

Accessory Dwelling Units

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I. INTRODUCTION

The environment is showing the negative impacts of industrialization through climate change and politicians have begun to take action to preserve their constituents well-being.¹ Steps are being taken as a society and social cry for green initiatives has been getting louder, in fact Governor Wolf signed an executive order in 2019 which followed the Paris accord to reduce greenhouse gasses.² This opened the door for the Borough of Carlisle to adopt a climate action and resolution, which was done in 2020, following the state's obligations for a green initiative to combat climate change.³

Part of this green initiative is to promote accessory dwelling units ("ADU" and its cognates). This was being promoted by American Association of Retired Persons ("AARP") after the war for housing benefits; however, has grown in popularity given the environmental benefits, among others.⁴ Part of addressing this is increasing the density of housing to reduce the dependence on cars (thereby reducing emissions), cause families to care for each other without much waste, and most importantly to create efficiencies in housing due to the growing and aging

¹ Carlisle Borough. Climate Action Plan & Climate Action Commission, Carlisle Pennsylvania (Sept 27, 2021, 4:00pm) https://www.carlislepa.org/government/climate_action_plan.php.

² Borough of Carlisle Resolution No. 07-09-2020-01. A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF CARLISLE, CUMBERLAND COUNTY, PENNSYLVANIA, TO DEVELOP AND IMPLEMENT A STRATEGY TO REDUCE GREENHOUSE GAS (GHG) EMISSIONS CONSISTENT WITH U.S. INTERNATIONAL PARIS ACCORD COMMITMENTS.

<https://cms8.revize.com/revize/carlislepa/Climate%20Action%20Plan/Climate%20Action%20Resolution.pdf>

³ Id.

⁴ AARP Gov't Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance.

<https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

population.⁵ There are a few key elements to this particular goal, which are reflected in the key elements in known ordinances.

A. Key Elements of Ordinances addressing ADUs

To address the efficiencies in housing regarding ADUs, other municipalities have added ordinances to allow for ADUs; ordinances have been enacted from Canada and throughout the United States, here we will focus on Pennsylvania, specifically Pittsburgh, Philadelphia, the City of Bethlehem, and Buckingham Township.⁶ Some of these ordinances limit the ADU by how a person may obtain an ADU or who may reside in them, yet others by the requirements and dimensions of the ADU.⁷ Some of these allow ADUs by permit and others by right.⁸ Other ADU ordinance designs call for a test period⁹ or make reasonable restrictions on the ADU design¹⁰, or limited who could reside in them.¹¹

B. How Ordinances Address the Social, Economic, and Environmental Concerns.

These ordinances address the problem by allowing ADUs by right without complications from home owners associations or neighbors using laws to hinder them.¹² This benefits

⁵ Id.

⁶ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E) <https://buckinghampa.org/media/1462/zoning-ordinance.pdf>

⁷ Id.

⁸ PHILADELPHIA CODE, § 14-604 (2021) https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885. See also PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 9-912.08 (2021) https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCO_TITNINEZOCO_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

⁹ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08.B (2021) https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCO_TITNINEZOCO_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

¹⁰ AARP Gov't Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance. <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages>.

¹¹ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400 <https://buckinghampa.org/media/1462/zoning-ordinance.pdf>; see also, ¹¹ City of Bethlehem Zoning Ordinance, § 1302.142 (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

¹² Id.

municipalities by increasing operational efficiency of resources. Socially, economically, and environmentally ADUs cause social intermingling and thereby likely promoting tolerance, promoting economic benefits to both parties, and preserving environmental resources.¹³

There are numerous social benefits. The social benefits are that children will take care of their elder family members (on a fixed income) in lieu of sending them to a nursing home, along with parents being able to have younger family members around them to aid them.¹⁴ This also aids in family connection by having family around. On a social note, ADUs allow social mingling of groups, which reduces segregation by exclusionary zoning.¹⁵ Turning from the social benefits to the economic benefits, society will benefit from ADUs.

Economically, society will benefit on both sides: the homeowner can collect extra income and the ADU resident can pay a lower “rent” than living in a traditional apartment or mortgage.¹⁶ This provides fiscally responsible housing that may be more appropriate for one person as compared to that one person occupying a townhome or full apartment.¹⁷ Since they are often built on preexisting structures, underlying utility structures already exist, as compared to building a whole new structure.¹⁸ This likely benefits the society by having a “downstream” effect whereby no subsidy is needed for a small economically underprivileged family, which in turn promotes social equity.¹⁹ Lastly, environmental benefits brought on by ADUs are also of note.

