NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

RE: PETITION TO AMEND THE NEW HAVEN ZONING ORDINANCE TEXT of Section 22: Accessory Dwelling Units including removing the owner occupancy requirement, allowing detached and attached ADUs outside of the existing building envelope, eliminating the minimum lot size requirement and amending setback requirements for ADUs

Submitted by: Laura E. Brown, Director, City Plan Department

REPORT: 1646-01
ADVICE: Approval with recommendations

BACKGROUND
The current Accessory Dwelling Unit (ADU) ordinance was initially adopted in 2021 and was envisioned as the first phase of three toward more comprehensively reducing barriers to ADU creation. The existing iteration of the ordinance includes the following provisions: restricting as-of-right ADUs to those in which either the ADU or the principal structure is occupied by the property owner, allowing ADUs only within the envelope of existing buildings, limiting ADUs to parcels within the RS-1, RS-2, RM-1, and RM-2 zones consisting of no less than 4,000sf of lot area, with no required off-street parking. Examples of ADUs that are currently as-of-right include converting a third floor into a new unit, fitting out a basement unit or converting an existing garage into a dwelling unit.

PROPOSED AMENDMENT:
The currently proposed text amendment will implement Phase 2 by removing the owner occupancy requirement for ADUs, as well as Phase 3 by expanding the ordinance to allow detached and attached ADUs outside of the building envelope of existing structures. The proposal includes the elimination of the minimum lot size requirement for ADUs and the alignment of ADU setbacks with those of “accessory structures” which is 5’ from the property line. Language has also been added to ensure that once an ADU is established within a detached/accessory structure, the parcel cannot be sub-divided to provide a separate lot for the structure. No change is proposed to the zones where ADUs are permitted which are as follows: RM-1, RM-2, RS-1 and RS-2 zones. The proposed changes to the Ordinance as submitted to the Board of Alders may be found attached to this staff report.

PUBLIC HEARING
A Public Hearing was held by the City Plan Commission on February 7, 2024. A transcript of the hearing, meeting #1626, is available from the City Plan Department.

A motion was made by Commissioner Alder Marchand to make a favorable recommendation to the Board of Alders with the further recommendations that the owner occupancy requirement be maintained and with the recommendation that the Board of Alders give significant consideration to the issue of short-term rentals, possibility of accessibility requirements for first floor ADUs, rental inspection requirements, effect on property values in the surrounding neighborhood, and consideration of the impact on affordability at 8:14pm. 4-0 in favor.
PLANNING CONSIDERATIONS
The City Plan office has documented the creation of 11 ADUs having been permitted since the passage of the ADU Ordinance, but all have required additional relief before the Board of Zoning Appeals. The ADU Ordinance in its current form resulted in no new housing units built as-of-right. This is consistent with experiences of other municipalities that have implemented ADU ordinances where owner occupancy, design restrictions, and regulatory processes are documented barriers to new housing creation through ADUs. Applying for zoning relief takes time (2-3 months) and creates financial constraints for homeowners who wish to create housing for ADUs. In some cases these regulatory costs may be passed along to tenants. Reducing needed approvals will allow more expeditious building of new housing units which the City desperately needs. In other cities, similar zoning-based reforms supporting housing creation have also significantly tempered rental increases. (New Haven has experienced a staggering 30% increase in rents between 2017 and 2023i and nearly 58% of all renters are “cost burdened.”ii) ADUs in particular provide opportunities for elderly homeowners to stay in their homes with an additional income stream and open more affordable opportunities for small households or single people.

The most significant of the proposed amendments to the Ordinance is removal of the owner-occupancy requirement, a known barrier to ADU creation. Residents have expressed concerns about maintenance of these units without owner occupancy. While this proposal will reduce some regulatory barriers, building an ADU requires compliance with the building code and often requires unique site or architectural design or retrofitting that can be costly. Planning staff do not believe this ordinance will result in mass construction of ADUs by absentee landlords.

Amending the ordinance to allow detached and attached ADUs outside of an existing building envelope will allow parcels that don’t have an existing accessory structure to create an ADU without the need for relief via the Board of Zoning Appeals. This includes new construction, expansions (in cases where an existing building cannot be converted), or second floor garage units that wouldn’t force the property owner to sacrifice parking for an ADU. To address aesthetic issues related to increased density, the proposal also includes alignment of the setback requirement with the requirements of “accessory buildings” which are not permitted in the front yard and must be 5’ from each property line. The height of ADUs cannot exceed that of the existing principal structure and ADUs will still be subject to lot coverage requirements in existing zones.

