



**215 Julia Ave
Mill Valley, CA 94941**

November 10, 2020

Marin County Planning Commission
3501 Civic Center Drive, Suite #308
San Rafael, CA 94903
Attention: Planning Manager Jeremy Tejirian
JTejirian@marincounty.org

Re: Proposed Development Code Amendments pertaining to Accessory Dwelling Units (ADUs)

Dear Marin County Planning Commission,

We are very concerned about proposed development code amendments pertaining to Accessory Dwelling Units (ADUs). We urge you to follow Larkspur and Corte Madera's lead, learn about all aspects of the newly enacted Accessory Dwelling Unit (ADU) laws, particularly AB-68, and ensure public safety in the event of a fire or other emergency by adding a **"Restricted Areas for Accessory Dwelling Units (ADUs)"** section to the Marin County Development Code, which will prohibit ADUs in the Wildlands Urban Interface and in High Fire Hazard Zones with unsafe evacuation routes.

There are various advantages to adding an accessory dwelling unit or second unit to a home. For homeowners, the extra unit can provide additional income, support family members such as adult children or aging parents and house on-site caregivers. In addition, the units may provide additional affordable housing, although this is not guaranteed. When local jurisdictions craft careful accessory dwelling unit ordinances, these second units can fit seamlessly into an established community.

However, by requiring ministerial review and stripping away local control of land use, local development standards, community engagement, and environmental review related to second units, the new ADU laws went too far. At the same time, the laws provided a remedy, which the cities of Larkspur and Corte Madera adopted, and which we hope you will adopt too.

I. EXCERPTS FROM ASSEMBLY BILL - 68 “LAND USE: ACCESSORY DWELLING UNITS” (2019-2020)

A. There Are Three Sections of Assembly Bill 68, Which We Wish To Bring To Your Attention:

[Link to Assembly Bill 68:](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB68&showamends=false)

https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB68&showamends=false

1. The following section of AB-68 allows Marin County to choose where ADUs may and may not be permitted.

“SECTION 1.

Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

- (A) **Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety”**

2. AB-68 requires Marin County to allow Accessory Dwelling Units (ADUs) to exceed the Floor Area Ratio (FAR), in areas where ADUs are permitted without a variance/waiver.

AB-68 requires a jurisdiction to ministerially approve a permit application for building two Accessory Dwelling Units - ADUs (one of which can be detached) in addition to the primary residence, for a total of 3 housing units in single family zones.

More specifically, the law requires jurisdictions to “ministerially” allow a homeowner, in single family neighborhoods, to build a detached backyard residence that is at least 800-square-feet and 16-feet-high with only four-foot side and rear setbacks, as well as convert a garage, office or spare room into a third living space. The size of the two additional units can be over and above the existing allowable square footage for the primary home.

3. The following sections of AB-68 greatly diminish parking requirements for ADUs:

Planning Manager Jeremy Tejirian informed us that “the Development Code which is Marin County Code Title 22, administered by the Community Development Agency, does not include parking standards. Parking standards are in Marin County Code Title 24, which is administered by the Department of Public Works. The Development Code amendments will not have any effect on parking regulations.” Therefore, the Planning Commission will not be making decisions regarding parking regulations at this time. Never-the-less, in order for you to make the best decisions regarding ADUs, it is extremely important that you are aware of how the new ADU laws restrict parking regulations.

Excerpts from AB-68 regarding parking for ADUs:

“(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those off-street parking spaces be replaced.”

“(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit. (*Please note that “walking distance” was crossed out.*)**

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.”

(8) “ ‘Public transit’ means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.”