Environmental benefits are trickle-down effects brought on by ADUs. Specifically, the

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ U.S. Department of Housing and Urban Development, HUD User. Accessory Dwelling Units: A Case Study. 2008 <https://www.huduser.gov/portal/publications/adu.pdf>

¹⁷ Id.

¹⁸ Id.

¹⁹ AARP Gov’t Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance. <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

reduced need for new buildings to support urban sprawl (*i.e.*, no new sewer system),²⁰ closer work opportunities,²¹ likely because of the closer work, less reliance on vehicles thus a direct reduction of emissions. Those are some of the numerous benefits of ADU legislation.

C. This Narrative will Cover

This paper is divided into several sections for the benefit of the reader: (1) A brief overview of the problems facing Carlisle; (2) A brief overview of the absence of adequate measures in the Borough of Carlisle; (3) How the current Carlisle zoning code cannot adequately address the problem; (4) How the ADUs have been addressed in other municipalities and how those solutions have remedied the issues facing Carlisle; (5) Our recommendations to the Borough of Carlisle in implementing their own ADU-friendly ordinance; and (6) An overall conclusion.

II. PROBLEM

ADUs are needed to increase density and provide housing at a more fiscally responsible level, to address 2 concerns: (1) a lack of housing availability and (2) housing density, Increasing the density by encouraging individuals to build ADUs is a method to address the lack of housing and do so at a lower cost than building new.

It also addresses environmental concerns regarding goals of the Borough of Carlisle in accordance with Governor Wolf's executive order, which was a trickle-down effect of the Paris Treaty.

III. EXPLAIN HOW EXISTING LOCAL ORDINANCES CANNOT ADEQUATELY

²⁰ U.S. Department of Housing and Urban Development, HUD User. Accessory Dwelling Units: A Case Study. 2008 <https://www.huduser.gov/portal/publications/adu.pdf>

²¹ AARP Gov't Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance. <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

ADDRESS THE PROBLEM

The problem for the Borough of Carlisle is that there is no ordinance to govern ADUs. Therefore, they are unable to adequately govern the Borough with fair and clear rules for all. This also affects their responsibility to meet their resolutions when it comes to reduction of greenhouse gasses. There are no local ordinances at this point addressing this issue.¹ The zoning regulations do not account for it either and functionally hinder it. The current ones hinder the creation of denser housing because they interfere with the ADU building process.

IV. HOW HAS THIS PROBLEM BEEN ADDRESSED BY OTHER MUNICIPALITIES

A. Pennsylvania Municipalities

In Pennsylvania, four cities currently allow accessory dwelling units: Philadelphia, Pittsburgh, Bethlehem, and Buckingham Township. These municipalities' ADU ordinances are provided as a guideline for how Carlisle can best tackle the following issues in its own ADU ordinance.

1. Permitted Lots and the Permitted Number of ADUs

It is important to keep the purpose of an ADU in mind when deciding on which lots to allow ADUs. ADUs are intended to be dwellings. Therefore, in Pennsylvania ADUs are permitted

¹ Carlisle Pennsylvania, General Legislation, Zoning § 255-14 <https://ecode360.com/10684298>

on lots occupied by a single-family use.^{2 3 4 5} Some municipalities include other permitted lots that are specific to the municipality. In example, Philadelphia separately addresses ADUs on historical lots.⁶

The most logical way to ensure ADUs will be used for dwelling is to prevent them from being used on lots without a dwelling purpose. The amount of ADUs permitted on each lot serves as a safety precaution against a new form of landlordism. In example, a principal owner could disguise what is an apartment complex as a multi-ADU property if the restrictions in the ADU ordinance are less burdensome on him or preferable in some way.

In Pennsylvania, all municipalities with ADU ordinances allow one ADU per lot.^{7 8 9 10} By only allowing one ADU per lot, ADUs cannot become a loophole for opportunistic property owners to abuse.

2. Appearance of an ADU – Size and Aesthetics

In the implementation of ADUs, the size and appearance of an ADU is specific to the needs

² PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

³ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCA_TITNINEZOCA_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

⁴ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(3) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

⁵ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E)(3) *et seq.*

<https://buckinghampa.org/media/1462/zoning-ordinance.pdf> Id.

