

ATTACHMENT #9

Accessory Apartment
Special Exception Process and Chart



July 16, 2003

Memorandum

To: Montgomery County Planning Board

From: Sharon Suarez, AICP, Research & Technology Center—Housing & Demographics
Joe Davis, Chief, Development Review
John Carter, Chief, Community Based Planning

Subject: Review of DHCA's Draft Changes to the Accessory Apartment Approval Process

Elizabeth Davison and her staff at the Department of Housing and Community Affairs (DHCA) have taken the lead role in partnership with Park & Planning staff to prepare a zoning text amendment to allow accessory apartments as a permitted use rather than as a special exception use in residential zones.

According to DHCA, the draft zoning text amendment will propose that:

- DHCA will be responsible for the licensing and enforcement of accessory apartments;
- Appeals on decisions related to accessory apartments will be heard and acted upon by the Landlord-Tenant Commission (LTC).

Park & Planning staff concur that the current approach needs refinement and have proactively reviewed the current special exception process to determine opportunities to both optimize the production of accessory apartments and to address concerns of community compatibility.

Attached to this memorandum is an annotated chart from DHCA that identifies the key administrative items in the current Special Exception approval process for accessory apartments, as well as DHCA's proposed changes to the current process. Park & Planning staff added a column in which we have identified our responses.

ACCESSORY APARTMENT REVIEW
June 16, 2003

ITEM	CURRENT REQUIREMENTS	PROPOSED DHCA CHANGES/ISSUES	MNCPPC STAFF RESPONSE
ADMINISTRATIVE PROCESS	<p>Petition for special exception submitted to the Board of Appeals.</p> <p>Preliminary code enforcement inspection conducted.</p> <p>Reviewed by M-NCPPC to determine if request meets all zoning requirements and development standards and is in conformance with the applicable Master Plan.</p> <p>Hearing is scheduled for a minimum of 60 days after filing. Written opinion is issued within 30-60 days.</p> <p>Final code enforcement inspection conducted.</p> <p>License issued.</p>	<p>Streamlined approval process through DHCA.</p> <p>License to be issued by Licensing and Registration upon approval by Code Enforcement.</p> <p>Approval within 30 days if no code violations; Applicants would be given 90 days to meet housing code standards if violations exist.</p>	<p>Internal Accessory Apartments: Based on the changes recommended in following sections of this chart, recommend concurrence with DHCA recommendations for internal accessory apartments w/o variances. An applicant seeking a variance from the parking requirement must appeal the parking requirement to DPS and then to the BOA, not to DHCA.</p> <p>External Accessory Apartment Structures: Retain as a Special Exception with appeals to the Circuit Court.</p>
APPEALS PROCESS	<p>Appeals filed in circuit court.</p>	<p>Appeals to DHCA Landlord-Tenant Commission (LTC)</p>	<p>Internal Accessory Apartments: Change to permit use in all residential zones. Concur with DHCA appeal process, except for those applicants seeking a variance for parking. Applicants seeking a variance from the parking requirements will be required to appeal to the DPS and then to the BOA, in addition to any aforementioned appeals to the DHCA LTC.</p> <p>External Accessory Apartment Structures: Retain as a Special Exception with appeals to the Circuit Court.</p>
ZONES	<p>Must be located in the Rural, Rural Cluster, LDRC, RDT, RMH-200, RE-2, RE-2C, RE-1, R-200, R-150, R-90, or R-60 zone or in a one-family residential area of a Planned Development or Town Sector zone.</p>	<p>No Changes</p>	<p>For both Internal Accessory Apartments and External Accessory Apartment Structures: Concur.</p> <p>(Note: While an accessory apartment is allowed in the zones listed at left, there are others zones (such as MXPDP) that also allow accessory apartments by right.)</p>

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PARKING REQUIREMENTS	Have at least 2 off-street parking spaces (driveway, not front yard) or proof of adequate on-street parking	No Changes	For both Internal Accessory Apartments and External Accessory Apartment Structures: Recommend changes to parking requirements. The number of on-site parking spaces should be increased to three (3) and the alternate requirement for "proof of adequate on-street parking" should be deleted. The new parking requirement should read: "Have at least three (3) off-street parking spaces (driveway, not front yard)." Provision of fewer than three parking spaces will require a variance from the DPS. (See the Administrative Process recommendation, above.)
ARCHITECTURAL CONTROLS	<p>Must be subordinate to the main house.</p> <p>Maximum size of 1,200 square feet</p> <p>Must be internal to the existing home (unless the lot is larger than 1 acre).</p> <p>Must be compatible with adjacent homes, if modifying.</p> <p>Must maintain appearance of single-family house.</p>	<p>May want to change lot size requirement for separate structure. No other changes.</p> <p>(Kentlands -City of Gaithersburg-permits accessory apartments in carriage houses through plan development review.)</p>	<p>Internal Accessory Apartments: Concur that the language in the original requirement needs to be changed, but disagree with the change suggested by DHCA. An internal accessory apartment is one that is within the existing structure and that is a subordinate use to that structure. A subordinate use is one that consumes less than 50% of the existing structure. As long as the accessory apartment is less than 50% of the existing structure, no other size limitation is needed.</p> <p>External Accessory Apartment Structures: Retain as a Special Exception with requirements as currently applicable; examine standards.</p>
NEIGHBORHOOD/ GOVERNMENTAL AGENCY NOTIFICATION	<p>Notification of BOA hearing date is sent to as required by Zoning Ordinance 59-A-4.46 (a):</p> <p>Confronting and adjoining neighbors Homeowners, citizens, and civic associations in the vicinity of the applicant's property M-NCPPC People's Counsel Department of Environmental Protection Department of Housing and Community Affairs Department of Public Works and Transportation State Highway Administration Fire Marshal Board of Education</p>	<p>More limited notification.</p> <p>Written notification to adjoining and confronting property owners.</p> <p>Written notification to homeowners' association, civic or citizen association in which the property is located for covenant enforcement.</p>	<p>Internal Accessory Apartments: There will be no need for any notification other than that required for a building permit, because the use will be permitted by right.</p> <p>External Accessory Apartment Structures: Retain as a Special Exception and continue the notification currently required per Zoning Ordinance 59-A-4.46 (a).</p>

