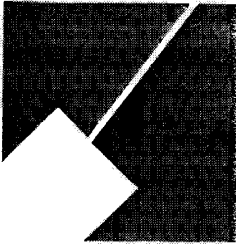


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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**MCPB
Item #2
11/04/04**

DATE: October 29, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendments
PURPOSE: To amend the Zoning Ordinance to revise the process for review and approval of an accessory apartment

TEXT AMENDMENT: 04-10
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance
INTRODUCED BY: District Council at the request of the County Executive
INTRODUCED DATE: June 29, 2004
PLANNING BOARD REVIEW: November 4, 2004
PUBLIC HEARING: September 30, 2004, 7:30 PM

STAFF RECOMMENDATION: DEFERRAL

Staff is recommending deferral based on the following issues:

- Concerns with assignment of authority when determining certain questions of compatibility and neighborhood impact
- Distinction between a small accessory apartment (allowed by right) and a large accessory apartment (allowed by special exception) and the standards of approval governing each
- Defining a neighborhood for purposes of determining excessive concentration
- Clarification of authority of appeals of decisions made by the Department of Housing and Community Affairs (DHCA)
- Clarification of the intent and whether the intent is being met by the subject proposal

PURPOSE OF THE TEXT AMENDMENTS

ZTA 04-10 was submitted by the Executive to revise the process for review and approval of an accessory apartment. The ZTA would implement a housing policy directed towards increasing the supply of affordable housing in the County. Specifically, the text amendment proposes to:

- revise the definition for accessory apartment and add a definition for accessory apartment, large;
- revise the approval process for accessory apartments from a special exception to administrative review for certain accessory apartments;
- add a requirement that an accessory apartment is not allowed if more than 15 percent of the dwelling units in the neighborhood have an accessory apartment, are single-family rental units, or contain a similar use;
- delete the minimum age of house and length of ownership before an accessory apartment may be approved;
- add a maximum size of 800 square feet for an interior accessory apartment and an 800 square foot footprint for an accessory apartment in a separate structure;
- change the definition of owner to include the parent or child of the owner;
- reduce the maximum length of an owner's absence to 3 months; and
- allow for flexibility from the land use standards for an accessory apartment subject to site plan approval.

ANALYSIS

Revise the definition for accessory apartment and add a definition for a large accessory apartment

The proposed text amendment would revised the definition for an accessory apartment to limit the floor area to a maximum of 800 square feet by establishing a new category for a large accessory apartment that ranges in floor area from greater than 800 to 1200 square feet when the use is attached to a single-family house. A large accessory apartment is further defined as that which is located in a separate accessory structure having a footprint of over 800 square feet, but less than 2,500 square feet, of habitable area.

Issues/Concerns

Currently, accessory apartments are limited to 1200 square feet of floor area (when attached to a dwelling) or less than 50% of the floor area or 2,500 square feet, whichever is less, for structures separate from the main dwelling. In any case, a special exception request must be made to the Board of Appeals

for approval. The County Executive believes that a distinction could be made between larger accessory apartments and the smaller units where the smaller units could be permitted by right under certain standards with administrative review by DHCA. Staff has no objection with the concept of distinguishing between large and small accessory apartments but believes that additional thought should be put into the impacts of a distinction. For example, what distinguishes a by-right 800 square foot accessory apartment located in the smaller lot down-County existing neighborhood from an 801 square foot large accessory apartment permitted by special exception in that same neighborhood. Staff believes that additional analysis is necessary to clarify the intent of establishing two types of accessory apartments.

STANDARDS OF APPROVAL GOVERNING ACCESSORY APARTMENTS AND LARGE ACCESSORY APARTMENTS

According to the proposed ZTA, a special exception may be granted for a large accessory apartment on the same lot as an existing one-family detached dwelling, subject to the dwelling unit, ownership, and land use requirements of Section 59-A-6.17, excluding the limitation on size of the accessory apartment.

Issues/Concerns

The Executive Branch has asserted that a basis exists for the proposed distinction between a large accessory apartment (special exception approval) and an accessory apartment (by-right). Staff has concerns with the distinction since both uses would adhere to virtually the same standards for approval (Section 59-A-6.17). Specific concerns with these standards will be addressed in the proceeding sections.

DEFINING A NEIGHBORHOOD FOR PURPOSES OF DETERMINING EXCESSIVE CONCENTRATION

The proposed text amendment states that an accessory apartment must not result in an excessive concentration of similar uses, including single-family rental units, in the general neighborhood of the proposed use. An excessive concentration would be reached when the number of accessory apartments, rental single-family units, and other similar uses, equals 15 percent or more of the total number of housing units in the neighborhood. In determining the boundaries of the neighborhood, the Director of DHCA will take into consideration natural boundaries, including streams, major roads, public facilities, and land in non-residential zones. The Director may exceed the 15 percent requirement if the Director finds that there will be no adverse impact on the neighborhood. In the case for which a property is subject to site plan review, the Planning Board in consultation with the Director of DHCA may allow a higher concentration of accessory apartments in a neighborhood if the changes will preserve the character of the neighborhood in which the accessory apartments are located, and that the increased concentration of accessory apartments will not have an adverse impact on the neighborhood.