⁶ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

⁷ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

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⁸ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCA_TITNINEZOCA_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

⁹ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(3) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

¹⁰ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E)(3) *et seq.*

<https://buckinghampa.org/media/1462/zoning-ordinance.pdf>

and features of the municipality.

A basic size requirement is necessary to avoid two scenarios: (1) A cramped and unlivable ADU, and (2) An ADU that serves as a second principal dwelling by being too large to be considered “accessory.” Usually, the requirements are broken down into floor area and height.

Philadelphia and Pittsburgh require an ADU to have a maximum of 800 sq. ft..^{11 12} In contrast to this standardized approach, Bethlehem restricts an ADU from exceeding 33% of the total floor area of the principal dwelling.¹³ Pittsburgh restricts an ADU from exceeding 30ft or two stories¹⁴, while Bethlehem does not allow the ADU to exceed the height of the principal dwelling.¹⁵ Philadelphia is silent on ADU height.¹⁶

As shown above, different municipalities have different approaches to the height and size of an ADU. It depends on the characteristics of the municipality. If a municipality has houses that have an above average size, a provision like Bethlehem’s would allow for proportionately sized ADUs. In contrast, a municipality with smaller dwellings or a larger population may want to create a standard provision, like Philadelphia and Pittsburgh. This standardization minimizes fact-specific inquiries to ensure principal owners are adhering to the ADU ordinance.

¹¹ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

¹² PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCO_TITNINEZOCO_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

¹³ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(3) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

¹⁴ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCO_TITNINEZOCO_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

¹⁵ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(3) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

¹⁶ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

Aesthetic concerns are concerns about ADUs changing the character of a neighborhood, such as an ADU that is aesthetically displeasing or an ADU that ‘sticks out’ from the residential neighborhood. Only some ADU-friendly municipalities in Pennsylvania have aesthetic concerns.

For example, the Buckingham Township and Bethlehem ordinances remedy these concerns by prohibiting any changes to an ADU that would suggest it’s not a single-family residence or detract from the character of the neighborhood.^{17 18}

Additionally, Bethlehem requires principal lot owners to prove that the ADU can be reverted into a regular part of the principal dwelling or otherwise be turned into an additional occupation area of the principal residence, such as a bedroom.¹⁹ This prevents unused ADUs posing the risk of changing the character of the neighborhood while serving no purpose.

Although what is considered changing the character of the neighborhood is municipality-specific, these provisions at their core ensure that ADUs can’t affect the character of the rest of the neighborhood, or the neighbors living in it.

3. Permitted Lot Residents and Resident Restrictions

The most important resident to regulate on a lot with an ADU is the principal owner. As mentioned above, allowing multiple ADUs per lot can be abused and made into an alternative form of landlordism. This concern also pertains to allowing principal owners to live off-site. In example, a principal owner creates an ADU on his lot. He lives on a second lot but maintains the first. In this scenario, the first lot becomes analogous to an apartment, once again allowing opportunistic

¹⁷ Id.

¹⁸ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(3) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

¹⁹ Id.

property owners to avoid landlord restrictions. Pittsburgh addressed “on-site landlordism” in its Planning Commission Presentation.²⁰

All municipalities in Pennsylvania require the principal owner to reside on the principal lot the ADU is located on.^{21 22 23 24} By requiring the principal owner to reside on the lot, it avoids the scenario. The principal owner must use the ADU as intended: an accessory to his own dwelling. This ensures that he too, is a resident.

When it comes to permitted ADU occupants, the issues can be divided into two concerns: How many occupants are permitted, and who is permitted as an occupant in an ADU.

The importance of how many occupants an ADU can have varies in each municipality. By allowing an ADU to house too many occupants, issues with inadequate living space or conditions can arise, as well as the aforementioned concerns of alternative landlordism. However, by restricting an ADU to one or two occupants, the ordinance may deter the use of ADUs all together, as they are often intended to house multigenerational relatives.

All ADU-friendly municipalities in Pennsylvania are silent on the number of occupants to an ADU^{25 26 27} except Bethlehem. The Bethlehem ADU ordinance states that only two relatives

²⁰ Planning District Commission, ADU Overlay District, Powerpoint pg. 8 (2018)

²¹ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

²² PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCO_TITNINEZOCO_ARTVUSR_E_CH912ACUSST_912.01ACUSSTGE

²³ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(3) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

²⁴ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E)(3) *et seq.*

<https://buckinghampa.org/media/1462/zoning-ordinance.pdf> Id.

