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## Council continues moratorium on accessory structures

By Sora O'Doherty

A moratorium put in place in July will remain in place until the rules governing accessory structures are changed. The rules that allowed accessory structures to be built within five feet of the property line became controversial when the owner of 71 Meadowview built two such structures with the announced intention of renting accommodations through Airbnb. The two accessory structures are five feet from the border fence, 15 feet tall and with windows that overlooked the neighbors' bedroom. According to Orinda Associate Planner Adam Foster, those structures have not yet received final approval from the city and therefore cannot yet be inhabited.

Foster clarified the rules regulating rental properties in Orinda. Short-term rentals are defined as rentals up to 30 days but not longer. Only one short-term rental is allowed at any time on a single parcel. However, the number of long-term rentals, over 30 days, is unlimited. So a property owner could have one short-term rental and unlimited long-term rentals simultaneously.

At its Jan. 22 meeting, the city council was asked by staff to make permanent the provisions of the urgency ordinance adopted last July. After some discussion, the council decided to continue the moratorium until new rules are drafted. A draft ordinance needs to go to the planning commission for review before coming back before the city council, but the council asked that the matter come before it again prior to going to the planning commission. A new ordinance must be adopted before the moratorium expires in July, therefore the matter must return to the city council by June.

The definitions of accessory structures and accessory dwelling units are different, and they are covered by different rules. However, accessory structures may be habitable and can be converted ministerially to accessory dwelling units, which means that if the structure meets the requirements for an ADU, the city has no discretion in recognizing it as an ADU. There may be only one accessory dwelling unit on a parcel.

Currently there is no limit to the number of accessory structures that are allowed on a parcel. According to Foster, the distinction between an accessory structure and an ADU is subtle and not easy to pin down. One factor often considered is the presence of a source of 220 volt electricity, commonly used for stoves. But an accessory unit may have, for example, a microwave oven that runs on 115 volts.

The previous ordinance, now in abeyance, allowed accessory structures to be built within the required setback and limited the height of such structures to 15 feet. Currently, if an accessory structure is not built within the setback area of a parcel, the maximum height is 27 feet, the same as the main structure.

Although there is no limit to the number of accessory structures that can be built on a parcel, the total amount of structures on a parcel is controlled by floor area ration requirements.

Council Member Amy Worth asked staff if there was any reason why the council should not limit the number of accessory structures on a parcel. Other communities have limited the size and number of accessory structures. The council directed staff to look into the possibility of imposing limits on the number, size, or height of accessory structures that are not built within the setback. In order to be built within the setback, any accessory structure would require permission from the city, which enables the city to use discretion as to whether or not to approve the planned structure.

Excerpt from Orinda Municipal Code Section 17.2.3:

"Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons on the same parcel as a single-family dwelling. It shall include permanent provisions for living, sleeping, eating, cooking (see definition of kitchen), and sanitation. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in Health and Safety Code 17958.1.2.A manufactured home, as defined in Health and Safety Code 18007.

"Kitchen" means any room or part of a room within a building which is designed, built, used or intended to be used for storage and food preparation and dishwashing in conjunction with the establishment or use of a dwelling unit; but not including a bar, butler's pantry or similar room adjacent to or connected with a kitchen. Food preparation facilities shall include 220 volt electrical or natural or propane gas service, unless otherwise specified by this Code.

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