

"Federation Corner" column
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Federation opposes Accessory Apartments changes

By Jim Humphrey, MCCF District 1 VP

As defined in the county code, an accessory apartment is "a second dwelling unit that is part of an existing one-family detached dwelling, or is located in a separate existing accessory structure on the same lot as the main dwelling," with provision for cooking, eating, sanitation and sleeping. In addition, county law requires the owner to live in one of the units on the property. A housing goal of the county's General Plan is to encourage innovative housing types such as this.

Montgomery County Civic Federation (MCCF) supports accessory apartments as a one means of providing affordable housing. But, an overwhelming majority of MCCF delegates voted at the September 13 MCCF meeting to oppose Zoning Text Amendment 04-10, which would change the rules and approval process for such units.

The approval of accessory apartments is now granted as a "special exception" by the Board of Appeals. The process was streamlined in the past few years to eliminate additional approval by the Planning Board. An applicant who wishes to create an accessory apartment on their property must pay a nominal fee and, for a short time, post a sign on their property announcing their intention, after which their request is heard by the Board of Appeals. The whole process takes about sixty days.

Supporters of the ZTA claim that if empty-nesters and seniors wish to create accessory apartments on their property, to generate income to help pay bills or provide security by having others live near them, they should be able to do so. They DO have the ability to do that now and, as noted, the process has never been simpler. Members of the Civic Federation are not aware of any cases where residents have found the approval process for accessory apartments too lengthy or expensive. The Board of Appeals members have not publicly stated that they are overburdened with requests for approval of these units. This legislation appears to be a solution in search of a problem.

ZTA 04-10 would retain approval by the Board of Appeals of units larger than 800 square feet, but smaller units would be approved by the Director of the Department of Housing and Community Affairs (DHCA). The ZTA states that approval should not be granted if it results in an undue concentration of such units, which might have an adverse impact on a neighborhood. But, while the legislation sets a limit the number of units at 15% of the number of regular dwelling units in a neighborhood, it also allows Director DHCA to exceed this number if deemed acceptable. MCCF concurs with the concerns noted by the Council's own staff that neither "adverse impact" nor the boundaries for a neighborhood are defined in the ZTA, giving the Director DHCA authority to make subjective decisions without providing the objective criteria on which to base them.

The MCCF is also concerned that the ZTA would allow the Planning Board to approve inclusion of accessory apartments in new housing units. Current law does not allow Board approval, and requires a dwelling unit be five years old, and owned by the current owner for at least one year, before application is made for an accessory apartment. Our concern is that the result of allowing developers to build accessory units into new

dwelling will be that the price charged will be for two units--the main dwelling and the accessory unit--and as such not be affordable. MCCF prefers that accessory units not be allowed in newly constructed housing and that the one year ownership provision be retained. This will keep housing prices more affordable and then, after one year, the owner can apply to create an accessory unit that could generate income to help meet their mortgage payments. Accessory apartments could then still be created to help meet the county need for affordable housing, but with the owner benefiting financially, not a developer.

Other concerns that the MCCF has with ZTA 04-10 include new authority to grant accessory apartments on smaller than the minimum lot size now required, and to waive the requirement for off-street parking for these units. These changes, coupled with the right to approve greater than 15% concentration of these units, constitute a threat to the quality of life and character of established neighborhoods. And, finally, MCCF opposes the provision in the ZTA that would shorten the time an owner could be absent from the property from the current six months to only three months. We think this would be a burden on residents, especially seniors, who choose to spend the cold weather months in warmer climes.

In accord with the old axiom that states "If it ain't broke, don't fix it," the Montgomery County Civic Federation opposes passage of ZTA 04-10, and urges the County Council to leave the current approval process and regulations pertaining to accessory apartments in place. What we do ask is that the enforcement of accessory apartment standards be improved, so that neighbor complaints about excessive noise, too many renters, illegal parking or poor condition of these units be addressed and corrected in a timely fashion.