

MEMORANDUM

TO: Mayor JB Lawrence and Blowing Rock Town Council

FROM: Kevin Rothrock, Planning Director

SUBJECT: Nonconforming Uses Exception – accessory apartments

DATE: April 6, 2015

The Planning Board recently forwarded a draft ordinance recommendation that would have allowed accessory apartments in the R-15 and R-MH zoning districts. At the March 10th Council meeting, Town Council tabled that discussion and instead requested that the Planning Board review and consider a draft ordinance that would provide an exception to the nonconforming section of the Land Use Code. The exception, if approved, would allow expansion of the principle residence on current nonconforming properties with accessory apartments, but would restrict expansion of the apartment. An accessory apartment is a dwelling unit in addition to the primary residence that is limited to 25% of the gross floor area of the primary structure and also limited to a maximum of 750 square feet. Accessory apartments are currently not allowed in the R-15, single-family zoning district. This amendment would not change the fact that accessory apartments are not allowed to be constructed or expanded anywhere in R-15 zoning. This code amendment would affect only those properties with existing accessory apartments that are considered “grandfathered” by the ordinance.

In addition, this draft ordinance does not affect the rental status of nonconforming accessory apartments, and proposes no changes with respect to short-term rental activity.

If this ordinance receives favorable consideration, staff would recommend that at this time no further consideration be given to allowing accessory apartments in the R-15 zoning district.

PLANNING BOARD RECOMMENDATION

At their regular meeting on March 19th, Planning Board recommended approval of the draft ordinance.

Please review the attached highlighted draft ordinance for discussion and consideration at the April 14th meeting.

I can provide further clarification on the ordinance amendment during the meeting, or questions can be directed to me at 295-5240 or krothrock@townofblowingrock.com.

Section 16-8.3 Extension or Enlargement of Nonconforming Situations. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

a) An increase in the total amount of space devoted to a nonconforming use; or

An increase in nonconformity. For the purposes of this Article, an increase in nonconformity shall refer to any improvement or expansion which contravenes the density, dimensional or other requirements of the Land Use Ordinance. Structures or portions of structures which are nonconforming may not be extended or expanded in any fashion.

EXPLANATORY NOTE: For purposes of illustration, and not limitation, a deck, or any portion thereof, which is nonconforming for failing to comply with applicable setback requirements may not be altered so as to make it a porch as that would constitute an increase in nonconformity. Neither shall a nonconforming porch be altered to create an enclosed space with the exception that mesh screening may be added.

16-8.3.1 Subject to Section 16-8.3.3 a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was manifestly designed or arranged to accommodate such use. However, subject to Section 16-8.7 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.

EXCEPTION: If a nonconforming use of land is due to a property having a single-family residence with an accessory apartment, then the principal structure may be expanded and other accessory structures may be constructed as long as the accessory apartment or additional dwelling unit is not expanded in any way. Further, no expansion of the principle structure shall result in enlargement of a nonconforming situation with respect to setbacks or building height.

16-8.3.2 Subject to Section 16-8.7 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed at the effective date of this chapter.