

## The Second Coming of the ADU

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*Joseph Weil Huennekens discusses the history of accessory dwelling units (ADUs) in the context of housing in the suburbs, and argues that fair housing requires more than ADU legalization.*

Planners and advocates have long promoted accessory dwelling units (ADUs) as a solution to the affordable housing crisis. According to proponents, ADUs are a low-impact way to unleash new production—a corrective to years of racist housing policy that have kept multifamily options out of the suburbs (Kazis 2020; Regional Plan Association 2020). As a result of this advocacy, a number of places have moved to legalize ADUs. Jurisdictions that are considering, or have recently passed ADU legislation, include New York State,<sup>1</sup> Connecticut,<sup>2</sup> and California.<sup>3</sup>

In media coverage,<sup>4</sup> ADUs are generally presented as a new idea. Yet efforts to legalize the units actually date back four decades (Gellen 1985; Hare 1987). In the 1980s, a wave of ADU laws were passed throughout the country, with an especially large number in the suburbs of Long Island, New York. Unfortunately, on Long Island, the rhetoric used by advocates to “sell” ADUs ended up constraining the laws themselves. The results were low production, continued informality, and a sense of disappointment that set back ADU advocacy for decades.

In this article, I argue that today’s ADU proponents should take heed of this forgotten history, lest they replicate the disappointing results of the first wave. They must avoid making grandiose claims about the potential impact of ADUs and resist the urge to center sympathetic groups of beneficiaries. Instead, advocates should foreground tough public conversations, especially about investor-owners, and be humble about the capacity of ADUs to radically alter exclusionary environments.

### Selling ADUs

Accessory dwelling units—additional residences carved out of an existing home or built on an existing property—have a long history in the United States. Yet they emerged as a housing policy issue only in the 1980s. ADU advocacy in that era was spearheaded by an indefatigable bureaucrat-cum-activist named Patrick H. Hare, who relentlessly encouraged accessory units in academic, political, and popular fora (Hare 1985; Hare 1987; Hare 1988; Hare 1991). Hare and other advocates—joined by high-profile institutions like AARP and the Ford Foundation—positioned ADUs as a way for the elderly to age in place while simultaneously making room for young people locked out of homeownership (Brooks 1982; Cobb and Dvorak 2000). The units were a bipartisan, low-cost solution to the housing crisis of the Reagan years: a policy win just waiting to be unleashed.

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<sup>1</sup> See: <https://therealdeal.com/2021/02/03/bill-would-legalize-granny-flats-in-new-york>.

<sup>2</sup> See: [www.jdsupra.com/legalnews/new-ct-zoning-laws-look-to-increase-5245429](http://www.jdsupra.com/legalnews/new-ct-zoning-laws-look-to-increase-5245429).

<sup>3</sup> See: [www.nytimes.com/2021/08/26/business/california-duplex-senate-bill-9.html](http://www.nytimes.com/2021/08/26/business/california-duplex-senate-bill-9.html).

<sup>4</sup> See, for example: [www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html](http://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html).

Advocates in the 1980s knew that changing zoning in existing single-family neighborhoods would be difficult to achieve. They responded to this challenge by centering sympathetic groups in their rhetoric. As early as 1981, policymakers already suggested that one way to get ADUs in the door was by limiting them to the elderly. This would, in the words of one town official, “test the waters” so that accessory units could eventually be expanded to serve a larger population (Brooks 1981). Advocates positioned young adults as an additional set of beneficiaries, frequently referencing the needs of the suburban “second generation” (*Newsday* 1988). This was an especially effective argument in the 80s, as the children of the postwar suburban boom struggled to buy homes amidst record-high interest-rates.

Advocates emphasized the elderly and young not only because they were sympathetic, but also to mitigate the threat of race-based fearmongering. Proponents of ADUs were well aware that some “want to pander to people’s fear that somehow the composition of the neighborhood might change if illegal rentals are legalized” (Shaman 1985). They therefore emphasized the implicit whiteness of the proposed beneficiaries. ADU tenants weren’t just seniors or young adults, they were *our* children and *local* seniors. That is, family relations of existing, mostly white, suburban residents.

## **Disappointment on Long Island**

ADU policies spread across Long Island in the 1980s, driven by the strategic—and effective—argument that accessory apartments would benefit local seniors, young people, and homeowners. In 1979, the Town of Babylon became the first municipality in the New York City region to legalize accessory apartments (Moore 2017). In 1983, the nearby Town of Brookhaven did the same. These jurisdictions were followed by numerous other towns and villages throughout the 80s and early-90s (Anacker and Niedt 2019; Goldberg 1995; Rather 1991).

