COUNTY OF YORK
MEMORANDUM

DATE: September 4, 2014 (BOS Mtg. 9/16/14)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application No. ZT-153-14, York County Board of Supervisors: Amend Section 24.1-407 – Accessory Apartments

ISSUE

This application, which was sponsored by the Board of Supervisors at its June 17, 2014 meeting, proposes to amend Section 24.1-407 of the Zoning Ordinance to expand the opportunities for accessory apartments to be established as a by-right use, rather than by Special Use Permit, in the RC, RR, R33, R20, and R13 zoning districts.

CONSIDERATIONS

1. The Board's sponsorship of this application is a result of a review of the history of the decisions made on the 34 Special Use Permit applications processed over the past 15 years pertaining to Accessory Apartments. Only two of those applications were denied. Given the consistent pattern and practice of approval, the Board requested that staff prepare a proposal to eliminate the need for SUP approval in the case of some or all future proposals for such uses.

2. *Accessory Apartments* are defined as a separate and complete housekeeping unit providing complete and independent living, sleeping, and sanitation facilities (but not necessarily cooking facilities) with complete sanitation facilities being considered to be a bathroom with a sink, toilet, and a bathtub or shower. The current standards for accessory apartments vary depending on the zoning district, the size of the property, and whether they are within the principal structure or in a separate detached accessory structure. The current accessory apartment approval requirements and procedures, which have been in effect in essentially the same form since 2003, can be summarized as follows:

    - Accessory apartments of up to 600 square feet or 25% of the floor area of the principal dwelling, whichever is less, *and* **attached** to the principal dwelling, are permitted as a matter of right in the RC, RR, R33, R20, and R13 districts;

    - Any **attached** accessory apartment in excess of 600 s.f. /25%, but not exceeding 800 s.f./35%, requires a Special Use Permit, except as noted below;

- On property zoned RC that is at least 5 acres in area, or on property at least 1 acre in area that is zoned RR, **detached** accessory apartments not exceeding 600 square feet or 25% of the principal building floor area, are allowed as a matter of right.;

- On lots/parcels at least **2 times** the district minimum size in the RC, RR or R33 districts (i.e., at least 10 acres in RC, 2 acres in RR, and 66,000 square feet in the R33) or at least **4 times** the district minimum size in the R20 district (i.e., 80,000 s.f. in R20), accessory apartments, either **attached** or **detached**, are permitted as a matter of right up to a maximum size of 800 s.f. or 35%, whichever is less;

- In addition, on properties meeting these district (RC, RR, R33, or R20) and lot area thresholds (2x or 4x the lot size), accessory apartments up to an **absolute maximum** of 1,000 s.f. or 49%, whichever is less, may be authorized by Special Use Permit;

- On properties zoned RC, RR, R33, R20, and R13, but which do not meet the above-noted minimum area thresholds, **detached** accessory apartments not exceeding 800 square feet or 35%, whichever is less, require special use permit authorization.

3. The review of the 34 Special Use Permit applications processed over the past 15 years yielded the following information and observations:

    - Only two of the applications were denied (one due to concern that the applicant's plans misrepresented the actual apartment size, and the other due to concerns about lot size and the after-the-fact nature of the application);

    - Approvals by zoning classification were:
        - RC – 1
        - RR – 21 (11 of those were on properties exceeding one [1] acre)
        - R20 – 7 (4 on properties exceeding 20,000 s.f.)
        - R13 – 2 (both properties were 3 to 4 times the district lot size standard)
        - IL – 1 (nonconforming residence in an Industrial District)

    - The mean apartment size (of those approved) was 662 square feet; the median size was 644 square feet;

    - Seven (7) apartments were approved to exceed the 800 s.f. limit and two (2) of those exceeded 1,000 s.f.; however, those approvals preceded the 2006 adoption of the current absolute upper limit of 1,000 square feet/49%;

4. Key features of the proposed amendments under consideration include:

- Both attached and detached accessory apartments would be permitted as a matter of right provided that they do not exceed 800 square feet or 35% of the floor area of the principal residence, whichever is greater; (*currently, most proposals in excess of 600 square feet or 25%, whichever is less, require Special Use Permit approval unless on lots at least two to four times the district minimum*);

