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Coates' Canons Blog: Meet the Granny Pod: New Zoning Protection for Temporary Family Health Care Structures

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Extended families residing together were commonplace in the early 20th century. In the 1920s most zoning ordinances allowed rooms in single family homes to be rented to boarders. It was also not uncommon at that time for single family homes to have an accessory dwelling unit. These came in a variety of settings – a basement, attic, or garage apartment, a "mother-in-law" suite, or, in larger homes, separate quarters for domestic help.

Single-family zoning districts began to be made more restrictive after World War II. Charlotte's 1951 zoning ordinance, for example, allowed accessory dwelling units in its "Residence 1" zoning district, but only for servants' quarters in the rear yard. In language that conjures images from "**The Help**," the Charlotte ordinance of that time expressly prohibited garage apartments for rent unless they were "occupied only by servants in the employ of the occupants of the main residence." Over the following decades even this limited permitted use of accessory dwelling units in single-family zoning districts was eliminated in many cities and counties.

In recent years there has been a renewed interest in permitting some accessory dwelling units in single-family neighborhoods. Advocates suggest more permissive regulations for accessory dwelling expand the range of housing choices, provide more affordable housing, facilitate aging-in-place, and allow modest increases in residential density while retaining the essential character of urban neighborhoods. Opponents worry about over-crowding, traffic, and impacts on neighborhood character and property values. Click **here** for a 2013 story on the Raleigh city council's consideration of the issue and **here** for planning staff and planning board background information on that discussion.

A new North Carolina statute may spark renewed attention to the general issue of accessory dwellings by mandating zoning approval for a limited and very specific type of accessory residence – a "temporary family health care structure." Allowing an accessory dwelling unit to accommodate on-site care-giving is not a new idea. Some North Carolina counties have allowed a second dwelling to be temporarily placed on a lot already occupied by a principal dwelling if necessary to accommodate an on-site care-giver. This often requires a special use permit and the accessory structure is usually limited to a manufactured home that must be removed when the need for care-giving ends. Other local governments have relaxed single-family zoning restrictions more generally to allow accessory apartments in some residential zoning districts.

While the decision to allow accessory dwellings is clearly within the discretion of local elected officials, there are limits to the conditions that can be imposed. For example, Wilmington amended its zoning to allow garage apartments as an accessory use in a single-family zoning district, provided that either the principal or the accessory dwelling was occupied by the owner of the property. The court of appeals in *City of Wilmington v. Hill*, 189 N.C. App. 173, 657 S.E.2d 670 (2008), held that the zoning statutes grant authority to regulate land use, but not land ownership, so the court invalidated the owner occupancy requirement.

A statute enacted in 2014 adds a new element to land use regulation of accessory dwellings in North Carolina. The new law, **S.L. 2014-94**, creates G.S. 160A-383.5 to require zoning approval of "temporary family health care structures." The law becomes effective October 1, 2014 and applies to both cities and counties.

This law is modeled on a Virginia statute enacted in 2010. A Salem, Virginia minister developed an idea for a modular dwelling that could be placed on the lot of a family care-giver to provide temporary housing for an impaired person. He envisioned these as an alternative to nursing home placement for the impaired person. He worked with economic development staff at Virginia Tech to develop a prototype, but learned many zoning ordinances prohibited placement of an

accessory dwelling on the lot, even on a temporary basis. The 2010 Virginia statute was adopted to eliminate these zoning barriers by requiring local governments to permit these structures, which have come to be known as “granny pods.” Click **here** for a 2010 story on his idea, **here** for a 2012 video story, and **here** for more on his company.

A temporary family health care structure

The n statute similarly requires city and county zoning to permit “temporary family health care struct ovided there is a qualifying need, the structure qualifies and a set of regulatory requir

Qual

G.S. 1 mporary structures that will house a single “mentally or physically impaired person.” The statute defines these to be North Carolina residents who require assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation, transferring, toileting, and eating). The impairment must be certified in writing by a physician licensed in North Carolina.

Also, the caregiver must be at least 18 years old and must be a first or second degree relative of the impaired person (a spouse, parent, grandparent, child, grandchild, aunt, uncle, nephew, or niece). A legal guardian of the impaired person also qualifies.

Qualifying Structure

The structures covered by this law are limited to transportable residential units. The unit must be assembled off-site and built to the standards of the State Building Code (thus a manufactured home built to HUD standards would not qualify). It must be no more than 300 gross square feet. It must not be placed on a permanent foundation.

Regulatory Provisions

Cities and counties must permit qualified structures as an accessory use in any single-family residential district if it is placed on a lot owned or occupied by a qualified care-giver and the accessory structure is occupied only by the impaired person. The city or county is prohibited from requiring a special use permit.

The accessory structure must comply with all setbacks and any maximum floor area ratio limits that apply to the primary residential structure. The structure may be required to connect to any water, sewer, and electric utilities serving the property. Only one accessory temporary family care structure is allowed per lot. Other zoning requirements that are applicable to all other accessory structures in that zoning district may also be applied. No signage regarding the presence of the structure is allowed. The structure must be removed within 60 days after care-giving on the site ceases.

The city or county may require a permit to be obtained prior to installation. A fee of up to $100 may be charged. An annual renewal fee of up to $50 is also allowed. Evidence of compliance may be required as part of the permitting and annual permit renewal, including an annual renewal of the doctor’s certification of impairment. The city or county may make periodic inspections at times convenient to the caregiver to assure on-going compliance. Enforcement action, including permit revocation, is authorized if any of these requirements are violated.
Unlike the statutory protection for family care homes in **G.S. 168-23**, this statute does not exempt temporary family health care structures from private deed restrictions or covenants. Thus any applicable non-governmental restrictions may still be enforced by the neighbors.

The structure is exempted from health and sanitation regulations regarding establishments providing food and lodging. It is also not required to comply with the social service licensing and regulatory provisions related to adult care homes.

The structure is to be treated as real property for zoning and building code purposes, but it is treated as personal property for tax purposes.

Conclusions

The extent to which accessory dwelling units should be allowed in single-family residential zoning districts is an important topic for local discussion. Reconciling concerns about affordable housing, density, neighborhood compatibility, design standards, property value impacts, and changing social needs warrant careful consideration as zoning ordinances are modernized. While updating ordinances to reflect this new law, local government may well want to revisit and discuss their overall policies on accessory dwellings in predominately single-family neighborhoods.

Local zoning cannot be more restrictive than the standards discussed above for temporary family health care structures and should be promptly amended to incorporate this mandate. Whether a broader review is done or not, in the particular circumstances noted above the General Assembly has mandated that local governments accommodate those wishing to provide on-site care for an impaired family member.

Links

- www.imdb.com/title/tt1454029/?ref_=ttmd_ph_tt1
- raleighpublicrecord.org/news/2013/02/14/backyard-cottages-get-a-thumbs-down-from-city-council/
- raleighudo.com/blog/latest-information-about-proposed-udo-regulations-accessory-dwelling-units
- appellate.nccourts.org/opinions/?c=2&pdf=2329
- www.ncleg.net/Sessions/2013/Bills/House/PDF/H625v4.pdf
- www.washingtonpost.com/wp-dyn/content/article/2010/05/05/AR2010050503074.html?wpisrc=nl_most
- www.cbsnews.com/news/granny-pods-inside-housing-alternative-for-aging-loved-ones/
- www.medcottage.com/
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=168-23