

ATTACHMENT 18: 04-05-2017 MONTECITO PLANNING COMMISSION MEMORANDUM

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**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Montecito Planning Commission
FROM: Noel Langle
DATE: April 5, 2017
RE: Continued hearing regarding:
Accessory Dwelling Unit Ordinance Amendments
Case Nos. 16ORD-00000-00015 & 16ORD-00000-00016

On March 22, 2017, the Planning and Development Department presented proposed amendments to the Montecito Land Use and Development Code (Montecito LUDC) and the Article II Coastal Zoning Ordinance (Article II) to your Commission for consideration. The purpose of these amendments is to revise the Montecito LUDC and the Article II zoning regulations in a manner that is consistent with recent revisions to Government Code Section 65852.2 that regulates the development of accessory dwelling units (ADUs). At the conclusion of the hearing your Commission outlined several areas that you requested that the Department look into further regarding the scope of revisions that could be made to address the concerns of the Commission. The following discusses those areas.

1. Conform the language of amendment to the language of Section 65852.2.

At the March 22nd hearing your Commission expressed concern that the language of the following proposed development standards (shown in italics) is not consistent with the language of Section 65852.2 and therefore could be subject to legal challenge:

a. Requirement that an application for an ADU must be a complete application.

*Section 35.442.015.D.2.a: The Director shall approve, conditionally approve, or deny an application for an accessory dwelling unit that complies with Subsection E (Development standards for accessory dwelling units that are accessory to existing one-family dwellings), below, within 120 days after receiving a **complete** application in compliance with Section 35.470.030 (Application Preparation and Filing).*

The concern regarding this standard is that Section 65852.2(a)(3) only says that a local agency shall consider an application for an ADU ministerially without discretionary review within 120 days after receiving the application and makes no mention of the application having to be a complete applications. The Department's opinion is that the requirement for a complete application may be deleted without detrimentally affecting the processing of applications for ADUs.

b. Requirement that the living area of the principal dwelling used to determine the allowed floor area of the ADU must be legal living area.

*Section 35.442.015.E.4.a(1): The living area of an attached accessory dwelling unit shall not exceed 50 percent of the **legal** living area of the principal dwelling that exists at the time of application for the accessory dwelling unit, provided that the living area of the accessory dwelling unit does not exceed 1,200 square feet.*

The concern regarding this standard is that Section 65852.2(i)(1) defines living area as the interior habitable area of a dwelling unit including basements and attics but not including a garage or any accessory structure, and does not include a requirement that living area must be legal in the sense that it is permitted as living area. The Department's opinion is that the requirement that the living area must be legal living area may be deleted as this situation can be addressed through other zoning ordinance requirements, e.g., by requiring that any habitable area that was not permitted as such shall be legalized prior to or as part of the permitting of the ADU.

c. Required minimum rental period for an ADU.

*Section 35.442.015.E.8.a: An accessory dwelling unit may be used for rentals provided that the length of any rental **shall be not less than 31 consecutive days**.*

The concern regarding this standard is that Section 65852.2(a)(6) that allows a local agency to require that ADUs used as rentals have a rental term of longer than 30 days which is different from the phrase "not less than 31 consecutive days" which is used in the proposed standard. The Department's opinion is that the language of the proposed standard is not in conflict with Section 65852.2(a)(6); however, the proposed standard can be revised to read as follows and have the same meaning:

An accessory dwelling unit may be used for rentals provided that the length of any rental shall be for longer than 30 days.

d. Requiring that the owner occupy the property in addition to including a required minimum rental period.

In addition to Section 35.442.015.E.8.a discussed above, the proposed standards also include the following:

Section 35.442.015.E.9.a: The owner of the lot shall reside on the lot, either in the principal dwelling or in the accessory dwelling unit except when:

- (1) A disability or infirmity requires institutionalization of the owner, or*
- (2) The Director approves in writing the owner's written request for a temporary absence due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause.*

Section 65852.2(a)(6) provides that "This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days."

Your Commission is concerned whether the use of the word “or” in the last sentence of Section 65852.2(a)(6) allows the proposed standards to include requiring that the property be owner-occupied in addition to requiring a rental period of longer than 30 days, or whether the County may include only one of these standards. The Department’s opinion is that the state law can be read to allow for both standards to be imposed, and recommends that your Commission retain both requirements.

e. Prohibition regarding financing the ADU separately from the principal dwelling.

Section 35.442.015.E.8.b: An accessory dwelling unit shall not be sold or financed separately from the principal dwelling.

The concern regarding this standard is that Section 65852.2(a)(1)(D)(i) requires that a local ordinance shall require that an ADU shall comply with the requirement that it is not intended for sale separate from the primary residence but makes no mention of whether the ADU may be financed separately. The proposed standard is currently included in the existing standards that apply to residential second units; however, the Department’s opinion is that the proposed standard can be revised as follows in order to strictly conform with Section 65852.2(a)(1)(D)(i):

An accessory dwelling unit shall not be sold separately from the principal dwelling.