²⁵ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

²⁶ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

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²⁷

may occupy the ADU at the same time.²⁸ In this case, fixing this issue depends on if the municipality considers it an issue at all. A municipality, like Bethlehem, has concerns about living conditions and alternative landlordism, this restriction prevents those scenarios from occurring. However, if it is not considered an issue, the ordinance can address the nonissue by not addressing it.

The importance of who can reside on an ADU varies in each municipality. Some Pennsylvania municipalities do not restrict who can be a resident of an ADU. In some instances, the title of the ordinance indicates what is the intended and permitted purpose for ADUs in that municipality. Bethlehem’s zoning ordinance is called “Unit of Care for a Relative”²⁹, which is as straightforward as it sounds. The principal owner must show that the ADU is necessary to provide adequate care to a close relative of a principal resident of the principal unit.³⁰ Furthermore, the principal owner must show at least one of the relatives requires care due to illness, old age, or disability.³¹ Comparatively, Buckingham’s ADU ordinance is called “Accessory In-Law Dwellings.”³² The principal owner of the occupant must only show the residents are relatives, without any disability requirements.³³ In contrast, the Philadelphia and Pittsburgh ADU ordinances do not address the “who” question.^{34 35}

²⁸ City of Bethlehem Zoning Ordinance, § 1302.142 (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E)(3) *et seq.* <https://buckinghampa.org/media/1462/zoning-ordinance.pdf>

³³ *Id.*

³⁴ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

³⁵ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

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How to solve the question of who can occupy an ADU depends on the needs of the municipality. If municipalities like Bethlehem and Buckingham County want an ADU ordinance that has a narrow focus on housing family or family who cannot care for themselves, the title and scope of the ordinance avoid anyone outside of that focus from occupying an ADU. If this is not a concern, there is no issue, and no need to add a provision addressing the type of occupant.

4. By-right vs. By-Permit

An ADU ordinance is either by-permit, or by-right. A by-permit ADU ordinance requires the principal owner to apply for a permit to have an ADU on their principal lot, while a by-right ADU ordinance does not require a permit. Permits can be helpful. Application fees can bring in revenue to the municipality, and permits can help with regulation if a municipality prefers a stricter and narrower ordinance. However, if the municipality wants to take a broader approach, implementing permits can discourage possible applicants due to the cost and time required to be approved.

ADU-friendly municipalities in Pennsylvania are split down the middle on how to handle this issue. Pittsburgh and Philadelphia are examples of by-right ADU ordinances. Both municipalities do not require permits but do require deed restrictions obliging current and future property owners to maintain the property in compliance with the respective zoning code.^{36 37}

³⁶ *Id.*

³⁷ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

In contrast, Bethlehem and Buckingham Township have by-permit ADU ordinances. In Bethlehem, the applicant must establish a “legally binding mechanism” in a form acceptable to the city that prohibits use of the ADU when it is unoccupied.³⁸ This must be binding on future owners.³⁹ Additionally, once the permit is issued, it must be annually renewed. To renew the permit, the principal owner must provide a written statement that the occupants are still residing in the ADU.⁴⁰ Buckingham Township requires a permit from either the Bucks County Department of Health or a governmental agency with jurisdiction to show that the principal lot can be served by public sewers or adequate on-lot septic system. Then, a zoning permit is issued for the ADU.⁴¹ There is no renewal requirement.⁴²

As stated earlier, municipalities with stricter, narrower ordinances like Bethlehem and Buckingham Township benefit from by-permit ADUs. By making an applicant prove they meet the standards in the ordinance, it avoids someone breaching the narrow scope intended by the municipality. Municipalities that are more focused on promoting the widespread use of ADUs, such as Philadelphia and Pittsburgh, benefit from removing this burden on the principal owner. Both solutions are effective, but it depends on the specific needs of the municipality.

5. Parking Requirements

Parking is the issue that concerns most municipalities. Many parking concerns are adjacent to aesthetic concerns. A street lined with parked cars on either side could be considered unsightly

³⁸ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(6) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E)(3) *et seq.* [2] <https://buckinghampa.org/media/1462/zoning-ordinance.pdf>

⁴² *Id.*

to those living in residential areas. Another issue is many municipalities want to enforce parking regulations that could defeat the purpose of creating less automobile-reliant communities. ADU-friendly municipalities in Pennsylvania approach this in two ways: by having strict requirements tailored to the needs of the municipality or by not addressing it at all.

