County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING
File #: 19-227

Board Meeting Date: 3/26/2019

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: An ordinance amending the County's Second Unit Regulations, Chapter 22.5 of the Zoning Regulations, to comply with State law, improve consistency and clarity, and further facilitate production of second units
County File Number: PLN 2019-00003

RECOMMENDATION:

Adopt an ordinance amending the County's Second Unit Regulations, Chapter 22.5 of the Zoning Regulations, to comply with State law, improve consistency and clarity, and further facilitate production of second units, previously introduced at the Planning Commission on February 13, 2019, and waiving the reading of the ordinance in its entirety.

BACKGROUND:

In 2017, the Planning Commission recommended, and the Board of Supervisors adopted, a comprehensive update to the County's Second Unit Regulations (Chapter 22.5 of the Zoning Regulations). The update was intended to bring the County's regulations into compliance with State law, and, consistent with the State's mandate, to facilitate production of second units in unincorporated San Mateo County.

Since adoption of the updated regulations, there have been additional changes to State law, and implementation of the new regulations has also highlighted a number of issues:

- At the time of adoption, the revised regulations included a number of State-mandated standards that were ambiguous. The State has since promulgated guidance that clarifies a number of these issues, allowing staff to propose additional changes or refinements to the regulations that better address the State's intent, and in some cases restore a degree of County discretion.

- The 2017 update incorporated regulations that, as written, proved problematic, or were difficult to implement as intended in specific situations.

- Application of the regulations has revealed some conflicts between the new standards and other parts of the zoning code.

- There were some errors or ambiguities in the language of the 2017 regulations that made them difficult to interpret and apply, both for applicants and staff.

- Since 2017, the State legislature has adopted additional changes to State law, which must be adopted by the County to keep the County's Zoning Regulations consistent with State law.

The proposed updates address these issues, and increase clarity and ease of implementation to further facilitate the production of second units in the unincorporated County.

The County Planning Commission considered the proposed updates on February 13, 2019, and voted unanimously to recommend that the Board of Supervisors adopt the proposed amendments.

DISCUSSION:

Proposed Amendments. Each of the proposed changes included in the attached ordinance is discussed below. Underlining and strike-through in the quoted excerpts indicates new or modified language.

1. "Any secondary structure that provides independent facilities for living, sleeping, eating, cooking, and sanitation may be considered a second unit, at the discretion of the Community Development Director, unless an applicant can provide compelling evidence to the contrary to the satisfaction of the Community Development Director."

   In the 2017 updates, this provision was intended to provide guidance in cases where it was unclear if a proposed unit was genuinely intended for use as second unit, and therefore eligible for the relief available to second units. However, the prior language was more proscriptive than intended, and has been modified to allow more discretion on the part of the director.

2. "For purposes of this Chapter, the "floor area" of a ~~primary residence or~~ second unit is the area of each floor level included within the walls enclosing each dwelling unit."

   This section has been modified to clarify that the calculation of floor area for a primary residence should be made in the manner described in the relevant zoning district.

3. "Second units shall be allowed in R-3 Districts outside the Coastal Zone subject to the following conditions:

   a. The R-3 zoned parcel on which the second unit is proposed is vacant, or contains no more than a single existing primary residence or duplex; and

   b. The regulations of the associated zoning combining district preclude development of three or more residential units on the parcel, not including a second unit."

The updated 2017 regulations, like prior versions of the regulations, allowed second units only in single-family and duplex zoning districts (R-1, R-2). However, a State law adopted in 2018 requires local jurisdictions to allow second units on parcels zoned for "single-family or multifamily use and includes a proposed or existing single-family residence." (Government Code Section 65852.2(a)(1)(D)(ii)). It is unclear how broad this requirement is intended to be, and the State has not yet promulgated additional guidance. This proposed amendment extends the areas in which second units are allowed to only those R-3 zoned parcels which, because of a combination of lot size, lot configuration, and other constraints posed by zoning and overlay standards, are effectively single-family parcels that cannot be built at densities greater than one unit. The intent of this change is to allow second units on these parcels only, when no other densification of the parcel is feasible. Staff will continue to monitor the State's interpretation of this provision, and may propose subsequent amendments if needed.

"Per Section 3.22 of the County's Local Coastal Program, second units are not allowed on non-conforming R-1 parcels of less than 5,000 square feet within the Coastal Zone."

