

ACTION CALENDAR
10/25/2005

To: Honorable Mayor and
Members of the City Council

From: Councilmembers Olds and Wozniak

Subject: Amending "By Right" Residential Additions and Definition of a Story in the Zoning Ordinance

RECOMMENDATION

That the Berkeley City Council refer to the Planning Commission the following issue for discussion and return to the City Council within 120 days with recommendations for proposed modifications to the language of the Zoning Ordinance:

1. An addition of up to 700 sq. ft within the required setbacks be permitted on the first floor of a residence, by right with a zoning certificate.
2. An addition of up to 500 sq ft. to a second story and higher stories require an AUP.
3. Clarify the language in the Zoning Ordinance on how many feet constitute a story in residential construction.

BACKGROUND AND NEED FOR COUNCIL ACTION:

In order to reduce the confusion, tension between neighbors and litigation that has resulted as a consequence of the 499sq. ft "by right" rule, we must amend the ordinance as quickly as possible.

Current Zoning regulations allow the addition of up to 500 sq ft without any notification to neighbors. This has resulted in loss of views and light throughout the city with some residents filing appeals and law suits. As elected officials we have a responsibility to try to resolve the problem of how detriment to neighbors can be minimized in "by-right" additions when no notification to neighbors is required and there is no regulation that no-detriment be demonstrated

One solution is to allow up to 700 sq ft. by right additions to the first floor.

Many of the contentious cases have involved obstruction of views by second and third story additions. First floor additions would most likely not interfere with light and views. To our knowledge, there has never been an appeal of a first floor addition. We are suggesting that any addition to a second or higher story should require an AUP with notification to neighbors and the possibility of a public hearing before the ZAB, if there is any objection.

There is also some confusion about how many feet constitutes a story in residential additions. The Zoning Ordinance does not currently prescribe how high a story may be. A property owner may construct a one-story addition that is 20 or more feet tall. This has resulted in additions that appear as a two-story mass, but that are actually only one story. Such additions have detrimental effects without being subject to any discretionary review.

FINANCIAL IMPLICATIONS:

This item is currently included in the Planning Commission's work plan.

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