II. PROBLEMS WITH MARIN COUNTY DEVELOPMENT CODE AMENDMENTS RE: ADUs, IF NEIGHBORHOODS IN THE WILDLANDS URBAN INTERFACE & IN HIGH FIRE HAZARD ZONES &/OR WITH UNSAFE EVACUATION ROUTES ARE NOT EXEMPTED

A. The proposed Marin County Development Code Amendments Re: ADUs Jeopardize Communities in High Fire Hazard Zones & the Wildland Urban Interface (WUI) and/or With Unsafe Evacuation Routes:

Residential areas in High Fire Hazard Zones and in the Wildland Urban Interface tend to include terrain that is more difficult to traverse and develop, with steep hillsides, ravines, and box canyons served by narrow, winding roads (often one lane). Such terrain presents significant ingress and egress challenges for first responders, firefighters, ambulances, paramedics, and other life safety services.

In some cases, these areas have additional roadway access challenges due to landslides, flooding, and other conditions that make roadways impassible, such as stalled vehicles, wide

vehicles parked on narrow streets, fallen trees, etc. In the event of a catastrophic wildfire, the result of these existing conditions is often tragic.

The proposed Marin County Development Code Amendments re: ADUs, in adherence to the newly enacted ADU laws (including AB-68), allow a dramatic increase in potential housing density and population in these hazardous communities, while AB-68 also requires the County to reduce off-street parking requirements for ADUs. This will lead to streets being overcrowded with parked cars. **Dire consequences could result during an emergency when residents are unable to evacuate and fire trucks/paramedics are unable to reach their destinations.**

Moreover, it is critical to consider that a significant amount of high fire risk communities abut or are contiguous to public lands and open space, county, state, and federal parks and protected lands. The 4' setback, mandated by AB-68, is grossly inadequate to protect life and property, and prevent wildfire embers from engulfing structures. The findings of numerous recent studies overwhelmingly support this contention.

Almonte as an example:

Almonte in Unincorporated Mill Valley is typical of a number of Marin County communities. The neighborhood is located on a steep hill in a high fire hazard zone and in the Wildland Urban Interface (WUI). The streets are very narrow and winding, many are steep or have only one lane. In 2005, representatives from both the fire department and the police department indicated that residents would have difficulty evacuating. Under current conditions, Almonte residents have reported incidents when paramedics could not speedily reach their emergency destinations because parked vehicles blocked the roadway. In one instance, the paramedics went door to door, trying to find the owner of an SUV, while a medically distressed neighbor waited for help.

Also, please note that Almonte has two bus stops at the bottom of the hill, one at each entrance to the community. So, even though the buses are inconvenient for most and used by few, we believe the bus stops would qualify as "public transit" as defined by AB-68. (**See the above definition of "public transit".) Therefore, AB-68 would not allow additional off-street parking spaces for ADUs in most of Almonte.

B. AB-68 (& Potentially the Marin County Development Code re: ADUs) Wrongly Assumes That Residents Who Live Near Bus Stops Don't Need Vehicles and Therefore Don't Need Parking Spaces.

AB-68 presumes that residents who live within ½ mile of public transit (including just a bus stop) would need less parking because they would rely on public transit instead of vehicles for their transportation needs. However, this is a false presumption in Marin County.

Due to Marin's insufficient and inconvenient public transportation and the need to carry children, equipment or large purchases, the vast majority of Marin residents rely on their personal vehicles to travel within Marin. Infrequent bus service provides transportation primarily in the North/South direction. SMART also travels North/South. There is little public transportation available for West/East travel. Many members of Marin's population cannot walk or bike very far (E.g. Marin's growing elderly population) or else find these non- motorized forms of transportation to be inappropriate for where they are going (E.g. They need to transport children

or carry heavy objects). Therefore, Marin residents will most likely continue to rely primarily on their personal vehicles for transportation and will need places to park these vehicles.

Data from a recent Metropolitan Transportation Commission report confirms that most Marin residents use personal vehicles for their transportation needs and few use transit. MTC concluded that 73.5 % of Marin commuters drive to work and only 8.9 % of Marin commuters use transit to get to work.

If the Proposed Marin County Development Code re: ADUs follows AB-68, without instituting the below remedy (**III. THE SOLUTION**), then the Development Code would also wrongly assume that residents who live near bus stops don't need vehicles or off-street parking spaces.

