WEST VIRGINIA CODE CHAPTER 8 ARTICLE 42

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§8-42-1. Definitions.

As used in this article:

(a) "Accessory dwelling unit" means a self-contained and independently accessed living unit on the same parcel as a single-family dwelling of greater square footage that includes its own cooking, sleeping, and sanitation facilities and complies with, or is otherwise exempt from, any applicable regulatory requirements;

(b) "By right" means the ability to be approved without requiring:

(1) A public hearing;

(2) A variance, conditional use permit, special permit, or special exception; or

(3) Other discretionary zoning action other than a determination that a site plan and any construction plans conform with applicable regulatory requirements;

(c) "Gross floor area" means the interior habitable area of a single-family dwelling or an accessory dwelling unit;

(d)(1) "Regulatory requirements" means the requirements determined by a municipality to be necessary for approval of plans, permits, or applications under this section.

(2) "Regulatory requirements" includes:

(A) The West Virginia Fire Code as adopted by the State Fire Marshal;

(B) Any locally adopted ordinances and amendments to the ordinances;

(C) Applicable zoning ordinances and conditions;

(D) Design and construction standards, including any applicable building codes; and

(E) Other federal, state, and local laws, rules, and ordinances applicable to the plan, permit, or application in question;

(e) "Short-term rental" means an individually or collectively owned single-family house or single-family dwelling unit or a unit or group of units in a condominium, cooperative, time-share, or owner-occupied residential home that is offered for a fee for 30 days or less; and

(f) "Single-family dwelling" means a building with one or more rooms designed for residential living purposes by one household that is detached from any other dwelling unit.

(g) “Manufactured home” means a structure constructed in compliance with the federal Manufactured Home Construction and Safety Standards, 42 U.S.C. §5401 *et seq.*, and installed on a permanent foundation.

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§8-42-2. Prohibition on policy regulations restricting accessory dwelling units.

(a) Except as provided in this article, a municipality shall not adopt a policy, regulation, or ordinance that restricts, prohibits, or otherwise regulates the use of at least one accessory dwelling unit by right on a lot or parcel that contains a single-family dwelling.

(b) An accessory dwelling unit may be attached, detached, or internal to the single-family dwelling on a lot or parcel.

(c) If the accessory dwelling unit is detached from or attached to the single-family dwelling, it shall not be more than 75 percent of the gross floor area of the single-family dwelling or 1,000 square feet, whichever is less.

(d) A municipality may not:

(1) Require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require fees in lieu of additional parking;

(2) Require that an accessory dwelling unit match the exterior design, roof pitch, or finishing materials of the single-family dwelling: *Provided*, That a municipality may require an accessory dwelling unit to match exterior design, roof pitch, finishing materials, and other design guidelines if the single family dwelling or accessory dwelling unit is located within a historic district, as defined in §8A-1-2 of this code, and the requirement is imposed pursuant to an ordinance or regulation duly adopted for the preservation of that historic district;

(3) Require a familial, marital, or employment relationship between the occupants of the single-family dwelling and the occupants of the accessory dwelling unit;

(4) Assess development impact fees in excess of $250 on the construction of an accessory dwelling unit;

(5) Require improvements to public streets or sidewalks as a condition of permitting an accessory dwelling unit, except as necessary to reconstruct or repair a public street or sidewalk that is disturbed as a result of the construction of the accessory dwelling unit;

(6) Set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot;

(7) Impose more onerous development standards on an accessory dwelling unit beyond those set forth in this article;

(8)(A) Require a restrictive covenant concerning an accessory dwelling unit on a parcel zoned for residential use by a single-family dwelling.

(B)(i) Paragraph (A) of this subdivision does not prohibit restrictive covenants concerning

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accessory dwelling units entered into between private parties.

(ii) Notwithstanding clause (i) of this paragraph, a municipality shall not condition a permit, license, or use of an accessory dwelling unit on the adoption or implementation of a restrictive covenant entered into between private parties; or

(9) Require water and sewer for the accessory dwelling unit separate from that serving the primary structure.

(e) A manufactured home may be used as an accessory dwelling unit by right on a lot or parcel that contains a single family dwelling in any zoning district where accessory dwelling units are permitted.

(f) A municipality may not prohibit or unreasonably restrict the use of a manufactured home as an accessory dwelling unit, provided that the manufactured home is installed on a permanent foundation and complies with applicable building, fire, and safety codes and any other requirements in this article.

(g) A municipality may not impose design, aesthetic, age of construction, or prior use requirements on a manufactured home used as an accessory dwelling unit that are more restrictive than those imposed on site built accessory dwelling units of comparable size.

(h) A manufactured home used as an accessory dwelling unit shall be assessed and taxed as real property.

(i) A manufactured home used as an accessory dwelling unit may share water, sewer, and utility connections with the primary single family dwelling. Separate utility connections or meters may be required only where necessary to protect public health and safety and where such requirements are applied uniformly to all accessory dwelling units.

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§8-42-3. Exemptions.

(a) This article does not prohibit a municipality from regulating short-term rentals.

(b)(1)(A) A municipality may require a fee for reviewing applications to create accessory dwelling units; and

(B) The application fee may not exceed $250 for each accessory dwelling unit.

(2) Subdivision (1) of this subsection does not prohibit a municipality from requiring its usual building fees in addition to the application fee.

(c) A policy, regulation, or ordinance in effect on or after January 1, 2027, that applies to an accessory dwelling unit and does not comply with this article is invalid to the extent of its conflict with this article.

(d) A municipality may require an accessory dwelling unit to have:

(1) A will-serve letter from both the water system and the sewer system that serves the primary dwelling; or

(2) Approval from the Department of Health where municipal or private water service or sewer service is not available.

(e) This article does not:

(1) Supersede applicable regulatory requirements; or

(2) Prohibit a municipality from adopting a policy, regulation, or ordinance that is more permissive than the provisions under this article.

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