


TO: Planning Commission

FROM: Anne McClung, Planning and Building Director 

RE: Zoning Ordinance Amendment #32
Accessory Apartment Permit Program

DATE: January 12, 2017

Background

Town Council has directed that an amendment to the Zoning Ordinance be prepared to allow accessory apartments with single family homes. Accessory apartments have not been allowed in Town for many years. Accessory apartments were allowed in the Town up until 1976 (Ordinance #415). Concerns about over occupancy, parking problems and the impact on neighborhood character were issues that led to the discontinuance of this use. There are existing lawful non-conforming accessory apartments in Town. Lawful non-conforming apartments are those created when it was legal to do so and then rendered non-conforming when the regulations changed. To retain the lawful non-conforming status, the apartment would have to have been rented out since the time of the regulation change. The majority of the existing lawful non-conforming accessory apartments are found in the Miller-Southside and McBryde Village neighborhoods. The Town maintains a list of the addresses with lawful non-conforming accessory apartments. Because the apartments are an existing lawful non-conforming use they would not be subject to the regulations proposed in this amendment.

Many communities around the country are now allowing accessory apartments. The use is not new but is one that is often not allowed under current zoning regulations. The accessory apartment is also referred to as granny flat, in-law apartment, basement apartment, garage apartment or carriage house. There are many positive outcomes from allowing this type of residential unit when integrated into the neighborhood but there are also concerns, especially in a university town with a high demand for student housing. Student housing in neighborhoods is often where lifestyle conflicts can occur. The pros and cons of the proposed accessory apartment use are discussed below. Also provided in the staff report is a discussion of how a new accessory apartment permit program would be structured and the development standards that would apply to the apartments.

A draft of the proposed Zoning Ordinance Amendment text and a comparison chart of the parameters in the programs in other communities are attached for your review. The draft regulations have also been reviewed by the Zoning Review Committee (ZRC) and the Housing and Community Development Advisory Board (HCDAB). A summary document outlining the recommendations of each group is attached. Information on public input to date can be found later in the staff report.

Proposed Amendment

The amendment includes revision to a number of different sections of the Zoning Ordinance. The parameters of the permit program are contained in new proposed Section 1270. The definitions section

of the Zoning Ordinance, Section 2103, would be amended to add a definition of the proposed “accessory apartment permit program”. The existing definition of accessory apartment is included in this amendment for reference but no changes to the definition are recommended. The final regulatory section proposed in the amendment is to create Use and Design standards that would govern the use (Section 4201). The standards are discussed by topic below.

The parameters of both the permit program and the development standards have been drawn from research of programs in other communities around the country. Housing and Neighborhood Services (HNS) staff have conducted this research and provided the attached summary chart which shows that the standards proposed in the Town’s ordinance are common standards.

Pros/Cons of Accessory Apartments

There are pros and cons to adding accessory apartments into single family zoning districts. It is a way to encourage owner occupancy and to make home ownership more affordable. Both of these situations are of ongoing concern in the Town. Accessory apartments also provide options for owners who want to age-in-place but may need family or caregivers to live with them. Accessory apartments are typically affordable and can contribute to the provision of affordable housing in our community. As a university town we do expect that many of the units will be occupied by undergraduate or graduate students, especially apartments in neighborhoods within walking distance to the university campus and downtown. Town Council considered an option put forth for consideration to tie the program to specific community goals and limit the occupants to low and moderate income people earning up to 120% of the area median income, people 55 and older as a means to support aging-in-place, people with disabilities, caregivers supporting older people and people with disabilities and immediate family members. After discussion, Town Council opted to keep the program as flexible and as simple as possible, making the accessory apartment housing available to all. One of the strongest components of the program discussed is the requirement for owner residency. Typically, having the owner live on-site influences renter behavior and helps integrate the unit and its occupants into the neighborhood fabric.

Some of the provisions of the program will be difficult to enforce once a permit is issued. Staff anticipates the same type of difficulties as we currently experience when pursuing investigations of over-occupancy complaints and being able to prove over-occupancy violations. We may have more over-occupancy issues with the creation of accessory apartments. There may also be situations where a unit is created lawfully under the program but then drops out of the program and continues to be rented illegally. There may also be times when an owner represents that they live on-site but do not. Staff anticipates responding to these issues on a complaint driven basis.

