

ATTACHMENT 17: 03-15-2017 MONTECITO PLANNING COMMISSION STAFF REPORT

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SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION
Accessory Dwelling Unit Ordinance Amendment

Hearing Date: March 22, 2017

Assistant Director: Dianne Black

Staff Report Date: March 15, 2017

Staff Contact: Noel Langle

Case Nos. 16ORD-00000-00015 & 16ORD-00000-00016

Phone No.: (805) 568-2067

Environmental Document:

Montecito LUDC - CEQA Guidelines Section 15282(h)

Article II CZO - CEQA Guidelines Sections 15265 and 15282(h)

1.0 REQUEST

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission:

- 1.1 Case No. 16ORD-00000-00015.** Adopt a recommendation to the Board of Supervisors that Board of Supervisors adopt an ordinance (Case No. 16ORD-00000-00015) amending Division 35.2, Montecito Zones and Allowable Land Uses, Division 35.3, Montecito Site Planning and Other Project Standards, Division 35.4, Montecito Standards for Specific Land Uses, Division 35.6, Montecito Site Development Regulations, Division 35.7, Montecito Planning Permit Procedures, Division 35.9, Montecito Land Use and Development Code Administration, and Division 35.10, Glossary, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment C; and
- 1.2 Case No. 16ORD-00000-00016.** Adopt a recommendation to the County Planning Commission that it recommend to the Board of Supervisors that Board of Supervisors adopt an ordinance (Case No. 16ORD-00000-00016) amending Division 2, Definitions, Division 4, Zoning Districts, Division 7, General Regulations, Division 11, Permit Procedures, Division 12, Administration, Division 13, Summerland Community Plan Overlay, and Division 16, Toro Canyon Plan (TCP) Overlay District, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment F.

The proposed ordinance amendments revise existing development standards and permit procedures in order to implement recent State legislation regarding accessory dwelling units (currently referred to as “residential second units” in the zoning ordinances). The proposed amendment to the Montecito Land Use and Development Code also deletes language that only applies within the Coastal Zone.

2.0 RECOMMENDATION AND PROCEDURES

- 2.1 Case No. 16ORD-00000-00015.** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 16ORD-00000-00015 as shown in Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:
 1. Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment A);

2. Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15282(h) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the Board of Supervisors approve Case No. 16ORD-00000-00015, an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

2.2 Case No. 16ORD-00000-00016. Follow the procedures outlined below and recommend to the County Planning Commission that they recommend to the Board of Supervisors that the Board approve Case No. 16ORD-00000-00016 as shown in Attachment F based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend to the County Planning Commission that the County Planning Commission make the findings for approval and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment D);
2. Recommend to the County Planning Commission that the County Planning Commission recommend to the Board of Supervisors that the Board of Supervisors determine that the adoption of this ordinance is statutorily exempt from the California Environmental Quality Act pursuant to Sections Section 15282(h) and 15265 of the Guidelines for Implementation of CEQA (Attachment E); and,
3. Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors approve Case No. 16ORD-00000-00016, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment F).

Please refer the matter to staff if your Commission takes other than the recommended action for the development of appropriate materials.

3.0 JURISDICTION

- 3.1 Case No. 16ORD-00000-00015.** This project is being considered by the Montecito Planning Commission based upon Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.494 of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC). The Government Code and the Montecito LUDC require that the Montecito Planning Commission, as the designated planning agency for the unincorporated area of the County within the Montecito Community Plan Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.
- 3.2 Case No. 16ORD-00000-00016.** This project is being considered by the Montecito Planning Commission in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code. Section 2-25.2 provides that the Montecito Planning Commission may make recommendations to the County Planning Commission on text amendments to the Article II Coastal Zoning Ordinance (Article II) of Chapter 35 of the County Code that will affect land use decisions within the Coastal Zone portion of the Montecito Planning Area.