The proposed amendment will also reduce the need for zoning relief for currently non-conforming lots by eliminating the minimum lot size requirement for ADUs. This alone would allow an additional 4,258 parcels in RM and RS zones under 4,000 square feet to become eligible for an ADU (18% of 23,370 parcels) provided all other dimensional requirements are met.

Since the Submission to the Board of Alders staff have worked closely with OBIE and the Department of Disability Services to incorporate a section of the ordinance requiring ADA compliancy. Staff determined that costs associated with this will not create additional financial burdens and will result in increased these units being more accessible residents with disabilities. The proposed revision reads: “All ADUs established at ground level by way of new construction or conversion must comply with the Type B accessibility requirements of the Connecticut State Building Code

SECTIONS(S) 181 and 182 OF THE CHARTER OF THE CITY OF NEW HAVEN
The City Plan Commission finds that, based on submitted information the proposed text amendment comply with Sections 181 and 182 of the Charter of the City of New Haven in that it is (i) uniform for each class of buildings or structures, (ii) made in accordance with the comprehensive plan, (iii) designed to lessen congestion in the streets, secure safety from fire, panic and other dangers, promote health and the general welfare, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, facilitate the adequate provisions for transportation, water, sewerage, parks and other public requirements, and (iv) made with reasonable consideration as to the character of the proposed RS-3 District and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

SECTION 64(d)(2)c OF THE NEW HAVEN ZONING ORDINANCE
Section 64(d)(2) requires that the City Plan Commission take into consideration in evaluating any amendment to the text of the Zoning Code:

a. Errors in the existing ordinance, changes that have taken place in the city and in patterns of construction and land use, the supply of land and its peculiar suitability for various purposes, the purposes of zoning and the comprehensive plan of the City of New Haven;

The initial recommendation to allow ADUs in the New Haven Zoning Ordinance (NHZO) emerged from the work of the Affordable Housing Task Force (AHTF), recognizing the need for more housing options at all scales and in all neighborhoods. They stated in 2021: “The Board of Alders, on the advice of the City Plan Commission and its Staff, should implement zoning changes to permit a wider range of affordable housing options including expanded permitting of rooming houses, allowance for accessory dwelling units, ease minimum lot area requirements; increase in density allowances and more.” The recommendations to remove barriers to ADU creation are also in alignment with the 2023 “Breaking Ground” policy report by Elm City Communities which recommends eliminating parking requirements, shrinking the minimum lot size, and ending owner-occupancy restrictions for ADUs, the Regional Plan Association’s “Be My Neighbor” Reportiii and the AARP’s Future of Housing Report.iv This is also consistent with Public Act 21-29 passed by the Connecticut Legislature in 2021 which directed that municipalities must allow one Accessory Dwelling Unit (ADU) alongside or within a single-family house, according to existing lot coverage and setback rules for single-family homes, without the need for a public hearing or special permit.

b. Whether some other method or procedure under the zoning ordinance is more appropriate; and

The Commission agrees that the enactment of the ADU Ordinance in 2021, along with the proposed amendments, is consistent with Public Act 21-29 passed by the Connecticut Legislature which directed that municipalities must allow one Accessory Dwelling Unit (ADU) alongside or within a single-family house, according to existing lot coverage and setback rules for single-family homes, without the need for a public hearing or special permit.

RECOMMENDATIONS
Overall, the guidelines proposed in this amendment support cohesive integration of ADUs within existing neighborhoods and allows for a larger base of parcels eligible for ADUs further increasing the amount and diversification of New Haven’s housing stock. The City Plan Commission provides a favorable recommendation to the Board of Alders with the further recommendations that the owner
occupancy requirement be maintained and with the recommendation that the Board of Alders give significant consideration to the issue of short-term rentals, the possibility of accessibility requirements for first floor ADUs, rental inspection requirements, effect on property values in the surrounding neighborhood, and the impact on affordability.

FINDINGS AND ADVICE
Based on the above it is the recommendation of the Commission that the proposed text amendment is in full compliance with the standards and requirements of Section(s) 181 and 182 of the Charter of the City of New Haven and Section 62(d)(2) of the New Haven Zoning Ordinance and should be approved with the inclusion of the recommended language stated above.

ADOPTED: February 7, 2024
Leslie Radcliffe
Chair

ATTEST: _______________________
Laura E Brown
Executive Director, City Plan Department

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4 AARP. FUTURE OF HOUSING Addressing Housing Challenges Across the U.S. for Aging Communities. Retrieved from https://futureofhousing.aarp.org/