

COUNTY OF YORK

MEMORANDUM

DATE: June 25, 2014 (PC Mtg. 7/9/14)

TO: York County Planning Commission

FROM: J. Mark Carter, Assistant 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 33 Special Use Permit applications processed over the past 15 years pertaining to Accessory Apartments. Only one of those applications was 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. Accessory apartment approval requirements and procedures 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 33 Special Use Permit applications processed over the past 15 years yielded the following information and observations:
- Only one of the applications was denied (proposed on a 13,500 s.f. R13 cluster subdivision property);
 - 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 amendment sponsored by the Board for 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*);
- 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.

RECOMMENDATION

The 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 appear to be adequate to accommodate the types of proposals that have been deemed acceptable in the past while eliminating the time (3 months, approximately) 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 applicants, staff recommends that the Commission for the proposed text amendments to the Board of Supervisors with a recommendation for approval of the draft language set forth in the attached proposed resolution.

Carter/3337

Attachment:

- Proposed Resolution No. PC14-21

PLANNING COMMISSION
 COUNTY OF YORK
 YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of _____, 2014:

Present

Vote

Mark B. Suiter
 Melissa S. Magowan
 Montgoussaint E. Jons
 Glenn A. Brazelton
 Timothy D. McCulloch
 Todd H. Mathes
 Richard M. Myer, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZT-153-14 TO AMEND SECTION 24.1-407 OF THE YORK COUNTY ZONING ORDINANCE, CHAPTER 24.1 – YORK COUNTY CODE, TO MODIFY THE REQUIREMENTS PERTAINING TO ACCESSORY APARTMENTS TO INCREASE THE BY-RIGHT OPPORTUNITIES FOR THEIR ESTABLISHMENT IN THE RC, RR, R20, AND R13 RESIDENTIAL ZONING DISTRICTS

WHEREAS, based on previous case records, the York County Board of Supervisors has determined that it would be appropriate and consistent with good zoning practice to consider expanding the opportunities for establishment of accessory apartments as a by-right, rather than Special Use Permit, use in conjunction with single-family residences located in the RC, RR, R20, and R13 zoning districts; and

WHEREAS, the Board has sponsored Application No. ZT-153-14 to allow formal consideration of proposed amendments and has forwarded the application to the Planning Commission in accordance with applicable procedures; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has given careful consideration to the public comments with respect to this application; and

WHEREAS, the Commission has determined that the proposed amendments would appropriately expand the by-right opportunities for accessory apartments in a manner consistent with the approvals granted through the Special Use Permit process over the course of the past 15 years;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the ____ day of _____, 2014, that Application No. ZT-153-14 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation for approval of amendments to Section 24.1-407 of the York County Zoning Ordinance, Chapter 24.1-York County Code, as set forth below:

Sec. 24.1-407. Standards for accessory apartments in conjunction with single-family detached dwellings.

- (a) Not more than one (1) accessory apartment may be permitted in conjunction with a single-family detached dwelling.
- (b) Accessory apartments may be considered and authorized in accordance with the following schedule/procedures:

1. Accessory apartments not exceeding ~~800~~ 600 square feet or ~~35%~~ 25% of the floor area of the principal structure, whichever is ~~greater~~ less, and attached to the principal structure (the single-family detached dwelling unit) or in a detached accessory structure, shall be permitted as a matter of right in the RC, RR, R20 and R13 zoning districts provided, however, that no accessory apartment authorized as a matter-of-right shall exceed 1,000 square feet. - Attached accessory apartments in excess of the 600 square feet/25% limitation, but not exceeding 800 square feet or 35% of the floor area of the principal structure, whichever is less, may be authorized by special use permit in the RC, RR, R20 and R13 zoning districts.