4.0 BACKGROUND

In 2016 the State legislature enacted two bills (Assembly Bill 2299 and Senate Bill 1069) to streamline the process for property owners that want to add an accessory dwelling unit (ADU) on their residentially-zoned property in addition to an existing primary dwelling by either (1) converting floor area within existing structures, (2) adding floor area to existing structures, or (3) building a new structure. These bills, which became effective on January 1, 2017, revised the language of Government Code Section 65852.2 that provides the regulations regarding the development of ADUs. The revisions included adding development standards that local jurisdictions must use in reviewing applications for ADUs that are accessory to existing single-family dwellings on residentially-zoned lots. See Attachment G for the text of Section 65852.2.

Section 65852.2 also provides that local regulations that are not in compliance with the Section as revised are null and void as of January 1, 2017, and that a local jurisdiction may either amend their existing regulations in a manner that conforms to the new requirements, or choose to not amend their existing regulations and instead simply approve applications for ADUs if the proposed development conforms to the requirements of Section 65852.2. Since the County's adopted regulations are inconsistent with Section 65852.2, they became null and void as of January 1, 2017. Therefore, the Planning and Development Department is proposing to amend the County's zoning ordinances in a manner that conforms to the limitations of Section 65852.2.

A summary of the proposed changes to County's existing regulations that are required to implement Section 65852.2 is provided below in Section 5.0 (Project Description and Analysis).

5.0 PROJECT DESCRIPTION AND ANALYSIS

5.1 Executive Summary.

ADUs provide complete, independent living facilities for one or more persons that include permanent provisions for cooking, eating, living, sanitation, and sleeping. ADUs may either be an attached ADU which is attached to the principal dwelling, or a detached ADU that is located in a separate accessory structure. As required by Government Code Section 65852.2, an ADU:

- Shall be deemed to be an accessory use or an accessory building.
- Shall not be considered to exceed the allowable density for the lot that it is located on.
- Is considered a residential use that is consistent with the existing Comprehensive Plan and zoning designation for the lot that it is located on.
- May not be considered in the application of any local ordinance, policy, or program to limit residential growth (e.g., the Montecito Growth Management Ordinance).

ADUs are currently referred to as residential second units in the County's zoning ordinances. Section 35.442.160 (Residential Second Units) of the Montecito Land Use and Development Code, and Section 35-142 (Residential Second Units) of the Article II Coastal Zoning Ordinance, provide the existing regulations that apply to ADUs located in the Montecito Community Plan area. Within the Montecito Community Plan area, ADUs are currently only allowed in the R-1/E-1 (One-Family Residential) zone, and the AG-I-5 (AG-I, five acre minimum lot area) zone (Coastal Zone only). State law requires that applications for ADUs located in residential zones shall be approved through a ministerial process (e.g., a Land Use Permit) provided the proposed project complies with applicable development standards.

Review by the Montecito Board of Architectural Review (MBAR) is not required; however, the existing procedure does require review by the Chair of the MBAR or designee.

The primary impact of the revisions to Section 65852.2 is on applications for ADUs that are accessory to an existing dwelling located in residential zones as Section 65852.2 restricts the scope of development standards that a local jurisdiction may use in determining whether to approve or deny an application for an ADU. These development standards are different depending on whether the ADU would be located (1) entirely within an existing one-family dwelling or accessory structure located on a lot zoned for one-family residential use, or (2) partially within or attached to an existing one-family dwelling or existing accessory structure, or within a proposed new accessory structure, located on a lot zoned for residential use. Section 65852.2 does allow local jurisdictions greater latitude in applying development standards when the ADU would either not be accessory to an existing residential use on a residentially-zoned or would be located on a lot that is not zoned residential.

Therefore, the amendments propose to:

- Delete existing Montecito Land Use and Development Code (Montecito LUDC) Section 35.442.160 (Residential Second Units) and replace it with a new Section 35.442.015 titled “Accessory Dwelling Units,”
- Revise existing Article II Coastal Zoning Ordinance (Article II) Section 35-142 (Residential Second Units) to re-title it as “Accessory Dwelling Units,”
- Revise the development standards in both the Montecito LUDC and Article II that apply to ADUs that are accessory to existing dwellings located in residential zones to be consistent with Section 65852.2,
- Generally maintain the existing development standards for applications for ADUs that are either not accessory to existing dwellings or are located on a lot zoned AG-I-5,
- Add new definitions and revise existing definitions regarding ADU, and
- Revise various sections of the Montecito LUDC and Article II to provide internal consistency within the zoning ordinances with the new regulations that apply to ADUs (e.g., location within setbacks, provision of additional parking) including replacing the term “residential second units” with “accessory dwelling units.”

