may not, by law, favor ADUs over other types of development based purely on policy grounds. Until more data on ADU usage is available, the approach recommended by the Needs Assessment is reasonable. Moreover, the ordinance does not place barriers to affordable housing—rather, by taking advantage of the lone statutory exception available for impact fees and eliminating park related impact fee costs from low-cost housing, affordable housing will become less costly under the new ordinance.