Commercialization of residential neighborhood is also a concern. The Zoning Ordinance does allow home occupations by right in all residential zoning districts. A home occupation is the operation of business in the home subject to certain criteria. Allowing accessory apartments will provide another business/revenue opportunity for single family home owners. To limit further commercialization, the accessory apartment permit program would not allow property owners to have an accessory apartment and also operate a homestay. A homestay is the rental of all or a portion of a residential unit for short term occupancy primarily occurring through a web-based platform such as AirBnB, HomeAway or Craigslist. On December 13, 2016 the Town Council adopted regulations for the homestay use which became effective in January. Information on the new homestay use can be found on the Town’s website.

Specific Provisions and Development Standards

The standards included in the draft amendment text reflect the recommendations of staff on pertinent issues such as where the use will be allowed, how the standards in the underlying zoning district apply,

and what development standards specific to the accessory apartment should apply. The standards are discussed by topic below.

Zoning Districts - The amendment proposed would allow one accessory apartment with a single family home in the RR-1, RR-2 or R-4 zoning district. The R-5 district and multi-family districts were not included given the level of density and intensity already allowed by-right in these districts with housing types such as duplexes, apartments, townhomes etc. Accessory apartments could also be requested as part of rezoning to the Planned Residential (PR) district and would be handled as a proposed use along with the other land use types specified in the PR rezoning application. The ZRC recommends including the R-5 district in the program when limited to single family homes in the district. The HCDAB did not concur and recommends the districts as outlined in the staff recommendation.

Non Conforming Lots

The amendment would allow any single family home in a qualifying zoning district that is non-conforming with regard to lot size to have an accessory apartment. The amendment limits the use to existing structures and would not allow additions or expansion to the structure even if the expansion met other district standards such as setbacks or floor area ratio.

The ZRC recommends allowing accessory apartments on non-conforming lots. However, new construction would be allowed. Any new construction would be required to comply with the development standards for the district and could not exacerbate any other existing non-conformity such as non-conforming setbacks, non-conforming lot coverage or non-conforming floor area ratio. The HCDAB concurs with this recommendation.

Owner Residency

As previously noted, the owner must live on-site to qualify for the accessory apartment program. In addition the owner must be in residence nine months of the calendar year. No single absence may be greater than 30 days.

The ZRC and the HCDAB recommend striking the wording that limits an owner absence at any one time to 30 days in a calendar year. This would be more flexible and accommodate the needs in a university community.

The proposed regulations also state that the owner must live in the primary unit. The only exception would be if the homeowner lives in the accessory apartment and family members lived in the primary home. The ZRC and HCDAB recommend eliminating this restriction and allowing more flexibility in the residency of each unit.

Density – Accessory apartments will not count towards the allowed density in the zoning district although the units do meet the definition of a dwelling unit. It is anticipated that the accessory apartment with the limitations proposed, will not have the same level of impact as a full second dwelling unit. This exemption should be specifically called out in the Zoning Ordinance to ensure there is no conflict or ambiguity in how density is calculated.

Occupancy - The occupancy standard will remain as it applies today. The resident(s) in the accessory apartment count in the overall allowed number of individuals. The standard in the RR-1, RR-2 and R-4 district is a family plus two persons unrelated to the family or three unrelated persons. The definition of family is provided below for your information.

FAMILY—One or more persons related by blood, marriage, or adoption, or under approved foster care.

The ZRC recommends allowing a greater number of occupants unrelated to the family occupying the primary structure if the occupants in the accessory apartment are related to each other. The recommendation is to allow a maximum of three persons unrelated to the family instead of the existing two persons, provided the three individuals are related to each other. For example, this would allow a family to occupy the primary structure and rent an accessory apartment to a couple with a baby. There would be three persons living in the accessory apartment that are unrelated to the family but are related to one another.

The HCDAB recommends the occupancy standard as contained in the staff recommendation.

Unit Size - Staff is suggesting that a size limit be included. The proposed limit is 800 square feet which should allow for a very reasonably sized apartment. Staff did not want to limit the size to such a small square footage that accessory apartments would include only efficiency units. The size proposed allows for separate bedrooms and for a larger unit if constructed with wider hallways and facilities to accommodate a disabled resident. The concern of having no size limit is that an accessory apartment should indeed be accessory to the primary home and of smaller size than the primary home. In addition, larger units will invite greater occupancy and potentially exacerbate over-occupancy problems.

