

"Federation Corner" column
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Accessory apartment debate has yet to occur

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On March 7 and 14, the three members on the County Council Planning, Housing and Economic Development (PHED) Committee will hold worksessions on a draft rewrite of the Housing Element (or chapter) of the General Plan, which is the overall master plan for the county. The County Council is the body granted authority by the State to approve master plans and any amendments to them.

The process for amending master plans includes the Planning Department staff writing the initial draft. The Planning Board then holds a public hearing, conducts worksessions and may alter the draft, then approves and transmits their recommended version to the Council. The Council holds a public hearing on the Board's version, after which the matter is referred to the PHED Committee. The PHED then holds worksessions before making a recommendation to the full Council to adopt the master plan as recommended by the Planning Board or make further alterations before adoption.

One of the provisions of the draft Housing Element the PHED will be considering this month is a recommendation to allow accessory apartments in all residential zones by-right, instead of through the existing Special Exception process. This is not a new idea. The first I heard of it was in a February 2, 2004 memo from the "Housing Montgomery" team at the then-merged Park and Planning Department, since split into two separate departments. That memo stated: "The DHCA (Department of Housing and Community Affairs) has taken the lead role in drafting a zoning text amendment to allow accessory apartments as permitted uses, rather than as special exception uses, in residential zones."

The 2004 memo continues: "Park and Planning staff believes that accessory apartments represent an acceptable method of providing more affordable housing to our workforce. Making accessory apartments a permitted use will streamline the approval process. However, care must be taken to address the issues of neighborhood compatibility and concentration, as well as enforcement."

As defined in the county code, an accessory apartment is "a second dwelling units 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.

As part of the current Special Exception process for accessory apartment applications, the Board of Appeals (a citizen body with members who are all county residents) must consider whether there is an undue concentration of such units in an area, or if there are other possible negative impacts that might merit disapproval. And the Hearing Examiner, who compiles the record on such applications for the Board, must allow public testimony from neighbors and the association representing the community where the unit is being requested.

There was a zoning text amendment introduced in Council in 2004 to allow accessory apartments as a permitted use in residential zones. And in September of that year, the delegates to the Civic Federation, which advocates on behalf of county residents, voted overwhelmingly to support retention of the Special Exception process for approval of accessory units. The ZTA failed to be approved and the legislation died with the Council changeover in 2006. But the idea didn't die. After his 2006 election, County Executive Ike Leggett created an Affordable Housing Task Force in April of the following year. The Task

Force issued its final report in March 2008, one of the recommendations of which was to allow accessory apartments as a permitted use in residential zones.

The issue seemed to disappear for a while. But those paying close attention noticed a memo from the Planning Department staff to the Planning Board in early 2008, outlining the work program for revision of the General Plan's Housing Element, which included a goal "to identify the extent to which adopted policies address current housing issues, including Accessory Dwelling units." A series of staff reports were filed with the Board throughout the spring of 2008, culminating in the presentation of the staff's draft Housing Element revision in early 2009. And, no surprise here, the draft includes a recommendation to allow accessory apartments by-right in residential zones.

Allowing accessory apartments as a permitted use in residential zones is a *de facto* revision of every community master plan with residentially zoned areas, and has the potential to double the population density in these areas with no consideration of how the county will provide or pay for the needed infrastructure--the schools, roads and transit, and public safety services--to accommodate the increase.

On December 1, 2009, the Federation testified before the Council on the draft revision of the Housing Element of the General Plan, in part stating that the proposed strategy to allow accessory apartments in residential zones by-right "is an attempt to circumvent a county policy debate that has yet to take place." County officials should make no mistake about this point. Their repeated assertion that accessory apartments should be allowed by-right does not substitute for, or satisfy the need for, a public discussion of the issue.

The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to theelms518@earthlink.net