



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
December 13, 2016
Agenda Item: **PH-2**

STAFF REPORT

To: Members of the Planning Commission
From: Community Development Department
Subject: Amendments to Chapter 16 (Zoning) of the Tiburon Municipal Code Regarding Secondary (Accessory) Dwelling Units and Junior Accessory Dwelling Units; Town File MCA2016006
Reviewed By: _____

BACKGROUND

The California Legislature passed three bills in 2016 that have substantive effects on the existing regulatory framework for secondary (accessory) dwelling units and upon junior accessory dwelling units. All three bills were signed by the governor. The two bills affecting secondary dwelling units will become effective on January 1, 2017; the bill affecting junior accessory dwelling units went into effect upon its signing by the governor in September. Cities and counties throughout the state are now amending their zoning ordinances in response to the new laws. The general purpose of the legislation was to provide additional opportunities for affordable housing in California.

Secondary Dwelling Units

Prior to July 1, 2003, secondary dwelling unit applications were subject to a conditional use permit process in the Town of Tiburon. The Town approved 39 such units by conditional use permit between 1984 and 2003. After that date, state law required ministerial or non-discretionary review and approval secondary dwelling units, subject to locally-adopted standards that retained a limited level of local discretion as to their content. The Town has ministerially approved eight secondary dwelling units since 2003.

Under the new state laws, secondary dwelling units are now required to be called “accessory dwelling units” (ADU). They were previously referred to as “second units” in state language, and as “secondary dwelling units” in Town regulations, but are also commonly known as granny units, in-law suites, or carriage houses. Such units are defined generally as independent, self-contained dwelling units, which may be attached or detached from a primary unit and may be constructed in single family residential zones and/or in multi-family residential zones subject to local discretion. ADU are strongly encouraged and facilitated by the state and are supported by the Town through General Plan policies.

Junior Accessory Dwelling Units

Junior accessory dwelling units (JADU) are a recent phenomenon adopted by relatively few jurisdictions in California thus far. Tiburon and Novato were at the forefront in Marin County, having adopted JADU ordinances in early 2015. To date, no applications for a JADU have been filed in Tiburon. Certain elements of the state legislation are intended to remove some of the obstacles to creation of JADUs that were posed by special district and utility provider requirements, including fire sprinklers throughout the entire residence, separate utility meters, and utility connection fees that can no longer be required in most instances.

ANALYSIS

Overview

Assembly Bill 2299 and Senate Bill 1069 regarding accessory dwelling units were coordinated to contain nearly identical provisions in the event one or the other did not become law. Assembly Bill 2406 authorized adoption by local agencies of a permit process for junior accessory dwelling units and specified the regulatory scope of any such ordinance. Due to the complex nature of the legislation, extensive consultation with the Town Attorney was required during the preparation of the proposed amendments.

Secondary Dwelling Units

The state legislation requires substantive revisions to the Town's regulations governing secondary dwelling units, including new or modified definitions and clarifications of appeal procedures and time lines for action. However, a virtually complete re-write of the Town Council-adopted "standards" used in the review of these applications is required. The Commission should note that the Town is proposing adoption of these revised standards by "resolution"; the method by which they were originally adopted. The state law suggests that the standards be adopted by ordinance, which would then require a lengthy and cumbersome amendment process. Given the propensity of the state to frequently modify accessory unit laws, and the strong likelihood that subsequent state legislation will be required to clarify ambiguous provisions contained in the new state laws, Town Staff believes adoption of the standards by resolution is a superior approach and poses little risk provided that the adopted standards are in compliance with the statutes.

Junior Accessory Dwelling Unit Regulations

Assembly Bill 2406 was based on the same general model used to create the Town's ordinance in 2015 and relatively few changes are needed to the ordinance provisions. Modest revisions are required to the "standards" used in the ministerial review of applications. These include appeal provisions that have been clarified and a time limit imposed for action on JADU applications to match that contained in state law. A process for sending "courtesy notices" of a pending JADU application to nearby property owners has also been added, although such notices are not required by state law and the decision on an application must be ministerial and not discretionary in nature.

Changes to State Law

The following is a summary of the changes to local regulation required under the new state laws.

