



STAFF REPORT

MORGAN COUNTY PLANNING COMMISSION

PETITION FOR: TEXT AMENDMENT

Applicant: Morgan County Planning & Development
Applicant's Agent:
Zoning Ordinance: Article 4 Districts & Maps
Article 7 Regulations for Specific Uses

Summary

This text amendment application is being submitted by Staff in conjunction with a text amendment application for Accessory Buildings to curtail issues that are being observed in the Planning and Development office. Although both need amendment, Accessory Dwellings are the greater concern.

It is rare that Staff must include a specific disclaimer in a Staff Report. However, photographs of structures in the county and comments made by the owners of these structures are included. This text amendment is not targeting individuals. No addresses for the structures shown are given. It should be stressed that the accessory dwellings shown in this Staff Report were legally constructed under the current language in the ordinance. The impetus for this text amendment request is the trend that has been perceived in the last few years.

Accessory dwellings were not included in the Zoning Ordinance until 2005. Prior to that date, any number of dwellings could be constructed on a residential lot, provided the dimensional requirements for setbacks and lot size were met. In 2005, accessory dwellings were added as a separate use and given a maximum size of 50% of the principal dwelling. The same 2005 ordinance also stipulated that only one principal dwelling was allowed per lot.

Housing sizes increased during the building boom, and then the requests for accessory dwelling increased when the economy tanked, and family members were looking for a place to stay. The language for accessory dwellings was changed in 2012 to prohibit the use of manufactured homes as accessory dwellings and to limit the size of accessory dwellings in accessory buildings to 800 heated square feet. It left accessory dwellings not in an accessory building at 50% of the principal dwelling.

Several issues were realized after the 2012 text amendment. While the prohibition on accessory dwelling manufactured homes significantly decreased the number of accessory dwelling requests, the accessory dwellings that were being constructed were getting larger. Fifty percent of a 5,000 square foot house resulted in a 2,500 square foot accessory dwelling. And that was heated square footage. When the 2-car garage and multiple porches were added, the footprint of the accessory dwelling was the same size or larger than the principal dwelling. Heated space includes finished basements, so a 2,500 square

foot house with a full finished basement (5,000 total) could have an accessory dwelling with the same size footprint as the principal dwelling. Unpermitted accessory dwellings were discovered above a significant number of barns because unfinished spaces were being remodeled. It is now common for larger properties to have 3 or more barns with “apartments” above the barn, and many of these barns are large.

Home construction started growing in 2017. The majority of accessory dwellings constructed at that time were accessory to an existing home. 2018 saw an increase in accessory dwellings without a primary dwelling. The Zoning Ordinance currently does not specifically state that a principal dwelling must come first. The reasons given for needing a “small” house first was that their “other” house had not sold yet, or had sold too fast. Many times, a family wanted to build something smaller (because they were under the mistaken impression that a small house could be constructed significantly faster than a larger home) so they could register their children for school. (Incidentally, these are the same reasons given for the dramatic increase in RV residences found in the county now.) And the cost of construction is always mentioned, usually in a statement that a larger home cannot be afforded. In almost all cases, we have been told at the permitting stage that the principal dwelling will be started within a year (or thereabout) after the completion of the accessory dwelling. However, when asked again at the issuance of a Certificate of Occupancy, it is usually admitted that it will be 5 or more before a principal dwelling will be considered. The most surprising thing is the estimated construction cost given for these accessory dwellings: some of the more recent permits have been \$170,000 or more.

Accessory Dwellings permitted before a Principal Dwelling or after a Principal Dwelling:

2014: 4 after principal dwelling, 2 without a principal dwelling
2015: 5 after principal dwelling
2016: 3 after principal dwelling, 2 without a principal dwelling
2017: 5 after principal dwelling, 2 without a principal dwelling
2018: 4 after principal dwelling, 9 without a principal dwelling
2019: 1 after principal dwelling, 2 without a principal dwelling

2019 numbers are current to the middle of March, but do not reflect 2 additional houses that were denied by Staff due to having less square footage than required by the zoning district. It was implied that these applicants intended to submit their building permit applications as accessory dwellings without a principal dwelling, but Staff persisted with inquiries and when the applicants admitted that no principal dwelling would be forthcoming, the applications were refused.

Another concern regarding accessory dwellings, even those constructed with a primary dwelling, is the use of the dwelling for rental income. Many of the accessory dwellings constructed after the principal dwelling have been placed a significant distance from the principal dwelling, with its own electric meter and driveway. While this could be interpreted as a family member who wants to maintain independence, a few people requesting accessory dwelling permits have admitted the secondary dwelling is only for rental income and they want the renter as far from their personal home as possible.



Accessory dwelling constructed after principal dwelling. Principal dwelling: 5664 heated square feet. Accessory dwelling: 2600 heated square feet, not counting carport and porches. Applicant's estimated construction cost: \$250,000.