Parking – The wording as drafted states that one off-street parking space, on an approved surface, is required for the accessory apartment. This is in addition to the provision of two off-street spaces for the primary home. The spaces for the primary home may be tandem spaces and do not include any space in a garage. On-street parking may not be counted as on-street spaces are available to the general public and not reserved for tenant parking. There are also existing neighborhoods where on and off-street parking is already an issue. The problem should not be exacerbated by creating more parking demand when existing demand cannot be met. The HCDAB concurs with the recommendation to require parking.

The ZRC recommends not requiring any additional parking for the accessory apartment. The ZRC would like to discourage auto use and has concerns about increasing impervious area. If parking is provided, the ZRC recommends that the material should be pervious pavers or porous concrete.

Lot Coverage, Setbacks, Height and Floor Area Ratio - Standards for items such as lot coverage, setbacks height and floor area ratio will be as stated in the underlying zoning district. This ensures that any additions for the purpose of having an accessory apartment do not make the home any larger, taller, or closer to the property line than if the owner were constructing an addition to the primary home for the owner's use and not for rental purposes.

The ZRC recommendation includes correcting an oversight and including lot coverage in the applicable development standards from the underlying zoning district. This has been incorporated into the ordinance text.

The ZRC recommends that accessory apartments have a five foot setback from the property line in the rear and side yards as opposed to the typical 10' setback. The HCDAB recommends retaining the existing setbacks.

The ZRC also had discussion about the need to limit the height of structures closer to the property line. The conversation focused on new construction. After discussion, the ZRC recommends that accessory apartments be limited in height to 10' at the eave of the structure and that an additional one foot of setback be provided for every additional foot of height. In no case shall the accessory apartment exceed the maximum height of structures allowed in the zoning district. To aid in privacy for adjoining

neighbors, the entrance to the apartment may not be located on the property line side of the structure. No patios or decks are allowed on the property line side of the structure. The HCDAB concurred with the ZRC proposal with regard to height.

The ZRC further recommends that if the accessory apartment is detached from the primary structure that it not be considered in the calculation of floor area ratio. The HCDAB recommends the text as written with the FAR considered cumulatively.

Safety Measures - The regulations do require smoke detectors in each room, carbon monoxide detectors when gas heating or appliances are used and an egress window in any sleeping area. These are reasonable basic safety standards. There may be other standards added based on further conversation with the Building Official. The recommendation to add the requirement for carbon monoxide detectors came from the ZRC.

Universal Design Features – One of the goals of the program is to allow for more aging-in-place and for older relatives to be able to move in with family members and retain the independence that comes with a separate living space. Incorporating universal design features in accessory apartments will further this goal. The level of features required is tied to the level of modification or improvements proposed. The requirements are outlined in a chart format. At a minimum, in all cases, the door handles in the apartment must be converted to lever style handles. If unfinished space is being converted to finished space for the apartment then a low or no-step shower must be provided. If new construction is proposed then a wider entryway and hallways must be provided to accommodate anyone who is wheelchair bound. There are exceptions to some of the universal design features which would not be feasible for garage apartments or basement apartments with steps to the entry.

Public Input Meetings

To gather general thoughts from the community towards allowing accessory apartments prior to any ordinance drafting, staff held two public input sessions on Wednesday evening, October 19, 2016 and Sunday afternoon, October 23, 2016. The meetings posed the idea of allowing the use and solicited thoughts on how the use could or should be regulated. There was support for allowing the use and an understanding that some regulation would be needed. There were concerns that too many restrictive standards or regulations would make the use unfeasible. There were differing opinions on specific aspects of regulation such as limiting unit size and requiring parking. There were concerns expressed about undergraduate student occupancy of the apartments and potential neighborhood problems with over occupancy and parking. Notes from the meetings are attached. At the time of these meetings there was no draft text prepared.

A public meeting on the now developed draft text will be held on January 25, 2017 at 7:00 pm to solicit input on the specific regulations proposed. Staff will update the Planning Commission with a sign-in sheet and notes from this meeting.

Zoning Review Committee

The Zoning Review Committee (ZRC) is a sub-committee of the Planning Commission. The group is comprised of Planning Commissioners and citizens. The Committee met on December 5 and December 12, 2016 to review the proposed accessory apartment regulations. A summary of the Committee's recommendations is attached.

Housing and Community Development Advisory Board

The Board met on January 5, 2017 to review the proposed accessory apartment regulations. A summary of the Board's recommendations is attached.

Attachments:

Draft Ordinance Text dated 1-12-17
Summary chart from other jurisdictions
ZRC Recommendations
HCDAB Recommendations
October 2016 Input Meetings Summary Notes