Bethlehem and Buckingham Township have stricter requirements for parking. Bethlehem requires the principal owner to provide additional parking or prove that the ADU occupants will not routinely operate a vehicle.⁴³ Buckingham is more straightforward, in addition to off street parking, it requires two additional parking spaces per ADU.⁴⁴

In these two municipalities, the strict parking requirements seek to remedy the aesthetic and environmental concerns detailed above. In Bethlehem, parking must be provided to avoid unsightly street parking, but also offers the alternative of allowing a principal owner to show that the occupants will not routinely operate a vehicle. This promotes less vehicle-reliance if a principal owner doesn't want to provide additional parking. Therefore, the municipality either avoids its aesthetic concerns, or promotes one of the purposes of ADU usage. Similarly, Bethlehem requires two additional parking spaces to avoid street-parking, without promoting environmental benefit as an alternative.

In contrast, Pittsburgh and Philadelphia do not have additional parking requirements for ADUs but do exempt them from parking requirements that are applicable to the principal

⁴³ CITY OF BETHLEHEM ZONING ORDINANCE, PA § 1302.03(bbb)(6) (2021) <https://archive.bethlehem-pa.gov/ordinance/Zoning%20Ordinance.pdf>

⁴⁴ BUCKINGHAM TOWNSHIP ZONING ORDINANCE, § 400.B10(E)(3) *et seq.* [2] <https://buckinghampa.org/media/1462/zoning-ordinance.pdf>

residence.^{45 46} This is another instance of Pittsburgh and Philadelphia considering a factor a nonissue and remaining silent on it.

A. Social, Environmental, and Economic Benefits to Residents or the Municipality

The AARP summarizes these benefits in its Minimal Model State ADU Act.⁴⁷ Economic benefits include helping older homeowners, single parents, young home owners, and renters; increasing affordable housing that do not require government subsidies; providing homeowners with extra income so they can meet the increasing homeownership costs, and; avoiding construction, maintenance, and other costs incurred by reducing the need for new housing.⁴⁸

Social benefits include reducing segregation of race, income, and ethnicity, and; creating an alternative means for families to care for their aging, disabled, or ill family members while retaining their independence.⁴⁹

Environmental benefits include reducing the use of natural resources involved in construction; creating a denser urban area that reduces the use of natural areas and resources found in nature, and; reducing automobile-reliant neighborhoods and providing closer employment opportunities.⁵⁰

ADUs would benefit many groups, but it would benefit aging and elderly populations the most. According to a 2018 survey conducted by AARP of people aged 50 or older, 7 in 10

⁴⁵ PITTSBURGH CODE OF ORDINANCES, ZONING CODE, § 1-912.08 (2021) *et seq.*

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOCO_TITNINEZOCO_ARTVUSRE_CH912ACUSST_912.01ACUSSTGE

⁴⁶ PHILADELPHIA CODE, § 14-604 (2021) *et seq.*

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-208885

⁴⁷ AARP Gov't Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance., <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

⁴⁸ AARP Gov't Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance., at 30, <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

⁴⁹ *Id.* at 31

⁵⁰ *Id.* at 31

respondents would build an ADU to care for a loved one, and 1 in 3 would build an ADU for an individual who is not in need of care.⁵¹ Furthermore, 77% of respondents would like to live in their community as long as they are able.⁵²

IV. RECOMMENDATIONS

It is recommended to allow ADUs by permit or ease requirements significantly, contingent upon keeping the character of the neighborhood, meeting safety requirements, and addressing parking. Ordinances done as a matter of right, with an eye towards maintaining the character of the neighborhood tend to minimize the burden on everyone. By-right ADUs were chosen to serve as incentive as well as a consumer protection to encourage building.

The Borough of Carlisle did not want to address parking concerns with this; they opted to do this separately.⁵³ In numerous Zoom meetings and communications with Carlisle, they decided to address parking as a separate issue, as they felt it was a larger issue for the borough to address. Therefore, we did not include any additional parking provisions. They also decided to address ADU setbacks and building guidelines separately, so we have general language regarding the issue.

V. CONCLUSION

Pennsylvania's use of ADUs is still explorative but tested enough to go forward with an ADU ordinance modeled after preexisting ordinances, tailored for Carlisle. In consideration of their population, demographic, and other factors relative to its populace, a tailored ordinance would be useful to a city of its size. It has a smaller population than Philadelphia or Pittsburgh; however,

⁵¹ Id. at 4

⁵² Id.