Unfortunately, most of the new ADU laws passed by Long Island municipalities included restrictions, such as allowing ADUs only in owner-occupied homes or even limiting tenancy to family-relations (*Newsday* 1991). As a result, the burst of legalization produced only modest results. In Babylon, the first town to legalize ADUs, only 2,000 units had gone through the permitting process by 1985—a figure that the town’s planning director called “disappointing” (Shaman 1985). In 1992, the *Long Island Business News* reported that only one third of accessory apartment owners had formalized their units (Bruinooge 1992). Picking up on this, the media increasingly cast doubt on the entire legalization approach. Town governments were described as “largely unsuccessful” in their efforts, and compliance was described as “disappointing” because homeowners were choosing not to apply for permits (Shaman 1986; Shaman 1993).

Further, new controversies erupted around those ADUs that actually were created. In Islip, the few ADUs produced post-legalization were demonized when they turned out to be mostly owned and operated by investors. As one civic leader noted, ADU owners were “not the senior citizens renting out part of their house, and it’s not the young couple trying to get started. It’s nothing but greed” (Shaman 1986). Opponents in Islip and elsewhere weaponized advocates’ promises against them, arguing that ADUs were legalized under false premises. On Long Island then, the focus on sympathetic groups didn’t “test the waters,” it normalized exclusion—paving the way for further occupancy restrictions and enhanced enforcement of illegal units.

## **Learning from the eighties**

Contemporary advocates make very different arguments about ADUs than during the first wave of legalization, especially around race. Nonetheless, they still replicate some of the same tropes as their first-wave peers. One example is the claim that there is a large pent-up demand for ADUs. In the 1980s, advocates argued that there were around 90,000 informal units waiting to be legalized on Long Island (Morris 1988). These assumptions implied that the amount of existing ADUs was so

great that a large number of affordable units would be produced even with restrictions. Today's advocates make similar claims<sup>5</sup> about a giant latent market. Unlocking anything close to the projected numbers would require the removal of substantial permitting and code barriers—a caveat that is made clear in the reports. Yet such nuances do not always filter down to the local level. As happened on Long Island, this could give space to municipal officials looking to capitalize on the energy around ADUs while avoiding the deeper changes needed to produce a meaningful quantity of units.

A second example of a congruency between current and previous efforts is advocates' continued emphasis on existing homeowners. This is especially fraught given the new claim that ADUs can help desegregate the suburbs. The academic literature on the relationship between ethnic diversity and ADUs is unsettled (Maaoui 2018; Anacker and Niedt 2019). Indeed, a 1984 study of accessory apartments on Long Island found *not one Black resident* of the surveyed rental properties (Rudel 1984). These dispiriting results underline the grim reality that rental units in owner-occupied homes are not subject to the Fair Housing Act. This does not mean that an increase in accessory units would have no impact on diversity: units in investor-owned buildings are still subject to fair housing rules. However, by emphasizing existing homeowners at the same time that they promise desegregation, advocates elide where additional diversity may come from. They thus risk deferring, rather than defusing, racially-charged conversations about investor-owned properties.

### **Towards a responsible ADU campaign**

The first wave of ADU legalization reveals a central paradox that is still relevant today: what is helpful in getting ADU laws *passed* might hinder efforts to get ADUs *built*. Accessory apartments may be aesthetically pleasing, discrete, and populated by a family relation of an existing owner-occupant. They may also advance suburban inclusion in a limited way. Yet they might also be aesthetically unappealing, or owned by investors. And they may diversify the suburbs in ways that are less comfortable to existing residents than the idealized image of a discrete backyard cottage operated by a longtime homeowner.

Rhetoric and framing are important in getting ADU laws passed, but today's proponents should not overplay their hand. Instead, they should welcome tough conversations: acknowledging the reality of investor-owners, underlining that fair housing in the suburbs requires far more work than ADU legalization, and taking care not to foreground sympathetic groups. Doing otherwise risks giving space to cautious local policymakers who may legalize accessory units in restrictive or exclusionary ways, while still claiming credit for advancing inclusion. Learning from Long Island, contemporary proponents must instead promote units as just one part of a much larger fair housing strategy. This might usher in a more sustainable, long lasting, and effective era of accessory unit policy—one that avoids the disappointing fate of the first wave of legalization.

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<sup>5</sup> See, for example: <https://rew-online.com/rpa-releases-plan-to-create-500000-apartments-from-single-family-homes>.

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**To cite this article:**

Joseph Weil Huennekens, "The Second Coming of the Accessory Dwelling Unit", *Metropolitica*, 26 October 2021. URL: <https://metropolitica.org/The-Second-Coming-of-the-Accessory-Dwelling-Unit.html>.