

Accessory Apartments

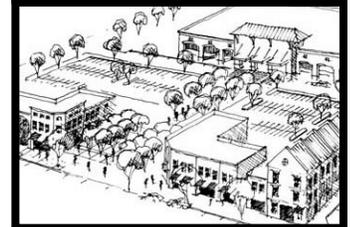
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Land Use Clinic



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School of Law & College of Environment and Design



The **UGA Land Use Clinic** provides innovative legal tools and strategies to help preserve land, water and scenic beauty while promoting creation of communities responsive to human and environmental needs. The clinic helps local governments, state agencies, landowners, and non-profit organizations to develop quality land use and growth management policies and practices. The clinic also gives UGA law students an opportunity to develop practical skills and provides them with knowledge of land use law and policy.

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I. Introduction

Accessory Dwelling Units (ADUs) are self-contained secondary living spaces that are either inside of, attached to, or detached from a larger main dwelling.¹ An ADU usually consists of one or two bedrooms, a sitting room, a bathroom, and a kitchen.² An ADU built inside of a principal dwelling is called an accessory apartment. Accessory apartments can be located in any part of the main dwelling, depending on where space is available. A structure that is physically connected to the main dwelling is known as an attached accessory cottage, while a detached accessory cottage is on the same lot as the main dwelling but is not connected to it.³ Detached accessory cottages are sometimes called ECHO homes (Elderly Cottage Housing Opportunities) if they are intended for inhabitation by elderly residents. ADUs are typically secondary to the main dwelling unit in terms of size, appearance, and location.⁴ Common locations for ADUs include attics, basements, attached garages, or small additions.⁵

Before World War II ADUs were fairly common. Empty-nesters often built ADUs in order to take in tenants after their children moved out. After the War, however, the rapid proliferation of suburbs with their focus on the nuclear family led to a decrease in ADUs. Many communities prohibited ADUs altogether.⁶

1 AARP “Accessory Dwelling Units: Model State Act and Local Ordinance” 8, available at http://assets.aarp.org/rgcenter/consume/d17158_dwll.pdf.

2 Leo M. Cram, “Accessory Apartments,” available at <http://muextension.missouri.edu/xplor/aging/gg0014.htm>

3 AARP, *supra* note 1.

4 Municipal Research and Services Center of Washington, “Accessory Dwelling Units”, Oct. 1995, available at <http://www.mrsc.org/Publications/textadu.aspx>.

5 Cram, *Supra* note 2.

6 AARP, *supra* note 1 at 8.

Current zoning ordinances commonly maintain strong prohibitions against ADUs.⁷ However, citizen groups, including the AARP, and governmental entities, including The Department of Housing and Urban Development, are calling for new zoning codes and a decrease in the barriers that stop citizens from constructing and living in ADUs.⁸

There are at least two main reasons for today’s increased interest in accessory dwellings: the affordable housing crisis and changing demographics. As the demand for affordable housing increases, communities need to consider a variety of housing options for their citizens. Also, the composition of many communities is changing, with an increase in single-person households.⁹

II. Who Would Live in an ADU?

ADUs are viable living options for a variety of different types of people, from young people to the elderly. Older singles or couples who continue to live in large homes after their children move out may want to bring in a renter as a source of supplemental income and companionship. Elderly people may also want to live in an accessory unit that is secondary to the home of one of their children. Middle-aged people may want to have an accessory apartment if they are frequently out of town in order to have someone looking after the primary dwelling. Young couples just starting out may want to include an ADU in their home in order to supplement their monthly payments and get them into a larger house more quickly. Divorced individuals may choose to rent space in their pre-divorce home so that they can keep the larger home and not uproot their children after one parent moves out. Single working parents may want to set up an arrangement where an ADU tenant can help around the house and help with child care.¹⁰ This list is by no means exhaustive; there are many situations in which ADUs benefit homeowners, tenants, and the community.

7 *Id.*

8 See AARP, *supra* note 1, see also, The Department of Housing and Urban Development, *infra* note 11.

9 MRSC, *supra* note 4.

10 Cram, *supra* note 2 (preceding paragraph).

ADUs provide affordable housing options in a community. Housing is affordable if a low or moderate income family can afford to rent or buy a decent quality dwelling without spending more than 30% of its income on shelter.¹¹ Encouraging ADUs is a way to help Americans move into suitable housing.

III. Who Benefits from ADUs?

Homeowners benefit from ADUs in the extra money they receive each month in rental income. Also, homeowners benefit from ADUs if they choose to add an ADU as part of improvements to their home: the improvements could end up paying for themselves. There is also potential for social and personal support from a tenant. Homeowners may feel more secure in their own homes because of the presence of a tenant.¹²

Unit occupants benefit from ADUs because of the typically modest rent charged. Occupants may feel more independent living in a single-family neighborhood than they would in a multi-family apartment complex. There is also a potential for social and personal support with the owner of the main dwelling.¹³

Communities can benefit from ADUs by encouraging a source of moderately priced housing that can help them reach growth management goals. ADUs can increase property values and tax revenue when the addition of an ADU adds to the appraised value of a home.