The complete texts of the ordinance amendments are contained in Exhibit 1 of Attachment C (Montecito LUDC) and Exhibit 1 of Attachment F (Article II Coastal Zoning Ordinance). Proposed deletions are shown by striking through the text and proposed additions are underlined. The use of an ellipsis (...) indicates that sections where the text is unchanged have been omitted for the sake of brevity. The Montecito LUDC ordinance amendment also includes the deletion of standards and references that only apply within the Coastal Zone or merely distinguish between coastal and non-coastal requirements since Article II continues to be the implementing ordinance of the County’s certified Local Coastal Program.

5.2 Comparison of existing versus proposed development standards.

The following provides a summary of the major changes to the existing development standards that apply within the Montecito Community Plan area that are required to be consistent with Section 65852.2 in regards to the restrictions that may be applied to ADUs that are accessory to existing dwellings located on residentially zoned lots. As mentioned above, the proposed ordinance amendments generally maintain the existing development standards that apply to ADUs that are either not accessory to existing dwellings or are located on a lot zoned AG-I-5; however these amendments propose to revise these development standards in order to provide greater clarity and be better

organized. Attachment H provides a comprehensive comparison of the existing and proposed development standards that would apply to applications for ADUs located within the Montecito Community Plan area that are accessory to existing dwellings on lots zoned residential.

Lot area requirements.

Existing: An attached ADU may only be located on a lot that has a minimum area of 7,000 square feet (6,000 if lot was legally created before June 2, 1966); a detached ADU may only be located on a lot that has a minimum area of five acres.

Proposed: The existing standards for attached and detached ADUs are proposed to be deleted since Section 65852.2 does not include minimum lot area requirements in the allowable restrictions.

Floor area limits.

Existing: The floor area of an ADU is restricted based on the size of the lot as shown below:

Type of Accessory Dwelling Unit	Lot Area (unless specified = net lot area)	Maximum Accessory Dwelling Unit Gross Floor Area
Attached	6,000 - 9,999 square feet	400 square feet
	10,000 - 19,999 square feet	600 square feet
	20,000 square feet - 1 acre	800 square feet
	Over 1 acre	1,000 square feet
Detached	5 acres (gross) or greater	1,000 square feet

Proposed: The proposed ordinance amendments delete the existing maximum floor area restrictions and replace them with the following in order to comply with Section 65852.2:

- Attached ADU - Not to exceed 50 percent of the existing legal living area of the principal dwelling at the time of application for the ADU to a maximum of 1,200 square feet.
- Detached ADU - 1,200 square feet.

Parking requirements.

Existing: One additional parking space shall be provided for each sleeping room in the ADU. The parking spaces may be allowed to be located in the side and rear setback areas if Director finds that due to location of principal dwelling or lot topography the normal setback requirements cannot be met.

Proposed: Section 65852.2 allows local jurisdictions to require an additional space for each sleeping room in the ADU; however, it also provides that an ADU is exempt from this requirement if any of the following circumstances apply:

- The ADU would be developed entirely within an existing one-family dwelling or accessory structure on a single-family residentially zoned lot.
- The ADU is located within one-half mile of public transit (e.g., a bus stop).
- The ADU is located within an architecturally and historically significant historic district.
- When on-street parking permits are required but not offered to the occupant of the ADU.

- There is a car share vehicle located within one block of the ADU.

Based on the language of Section 65852.2 these exemptions would also apply to applications for ADUs that are not accessory to existing dwellings located on residentially zoned lots.