2. Retain the existing development standard limiting floor area to 40 percent of the lot area.

Your Commission expressed a desire to retain the existing development standard that applies to ADUs located in the Montecito Community Plan area that requires that “The total gross floor area of all covered structures, including a residential second unit, shall not exceed 40 percent of the gross lot area of the lot on which the residential second unit is located.” (Section 35.442.160.F.1.e of the existing Montecito Land Use and Development Code)

Retaining this standard for larger lots would not unduly restrict the development of an ADU. For example, on a one acre lot, a 40 percent maximum floor area limit would allow a total building coverage of 17,424 square feet. Assuming that the floor area of the principal dwelling is 4,300 square feet (the maximum amount allowed consistent with the Montecito Architectural Guidelines and Development Standards) this would leave a total of 13,124 square feet available for all accessory structures including an ADU. However, as shown in the table below, including this standard could prove to be problematic as lot size decreases, especially for the smaller lots.

Lot Area (sf)	40 Percent Limitation (sf)	Maximum SFD Floor Area (sf) (1)	Floor Area Available for Accessory Structures
30,000	12,000	3,524	8,476
20,000	8,000	2,950	5,050
15,000	6,000	2,650	3,350
10,000	4,000	2,375	1,625
8,000	3,200	2,250	950
7,000	2,800	2,200	600

Notes:

(1) As shown in Table 1 of the Montecito Architectural Guidelines and Development Standards.

If your Commission wishes to include this standard in the proposed requirements, then the Department recommends that you also include a statement to the effect that this standard may be waived if it would otherwise prevent the development of an ADU.

3. Design review.

Your Commission indicated in your discussion regarding the design review of an ADU that the proposed amendments should be revised to address the following:

- a. Design review should be continued to be performed by the Chair of the MBAR and not shifted to planning staff.
- b. All ADUs should undergo design review and not just those located on lots of one acre or less.
- c. The height of an ADU may be increased if necessary to match the roofline of an existing structure that the ADU would be attached to.
- d. Materials that are compatible or comparable with existing structure should be allowed to be used instead of requiring the use of same materials.
- e. Installation of landscaping to screen the ADU that is compatible with the existing landscaping on the lot.

The Department's opinion is that the proposed amendments may be revised to include these items with the understanding that the design review by the MBAR Chair is ministerial, meaning that only the design standards included in the ADU regulations are applied in the review.

4. Parking arrangement.

Your Commission expressed a concern that the amendments as proposed would allow parking associated with an ADU to be located in tandem arrangement and also be allowed to be located within a setback area, and expressed the desire that the proposed amendments be revised to allow one or the other but not both.

Subsections (I) and (II) of Section 65852.2(a)(1)(D)(x) provide that:

- (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.
- (II) Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

Based on the language of these two subsections, the Department's opinion is that an applicant for an ADU may propose to provide any additionally required parking through a tandem arrangement and by parking within setback areas. However, the language of subsection (II) does provide that such parking may not be allowed in certain circumstances as described in the subsection. For example, tandem parking could be prohibited based on site-specific considerations that would prevent the rapid evacuation of a dwelling in high-fire hazard areas.

The Department recommends that the parking standards should be maintained as currently proposed.

5. Require review by the Historic Landmarks Advisory Commission if the ADU involves a structure that is 50 years old or greater.

Your Commission requested that a development standard be included that review by the Historic Landmarks Advisory Commission (HLAC) should be required if the project involves a structure that is 50 years old or greater. The Department’s opinion is that this standard may be added provided that the HLAC’s purview is limited to review and comment only in order to be consistent with the directive of Section 65852.2 that applications for an ADU be processed in a ministerial manner.

6. Require conversion of existing guest house or nonconforming dwelling to an ADU.

Your Commission commented that the existing development standard that provides that 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 farm employee housing” (Section 35.442.160.F.1.f) should be retained. The Department does not recommend that this standard be applied to any guest house or nonconforming dwelling that was specifically permitted as such as this requirement could be seen as interfering with the rights to have that structure granted under the permit.

7. Maximum floor area of ADU based on lot area.

There was discussion by your Commission regarding establishing a maximum floor area for the ADU that is related to lot area. The existing regulations include the following standards for the Montecito Community Plan area:

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

Your Commission may recommend to the Board of Supervisors that this or a similar table be included in the proposed standards for ADUs; however, the Department’s opinion is that including these ADU floor area limits based on the size of the lot is inconsistent with Section 65852.2(a)(1)(D)(iv) and (v) which provide that:

- (iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- (v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

8. Clarify the owner-occupancy requirement.

Your Commission was concerned that the proposed amendments do not establish any criteria that addresses who qualifies as an owner-occupant in order to comply with the requirement that the owner reside on the property. Article II currently requires that in order to qualify as an owner-occupant the owner must claim the homeowners’ property tax exemption which certifies that they occupy the property as their principal residence. The Department recommends that this requirement be maintained for Article II and added to the Montecito LUDC amendment.

Attachments.

December 2016 Accessory Dwelling Unit Memorandum. The California Department of Housing and Community Development Department prepared this guidance document to assist local governments in implementing the recent revisions to State law.

Revised Government Code Section 65852.2. This revised Government Code Section 65852.2 is meant to replace Attachment G that was attached to your staff report dated March 15, 2017. Attachment G, although it was based on the language shown on the California Legislative Information website, did not correctly reflect the revisions to Section 65852.2 that resulted from the adoption of AB2299 and SB1069.