IV. What Negative Conceptions do People Have of ADUs?

Many homeowners feel that having an accessory apartment is embarrassing because it shows that they may be unable to maintain the lifestyle of their neighborhood without help from supplemental rental income. Others feel that accessory units take away from the traditional values associated with having a single-family residence. Neighbors are often concerned about any alterations to the physical appearance of a house when homeowners add ADUs to existing homes. Neighbors are also often concerned about parking and strains on neighborhood infrastructure, including utility services and schools. Some also have concerns about changing the dynamics of the neighborhood by bringing in people with alternative social values and living styles. Citizens worry that property values will go down if ADUs are allowed. All of these negative ideas contribute to resistance to ADUs.¹⁴

V. What is the Status of ADUs in Georgia?

In 1994 the legislature established the Barriers to Affordable Housing Committee to look at building codes, property taxes, tax incentives, zoning and land use issues, and housing appropriations in order to possibly eliminate barriers to affordable housing.¹⁵ Another group addressing ADUs in Georgia is the Georgia Quality Growth Partnership (GQGP), a group of more than 30 public and private organizations focused on encouraging quality growth. GQGP included a paper on accessory apartments in their “Toolkit of Best Practices.”¹⁶ The Toolkit is a valuable source of information and includes examples of accessory apartment ordinances in other states. However, there are currently no examples on the website of the implementation of accessory

11 US Department of Housing and Urban Development, “Why Not in Our Community? Removing Barriers to Affordable Housing” available at <http://www.huduser.org/Publications/pdf/wnioc.pdf>.

12 National Resource Center, “Housing Highlights: Accessory Units” available at <http://www.homemods.org/folders/PDF/access.pdf>.

13 *Id.*

14 Cram, *supra* note 2 (preceding paragraph).

15 NRC, *supra* note 11 at 11.

16 Georgia Quality Growth Partnership, “Accessory Apartments” available at http://www.dca.state.ga.us/intra_nonpub/Toolkit/Guides/AcsryHsngUnts.pdf.

apartments in Georgia.¹⁷ Flowery Branch, Georgia, and Roswell, Georgia, provide at least two examples of local governments including accessory apartments in their zoning ordinances.¹⁸

VI. How do we Encourage ADUs?

The community's housing goals should be a primary consideration in plans for adding ADUs. The most common reasons for implementing ADUs are:

1. to expand the supply of affordable housing for both owners and renters;
2. to provide a means for homeowners to obtain extra income, security, companionship, and services;
3. to make more efficient use of existing housing stocks and infrastructure; and
4. to provide a mix of housing that responds to changing family needs.¹⁹

One suggestion for implementation is to form a group of citizen leaders who have the interest and ability to run a campaign designed to heighten community interest, involvement, and support. The task force should include representative from private, public, and nonprofit sectors. The first step of the task force should be fact finding.²⁰ One important step is to determine the current demand for rental units generally in the area, and more specifically, the demand for ADUs. One indicator to look for is a low vacancy rate among low-rent units, which may suggest demand for ADUs.

Some people may be concerned that once ADUs are allowed in a community there would be a huge influx of such units.²¹ Research has found a contrary result. One national survey of 47 communities found that areas with favorable zoning for ADUs only get around one ADU per 1,000 single-family homes per year.²² However, if a community really wants to encourage ADUs, publication and the dissemination of information can increase this number to 2 or 3

units per 1,000 homes per year.²³ It is also important to consider the existing housing stock. Are there many houses in the community that are suitable for conversion to include an ADU? Split level, Cape Cod, and ranch style houses are good candidates for conversion, while smaller bungalow style houses may not be.²⁴ Information of this type can help decision-makers in considering whether ADUs are appropriate for their communities.

VII. "What do we want out of our Model Ordinance?"

There are many decisions to be made when drafting a model ordinance. The AARP, together with the American Planning Association, put together a comprehensive model ordinance that is helpful in forming ideas and opinions.²⁵ The AARP states that typically a community adopts an ADU ordinance as an amendment to its zoning ordinances. The AARP's model ordinance discusses both a permit system and a "by right" zoning system. The AARP labels standards as either "optimal," "favorable," or "minimal" in gauging how restrictive the provision is to the development of ADUs, with "optimal" being the least restrictive.²⁶

A. Definitions

A community must determine what types of ADUs it would like to include: accessory apartments and/or attached or detached cottages. A good definition is important to provide understanding of what is acceptable.