Section 65852.2 also requires that:

- The parking space may be provided as tandem parking on a driveway.
- The parking space shall be allowed in side and rear setback areas unless Director finds that parking in setback areas is not feasible based on (1) site topography or (2) fire, life and safety conditions, or is not permitted elsewhere in the County.
- When a garage, carport, or covered parking structure is converted or demolished in conjunction with the construction of an ADU, any replacement parking spaces required to satisfy the parking requirement for the principal dwelling may be provided in as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

Setbacks.

Existing: The setbacks that apply to the principal dwelling also apply to the ADU.

Proposed: The follow setback requirements are proposed in order to comply with Section 65852.2:

- No increase in the existing setback is required for an ADU that is accessory to an existing principal dwelling located in a single-family residentially zone that would be developed entirely within an existing one-family dwelling or accessory structure provided that the side and rear setbacks are sufficient for fire safety purposes.
- The setbacks that apply to the principal dwelling also apply to an ADU that is accessory to an existing principal dwelling on a residentially zoned lot that would be developed partially within or attached to an existing one-family dwelling or accessory structure, including a new detached accessory structure. except that:
 - No additional setback is required for garage conversions.
 - A setback of no more than five feet from the side and rear lot lines may be required if the ADU is constructed above an existing garage.

Not allowed if in addition to certain other structures.

Existing: An ADU shall not be allowed on a lot in addition to a guesthouse, dwellings other than the principal dwelling determined to be nonconforming as to use, or agricultural employee housing. If an ADU has been approved on a lot, a guesthouse or similar structure shall not subsequently be approved unless the ADU is removed.

Proposed: Section 65852.2 does not include any restrictions regarding whether an ADU may be approved in addition to other structures. Therefore, the proposed amendments only require that if an ADU has been approved on a lot, a guesthouse or similar structure shall not subsequently be approved unless the ADU is removed or converted to an allowed accessory structure.

Lot coverage limit.

Existing: The total gross floor area of all covered structures, including an ADU, shall not exceed 40 percent of the gross lot area.

Proposed: Section 65852.2 does not include any restriction on lot coverage; therefore, this standard is proposed to be deleted.

The following summarizes two additional significant changes to the existing development standards that apply within the Montecito Community Plan area that are included in the proposed ordinance amendments.

Design review.

All new or altered structures located within the Montecito Community Plan area are subject to review and approval by the Montecito Board of Architectural Review (MBAR) unless the alteration is determined to be minor by the Director. However, because Section 65852.2 requires that applications for ADUs shall be considered ministerially without discretionary review, applications for ADUs located within the Montecito Community Plan area are not subject to design review. The existing regulations do require that the Chair of the MBAR, or designee, shall approve the proposed design of the ADU. This has proven to be problematic for several reasons, including:

- There is little guidance for the Chair to on which to base their decision.
- It adds a degree of uncertainty to the process, both in terms of the outcome of the review and the length of time to complete the review.

To address this situation, the ordinance amendments propose for all ADUs to:

- Shift the responsibility from the Chair of the MBAR to the project planner.
- Add the following development standard that would apply to applications for ADUs that are proposed to be located on residentially zoned lots that is less than one acre in size. This reflects the existing design standards in Article II.

“The exterior appearance and architectural style of an accessory dwelling unit that is a proposed to be located on a lot that is less than one acre in size shall:

- a. If the accessory dwelling unit will be attached to an existing structure, then it shall reflect the exterior appearance and architectural style of the existing structure, and shall use the same exterior materials, roof covering, colors and design for trim, windows, roof pitch and other exterior physical features.
- b. If the accessory dwelling unit will not be attached to an existing structure, then it shall reflect the exterior appearance and architectural style of the principal dwelling, and shall use the same exterior materials, roof covering, colors and design for trim, windows, roof pitch and other exterior physical features.”

Minimum length of rental.

The existing regulations provide that an ADU may be rented, but also prohibit the ADU from being sold or financed separately from the principal dwelling. The proposed ordinance amendments maintain the existing standards, and adds a new requirement that if the ADUs is used as a rental that the length of any rental shall not be less than 31 consecutive days. This additional requirement is consistent with Government Code Section 65852.2(a)(6) and also implements one of the purposes of the State legislation that amended Government Code Section 65852.2 which is to facilitate the development of additional rental housing stock in order to meet current and future housing demand in California.

