LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

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House Committee on Human Services and Housing
HB 2001 Public Hearing, March 18, 2019

Chair Keny-Guyer and Members of the Committee:

I am writing to ask you to provide a few more essential clarifications of HB 1051.

Section 7 of HB 2001 includes important and welcome clarifications of what I believe the Oregon legislature has already required in HB 1051 (2017), codified as ORS 197.312(5) -- its landmark Accessory Dwelling Unit Statute. Commendably, these clarifications explicitly exclude owner-occupancy and off-street parking standards from the scope of "reasonable local regulations relating to siting and design."

As amended by Section 7, the ADU statute would read:

> (5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.
> (b) As used in this subsection[,]**:**
>> **(A)** "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.
>> **(B) "Reasonable local regulations relating to siting and design" does not include owner occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.**
>
> **(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.**

The proposed amendments are sound and should pass. They provide clear, timely, and authoritative answers to issues that have come up since the adoption of HB 1051 (Chapter 745 Or Laws 2017). Anything that can be stated clearly in the ADU statute will speed implementation by local governments, speed rulemaking, and avoid unnecessary, costly, contentious, and expensive litigation. Most importantly, your clarifications will get meaningful amounts of a vital type of affordable housing built sooner rather than later, or not at all.

I urge you to improve on this good work with a few more clarifications. My suggestions are my own. They resolve issues arising out of three recent cases involving the 2017 ADU statute at LUBA. These cases are the first to address HB 1051. They are:

> *Home Builders Assn. of Land County v. City of Eugene*, __ Or LUBA __ (No. 2018-063, 064, Nov. 29, 2018). This case was a key lost opportunity for authoritative guidance by LUBA, guidance that I hope you will now help provide. The importance of this case is reflected in the fact that it was brought by several flavors of housing advocates, including my client the Home Builders, 1000 Friends of Oregon, and Housing Land Advocates. It identified a number of key defects in Eugene's purported implementation of the statute, which was in fact a decision to delay full implementation past the statutory July 1, 2018 deadline. LUBA decided that the deadline wasn't really a deadline for code amendments, that it was only a date after which HB 1051 would apply directly.
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> *Kamps-Hughes v. City of Eugene*, __ Or LUBA __ (No. 2018-091, Nov. 29, 2018), which was a challenge to Eugene's denial of a permit for an on a lot with a single-family dwelling because it was an alley access only lot. LUBA told the City to apply the statute directly.
>
> Now pending at LUBA, *Home Builders Assn. of Lane County v. City of Eugene*, LUBA No. 2019-___, which challenges Eugene's denial of an ADU on the same Kapms-Hughes lot because the applicant did not show that the ADU would be "used in connection with or that is accessory to" the existing dwelling.

The following additional clarifications would provide essential guidance to all concerned:

> **1. Confirm that July 1, 2018, was a reviewable deadline for local codes to be in compliance with the statute.** In the HBA decision above, LUBA said that the 2017 statute <u>does not</u> set a deadline for local codes to be in compliance and that the city can take its time bringing its code into compliance. That allowed LUBA to duck all challenges to the city's failure to excise or amend existing code provisions that conflict with the ADU statute. Meanwhile, builders, neighbors, and everyone else will have to deal with two conflicting sets of standards and procedures -- one set forth in the city code and the other in the state statute. Their only remedy is to take up ADU application denials one by one, issue by issue, indefinitely. (It will be very rare that the applicant for a building permit denied by the City, based on a code provision that conflicts with the statute, can make a cost-effective appeal of that individual denial to LUBA.) This is in marked contrast to the prompt and useful guidance LUBA has given when reviewing past code updates. The best example is LUBA's prompt, comprehensive, and detailed analysis of Eugene's 2001 code update, in which LUBA identified dozens of errors – violations of the Needed Housing Statute. See *Home Builders Assn. of Lane County v. City of Eugene*, 41 Or LUBA 370 (2002). To its credit, Eugene promptly addressed the flaws which LUBA identified in 2002. That should be what happens with the ADU statute.

2. Provide more examples in the statute of what are not "reasonable local regulations relating to siting and design." As enacted in 2017, HB 1051 clearly prohibits all local regulations which don't relate to siting and design. It also prohibits local regulations that are not reasonable even if they do relate to siting and design. And reasonableness, clearly, is not just anything that a city decides is reasonable. What is reasonable is a state standard.

Based on experience with the three cases listed above, clarifying examples should include at least the following:

> **(A) Reasonable local regulations do not include regulations that preclude the development of at least one accessory dwelling unit for each detached single-family dwelling on a lot;**
>
> **(B) Regulations that relate to siting and design do not include:**
> > **(1) owner occupancy requirements of either the primary or accessory structure;**
> > **(2) requirements of occupancy that differ from the primary dwelling;**
> > **(3) household size requirements;**
> > **(4) internal allocations of space, such as numbers of bedrooms.**

3. **Define or delete "accessory."** The qualifying phrase "used in connection with or that is accessory to" needs to be defined as "located on the same lot or parcel," otherwise amended, or simply dropped, because it is already being used as an escape hatch from the statute and has the potential to make it a dead letter. Here's the smoking gun: After being directed by LUBA to apply the statute directly, the City of Eugene denied the Kamps-Hughes application on the ground that the applicant failed to show that the ADU would be "used in connection with or accessory to" the primary dwelling. The City said:

> "Your application materials do not specify any way in which the proposed detached residential structure would be *"used in connection with" or "accessory to" another single-family dwelling*. With respect to its relationship with/to another single-family dwelling, you assert only that the new structure would be located on the same lot as another single-family dwelling. This is an insufficient "connection" or "accessory" relationship to give the words in ORS 197.312(5)(b) any real meaning. . . With that in mind, no further analysis under ORS 197.312(5) is needed."

What a nice way to sneak in a requirement that an ADU be justified by owner-occupancy, family member connections, master-servant relationships, etc. That's not what the 2017 legislature intended and I don't think it is what the 2019 legislature wants. Eugene has identified a hole in the ADU life boat that will sink the boat if it is not plugged.

Again, dealing with these very basic issues now will avoid delay, litigation, and workload on agencies and stakeholders.

Thank you for your consideration.

Sincerely,

Bill Kloos

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