B. Authorization for ADUs

Authorization for ADUs is typically either done using zoning districts or by allowing conditional use permits. The AARP sees by right zoning as "optimal" and would allow ADUs in zoning districts designated as primarily single-family lots. Conditional use permits are "favorable."²⁷

17 *Id.*

18 Zoning Ordinance of the City of Flowery Branch §301 (2004), Roswell Zoning Ordinance §10.2 (2004).

19 MRSC, *supra* note 4.

20 Cram, *supra* note 2.

21 MRSC, *supra* note 4.

22 MRSC, *supra* note 4 (preceding paragraph).

23 Patrick B. Hare, "RNT In Law-Apt, SV \$," *Hartford Courant* Nov. 9, 2003, at C5.

24 Cram, *supra* note 2.

25 AARP, *supra* note 1.

26 *Id.* at 13.

27 *Id.* at 32.

C. Owner-Occupancy Requirement

Many communities require that the homeowner must occupy one of the two dwelling units, either the main dwelling or the ADU, reasoning that homeowners would be more likely to maintain the property if they lived there. Owner occupancy is also thought to encourage good tenant behavior since the landlord is living in the immediate vicinity. However, an owner-occupancy requirement should include a provision for the owner's absence.²⁸

D. Standards

ADU ordinances often contain provisions regulating the size of the ADU and/or the main dwelling. Size of the ADU can be expressed in terms of actual size, or as a percent of the main unit's size. Some ordinances also limit the number of bedrooms an ADU can have. Size limitations ensure that the ADU is secondary to the main residence. Size limitations can control neighborhood density.²⁹

ADU ordinances also impose a minimum lot size for homes with ADUs. In a survey of 50 ordinances, the minimum lot size requirement varied from 4,500 square feet to 1 acre.³⁰ If too stringent, lot size requirements can be detrimental to a goal of increasing the number of ADUs in a community. Also, ADUs are typically required to meet all setback and coverage requirements.³¹

E. Number of Occupants

Limits on the number of occupants in residences with ADUs are aimed at combating overcrowding and dealing with problems of neighborhood density and parking that could arise. Some communities limit the aggregate number of occupants in the main and accessory unit. Other communities place limitations specifically on the number of occupants in the ADU.³²

F. Building Standards and Aesthetics

ADU provisions may want to address concerns about the appearance of an ADU. Restrictions often address the entrances of ADUs and discourage the entrance to the ADU from being on the front of the principal unit.³³ Many of the appearance and design standards, like entryway requirements, focus on the appearance of the dwelling from the street. Some communities require that any modifications to the exterior of the main dwelling should conform with the original design and style of the home.³⁴

G. Parking and Traffic

The potential for traffic and parking problems is a big concern for ADU opponents. This concern can be addressed by requiring a certain number of off-street parking spaces for homes that have ADUs. The location of the off-street parking is also a consideration; some communities require that the parking be in the back of the house so as to reduce the number of parked cars visible to from the street.³⁵

H. Legalizing ADUs

An illegal ADU is one that was created without permission of the local government.³⁶ Many communities that do not permit ADUs already have non-conforming ADUs. Safety is the main concern for illegal ADUs; it is important for local governments to ensure that they are brought up to minimum safety standards.³⁷ When an ADU ordinance is adopted, communities can provide incentives for owners of illegal units to legalize them and bring them up to fire and safety requirements.³⁸ Two examples are waivers of applicable fines or providing a grace period for modifications.³⁹

28 MRSC, *supra* note 4.

29 *Id.*

30 AARP, *supra* note 1 at 36.

31 *Id.* at 37.

32 MRSC, *supra* note 4.

33 *Id.*

34 *Id.*

35 *Id.*

36 AARP, *supra* note 1.

37 MRSC, *supra* note 4.

38 *Id.*

39 *Id.*

I. Other Provisions to Consider

There are a variety of other provisions that a local government may want to include in its ADU ordinance. Some areas restrict the addition of ADUs by the age of the home, only allowing ADUs in older homes (not in new construction) and / or only allowing residents who have lived in the primary dwelling over a specified number of years to add ADUs. Both of these restrictions, of course, would limit the number of ADUs in a given locality. Many communities impose a recording requirement for ADUs to ensure compliance with their ordinance. Homeowners may have to file a deed restriction, covenant, or similar instrument with the recording office. Another consideration is the number of ADUs that should be allowed per lot.⁴⁰ Of course, this short listing of ideas is in no way exhaustive of additional provisions local governments may want to include in their ADU ordinances.

VIII. Conclusion

Implementing an ADU ordinance requires local governments to balance the interests of homeowners, potential tenants, and the community at large. ADUs can benefit all parties if they are implemented properly. Community education and involvement are important to ensure support for ADUs. ADUs allow communities to grow in population without additional construction or the expense of new infrastructure.⁴¹ Accessory dwelling are not for everyone or every neighborhood, but when done properly in the appropriate area accessory dwelling units can be great additions to a community.

⁴⁰ *Id.*

⁴¹ Cram, *supra* note 2.

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