6.0 ENVIRONMENTAL REVIEW

- 6.1 Case No. 16ORD-00000-00015.** The proposed ordinance amendment to the Montecito Land Use and Development Code is recommended to be determined to be exempt from environmental review pursuant to Section 15282(h) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15282(h) provides that “The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Section 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code” is statutorily exempt from the CEQA.
- 6.2 Case No. 16ORD-00000-00016.** The proposed ordinance amendment to the Article II Coastal Zoning Ordinance is recommended to be determined to be exempt from environmental review pursuant to Sections 15265 and 15282(h) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15265, the statutory exemption for the adoption of coastal plans and programs, including amendments thereto, provides that compliance with CEQA is the responsibility of the California Coastal Commission. Section 15282(h) provides that “The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Section 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code” is statutorily exempt from the CEQA.

7.0 POLICY CONSISTENCY

The proposed ordinance amendments do not alter the purpose and intent of any policies or development standards of the Comprehensive Plan, including the Montecito Community Plan, or the Coastal Land Use Plan, and the adoption of the proposed ordinance amendments will not result in any inconsistencies with the adopted policies and development standards.

In order for a development permit to be approved based on these proposed amendments, it still must be determined that the project is consistent with the policies and development standards of the Comprehensive Plan, including the Montecito Community Plan, and the Coastal Land Use Plan, as applicable. As part of this process, a policy consistency analysis will be performed during the review of the application, and typically projects would not be approved unless they are determined to be consistent with applicable policies and the findings required for approval can be made.

However, Government Code Section 65852.2(a)(5) requires that “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit.” Therefore, if this analysis identifies a policy inconsistency that cannot be overcome through project redesign (e.g., moving a detached ADU further away from a designated environmentally sensitive habitat area), then this inconsistency cannot be used as the basis for denial of the application for the ADU.

Additionally, Government Code Section 65852.2 provides that “An accessory dwelling unit that conforms to [Section 65852.2] shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.”

Lastly, Government Code Section 65852.2(j) states that:

Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

Therefore, if the policy analysis does identify an inconsistency with one or more of the resource protection policies contained in the Coastal Act, than this inconsistency may be used as the basis for denial of an application for an ADU.

Therefore, given the requirements of the Government Code, these amendments may be found consistent with the adopted Comprehensive Plan, including the Montecito Community Plan, and the Coastal Land Use Plan.

8.0 ORDINANCE COMPLIANCE

The proposed ordinances are consistent with the remaining portions of the Montecito LUDC and Article II that would not be revised by these ordinances. In order to approve a development project based on these proposed amendments, it still must be determined that the project is consistent with the whole of the Montecito LUDC and Article II as applicable, subject to the constraints Government Code Section 65852.2(a)(5) which requires that “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit.” Additionally, the proposed ordinances include the provision that where there are conflicts between the standards that apply to ADUs and other portions of the applicable zoning ordinance, that the specific ADU standards shall prevail.

9.0 PROCEDURES

9.1 Montecito Land Use and Development Code: The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board of Supervisors.

9.2 Article II Coastal Zoning Ordinance: The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the County Planning Commission.

10.0 APPEALS PROCEDURE

Ordinance amendments are legislative acts that require final action by the Board of Supervisors, therefore an appeal of the action of the Montecito Planning Commission is not required.

11.0 ATTACHMENTS

- A. 16ORD-00000-00015 Montecito LUDC Findings
- B. 16ORD-00000-00015 Montecito LUDC Notice of Exemption
- C. 16ORD-00000-00015 Montecito LUDC Resolution and Proposed Ordinance
- D. 16ORD-00000-00016 Article II Findings
- E. 16ORD-00000-00016 Article II Notice of Exemption

- F. 16ORD-00000-00016 Article II Resolution and Proposed Ordinance
- G. Government Code Section 65852.2
- H. Comparison of Existing Versus Proposed Development Standards for Accessory Dwelling Units That Are Accessory to an Existing Primary Dwelling and Are Located in the R-1/E-1 Zone