⁵³ Reference – CAC meeting held on October ____, 2021

its ordinance seems to lean closer to by-right and is easier to understand. At the same time, Bethlehem and Buckingham are smaller towns, which reflects in the narrower scopes of their ordinances that allow them to meet the specific needs of their community. Contrarily, this same approach makes it more difficult for an applicant to entertain it, which detracts from its purpose.

Going forward, it is a goal of Carlisle to do this ordinance by-right as the larger municipalities have done, which leans towards the Philadelphia Model. Yet, the scope of Bethlehem is tailored to the community, which has a population similar to Carlisle in number. Conclusively, it is a goal to take from both the big city ordinance and the small-town ordinance to customize an ordinance meeting the needs of the residences of Carlisle.

[Ordinance following]

ORDINANCE NO. _____

AN ORDINANCE FOR THE BOROUGH OF CARLISLE IN CUMBERLAND COUNTY,
PENNSYLVANIA, TO ESTABLISH REGULATIONS RELATED TO THE RIGHT OF
ACCESSORY DWELLING UNITS

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the authority of the Council of the
Borough of Carlisle, Cumberland County, Pennsylvania:

Accessories to Property (aka ADUs)

Short Title: A2P

By: Gabriella Nater (lead) & Alexandra Parker

SECTION 1. SHORT TITLE.

This Ordinance shall be known as “Accessories to Property (aka ADUs)” or “A2P” for short.

SECTION 2. PURPOSE

The purpose of this ordinance is to:

- (1) To confer a benefit upon those using Accessory Dwelling Units for the purpose of making housing more affordable;
- (2) To encourage multigenerational family living;
- (3) To maximize energy efficiency in housing and to reduce its carbon footprint.

SECTION 3. LEGAL AUTHORITY AND ENACTMENT

This ordinance is adopted under Article I, Section 27 of the Constitution of the Commonwealth of Pennsylvania, Sections 601 and 602 of the Pennsylvania Municipalities Planning Code⁵⁴, and 53 Pa. C.S. § 2964 relating to powers of municipalities, including passage of ordinances. The legal authority to engage in this legislation is through the Boroughs Articles of Incorporation⁵⁵, further by the authority to address issues relative to supply.⁵⁶

Policy

The policy here is to encourage density in populated areas, which has a lower carbon footprint when compared with less densely populated areas. It also serves to encourage closer communities, provide more affordable housing options, provide care for children or adults in transitional periods, and benefits principal owners by potentially increasing property value via rent or value of the property, among the array of other benefits.

SECTION 4. DEFINITIONS

The following words and phrases along with their respective cognates, when used in this ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accessory dwelling unit(s)” or “ADU.” An additional living space located on the same property lot as an original, larger, residence. At minimum, an ADU shall contain: a kitchen, a bathroom, a

⁵⁴ Act 247 of 1968, Pennsylvania Municipalities Planning Code, Article VI, § 601 and §602.

⁵⁵ BOROUGH OF CARLISLE, PA, Part I: Administrative Legislation, Art. I, Municipal Authority, § 10-2 (2021) <https://ecode360.com/10680515#10680516>

⁵⁶ BOROUGH OF CARLISLE, PA, Part I: Administrative Legislation, Art. I, Municipal Authority, § 10-3 (2021) <https://ecode360.com/10680515#10680516>

bedroom, and a living space.⁵⁷

“Accessory Housing Units.” The same as accessory dwelling units.

“Application.” A form set forth by the Borough of Carlisle that places the Borough on notice of a principal owner’s intent to construct an ADU.

“Borough.” Refers to the Borough of Carlisle.

“Contractors.” Any natural person or company engaged in the practice of constructing buildings or handiwork.

“Governing Document.” Articles of incorporation or bylaws or a declaration, rule, regulation or resolution adopted by a homeowner’s association, relating to common maintenance of a portion of the planned community that is binding on the lots within the plan community.⁵⁸

“Homeowner(s) Association.” An entity or association of homeowners primarily established to govern the common tract of land on which the homes were built, ruled by a board or other non-governmental governing body, and, that the homeowner joined via purchase of a property or contract, which sets forth rules pertaining to the properties within a group of properties.

⁵⁷ AARP Gov’t Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance. <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

⁵⁸ Id.

“Party.” A natural person.

“Principal Dwelling.” The primary place of housing located on the property.

“Principal Owner.” The owner of the principal dwelling on the property. It shall not include those with a life estate in property, long term lessees or those with a right to occupy the property severed from a right of ownership.