The reference to Section 3.22 of the LCP is a reiteration of the County's existing regulations, included to ensure that applicants are aware of the distinct Coastal Zone standards related to the permissible location of second units.

4. "Front Setbacks. With the exception of second units created within an existing garage, which shall remain governed by the provisions of 6429.3.(e) regardless of location, for all second units regardless of height, the second unit may be located no closer to the front property line of the subject parcel than the lesser of:

    - the setback required by the relevant zoning district, or
    - the distance from the front property line of the primary residence located or proposed to be located on that parcel.

    "In cases where an existing primary residence may be closer to the front property line than the front setback normally required in the same district, the second unit shall also be allowed to be located as close to the front property line as the primary residence."

    This amendment clarifies that while second units built in front of the primary residence must meet the front setbacks of the zoning district, in the case that the primary residence has a non-conforming front setback, the second unit may have an equivalent non-conforming setback. This is existing County policy, but was not previously explicitly provided for in the Zoning Regulations.

5. "For purposes of this Section, this shall include second units constructed within the building envelope of a garage partially or fully demolished or converted in order to create a second unit."

    This provision clarifies that "construction" of a second unit within a garage may include either conversion, or demolition and rebuilding of the garage.

6. "Second units constructed above an existing garage, regardless of height, shall be subject to the setbacks in 6429.3(b)."

This change clarifies the requirements of State law regarding setbacks for second units built above garages.

7. "The distance required between a detached second unit and any other residential structure on the same parcel must be a minimum of five (5) feet."

   This amendment clarifies that the intent of the five-foot separation requirement is to ensure distance between residential structures.

8. "The floor area of a detached second unit shall not exceed seven hundred fifty (750) square feet or thirty-five percent (35%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand five hundred (1,500) square feet. The floor area of the primary residence shall be calculated in the manner described in the relevant base or overlay district Zoning Regulations.

   "The floor area of a detached second unit shall count against the total floor area allowed on a parcel, such that the total floor area of the second unit in combination with the square footage of the primary residence and other structures on or proposed to be on the parcel shall not exceed the maximum floor area allowed within the zoning district."

   b. Floor Area of Attached Second Units. The floor area of an attached second unit shall not exceed seven hundred fifty (750) square feet or fifty percent (50%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand five hundred (1,500) square feet. The floor area of the primary residence shall be calculated in the manner described in the relevant base or overlay district Zoning Regulations.

      "With the exception of second units built entirely within an existing structure, as described in 6429.4(c), below, the floor area of an attached second unit shall count against the total floor area allowed on a parcel, such that the total floor area of the second unit in combination with the square footage of the primary residence and other structures on or proposed to be on the parcel shall not exceed the maximum floor area allowed within the zoning district."

   The prior, 2017 amendment to the Second Unit regulations incorporated the State's standards, which specified that jurisdictions must allow a maximum floor area of 1,200 square feet. However, it was unclear whether jurisdictions could also allow second units of sizes greater than 1,200 square feet. Subsequent State guidance clarified that while jurisdictions may not adopt more restrictive standards than the State, they may adopt "less restrictive standards […] that promote ADUs, such as […] less restrictive unit sizes" (California Department of Housing and Community Development, Accessory Dwelling Unit Memorandum, December 2016). This amendment revises the County's regulations to provide for a maximum second unit size of 1,500 sq. ft., the maximum size that had long been included in the County's regulations prior to the 2017 update.

   This section also clarifies that while there is a specific method of calculating floor area for second units, defined in the Second Unit Regulations, the method for calculating floor area for the primary residence remains that defined in the relevant zoning standards for the district.

9. "Floor Area of Internal Second Units. Second units built entirely within an existing primary

residence or accessory structure, including existing attached garages, shall not count as additional floor area for purposes of calculating the total floor area allowed on a parcel, regardless of the limitations of the base or overlay zoning district."

This section exempts second units constructed entirely within an existing structure from counting as additional or new floor area of the primary residence, although it does not remove this floor area if it was already counted against floor area allowed on the parcel. This meets the intent of the prior update, which did not explicitly address how the floor area of second units constructed within an existing structure should be assessed.

10. "However, should the base or overlay Zoning Regulations applicable to the parcel establish lot coverage limitations that vary based on the characteristics of existing or proposed development or the characteristics of the parcel, the second unit, independently or in combination with the square footage of the primary residence and other structures on or proposed to be on the parcel, shall be subject only to the least restrictive lot coverage limitation in the applicable district.