Secondary (Accessory) Dwelling Units

- Newly-created “Secondary Dwelling Units” must be referred to as “Accessory Dwelling Units” going forward.
- No minimum lot size restriction may be imposed.
- The statute appears to restrict local government regulation of ADU square footage in the ADU standards themselves within specified limits, but allows for local regulation through other discretionary permits (e.g., design review) in instances other than the simple conversion of existing floor space to an ADU. Where additions or new floor area are proposed for an ADU, the Town will apply typical zoning parameters such as height limits, floor area ratio limits, lot coverage limits, minimum setbacks, and the general principles of site plan and architectural review to prevent or ameliorate unreasonable adverse effects that might be caused by construction of additions. However, the Town would have very limited ability to regulate the subsequent conversion of such floor space to an ADU once it is built.
- Either the ADU or the primary unit can still be required to be owner-occupied, although exemptions have been created for units owned by a governmental agency, a land trust, or a housing organization.
- The Town may continue to prohibit rental of ADUs for periods of less than 30 days, in other words as “short term” rentals.
- Local standards regulating the conversion of existing floor space in a single family home or an existing detached accessory building into an ADU are narrowly circumscribed; for instance, no parking can be required for the ADU in such instances. Local agencies retain some latitude (in the form of standards) over accessory dwelling units that require new construction or additions to existing single family dwellings, but less latitude than under the prior state laws.
- Local agencies are now prohibited from imposing parking standards on ADU that are:
 - Located within one-half mile of public transit;
 - Located within an architecturally and historically significant district;
 - In part of an existing primary residence or in an existing detached accessory structure (with no expansion of exterior walls);
 - In areas where parking permits are required but are not offered to the ADU occupant;
 - Within one block of a car sharing vehicle.
- Some of the most substantive changes in the state law have implications for building, fire and utilities that are not necessarily reflected in the proposed zoning amendments, but will be addressed by the applicable Town Departments as appropriate. These changes are summarized below:
 - ADU shall not be required to provide fire sprinklers if they are not required for the primary residence.
 - ADU shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.
 - For ADU created within an existing structure, a local agency shall not require the applicant to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge.
 - For ADU created through the addition of new floor area, a local agency may require a new or separate utility connection directly between the ADU and the utility.

Junior Accessory Dwelling Units

As the state did not previously regulate JADUs, there is no basis to compare changes in state law. To summarize, the Town may:

- Limit JADUs to a single family dwelling located in a single family zone.
- Require owner occupancy of the lot on which the JADU is located, unless the lot is owned by a governmental agency, a land trust, or a housing organization.
- Require the utilization of a pre-existing bedroom and require that the unit be located within the existing walls of the primary residence.
- Require that the existing residence complies with current parking standards (no new parking must be created or provided for the JADU itself).
- Require deed restrictions to be recorded that also bind future owners.
- Continue to prohibit rental of ADUs for periods of less than 30 days, in other words as short-term rentals.

Specific Town Documents Requiring Amendment

The Town documents requiring amendment are:

1. Various sections of the Zoning Ordinance (Chapter 16 of the Municipal Code), including definitions, regulations governing secondary dwelling units and junior accessory dwelling units, tables and other miscellaneous sections referencing secondary dwelling units (due to the required name change to “accessory dwelling unit”). State law requires that the Planning Commission hold a public hearing and make its recommendations to the Town Council on these proposed amendments.
2. The Town Council resolutions establishing “standards” for review and approval of secondary dwelling units and junior accessory dwelling units. Due to the nature of the new state laws, there will now be two separate sets of standards for ADU. The first will govern ADUs where new construction or additions are involved; the second will govern exclusive conversion of existing floor space. The latter will have far fewer standards as dictated by state law. State law does not require a public hearing or formal Planning Commission recommendation on the adoption of the “standards”; although it is long-standing Town practice and tradition to do so and is therefore part of this business item.

Accordingly, the Planning Commission recommendations are set forth in separate resolutions (**Exhibit 1 and Exhibit 2**) covering these two areas of recommendation.

State Government Code sections setting forth the text of the new laws are attached as **Exhibits 3 and 4** for accessory dwelling units and junior accessory dwelling units, respectively.

Redline documents depicting the extensive revisions required to existing Town definitions, regulations, and standards are attached as **Exhibits 5, 6, and 7**.

ENVIRONMENTAL DETERMINATION

The proposed amendments to the zoning ordinance and to the accompanying standards are statutorily exempt from further review under the California Environmental Quality Act (CEQA) pursuant to Section 15282, subsection (h) of the CEQA Guidelines.

RECOMMENDATION

Staff recommends that the Planning Commission:

- 1) Hold a public hearing and consider all testimony.
- 2) Make any revisions as appropriate.
- 3) Move to adopt the attached resolution recommending approval to the Town Council of various zoning text amendments.
- 4) Move to adopt the attached resolution recommending adoption of revised “standards” for accessory dwelling units and junior accessory dwelling units to the Town Council.

EXHIBITS

1. Draft resolution recommending zoning text amendments to the Town Council.
2. Draft resolution recommending revised standards to the Town Council.
3. Government Code Section 65852.2 governing ADU.
4. Government Code Section 65852.22 governing JADU.
5. Redline showing proposed revisions to zoning definitions related to ADU and JADU.
6. Redline showing proposed revisions to ADU regulations and standards.
7. Redline showing proposed revisions to JADU regulations and standards.

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