Constructed 2017



Accessory dwelling constructed without a principal dwelling. Permitted heated square footage: 658 (under the current zoning language that an accessory dwelling in an accessory space – garage – must be under 800 square feet). Tax Assessors have visited the site and have the heated square footage listed as 1131 square feet. Applicant's estimated construction cost: \$54,000.

Constructed 2017



Accessory dwelling constructed without a principal dwelling. Heated square footage: 608. Tax Assessors agree with square footage. Also includes almost 1400 square feet of barn space. Applicant's estimated construction cost: \$65,000.

Constructed 2017



Accessory dwelling constructed without a principal dwelling. Permitted heated square footage: 741. Tax Assessors square footage: 884. Includes 1550 square feet of barn. Applicant's estimated construction cost: \$50,000

Constructed 2018



Accessory dwelling constructed without a principal dwelling. Permitted heated square footage: 800. Tax Assessors square footage: 1223. Includes 1200 square feet of barn. Applicant's estimated construction cost: \$170,000 without the screened porch and fireplace.

Constructed 2018



Accessory dwelling constructed without a principal dwelling. Permitted heated square footage: 800. Tax Assessors square footage: 950. Includes 1600 square feet of garage. Applicant's estimate construction cost: \$170,000.

Constructed 2018



Accessory dwelling constructed without a principal dwelling. Permitted heated square footage: 800. Tax Assessors square footage: 1020. Applicant's estimated construction cost: \$8,000.

Constructed 2018



Accessory dwelling constructed after a primary dwelling. Permitted heated square footage: 792. Tax Assessor's square footage: 968. Neither number includes an unpermitted full basement that doubles the square footage. Applicant's estimated construction cost: \$80,000.

Under construction

The last photo above is the reason why the proposed language includes a prohibition on basements. The language limits accessory dwellings to 800 heated square feet, with an additional 200 square feet in unheated footage. The limit on unheated square foot age is to prevent the addition of multiple car garages and porches that make the footprint of the accessory dwelling larger than the principal dwelling.

People frequently call the Planning office to ask about building a second home on their property. With the current ordinance, the answer is that an accessory dwelling can be constructed if it is half the size of the current dwelling, or another house can be constructed that is double the existing house size, making the existing house the accessory dwelling (both options maintain the ordinance's requirement that one residence be 50% the size of the other). With the proposed language, these options will be unavailable. Hence, the sentence in the proposed language requiring a parcel split or a variance.

Current and Proposed Language

See attached for proposed language changes to Chapter 7.2.

Staff proposes to change Accessory Dwellings from a Permitted Use to a Conditional Use in Article 4.

Staff Comments

The current language for accessory dwellings contains several loopholes that have been exploited, particularly in the last year. This text amendment is proposed to close those holes and to simplify the enforcement of the ordinance, not only from a zoning perspective, but for the building inspector as well.

Chapter 7.2 Accessory Dwellings

One accessory dwelling unit is permitted as subordinate to an existing single family dwelling provided the following requirements are met:

- ~~• An owner of the property or an immediate family member of the property owner must occupy either the principal dwelling unit or the accessory dwelling unit.~~
- An accessory dwelling must be constructed after the principal dwelling has received a Certificate of Occupancy.
- The accessory dwelling unit shall be owned by the same person as the principal dwelling.
- No more than one accessory dwelling unit shall be permitted on a single deeded lot in conjunction with the principal dwelling unit.
- ~~• Accessory dwelling units may be added to or included within the principal unit or located within a detached structure.~~
- Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit without meeting the requirements associated with the zoning district classification.
- The accessory dwelling must comply with all requirements of the county health department for on-site sewerage and well regulations.
- Accessory dwelling units shall be a minimum of ~~two~~ three hundred (200) (300) square feet and a maximum of ~~50% of the size of the principal dwelling unit.~~ eight hundred (800) square feet for heated square footage and a maximum of 1000 square feet total (including unheated square footage under roof, such as porches and carports).
- Accessory dwellings shall not have basements. Crawlspace or slab foundations are allowed.
- An accessory dwelling unit shall not be served by a driveway separate from that serving the principal dwelling ~~unless the accessory dwelling unit is accessed from a different road or street than the principal dwelling.~~
- Accessory dwellings shall adhere to the parking and setback requirements and height restrictions for the district in which they are to be located.
- If located in a building detached from the principal building or dwelling, an accessory dwelling shall not be closer than twenty (20) feet to the principal building or dwelling.
- Manufactured homes may not be used as accessory dwellings.
- Accessory dwellings shall be a Conditional Use in all zoning districts where single family detached homes are allowed. If an existing structure meets or exceeds the maximum square footage specified above and an additional dwelling exceeding the maximum square footage for an Accessory Dwelling is desired, the property must be split to allow for a second principal dwelling, or a Variance must be requested in addition to the Conditional Use.
- ~~• Living quarters located within accessory buildings must meet the definition of an accessory dwelling found in Article 3 of the Morgan County Zoning Ordinance, and shall not exceed 800 square feet.~~