"The least restrictive lot coverage calculation shall apply to the second unit regardless of the characteristics of the second unit, the subject parcel, and/or the primary residence which might otherwise trigger more restrictive lot coverage standards.

"This limitation applies only to the second unit, and does not provide an exemption or relaxation of any standards applying to the primary residence or any other structures. Any subsequent proposed conversion of the second unit to any other type of development shall also remain subject to the lot coverage standards that would normally apply in the relevant zoning district."

This section ensures that in the case where there are multiple possible lot coverage standards in a given zoning district, the creation of a second unit in and of itself does not trigger more stringent standards.

11. Second units built entirely within an existing building shall be subject to the greater of the height limit applicable to that building in the relevant district, or the maximum height of the existing primary residence, measured in the manner described in the Zoning Regulations of the relevant district."

This provision ensures that second units are subject to the greater of the height allowed in the relevant district, or the height of the existing primary residence.

12. "Daylight Plane. Neither second units built above an existing detached or attached garage or accessory structure, nor detached second units taller than sixteen (16) feet in height, shall be subject to daylight plane requirements."

This amendment exempts second units from the daylight plane requirements that exist in some zoning districts, in order to allow, consistent with State law, the construction of second units above existing structures.

13. "[E]xcept in the case that clearance and/or landing requirements preclude door placement on the side or rear of the parcel, in which case the required entrance may face the front of the parcel."

This provision clarifies that there are some situations in which it is infeasible to place second unit doorways facing the side or rear of the parcel, and in such cases only, front placement is allowed.

14. "Ingress and Egress for Attached Second Units. Attached second units having a connecting doorway or other permanent ingress or egress between the primary residence and the second unit must ensure that such doorway is independently securable from within the second unit, and must obtain a use permit in the manner described in Section 6431."

    This provision adds a requirement that any attached second unit that has an internal doorway connecting the second unit to the primary residence must make that doorway independently securable from within the second unit, and must obtain a conditional use permit.

15. "[S]hall not be required to provide any parking in addition to the parking required for the primary residence only:"

    This provision clarifies that, per State law, second units meeting the specified criteria shall not be required to provide additional parking, but that a new primary residence proposed concurrent with a second unit is still required to provide the normally required parking for that primary residence.

16. "[M]easured as a direct line from the transit stop. Public transit stops must be served by a transit line serving the public, and not solely by specialized, private, or limited population services such as school buses, privately run shuttles, or other services that cannot be used by all public riders."

    This clarifies how to calculate distance from a transit stop, consistent with the apparent intent of State law. This amendment also clarifies that second units in proximity to *non-public* transit stops are not eligible for parking exceptions.

17. "Including attached or detached garages."

    This clarifies that, consistent with the County's zoning definitions, attached and detached garages are considered accessory structures.

18. "Required parking. One (1) new parking space, in addition to those already existing on the parcel, shall be provided on-site for each new attached or detached second unit."

    State law adopted in 2018 provides that parking requirements for second units "shall not exceed one parking space per unit or per bedroom, whichever is less" (Government Code Section 65852.2(a)(1)(D)(x).) State guidance and staff interpret this provision to effectively mean only one space may be required per second unit.

19. "For purposes of this Section, conversion includes partial or full demolition of covered parking required to create a second unit."

    This provision clarifies that, as indicated Section 6429.3.e., demolition and rebuilding of covered parking are considered conversion.

20. "Garage conversion. If an existing attached or detached garage is converted to a second unit, the parking previously provided by that garage may be replaced by uncovered parking of any type and configuration allowed by Section 6429.11(c), below, and no additional parking related to the second unit is required. For purposes of this Section, conversion includes partial or full demolition of the garage and partial or full replacement with a second unit."

    This clarifies that, per State law, any parking removed by conversion of a garage may be replaced as uncovered parking, and in accordance with State law adopted in 2018, the space may be in the front setback, in tandem, in any configuration on the lot, and may receive the various other relief described in the regulations.

21. "Existing impervious surface area may be used for parking and need not be converted to pervious surface."

    This clarifies that while new parking created for a second unit must be pervious, the reuse of existing impervious surface is allowed.

22. "For parking provided in accordance with the provisions of this Chapter, a parking exception shall not be required."

    This section clarifies that the various types of parking relief offered by Chapter 22.5 do not require the granting of a parking exception.

