LU Committee

From: Tom Croly <tcroly@maui.net>
Sent: Monday, October 22, 2018 11:30 AM
To: LU Committee
Subject: Testimony for LU-10
Attachments: Accessory Dwelling Testimony LU-10.pdf

Please accept the attached testimony for item LU-10.

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Public Testimony for LU-10
Submitted by Thomas Croly
October 20, 2018

I have followed this proposed legislation for the past 3 year since it was first conceived by Land use chair Carroll as a measure to allow the construction of affordable accessory dwellings on lots smaller than 7500 square feet. And in its original form I was in full support. Allowing accessory dwellings to be built, or legalizing existing accessory dwellings that already exist, on these smaller lots is an idea worthy of consideration.

However, this item has since morphed into this new proposal by the planning department as a significant re-write of the accessory dwelling ordinance and includes larger accessory dwellings and multiple accessory dwellings to be built on lots larger than 7500 square feet.

While it is a well-intentioned measure, it really has not yet be properly vetted during the entire 3 years of promulgation. Some of the concerns that I do not believe have been addressed yet include:

1. No analysis has not been presented on the potential effects of up to doubling the resident housing density throughout the island by allowing 2 accessory dwellings on lots of more than 7500 square feet. What would the effects be to traffic? What would the effects be in wastewater? What would the effects be to fire protection? What would the effect be on quality of life for property owners in these single-family home district? I am not saying this is a bad measure, but more analysis is typically required for a 3 lot family subdivision than has been done for this significant change to zoning laws that affect almost all of Maui's residential housing districts.
2. The proposed measure would increase the size of the accessory dwelling that may be built without consideration of the parking requirements for that accessory dwelling. The original version of this measure would have allowed accessory dwellings of up to 500 square feet. But this new version could allow an accessory dwelling with as much as 1000 square feet inside, covered deck areas of up to 400 square feet and an additional 400 square feet of uncovered deck area. For a total structure that could have many bedrooms and be as large as 1800 square feet and still require only one parking space. This certainly would not be appropriate. While I support allowing larger accessory dwelling units, I would suggest 2 parking spaces be required for any accessory dwellings with more than 500 square feet of inside living space or those containing more than 1 bedroom.

3. Department of Health has made comments that would exclude the construction of a third dwelling in subdivisions served by septic systems. The department should identify those subdivisions that would be affected by this requirement before moving this measure forward.
4. Fire department and Water have pointed out in their comments that first and second dwellings are exempt from fire flow analysis, but that these third dwellings would trigger such a requirement. Prior to any consideration of passing this measure, the department should show examples of what meeting this requirement would typically entail. I know from experience that many property owners, who might wish to make use of this new ordinance to build a second accessory dwelling, will find that it becomes cost prohibitive if their property must then meet fire code requirements that they were formerly been exempt from. For example, if the second accessory dwelling triggers the requirement of a fire hydrant and a mile of 8" water line.

This measure might be useful in helping many of the thousands of unpermitted accessory dwellings, that have already been created inside garages or thru splitting up larger dwellings, to be properly permitted. But I already can see that many obstacles have yet to be addressed to allowing many, if not most, of these illegal dwellings to survive the permitting process that making use of this measure would entail. And if these issues are not addressed prior to passage of this measure will simply result in many more unhappy resident property owners who try to comply with County laws only to find that the permitting process is too severe. And it will create much more work for the County in permit review of applications that never come to fruition.

One need look no further than Oahu to see where a measure like this has already recently failed because it was rushed forward without complete consideration of all the effects, impacts and viability of the measure. In September 2015, the City and County of Honolulu passed their Accessory Dwelling unit ordinance. In the summer of 2016, they incentivize the construction of these units by waving all permitting, grading and inspection fees and waived parks assessments. Today, three years after this ordinance was first passed they have built only 67 accessory dwelling units. Despite the fact that more than 2000 property owners applied for permits. Most of these permits were denied and many others fell into that black whole of attempting to comply with agency comments only to find that doing so to be cost prohibitive. It would be misguided for Maui County make a similar mistake and pass a measure that might lead to as much as an 80% failure rate.

Finally, the Bed and Breakfast and Short Term rental home ordinances were fully vetted during their promulgation over the past 12 years. These ordinances carefully considered limiting these permitted uses via caps to ensure that these permitted uses would never have more than a 2% impact on resident housing. It is wholly unjustified to amend these ordinances as a part of this proposed accessory dwelling measure.

There is no data that would suggest that removing the ability to obtain a bed and breakfast or short term rental permits would result in more accessory dwellings being offered as long term rentals. But there is 25 years of experience to show that accessory dwellings will be used for illegal short term rental uses lacking a reasonable permit process to do it legally. The removal of accessory dwellings from the B&B and STRH ordinances thru this measure is wholly a bad faith act and backdoor method aimed at destroying the effectiveness of another ordinance.