



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 9
9/11/03

DATE: September 5, 2003
TO: Montgomery County Planning Board
FROM: Joseph R. Davis, Chief JRD
Development Review Division
301-495-4591

REVIEW TYPE: Zoning Text Amendment
PURPOSE: Eliminate the 1,200 gross square feet limit on the size of an accessory apartment

TEXT AMENDMENT: No. 03-18
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Praisner
DATE INTRODUCED: July 1, 2003

PLANNING BOARD REVIEW: September 11, 2003
PUBLIC HEARING: September 9, 2003; 1:30 PM

STAFF RECOMMENDATION

APPROVAL of the Text Amendment with the following modification:

Amend Sec. 59-G-2.00 (a) (9) to read as follows:

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling.

ISSUE TO BE RESOLVED BY TEXT AMENDMENT

The existing 1,200 square foot limitation could unreasonably restrict the provision of accessory apartments.

BACKGROUND

The 1,200 square foot limit on the size of an accessory apartment was added to the accessory apartment special exception standards in 2001 as part of the comprehensive amendment to the residential zones special exceptions approved as Phase I of the Comprehensive Zoning Ordinance Rewrite Project. This limit was intended to assure that accessory apartments did not become so large that they could result in the creation of de facto two-family homes or duplexes. Historically, there has been concern that accessory apartments should not be too large so as to adversely affect neighboring properties because of increased population density, increased parking demand or increased activity.

The situation that led to introduction of the subject text amendment involves a home with a separate accessory structure on the lot that the owner would like to turn into an accessory apartment. The separate structure is greater than 1,200 square feet in size but is less than 50 percent of the total floor area of the main dwelling. Staff believes that it would be appropriate to accommodate this situation without deleting the overall 1,200 square foot limitation for all accessory apartments.

ANALYSIS

When the accessory apartment special exception was added to the Zoning Ordinance in 1983, the basic intent was to allow an apartment as a relatively small-scale, "accessory use" to a main dwelling. In 1983, one of the concerns with accessory apartments involved the number of occupants. Occupancy for accessory apartments was regulated separately in Chapter 29 of the County Code and not in the Zoning Ordinance. The Zoning Ordinance defines a family, in addition to related persons, as allowing up to 5 unrelated individuals to live together as a household. Sec. 29-19 of the County Code limits occupancy of an accessory apartment to related persons or to "no more than 2 individuals who live and cook together as a single housekeeping unit". This is significant in that it demonstrates long-term concern that the number of occupants allowed in an accessory apartment should generally be less than the number of occupants in a two-family dwelling or duplex.

The number of parking spaces needed to serve a one-family dwelling containing an accessory apartment was also a concern. For an accessory apartment, Sec. 59-E-3.7 of the Zoning Ordinance requires two parking spaces per lot and authorizes the Board of Appeals to require more or less parking as part of their consideration of an accessory apartment special exception. This means that no additional parking is automatically required in the Parking Regulations for an accessory apartment. The Board of Appeals considers parking for this use on a case-by-case basis. This reflects the position that the use is not intended to generate as much parking as a standard two-family dwelling or duplex which would be 2 parking spaces per unit or 4 parking spaces per building.

In 2001, staff proposed the 1,200 square foot limitation on floor area for an accessory apartment as an additional safeguard to prevent such units from becoming two-family or duplex dwellings because of size. The average size of homes has increased significantly since 1983 and it was felt that additional measures were needed to prevent problems with the use. Staff believes that the 1,200 square foot limit is a valid mechanism to control the size of accessory apartments. This is a rather generous size limitation in that a 1,200 square foot apartment in a multi-family building could accommodate a living room, two bedrooms, two bathrooms, a "country kitchen" and separate dining room.

Staff supports dropping the 1,200 square foot limitation for an accessory apartment located in a separate, existing accessory structure on the same lot as the main dwelling. Staff, however, recommends that the maximum size still be controlled by requiring that the accessory apartment be less than 50 percent of the total floor area contained in the main dwelling. In this situation, staff feels that the normal requirement that such unit be "subordinate" to the main dwelling is not a clear enough standard.

Current special exception standards will limit the use of accessory structures as accessory apartments. If an accessory structure was constructed prior to December 2, 1983, the site must contain at least one acre. For structures constructed after that date, the site must contain at least two acres of land. Larger accessory apartments on lots containing one or more acres should not be a problem and could, to some extent, help to address the affordable housing shortage for larger families without adversely affecting nearby properties. The Board of Appeals would still address compatibility issues as part of the special exception approval process.

Accessory apartments appear to fill a niche that exists between renting a house or an apartment in a multi-family building. Accessory apartments also provide more independence for occupants than sharing a house with housemates where kitchens and other rooms become common areas shared by all residents. An accessory apartment can be ideal for one or two persons or a small family. Larger accessory apartments, over 1,200 square feet in size, located within a dwelling could be too large and out-of-scale with other nearby homes in terms of population density, parking and on-site activity. Under the present zoning standards, accessory apartments are not intended to become two-family or duplex dwellings, as defined in the Zoning Ordinance. In the staff's opinion, this policy should not be changed.

Attachments

Zoning Text Amendment No: 03-18
Concerning: Accessory Apartment
Requirements
Draft No. & Date: 1 – 6/19/03
Introduced: July 1, 2003
Public Hearing: 9/9/03 – 1:30 PM
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- eliminating the 1,200 gross square foot limit on the size of an accessory apartment.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-G-2 “SPECIAL EXCEPTIONS—STANDARDS AND
REQUIREMENTS”
Section 59-G-2.00 “Accessory apartment”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
*Underlining indicates text that is added to existing laws
by the original text amendment.*
*[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.*
*Double underlining indicates text that is added to the text
amendment by amendment.*
*[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.*
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Division 59-G-2 is amended as follows:**

2 **DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND**
3 **REQUIREMENTS.**

4 * * *

5 **59-G-2.00. Accessory apartment.**

6 A special exception may be granted for an accessory apartment on the same lot as
7 an existing one-family detached dwelling, subject to the following standards and
8 requirements:

9 (a) Dwelling unit requirements:

10 * * *

11 (5) The accessory apartment must not be located on a lot:

12 * * *

13 (9) The accessory apartment must be subordinate to the main dwelling.

14 [The floor area of the accessory apartment is limited to a maximum of
15 1,200 square feet.]

16 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
17 date of Council adoption.

18
19 This is a correct copy of Council action.

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23 _____

24 Mary A. Edgar, CMC
25 Clerk of the Council