23. "Second units located in scenic corridors outside the County's Coastal Zone are not subject to architectural review. In the Coastal Zone, such units shall be subject to architectural review as normally required."

    This section clarifies that, per State law, second units are not subject to architectural review, except in the Coastal Zone, where the California Coastal Act generally supersedes the State law regarding second units. (See Government Code Section 65852.2(j)).

24. "Second units constructed within or above an existing, detached accessory building that conforms to all applicable provisions of this Chapter shall not be required to obtain a use permit, regardless of the requirements of the applicable district."

    This provision clarifies that, while there are specific standards in some zoning districts that require a use permit for any detached accessory structure, second units are exempt from those use permit requirements. Similarly, some zoning districts have specific regulations regarding permitting of, conversion of, or construction above garages, and second units are also exempt from those requirements.

25. "In the case of second units within the Coastal Zone which are proposed in conjunction with other development that is required to be reviewed by the Planning Commission, the conditional use permit will be reviewed and granted by the Planning Commission only, and shall not be appealable. The Planning Commission's review may not consider issues related to design review."

    This provision clarifies that conditional use permits for second units in the Coastal Zone may be granted by the Planning Commission, although subjective design standards may not be considered.

26. "Second units requiring a conditional use permit which are within the CD District may require a Coastal Development Permit that may be appealable to the Coastal Commission."

This provision clarifies that second units in certain areas of the Coastal Zone are appealable to the Coastal Commission.

27. "In the event the creation or legalization of a second unit creates conflicts with standards specific to the base or overlay zoning of the parcel, or other standards for which specific exceptions are not provided in this Chapter, those conflicts must be addressed by whatever relief, if any, and through whatever procedures, are normally required by the regulations in which those standards are contained."

This provision clarifies that the conditional use permit process described in Section 6431 applies only to the specific standards and forms of relief contained in the Second Unit Regulations, and any other exceptions must be addressed in the manner described in other relevant regulations.

28. "Home Improvement Exceptions. For second units that may be allowed contingent on approval of a Home Improvement Exception, as described in Section 6531, second units are exempt from the requirements of Section 6531 that:

- *the improvement may not result in the creation of a new story.* Second units permitted contingent on an HIE may result in creation of a new story.
- *at least 75% of the existing exterior walls (in linear feet) will remain*. Second units may be permitted contingent on an HIE regardless of the percent of linear feet of existing walls remaining.
- *at least 50% of the existing roof (in square feet) will remain.* Second units may be permitted contingent on an HIE regardless of the percent of existing roof remaining.
- *the addition will be located at least three feet from a property line.* In the case of second units located within an existing garage, as described in 6429.3(e) second units may be permitted contingent on an HIE regardless of setbacks.
- *the existing structure is located in an area with an average slope of less than 20%.* Second units may be permitted contingent on an HIE regardless of the average slope.

"These exceptions to HIE standards are applicable only to the second unit, not to the primary residence or any other development on the subject parcel.

"Home Improvement Exceptions may not be used to allow a second unit of greater floor area than that allowed by Section 6429.4."

This section allows second units apply for a Home Improvement Exception (HIE), and modifies

some standards that would normally apply to an HIE for a primary residence. The normal HIE considerations and processes for review and approval would otherwise still apply.

29. "Except for units that are within the Coastal Zone's Appeals Jurisdiction and/or that require a Coastal Development Permit, no public notice or public hearing shall be required for review and approval or denial of a second unit, unless an applicant requests exceptions to the standards set forth in this Chapter. In the case of units that are within the Coastal Zone's Appeals Jurisdiction, and/or require a Coastal Development permit, all required public notice will be provided."

    This provision clarifies that, while State law typically prohibits public noticing and public hearing requirements for second units, they may still apply in areas of the Coastal Zone.

ENVIRONMENTAL REVIEW

Per CEQA Section 21080.17 and CEQA Guidelines Section 15282(h), adoption of ordinances relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

The adopting ordinance has been reviewed and approved by County Counsel as to form.

Approval of this agreement contributes to the Shared Vision 2025 of a Livable Community by increasing housing availability and affordability with minimal impact on existing neighborhoods.

FISCAL IMPACT:
There is no fiscal impact to the County from adoption of the proposed amendments to the County's Second Unit Regulations.

ATTACHMENTS:
A. Amended Second Unit Regulations: markup