Issues/Concerns

The issue of establishing an excessive concentration of similar uses in a neighborhood for a proposed by-right use coincides closely with the general special exception conditions of Section 59-G-121(a)(7) which concerns excessive concentration of special exceptions in general, an issue that the Board of Appeals currently addresses. Staff believes that defining a neighborhood is largely a subjective land use judgment that should not be decided in an administrative review process. Further, staff believes that any use that is proposed as a permitted use in a zone should not be subject to compatibility findings.

APPEAL OF DHCA ACCESSORY APARTMENT DECISION

Zoning appeals are heard by the Board of Appeals and landlord tenant appeals are heard by the Landlord-Tenant Commission. An accessory apartment permit decision will have elements of each. Clarification of authority must be addressed should the subject proposal be approved.

PLANNING BOARD REVIEW OF ACCESSORY APARTMENT PERMIT

At least 30 days before acting on an accessory apartment application, the Director of DHCA must provide the technical staff of the Planning Board with a copy of the application. Within 30 days of receiving the application, the technical staff must submit to the Director, on a form provided by the Director, a report indicating whether the proposed accessory apartment complies with Chapter 59 and the applicable master plan.

Issues/Concerns

Staff is concerned with the uncertainty of technical support time required by the proposed text amendment for the accessory apartment administrative review. Examination of many of the same requirements, standards and conditions of the current special exception process would be necessary to provide the Director with an accurate compliance analysis but within a much shorter timeframe than the current special exception process.

PUBLIC CONCERNS

Comments received from a number of citizens state that permitting any size accessory apartment by right would diminish the character of existing small lot neighborhoods and would be done so without providing the public adequate input in the process. In addition, they believed that allowing 15% of the neighborhood to include accessory apartments is too large. Further, DHCA should not have the authority to increase this percentage (DHCA would be permitted to increase this percentage if the Director finds that there is no adverse impact to the neighborhood).

RESEARCH AND TECHNOLOGY CENTER MEMORANDUM (Attachment 2)

Currently DHCA's Division of Housing and Code Enforcement (DHCE) reports approximately 500 registered living units (RLUs) and 440 accessory apartments.¹ Over the years, approximately 200 of the accessory apartments have been converted to family living units, leaving only 240 units currently rented to non-family members. In the past year, M-NCPPC has reviewed 20 accessory apartment special exception applications. According to DHCE, 20 applications per year is a high number, with most years receiving fewer than 20 applications.

The changes proposed to the accessory apartment section of the ordinance strive to make the application process for accessory apartments under 800 square feet in size an administrative process, instead of a discretionary one. The hope is that the more permissive nature of the proposed ZTA will result in about 250 additional accessory apartments within the next five to 10 years, or about 25 applications per year over a 10 year period—a 25% increase per year over recent years.² Research and Technology Center staff was asked to do a quick study to determine whether DHCA's estimated number of new applications is understated.

Seven jurisdictions throughout the country (including Howard County, Md.) known to have high housing prices, high demand for affordable units, and recently changed zoning ordinances—ones that had been recently changed to be more permissive of accessory apartments, were identified for the study.

If our experience is similar to those interviewed for this report, Montgomery County is likely to have about the same number of accessory apartments applications as before the ZTA was changed. Without exception, the jurisdictions interviewed did not see an increase in the number of applications for accessory apartments over the previous situation, despite pressure from increasing housing costs and increasing pressure for more affordable housing. This would mean that DHCA's estimate is not likely underestimated, and, instead, might be slightly overestimated.

One might wonder whether we should change our accessory apartment regulations, if we are not likely to realize an increase in the number of applications. Without exception and regardless of the lack of increase in the number of applications, the jurisdictions interviewed believe that:

¹In Montgomery County AAs require separate licensing requirements. The Board of Appeals must grant the property owner a special exception. Tenants of AAs pay rent to the owner. RLUs are exempt from licensing requirements, and residents of RLUs are related to or are employed by the owner and do not pay rent.

²In the past several years M-NCPPC staff has reviewed approximately 20 AA special exception applications per year.

- (1) A permissive accessory apartment ordinance is an important component, albeit a small one, of a community's affordable housing toolkit, and
- (2) Their jurisdictions consider the changes to the accessory apartment regulations to be positive affordable housing policy that will continue to serve their future needs.

GENERAL CONCERNS/COMMENTS

The impact of accessory housing differs in varying neighborhoods due to the availability of transit opportunities, on-street parking, the existence of driveways, width of streets, existence of large trees and other types of screening, types of back yards, etc. Perhaps as part of the master planning processes, neighborhoods could be identified that are especially well suited for accommodating accessory apartments. As a result, processes that were tailored to expediting accessory housing could allow applications meeting the specifications for the identified neighborhoods in master plans to be expedited, while other applications would undergo a much more rigorous process.

RECOMMENDATION

Based on the analysis as discussed above, staff recommends that ZTA 04-10 be deferred. In lieu of the proposed text amendment as written, staff believes that additional analysis of the numerous impacts of providing an administrative review process for certain accessory apartments is necessary. Staff believes that too many issues remain unclear for this text amendment to be adopted. Establishing a working group that incorporates the concerns of both the citizens and the housing advocate groups should be the next step prior to reviewing any text amendment.

Attachments

1. Zoning Text Amendment No. 04-10
2. Research and Technology Center Memorandum