C. AB-68 (& Potentially the Proposed Marin County Development Code re: ADUs) Will Increase Traffic Congestion & Greenhouse Gas Emissions & Degrade Public Safety:

AB-68 will increase traffic congestion and greenhouse gas (GHG) emissions. As discussed above, the bill would increase the number of residents and vehicles in neighborhoods and the residents would have to park their vehicles on the street due to insufficient off-street parking spaces. Due to more cars on the road plus more circulation of those cars, as residents search for vacant on-street parking spaces, traffic congestion and greenhouse gas emissions would rise. In areas with already high traffic congestion (E.g. Level of Service D or F), this additional congestion would impair public health and safety.

If the Proposed Marin County Development Code re: ADUs follows AB-68, without instituting the below remedy (**III. THE SOLUTION**), then the Development Code would also increase traffic congestion and GHG emissions and degrade public health and safety.

III. THE SOLUTION

A. Draft A New Section In The Marin County Development Code Entitled; “Restricted Areas for Accessory Dwelling Units”

In order to ensure public safety in the event of a fire or other emergency, we urge you to follow in the City of Larkspur's footsteps and draft a new section in the Marin County Development Code entitled; “**Restricted Areas for Accessory Dwelling Units**”. This section should be similar, but not identical, to the attached **City of Larkspur Municipal Code Title 18 “Zoning”, Chapter 18.23 “Accessory Dwelling Units”, Section 18.23.040 “Restricted Areas”**. (See Addendum I)

Below is a link to Larkspur's Municipal Code regarding Accessory Dwelling Units:
<https://larkspur.municipal.codes/Code/18.23.040>

The new “Restricted Areas for ADUs” section should prohibit Accessory Dwelling Units in all areas located in the Wildland Urban Interface (WUI), which are High Fire Hazard Zones with unsafe evacuation routes. Including a “Restricted Areas” section in the Marin County Development Code is permitted by AB-68 because the law allows a jurisdiction to designate where ADUs may and may not be permitted.

Excerpt from AB-68:

(A) “Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety”

Please note that the County ADU ordinance should not use the term “Very High Fire Hazard Severity Zone**”, which is in the Larkspur ordinance, because the terms “Very” and “Severity” are only used by CAL FIRE and CAL FIRE has not evaluated most of Unincorporated Marin. In Marin County, CAL FIRE has only evaluated three “Very High Fire Hazard Severity Zones” and these are located in the cities of Novato, Larkspur, and Mill Valley.

Recommended Wording For New “Restricted Areas for ADUs” Section (in red):

Due to the Unincorporated Marin’s unique local climatic, geologic and topographic conditions, accessory dwelling units are not permitted in certain hillside residential areas that are determined to have inadequate roadways to provide adequate ingress and egress for emergency access and evacuation in the event of a fire or other emergency. It is the determination of Marin County that additional dwelling units in these areas would present adverse impacts on traffic flow and public safety.

A. New accessory dwelling units are not permitted in the Wildlands Urban Interface (WUI) and in High Fire Hazard Zones, per Marin County Development Code Section _____ , where the primary access to the property is on roadways that are subject to constrained ingress/egress for emergency vehicles and resident evacuation. In determining which areas are subject to constrained ingress/egress, Marin County identified areas with unsafe evacuation routes, meeting one or more of the following criteria:

1. Streets with insufficient roadway width.
2. One-lane roadways allowing two-way traffic.
3. Remote areas not served by improved or paved roads.
4. Highly congested roadways

B. The restrictions of subsection (A) of this section shall apply to all properties that have vehicular access from:

List Districts, Neighborhoods, or Streets...

C. An owner may apply for a waiver from the restrictions on accessory dwelling units established by this section. The waiver shall be considered for approval or denial by the Zoning Administrator, who shall make such determination after consultation with the Fire Department. In deciding whether or not to grant the requested waiver, the Zoning Administrator shall consider factors related to ingress/egress for emergency vehicles and resident evacuation. These factors may include, but are not limited to, whether there are multiple routes of ingress or egress to the property, the distance from the property to the closest road with unconstrained ingress and egress, and the amount of off-street parking at the site.

