

"Federation Corner" column
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Council proposes changes for Accessory Apartments

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This is the second of three columns on housing related legislation introduced in County Council.

Zoning Text Amendment (ZTA) No. 04-10 was introduced by the Council at the request of the County Executive, proposing changes to the accessory apartment zoning laws. The ZTA is available on the Council web site under the agenda for June 29.

An accessory apartment is a second dwelling unit that is part of an existing one-family detached dwelling, or located in a separate existing structure on the same lot as the main dwelling. The accessory apartment must provide space for cooking, eating, sanitation and sleeping.

The ZTA does not directly address the issue of affordability, but both the transmittal memo from the County Executive and the analysis of the ZTA by council staff claim the legislation will help meet the objective of creating more affordable housing in all parts of the county.

Key components of existing law and the proposed changes:

Approval Process. Currently, approval of all accessory apartments is granted as a special exception by the Board of Appeals. ZTA 04-10 would retain the special exception approval process for large accessory apartments (defined below), but allow approval of smaller size units by right (ie without a special exception) by the Director of the Department of Housing and Community Affairs (DHCA). DHCA must notify adjoining and confronting property owners, the neighborhood association and municipality. If the property is next to multiple associations, notice is not required other than to one. The ZTA does not indicate how DHCA will determine whether an association exists or who they are.

Restrictions. ZTA 04-10 would keep in place the current limitation that accessory apartments cannot be created on the same lot as a mobile home or attached single family unit. An accessory apartment is also not allowed on a lot that has a guest room for rent, boardinghouse, or registered living unit. In the agricultural zone, it cannot be used for any rental unit other than an accessory dwelling (different than accessory apartment.).

Lot Size. The minimum lot size is 6000 square feet, which would remain. Accessory apartments are currently allowed in separate structures only if the lot is one acre or more, for homes built before 1983. For homes built after 1983, two acres or more are required in order to have the accessory apartment as a separate structure.

Unit Size and Classes At present, the size of accessory apartments can be as large as 1200 square feet, or if in a separate accessory structure the maximum floor area must not exceed 50% of the total floor area of the main dwelling, or 2500 square feet, whichever is less. The amendment would create two classes of accessory apartments--

“regular” and “large”. Regular accessory apartments would be as large as 800 square feet and large apartments would be greater than 800 square feet. The upper limit would not change.

Unit Age. Current law requires a house be at least five years old and be owned by current owner for one year before he can apply to create an accessory apartment. ZTA 04-10 would eliminate these requirements so a new building could have an accessory apartment from the time it is first occupied.

Zoning standards. Accessory apartments are not counted when determining how many units are allowed in a development. A dwelling can be expanded but the development standards of the zone apply. The ZTA would allow the Planning Board to approve inclusion of accessory apartments in new subdivisions, with relaxed lot size standards. Also, the Board could approve accessory units on lots of less than 6000 square feet, and in separate structures on lots of less than one acre.

Concentration of Units. Current law indicates that there must not be an excess of accessory apartments or other special exceptions in a neighborhood, including single-family rental units and other similar uses. The ZTA would permit the 15% limit to be exceeded if DHCA finds that it will not have an adverse impact on the neighborhood. There is no definition of adverse impact, and the change eliminates special exceptions from being considered when determining impact to the neighborhood. The guidance on defining neighborhood is limited, mentioning natural boundaries such as streams, major roads, public facilities and land in non-residential zones.

Owner Occupant. Current law requires that the owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding six months in any twelve month period. This period may be increased if a hardship would result. The proposed change would reduce the period to 3 months, but clarify that the parent or child of the owner could occupy one of the units rather than the actual owner. (We would like to point out that the ownership rule enforcement has been lacking.)

Parking. Current law requires the provision of two parking spaces per lot. ZTA 04-10 would permit DHCA to require more or permit fewer parking spaces.

Staff Concerns. Some concerns were raised during the Council staff analysis of ZTA 04-10. It was noted that the distinction between a small accessory apartment (approved by DHCA) and a large accessory apartment (approved by Board of Appeals) seems somewhat artificial, yet each would have a different approval and appeals process. Also, defining neighborhood, for purposes of determining excessive concentration, and assessing any adverse impact of such concentration are largely subjective judgments, in the absence of more objective standards than are provided in the ZTA. Staff noted that if DHCA is to be substituted for the Board of Appeals in the approval process, it would seem that subjective land use judgments should not be part of the process.

PUBLIC HEARING: The County Council will hold a public hearing on ZTA 04-10 on September 30, 2004 at 7:30 p.m. At this hearing, the Council will also hear testimony on Bill 20-04, which proposes changes to county regulations related to Landlord-Tenant Relations for accessory apartments.