  Subsequent to the Board's sponsorship, and after further scrutiny of the draft language, it was determined that it inadvertently would have allowed, for example, an 800 square foot apartment to be associated with an 800 square foot principal residence, which is inconsistent with the *principal use /accessory use* relationship that is a fundamental ordinance policy. The 15-year history of approvals indicates that in all but two instances the accessory apartment represented 35% or less of the principal residence floor area. Both of those requests still would have been approvable by Special Use Permit under the 49% upper limit provision that is proposed to be maintained in the draft amendments. Therefore, staff and the Planning Commission recommend that the originally sponsored draft language be revised to replace the "*whichever is greater*" clause with "*whichever is* ***less.***" However, to maintain the Board's objective of making more and most accessory apartment cases a by-right situation (based on the history of approvals), switching back to the "whichever is less" provision also necessitates increasing the floor area limit to 1,000 square feet. These proposals are incorporated into the attached proposed Ordinance No. 14-14.

- An upper limit on the matter-of-right floor area would be set at 1,000 square feet; (*currently, the absolute maximum, even by Special Use Permit, is 1,000 square feet*);

- Accessory apartments in excess of the 35% threshold, up to an absolute maximum of 49% of the floor area of the principal residence, could be authorized by the Board by Special Use Permit; (*currently, the absolute upper limit for SUP approvals is set at 1,000 square feet or 49%, whichever is less; adjusting this provision would continue the current opportunity for consideration of proportionally larger apartments, but the absolute upper limit of 1,000 square feet would remain in place*);

- In order to maintain the visual relationship between principal and accessory dwellings (i.e., that accessory structures are incidental/smaller), a provision limiting the lot coverage (footprint) of a detached accessory apartment to no more than 75% of that of the principal residence is proposed. (*This new provision is proposed in order to address any concerns about a detached accessory apartment becoming visually dominant on a property. The highest footprint ratio of the approved detached apartments was approximately 60%, while the average was approximately 41%, so the proposed limit of 75% is more than adequate to accommodate proposals consistent with past*

approvals).

5. It is important to note that even if the approval process for accessory apartments is modified as proposed in this application, the following basic standards, limitations and requirements would remain in place:

- Only one (1) accessory apartment per parcel
- Maximum of one (1) bedroom
- Single-family detached residential appearance must be maintained
- Occupancy only by family members, guests, medical/health caretaker, or domestic employee;
- Rental to general public is prohibited
- Utilities must be registered to principal residence occupant
- Wells / septic systems, if any, must be certified as adequate
- Deed restriction reciting standards must be recorded.

PLANNING COMMISISON RECOMMENDATION

The Planning Commission considered this application at its August 13th meeting and, subsequent to conducting a public hearing at which there were no speakers, voted 6:0 to recommend approval of the proposed amendments shown in the attached proposed Ordinance. As reflected in the Planning Commission meeting minutes, the Commission discussed and recommended two additional modifications to:

- eliminate subsection (e) since it addresses the distinction between "attached" and "detached" apartments, which will not be necessary under the proposed amendments; and

- clarify that for the purposes of the accessory apartment provisions the term "family" means individuals related by "blood, marriage, or adoption" so as to be distinguished from the more liberal definition that allows up to four (4) unrelated individuals to qualify as a "family".

COUNTY ADMINISTRATOR'S RECOMMENDATION

The Planning Commission has consistently recommended approval of the accessory apartment proposals that have come before it for review and on at least one previous occasion the Commission recommended that the Board consider adjustments to the requirements to allow more matter-of-right opportunities. That is the very reason that the Board has sponsored this application for consideration. Approval would set standards that the Commission has deemed to be adequate to accommodate the types of proposals that have been approved in the past while eliminating, for the vast majority cases, the time (approximately 3 months) and costs ($400 application fee) that applicants encounter under the current standards. One consequence, of course, is that it would also eliminate the public hearing opportunity that gives neighbors or other interested parties the opportunity to comment on a proposed accessory apartment. However, it has been rare that that there has been significant opposition to requests for accessory apartment Special Use

Permits.

Given the consistent record of approval for applications over the past 15 years and in the interest of streamlining the process for the majority of applicants, I support the Commission's recommendation for approval of the proposed text amendments as written in proposed Ordinance No. 14-15. I recommend its adoption.

Carter/3337
Attachments:

- Excerpts – Planning Commission Minutes, August 13, 2014.
- Proposed Ordinance No. 14-15.