B. Exemption Does Not Mean Exclusion – The ADU Ordinance Still Allows ADUs In The WUI And High Fire Hazard Areas Provided Conditions Are Safe

****Please note** that the above ADU ordinance still allows ADUs in the Wildlands Urban Interface and in High Fire Hazard Areas, provided conditions are safe. An owner may apply for a waiver of the restrictions on ADUs in the Wildlands Urban Interface and in High Fire Hazard Zones. The waiver may be granted if the Marin County Zoning Administrator, in consultation with the Fire Department, determines that there is safe ingress/egress for emergency vehicles and resident evacuation. We believe sufficient off-street parking is key to such safety.

IV. CONCLUSION

We urge you to learn about all aspects of the newly enacted Accessory Dwelling Unit (ADU) laws, particularly AB-68, and ensure public safety in the event of a fire or other emergency by adding a “**Restricted Areas for ADUs**” section to the Marin County Development Code, which will prohibit ADUs in the Wildlands Urban Interface and in High Fire Hazard Zones with unsafe evacuation routes.

Thank you in advance for your conscientious consideration.

Very truly yours,

/s/

Sharon Rushton, Chairperson

Sustainable TamAlmonte

ADDENDUM I

City of Larkspur Municipal Code Title 18 “Zoning”, Chapter 18.23 “Accessory Dwelling Units”, Section 18.23.040 “Restricted Areas”:

<https://larkspur.municipal.codes/Code/18.23.040>

“Due to the City’s unique local climatic, geologic and topographic conditions, accessory dwelling units are not permitted in certain hillside residential areas that are determined to have inadequate roadways to provide adequate ingress and egress for emergency access and evacuation in the event of a fire or other emergency. It is the determination of the City that additional dwelling units in these areas would present negative impact on traffic flow and public safety.

A. New accessory dwelling units are not permitted in very high fire hazard severity zones, per Larkspur Municipal Code Section [14.10.010](#), where the primary access to the property is on roadways that are subject to constrained ingress/egress for emergency vehicles and resident evacuation. In determining which areas are subject to constrained ingress/egress, the City identified areas that are served by a single emergency access route (no alternate routes) meeting one or more of the following criteria:

1. Streets with limited width, where permitted on-street parking is strictly limited to designated locations with white outlined parking space rectangles.
2. Streets with insufficient roadway width. A minimum twenty-foot roadway width is required for emergency access.
3. One-lane roadways allowing two-way traffic.
4. Remote areas not served by improved or paved roads.

B. The restrictions of subsection [\(A\)](#) of this section shall apply to all properties that have vehicular access from:

1. Madrone Avenue, west of Olive Avenue, including but not limited to those properties located on Echo Place, Glen Way, Hatzic Court, Jones Way, Nightingale Road, Oak Road, Penny Lane, Polhemus Way, Redwood Avenue, Ridgeway Lane, Scott Lane, Valley Way, Wilson Way.
2. Millard Avenue, 49 to 63 Olive Avenue, and Scott Way.
3. 31 Piedmont Road west to 260 Piedmont Road, including Coleman Avenue and Piedmont Court.
4. Owlswood Drive, Marina Vista Avenue, and Sunrise Lane.

5. Any property that is accessed solely by an unimproved or unpaved road.

C. An owner may apply for a waiver from the restrictions on accessory dwelling units established by this section. The waiver shall be considered for approval or denial by the Zoning Administrator, who shall make such determination after consultation with the Fire Department. In deciding whether or not to grant the requested waiver, the Zoning Administrator shall consider only factors related to ingress/egress for emergency vehicles and resident evacuation. These factors may include, but are not limited to, whether there are multiple routes of ingress or egress to the property as well as the distance from the property to the closest road with unconstrained ingress and egress. (Ord. 1045 § 2, 2020; Ord. 1044 § 3, 2020; Ord. 1038 § 1 (part), 2019)”