“Reasonable Private Restrictions.” are restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct an accessory dwelling unit or junior accessory dwelling unit consistently with the provisions of this Act.⁵⁹

“Subsequent Buyer.” A person who buys a property after an ADU has been added.

SECTION 5. ACCESSORY DWELLING UNITS

- (a) Right to build. Principal Owners that own a property located in the Borough of Carlisle may build an ADU on the Property as a matter of right, without undue restriction from neighbors or homeowners associations.

⁵⁹ AARP Gov’t Affairs. Accessory Dwelling Unites, Model State Act and Local Ordinance. <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html#:~:text=This%20new%2C%20free%20AARP%20publication,for%20people%20of%20all%20ages.>

- (b) Principal owners, who rent out their ADU to anyone, must be compliant with all applicable rental ordinances set forth by the borough.
- (c) An ADU built under this ordinance shall transfer to subsequent buyer by deed.
- (d) Pre-existing accessories to property, as defined [_____] ⁶⁰, may be converted to or used as a dwelling, contingent upon the requirement that they are safe and meet the building code requirements.
- (e) The borough may adopt reasonable regulations to govern the review and operation of ADUs. The borough may not develop, amend, nor interpret other codes or regulations, such as building codes or special taxing district provisions, in way(s) that interfere with the intent of this ordinance. ⁶¹
- (f) The principal dwelling must remain in compliance with the zoning regulations and building code, except for variations allowed herein for the purpose of encouraging ADUs.

SECTION 6. REQUIREMENTS

- (a) An application to notify the borough, completed and signed by the principal owner together with a fee of \$100.00 ⁶², shall be due at least ninety days prior to commencement of building an ADU to provide notice to the borough. ⁶³ Failure to complete the form accurately and thoroughly shall render the form void, as if no form was completed.
- (b) The borough shall send out an acknowledgement to the principal owner acknowledging

⁶⁰ Per Karla's edits to draft

⁶¹ Id.; Per Karla's edits to draft

⁶² Zoom meeting with Joel Hicks, Councilman, Borough of Carlisle (November 19, 2021).

⁶³ Id.

receipt of the application.⁶⁴ If the proposed ADU does not appear to be in compliance with this ordinance, the borough shall send notice to the property owner; the property owner must bring the proposed ADU into compliance to build.

- (c) Any other permits as required by the Borough to build an ADU are still required as well as any other fees.⁶⁵
- (d) ADUs are subject to all applicable regulations of the building codes and zoning regulations in which they are located, except as otherwise stated in this section. Lots must conform to overall maximum lot coverage and setback requirements of the underlying zone.
- (e) No more than one ADU is allowed per lot.
- (f) ADUs may only be built on a lot zoned for R-1 or R-2 use (single-family). They must be contained in a detached or semi-detached building. ADUs must either be located within the principal dwelling or within a detached accessory building.
- (g) ADUs must be the greater of either: (1) five feet from other structures, or (2) meet the accessory structure setbacks.
- (h) ADUs must have two-hour fire walls.
- (i) An ADUs must have a minimum floor area of 600 square feet. ADUs cannot exceed the height or area of the principal dwelling.
- (j) No additional parking is required outside of the available parking which exists on the principal lot.
- (k) An ADU shall conform to the building code requirements.

⁶⁴ Id.

⁶⁵ Email letter from Karla Farrell, Zoning Officer for Carlisle to Gabriella Nater, (November 14, 2021) & 3-way zoom call with Borough of Carlisle (November 2021)

- (l) The principal owner is required to occupy the principal dwelling as the principal owners domiciliary or principal residence. Occupants residing in an ADU can be no greater than [__ person(s) per ____ square feet]⁶⁶.
- (m) The principal owner must have the ADUs inspected and permitted.⁶⁷
- (n) There shall be no permit fee for building an ADU.
- (o) An ADU that does not meet the requirements of this ordinance then the principal owner will be assessed a punitive penalty.⁶⁸
- (p) A contractor building an ADU for a principal owner may not allocate the risk of the building code requirements to a principal owner via contract, as it is understood the principal owner is relying upon contractor to perform work that meets legal standards.

SECTION 7. ADMINISTRATION

- (a) Agency

This ordinance shall be administered by the borough.

- (b) Source of Funds

There may be appropriated and paid out of the proper funds of the borough of Carlisle annually, as the borough council may determine at the beginning of each and every year hereafter, such sum or sums so appropriated in installments, the frequency of such payments to be decided by borough council, or such other payment methods as Borough Council deems appropriate.⁶⁹

- (c) Fees and penalties.

