

September 30, 2004

Testimony before the County Council Regarding:

ZTA 04-10 Concerning Accessory Apartments (By District Council at request of County Executive)
Bill 20-04 Concerning Accessory Apartments (By District Council at request of County Executive)

**Presented by Nancy Wendt on Behalf of
The Olney Coalition**

President Silverman and members of the Council, good evening. My name is Nancy Wendt and I represent The Olney Coalition, an umbrella organization comprised of eight citizens associations that represent more than 2,000 households.

SUMMARY

The Olney Coalition supports accessory apartments as a special exception use in residential zones. We believe the creation of accessory apartments can contribute to the stock of affordable housing. However, we do not expect that accessory apartments will be a major factor in reducing the gap between the demand for and the supply of affordable housing units in the county based on the small number of permits issued to date.

There appears to be a surprising lack of analysis concerning how many new accessory apartments will be created, where they will be, whose needs they will serve, and what impacts they will have on their neighborhoods and communities. For this reason alone, ZTA 04-10 and Bill 20-04 are premature. The Council should defer transferring authority to review requests for accessory apartments from the Board of Appeals to DHCA pending a thorough analysis of the costs and benefits of doing so. For example, if the legislation does not produce the anticipated flood of requests that taxes the Board's ability to process them efficiently, then there would appear to be no real justification for any transfer of authority. In addition, a transfer would set a bad precedent for shifting land-use related authority away from the Council, the Board of Appeals and the Planning Board to the Executive.

SPECIFIC COMMENTS

Current law requires a house be at least five years old and to be owned by the current owner for one year before an application for an accessory apartment can be approved. ZTA 04-10 would eliminate these requirements so a new building could have an accessory apartment from the time it is first occupied. This change in the rules, combined with the fact that most single family subdivisions built in the last 10-15 years have restrictive covenants prohibiting or regulating land uses such as accessory apartments and accessory structures, will shift the emphasis on accessory apartments from existing homes to new construction.

Under present law, accessory apartments are permitted only by special exception, which gives the Board of Appeals and Planning Board authority and responsibility to review each accessory apartment proposal. The special exception process also requires that affected communities be notified of such projects and be given an opportunity to comment on them. The Olney Coalition supports continuation of the current law as the best way to encourage community input into the process.

ZTA 04-10 proposes two classes of accessory apartments (i.e., accessory apartments are units less than 800 square feet and large accessory apartments are units greater than 800 square feet.). The larger units would retain the special exception approval process. The smaller units would be a permitted use by right (i.e., would not require a special exception) and would be approved by the Director of the Department of Housing and Community Affairs (DHCA).

The distinction between a small accessory apartment (approved by DHCA) and a large accessory apartment (approved by Board of Appeals) seems artificial and the added complexity of separate approval and appeals processes invites inconsistency. This benefits no one.

The proposed text amendment does not provide objective standards for defining neighborhood, for purposes of determining excessive concentration, or for assessing the adverse impact of such concentration. Staff noted that if DHCA is to be substituted for the Board of Appeals in the approval process, subjective land use judgments should not be part of the process. The Olney Coalition concurs with Staff's suggestion.

The ZTA authorizes the Planning Board to allow accessory apartments to have a different address, lower the minimum lot size, and exceed the 15 percent neighborhood concentration limit for a new subdivision, if the Board finds that "the changes will preserve the character of the neighborhood in which the accessory apartments are located, and that the increased concentration...will not have an adverse impact on the neighborhood." Since accessory apartments are not counted when determining how many units are allowed in a subdivision, these relaxed standards could lead to increased densities that would further overwhelm roads, schools and emergency services.

The ZTA gives DHCA the authority to change the requirements for off road parking. In combination with the relaxed standards in the preceding paragraph this could lead to parking problems on narrow tertiary roads.

We believe the proposed legislation in its current form invites interpretations that could have adverse impacts that outweigh the potential benefits to the affordable housing initiative. Therefore we oppose approval of this legislation.

Thank you for this opportunity to provide input to the process.

Respectfully,

Nancy Wendt
On behalf of The Olney Coalition