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<i>(NEIGHBORHOOD/ GOVERNMENTAL AGENCY NOTIFICATION, continued...)</i>	<p>Washington Suburban Sanitary Commission Municipal government if applicable</p> <p>Some agencies and departments--People's Counsel, Environmental Protection, Public Works and Transportation, State Highway Administration, Fire Marshal, and Board of Education are not currently providing a response to the Board of Appeals' notification.</p>		
OCCUPANCY STANDARDS	<p>Must be owner occupied. No more than two unrelated persons or a family. The number of family members permitted determined by square footage of accessory apartment.</p> <p>No roomers permitted in the main unit.</p>	No Changes	<u>For both Internal Accessory Apartments and External Accessory Apartment Structures:</u> Concur.
CONCENTRATION	<p>Not result in an excessive concentration of such units in the neighborhood.</p> <p>Board of Appeals only requests information about special exceptions in the applicant's neighborhood. BOA does not request information about concentration of rental properties in the community. BOA does not have a quantified threshold to determine excessive concentration</p> <p>BOA denial of special exception because of over concentration was reversed by Circuit Court (Sandra Jacobson Appeal Civil No. 160589)</p>	<p>Will need to establish a numeric definition of excessive concentration of rental properties. Will need to look at all residential rental properties— multifamily, single family, and condominiums. Focus of excessive concentration review should be neighborhood stability.</p> <p>May want to look at the housing code complaint history for the neighborhood.</p>	<p><u>Internal Accessory Apartments:</u> Concur that changes are needed, but recommend that DHCA convene a meeting with stakeholders to identify issues and recommend solutions. MCPB will play a supporting role.</p> <p><u>External Accessory Apartment Structures:</u> Retain as a Special Exception with requirements as currently applicable; examine standards.</p>
OWNERSHIP REQUIREMENT	Must be owned for 1 year if the accessory apartment is being created.	Eliminate the 1-year ownership requirement.	<p><u>Internal Accessory Apartments:</u> Concur.</p> <p><u>External Accessory Apartment Structures:</u> Retain as a Special Exception with requirements as currently applicable; examine standards.</p>

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LOT SIZE REQUIREMENT	Have at least 6000 square foot lot in an R-60 Zone or the minimum lot size in all other one-family residential zones.	No Changes	<p><u>Internal Accessory Apartments:</u> Concur.</p> <p><u>External Accessory Apartment Structures:</u> Retain as a Special Exception with requirements as currently applicable; examine standards.</p>
AGE OF HOUSE REQUIREMENT	Must be five years old.	Eliminate the five-year requirement.	<p><u>Internal Accessory Apartments:</u> Concur.</p> <p><u>External Accessory Apartment Structures:</u> Retain as a Special Exception with requirements as currently applicable; examine standards.</p>
ENVIRONMENTAL REQUIREMENTS	<p>Must provide information regarding any existing or proposed trees, landscaping, & screening.</p> <p>Preliminary forest conservation plan and approved natural resources inventory or waiver.</p> <p>If property is in a special protection area, preliminary and/or final water quality plan is required. Otherwise a waiver is required.</p>	Eliminate environmental requirements	<p><u>For both Internal Accessory Apartments and External Accessory Apartment Structures:</u> To be discussed.</p>

MNCPPC Staff general observations:

- 1) Appeals of decisions related to parking variances should still go first to the Department of Permitting Services (DPS) and then, if necessary, to the Board of Appeals (BOA).
- 2) The current Special Exception approval process should be retained for External Accessory Apartment Structures (sometimes referred to as carriage houses), pending further study in the master plan program.
- 3) The current environmental requirements should be discussed further, before considering any deviation from the current process.

ATTACHMENT #10

Sample Format
Housing Progress and Delivery Report

Figure 1. Suggested Format for Countywide Housing Delivery Status Report

Countywide Housing Delivery Status Report	Market Rate Units		MPDUs		Other Affordable Units	
	Approved	Completed	Approved	Completed	Approved	Completed
Planned Housing						
Master Plans						
Sector Plan						
Text Amendments						
Approved						
Pre-preliminary						
Preliminary						
Site Plans						
Special Exceptions						
Local Map Amendments						
Mandatory Referrals						
Completed						

Figure 2. Suggested Format for Planning Area Housing Delivery Status Report

Planning Area Housing Delivery Status Report	Market Rate Units		MPDUs		Other Affordable Units	
	Approved	Completed	Approved	Completed	Approved	Completed
Home Ownership						
Single Family Detached						
Single Family Attached						
Multifamily						
Garden (Low rise)						
Midrise						
Highrise						
Rental						
Single Family Detached						
Single Family Attached						
Multifamily						
Garden (Low rise)						
Midrise						
Highrise						

SAMPLE FORMAT