⁶⁶ This was left as a blank for the Client to decide on per Karla (the zoning officer) working with Joel.

⁶⁷ Per Karla's edits to draft.

⁶⁸ Carlisle wanted this left open. 3-way zoom call with Borough of Carlisle (November 2021)

⁶⁹ BOROUGH OF CARLISLE, PA, CODE § 22-19

The following shall apply:

- (1) Property owners shall be liable to keep the ADU up to building code requirements; failure to do so shall result in a monetary damage as set by the Borough, plus any costs that would be recoverable in tort to anyone else's property.
- (2) In addition to this, any Principal Owners that fail to keep their ADU in a condition that meets the zoning or building requirements shall be fined 15% of any civil or criminal judgment (regardless of why the settlement and/or judgment is paid), whether settled by consent, private settlement, or trial which shall be held in trust by the Borough of Carlisle specifically by and for the benefit of the Climate Action Committee.
- (3) A Principal Owner renting out their ADU may not reallocate the cost of compliance to building code, except for that which is actually caused by any single tenant.

SECTION 8. SUBSTANCE

- (a) Program

The following shall apply:

- (1) Any covenant, restriction or condition contained in any deed, contract, security instrument or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document that either effectively prohibits or unreasonably restricts the construction or use of an ADU [or junior accessory dwelling unit] as a rental unit, though the latter otherwise meets the requirements of this Act, is void and unenforceable.
- (2) This section does not apply to provisions that impose reasonable private restrictions on ADUs or junior accessory dwelling units.

(b) Licensure

There shall be no special licensure requirements for adding an ADU.

SECTION 9. ENFORCEMENT AND APPEALS

The following shall apply:

(1) The Borough Council, on the recommendation of the Planning Commission, shall have the duty and authority for the administration and general enforcement of the provisions of this Ordinance, unless otherwise specified herein. The zoning officer shall have the duty and authority for controlling enforcement of the provisions of this chapter, as specified or implied herein or in other ordinances of the Borough.⁷⁰

(2) The zoning officer shall require that the ADUs contain all the requirements to be an ADU and such are acceptable in accordance with the provisions of this chapter, and any other applicable law or ordinance of the borough.⁷¹

(3) The property owner who is assessed a penalty has the right to appeal it within thirty days to the Zoning Hearing Board of Township or Municipality.

(4) The appeal must be in writing.

(5) The Zoning Hearing Board of Township or Municipality must review the appeal within thirty (30) days of receipt and determine the proper remedies, recommendations, and next steps.

4. The Zoning Hearing Board of Township or Municipality must contact the appellant no later than fifteen (15) days after a determination has been made.⁷²

⁷⁰ BOROUGH OF CARLISLE, PA CODE § 226-10(A)

⁷¹ Id.

⁷² Brittany Griffin & Jun Zhang, Mixed Use Zoning §705

(a) Enforcement Penalties.

Penalties for violations of this ordinance maybe levied by the borough, against the principal owner, at its discretion.⁷³

(1) Civil

(i) A party in compliance with zoning regulations and building codes, may seek remedies in civil court, inclusive of attorneys' fees, against a principal owner who is not in compliance when that non-compliance affects his or her zone of interest.

(ii) Subsequent buyer of principal dwelling with an ADU that is not up to building code or properly zoned, and to whom it was not disclosed, may civilly sue the prior principal owner for all damages incurred due to the failure to disclose.

(iii) This shall not operate as a waiver of the subsequent buyer of their duty to inspect.

SECTION 10. Repeals.

If any zoning ordinances or provisions are inconsistent with this zoning ordinance, it shall supersede the other ordinances and provisions⁷⁴ only to the extent necessary to meet the goals set forth herein.

SECTION 11. Applicability.

This shall apply to principal dwellings in the Carlisle Borough.

SECTION 12. Severability.

⁷³ Carlisle wanted this left open. 3-way zoom call with Borough of Carlisle (November 2021)

⁷⁴ Brittany Griffin & Jun Zhang, Mixed Use Zoning § 707

If any provisions in this ordinance are deemed unconstitutional, invalid, or ineffective in whole or in part by a court of competent jurisdiction, it shall not affect any other provision or the application of this ordinance. All other provisions herein shall be preserved and be given the full weight of law.

SECTION 13. Effective Date

This ordinance shall take effect in 90 days.