~~2. Accessory apartments proposed in detached structures in the RC or RR zoning districts shall be permitted as a matter of right if the subject property meets the following minimum area requirements and the size of the accessory apartment does not exceed the 600 square feet or 25% of the principal structure floor area:~~

District	Minimum Area
RC	5 acres
RR	1 acre

~~In addition, detached accessory apartments may be authorized in the RC, RR, R20, and R13 zoning districts by special use permit up to a maximum floor area limit of 800 square feet or 35% of the principal structure floor area, whichever is less.~~

~~2. Notwithstanding the above limitations, on property in the RC or RR zoning districts which is at least twice as large as the applicable conventional development (i.e., not a "cluster" development) minimum lot size for that district/property, or on property in the R20 zoning district which is at least four times as large, an attached or detached accessory apartment shall be permitted as a matter of right provided that it does not exceed 800 square feet or 35% of the principal structure floor area, whichever is less. and uUpon authorization by special use permit, the maximum size of an accessory apartment, whether attached or detached, on properties meeting the above noted minimum area thresholds may be increased to 1,000 square feet or 49% of the floor area of the principal structure, but in no case shall it be greater than 1,000 square feet whichever is less.~~

3. In no event shall the lot coverage (i.e., footprint) of a detached accessory apartment structure

exceed 75% of the lot coverage of the principal structure.

- (c) Access to an accessory apartment whether in the principal structure or in a detached accessory structure, shall be designed so that the premises continues to have the appearance from the principal street frontage of one single family detached dwelling unit and its customary accessory structures. No new entrance to accommodate an accessory apartment shall be installed on the front façade (facing the street) of an existing or proposed principal structure. The applicant shall be responsible for submitting sketches and/or plans to demonstrate compliance with this condition.
- (d) For the purposes of determining allowable floor area for an accessory apartment, all “habitable space,” as defined and determined under the terms of the Building Code, shall be included in the calculation and shall be considered a part of the apartment. Space which does not meet the “habitable” criteria shall not be counted in floor area calculations for the accessory apartment.
- (e) Notwithstanding the provisions of Section 24.1-273(c) of this chapter, for the purposes of this section, the term “attached” shall be construed to require connection by enclosed, heated, habitable space. Structures which are merely attached by a wall or roof construction, or which are within ten (10) feet of the principal structure shall not be considered “attached.”
- (f) The maximum number of bedrooms in an accessory apartment shall be one (1).
- (g) Adequate provisions shall be made for off-street parking of motor vehicles in such a fashion as to be compatible with the character of the single-family residence and adjacent properties.
- (h) Approval of accessory apartments shall be contingent upon prior certification by the health department that any on-site water supply and sewage treatment facilities are adequate to serve the total number of bedrooms proposed on the property (principal and accessory).
- (i) The accessory apartment shall be occupied only by family members or guests of the occupant of the single-family dwelling or by a bona fide medical/health caretaker or domestic employee of the occupant of the single family dwelling. The apartment shall not be offered to the general public (i.e., non-family members/ non-guests) for rental or other occupancy arrangements.
- (j) All utilities serving the accessory apartment (e.g., electric, water, sewer, gas) shall be registered to the occupant of the principal residence. Registration/billing of utility accounts to different parties (e.g. the occupant of the principal residence and the occupant of the accessory apartment) shall be prohibited, even if separate meters for the principal residence and accessory apartment are used.
- (k) Prior to issuance of a Building Permit for the accessory apartment the property owner shall prepare and record with the Clerk of the Circuit Court, at his expense, a deed restriction on the property stipulating that the accessory apartment will be used, occupied and maintained in accordance with the above-noted restrictions and such others as may be prescribed by the York County Board of Supervisors in approving the special use permit. A copy of any resolution authorizing the accessory apartment shall be attached to the deed restriction as an exhibit. Such restrictions shall not be voided, in whole or in part, unless specifically authorized by the County Administrator in recognition of some subsequent change in the zoning restrictions applicable to accessory apartments or upon removal of the accessory apartment through demolition or alterations to the structure.

(Ord. No. 03-8(R), 3/4/03; Ord. No. 06-20(R), 8/15/06; Ord. No. 08-17(R), 3/17/09; Ord. No. 10-24, 12/21/10)
