

EXHIBIT 7

Comment letter from HCD, received
September 9, 2023, in response to
the County's submittal of the Adopted
Ord. No. 4615 for ADUs and JADUs

Proposed NCZO Amendments for Accessory Dwelling
Units and Junior Accessory Dwelling Units
(PL24-0014)

County of Ventura
Planning Commission Hearing
Case No. PL20-0023
Exhibit 7 – Comment Letter from HCD,
received September 9, 2023

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



September 5, 2023

Ruchita Kadakia, Planning Manager
Planning Division
County of Ventura
800 S. Victoria Ave., L #1740
Ventura, CA 93009

Dear Ruchita Kadakia:

**RE: Review of Ventura County's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the County of Ventura (County) accessory dwelling unit (ADU) Ordinance No. 4615 (Ordinance), adopted February 7, 2023, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that statute, the County has up to 30 days to respond to these findings. Accordingly, the County must provide a written response to these findings no later than October 5, 2023.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- Section 8107-1.7.2 – *Citations* – The Ordinance incorrectly cites state statute in their definitions for “Passageway,” “Proposed Dwelling,” “Public Transit,” and “Tandem Parking.” Passageways are defined in Government Code section 65852.2, subdivision (j)(8); proposed dwellings are defined in subdivision (j)(10); public transit is defined in subdivision (j)(11); and tandem parking is defined in subdivision (j)(12). The County must amend the Ordinance accordingly.
- Section 8017-1.7.4 (a)(1) and (b)(1) – *JADUs and Zoning* – The Ordinance lists zones where ADUs and JADUs may be created. This list includes RPD and CPD/CBD, neither of which permit the development of single-family dwellings. Government Code section 65852.22, subdivision (a)(1), provides for the creation of JADUs in areas “zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” Therefore, JADUs may not be allowed in the RPD, CPD/CBD, or any other zone that does not allow single-family dwelling development. The County must amend the Ordinance to comply with State ADU Law.

- Section 8107-1.7.4 (b), 8107-1.7.5 (b) – *ADU Allowance* – The Ordinance states that a new detached ADU “may be combined with a JADU if all the following standards are met....” This implies that the unit combination of a converted ADU and a new detached ADU are not allowed. It later states, “Each lot may have one ADU if the standards of this Section 8107-1.5 (b) are met, and one JADU if the standards of this Section 8107-1.5 (b) are met.” This limits allowable ADU combinations to one ADU and one JADU.

However, Government Code section 65852.2, subdivision (e)(1), states, “Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.” Subparagraph (B) permits “One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings. This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other. This subdivision applies equally to ADUs created pursuant to Government Code section 65852.2, subdivisions (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs by right under subdivision (e)(1). The County must revise the Ordinance to remove this restriction.

- Section 8107-1.7.4 (d)(3) – *Detached Size Maximum* – The Ordinance states that “new construction ADUs shall not exceed 1,200 square feet.” However, there are no size maximums stated in Government Code section 65852.2, subdivision (e)(1)(D). Subdivision (e)(1)(D) requires that ADUs created in multifamily developments pursuant to this subdivision only meet the height requirements prescribed in subdivision (c)(2)(D), be detached from the multifamily structure, and meet four-foot side and rear yard setbacks. No additional standards are required. The local design standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject to subdivision (e). Therefore, a unit subject to subdivision (e)(1)(D) may not be subject to a maximum size. The County must remove this section.
- Section 8107-1.7.4 (d)(5) – *Detachment Requirement* – The Ordinance states that detached units “must be detached from the existing or proposed multifamily

dwelling and from other accessory structures.” However, Government Code section 65852.2, subdivision (e)(1)(D), only requires that such units are “detached from that multifamily dwelling....” The subdivision does not require that the ADU be detached from other accessory structures; therefore, the section, as written, is more stringent than State ADU Law. The County must remove the phrase “and from other accessory structures.”

- Section 8107-1.7.5 (h)(3) – *Converted Size Maximums* – The Ordinance requires that ADUs within converted spaces “[do] not exceed the size maximums for attached or detached ADUs....” ADUs that are created from existing space of single-family dwellings are created pursuant to Government Code section 65852.2, subdivision (e). Local design standards provided by the Ordinance pursuant to subdivisions (a) through (d) may not preclude a unit built subject to subdivision (e). Therefore, no size maximums may apply to any converted unit, whether within the primary dwelling or an accessory structure. The County must remove this reference.
- Section 8107-1.7.5 (i)(1) – *Design Requirements* – The Ordinance states, “No accessory structure shall be attached to a detached ADU unless the combined total floor area... does not exceed the allowable size.” However, adjacency to an accessory structure is a local design requirement that may not preclude units subject to Government Code section 65852.2, subdivision (e). Therefore, the County must note the exceptions or remove this section.
- Section 8107-1.7.6 (a)(4) – *JADUs with Multi Single Family Homes* – The Ordinance states, “Lots with multiple detached single-family dwellings are not eligible to have a JADU.” However, Government Code section 65852.22, subdivision (a)(1), limits “the number of junior accessory dwelling units to one **per residential lot zoned for single-family residences** with a single-family residence built, or proposed to be built, on the lot.” (Emphasis added.) Therefore, if the lots are zoned for the development of single-family residences, one JADU may be permitted on a lot with multiple detached single-family dwellings. Please note that this is one JADU per *lot*, not per single-family home on such a lot. The County must amend the Ordinance to comply with statute.
- Section 8107-1.7.7(b)(2) – *Zoning Clearance* – The Ordinance requires a “ministerial Zoning Clearance” if a proposed ADU does not meet the standards of Section 8107-1.7.4. However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “[a]ny requirement for a **zoning clearance** or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” (Emphasis added.) The County must amend the Ordinance and remove the zoning clearance requirement.

- Section 8119-1.3.3 (a) – *Placement* – The Ordinance states, “Buildings, Accessory Dwelling units (ADU) pursuant to Sec. 8107-1.7.5, and other habitable/non-habitable accessory buildings shall be located within the building site per Table 1.3.3(a) below.” Table 1.3.3(a) allows ADU placement exclusively in the rear of any primary dwelling. However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “[a]ny requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, **front setbacks**, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with **four-foot side and rear yard setbacks** to be constructed in compliance with all other local development standards.” (Emphasis added.) Therefore, the Ordinance may not preclude an 800 square-foot unit subject to all other local design standards, and the attached or detached ADU may be located, partially or completely, in the front setback.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the County must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the County choose to adopt the Ordinance without the changes specified by HCD, the County must include findings in its resolution that explain the reasons the County finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the County’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the County fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the County and the California Office of the Attorney General that the County is in violation of State ADU Law.

HCD appreciates the County’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the County in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability