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## Secondary Units: State law encourages easier approval process

By *Sophie Braccini*

As of Jan. 1 the state law regulating how in-law units are approved supersedes local municipal codes, requiring that each city adapt its code to the new rules crafted to promote an easier approval of such secondary housing structures.

If a municipal code is not compliant, then the code is considered null and void. A key component of the state law is that these units do not require a public hearing or neighbors' input to be approved, if compliant with the design standards.

Moraga planning commissioners started reviewing this new concept and voiced their concerns at a June 19 study session. They are working with staff to limit the area of discretionary approval and make sure that the design standards will protect neighbors' privacy and general aesthetics of the town.

City staff was clear when speaking to the planning commissioners: Moraga does not have a choice and has to relax its rules regarding the development of secondary dwelling or in-law units. The major mandatory change is that the process to approve units that are compliant with the design standard must be ministerial, meaning that a member of staff will make sure that the proposed unit meets all the criteria that the town has set forth, and if it does, will have to approve it, without anyone else being informed of the project. What is also important to consider is that the design standards put forth by the town cannot be too restrictive or it would defy the purpose of the new law.

The state regulation addresses units that are conversions to an existing home - a garage, an addition, such as a story over a garage, or an independent structure.

Commissioners found some elements of the new rules easy to support. For example the maximum size proposed by the state (800 to 1,200 square feet) does not exceed Moraga's 750-square-foot requirement by much. Commissioners also agreed that a 19-foot height limit was a sound restriction that would not permit a second story, but could allow for a half story, such as over a garage.

The new law indicates that a city cannot restrict entire areas from adding units, unless it is for health and safety reasons - sewage capacity, traffic impact, etc. Some commissioners said that these mandatory approval rules in some areas of Moraga, which have been developed under a planned development process and have already been allowed a density higher than what is usually permitted, could be problematic.

Planning Director Ellen Clark said that she would work with the town's legal counsel to see what could be restricted in Moraga without violating the law: flood zones, development on slopes, or areas that the fire department would deem difficult to access.

Commissioners Steve Woehleke and Ferenc Kovac expressed concern about a ministerial process that would have no neighbor notification and input when privacy could be invaded. Clark explained that the design guidelines could be very precise in term of vegetation screening, window's height, sightlines and difference of grade. But the process has to remain automatic to comply with the law.

The commissioners also asked that if an application is denied because staff believes that the proposed unit does not meet the town's requirement, and if the applicant wishes to appeal the decision, the Planning Commission should review it.

Staff will bring back a new version accommodating as much as legally possible the commissioners' requests during an upcoming public session where people can comment. Only one resident commented at the June 19 meeting to support a law that could allow housing options for students and seniors.

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