



**Zoning Text Amendment (ZTA) No. 19-01, Accessory Residential Uses – Accessory Apartments**

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**Completed: 02/7/19**

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**Description**

ZTA 19-01 would remove the requirement for conditional use approval for all accessory apartments; revise the limited use provisions for attached and detached accessory apartments; and, generally amend the provisions for accessory apartments by deleting many of the current restrictions on having an accessory apartment.

**Summary**

Staff recommends approval, as modified by staff, of ZTA No. 19-01 to remove the requirement for conditional use approval for all accessory apartments, and to revise the limited use provisions for attached and detached accessory apartments. The modifications provide clarification of the intent (Line 129) to allow any structure legally constructed before May 31, 2012 (effective date of allowing an accessory apartment without requiring special exception or conditional use approval) to be used as an accessory apartment without regard to setbacks. Overall, staff agrees with the sponsor in recognizing the importance of increasing the supply of accessory apartments in the County while also working to minimize any negative impacts on residential neighborhoods. Accessory Apartments also help provide supplemental income to homeowners thereby allowing many in our senior population to age in place and in many cases, providing affordable living arrangements for others. Many of the concerns pertaining to accessory apartments in the smaller lot zones stem from the ability to provide adequate parking (on-street or on-site). Staff believes that maintaining a parking requirement, with the ability to waive it through the Hearing Examiner process, will be key to minimizing any negative impacts on surrounding neighborhoods.

**Background/Analysis**

Recent Zoning Changes

ZTA 18-07, Accessory Residential Units – Accessory Apartments was introduced on July 17, 2018 as a way to remove barriers to the creation of Accessory Apartments. ZTA 18-07 allowed for the removal of the requirement for conditional use approval for all accessory apartments that do not meet the spacing

and parking requirements. The ZTA was adopted October 9, 2018 and became effective on October 29, 2018.

Prior to ZTA 18-07, applicants were required to pursue the conditional use process if they wanted to challenge the rejection of an accessory apartment license application by the Department of Housing and Community Affairs (DHCA) based on a failure of the application to meet statutory minimums for onsite parking and/or separation from an existing accessory apartment in the neighborhood.

Under ZTA 18-07, the waiver process was added to the existing objection process for accessory apartment cases as a substitute for the existing conditional use process. The waiver process allows the Hearing Examiner to consider challenges to the rejection of an accessory apartment license application by DHCA based on failure of the application to meet statutory minimums for on-site parking and/or separation from an existing accessory apartment in the neighborhood.

The new process, under ZTA 18-07, reduces the processing time for consideration of these issues, since the Planning Department is not required to review the waiver request; instead, the Hearing Examiner relies on testimony from the DHCA inspector, the applicant and neighbors. While the conditional use process typically takes 4 to 5 months to complete, the new process can take half that time, given that hearings are set within 30 days of the filing of the application for a waiver, and the Hearing Examiner's report must be filed within 30 days thereafter.

ZTA 19-01 further relaxes the standards for accessory apartment approvals as depicted below.

#### Permitting Data

Since 2013, when the County moved from the special exception approval process previously required for accessory apartments to Class 3 licensed accessory apartments, the County has processed 237 Accessory Dwelling Units applications. This includes 148 total licensed accessory apartments (about 30 a year, on average), 5 approved by the Hearing Examiner, 16 conditionally approved by the Hearing Examiner, 11 denied, 26 currently pending, and 31 withdrawn.

<b>Status</b>	<b>Count</b>
Finding Approved by the Hearing Examiner	5
Finding Conditional by the Hearing Examiner	16
Finding Denied	11
Licensed by DHCA	148
Pending	26
Withdrawn	31
<b>Grand Total</b>	<b>239</b>

### Current Accessory Apartment Provisions

An Accessory Dwelling Unit (or Accessory Apartment) is a second dwelling that is subordinate to an existing one-family detached home and has its own provisions for cooking, eating, sanitation and sleeping. Montgomery County's Accessory Dwelling Unit (ADU) program permits accessory apartments as long as the following conditions are met:

- The property must be the owner's primary residence.
- *Attached* Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, RE-1, R-200, R-90 and R-60 zones following all limited use standards.
- *Detached* Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, and RE-1 zones if the property is a minimum of one acre in size, and all limited use standards are met.
- The house must be at least 5 years old.
- The accessory apartment must have the same street address as the main house.
- The accessory apartment must be internal to the main dwelling on a property smaller than one acre. Complete internal separation of the units is required.
- Only one accessory apartment may be created on the same lot as an existing one family detached dwelling. Accessory apartments are prohibited in Townhomes.
- The maximum floor area for an accessory apartment, including any floor area used for an accessory apartment in a cellar, must be less than 50 percent of the total gross floor area in the principal dwelling, including any floor area used for an accessory apartment in the cellar of the principal dwelling, or 1,200 square feet, whichever is less. Maximum floor area is measured from the exterior of the house.
- The maximum floor area used for an accessory apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the floor plate of the principal dwelling. Maximum floor area is measured from the exterior of the house.
- In the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, there must be no approved or pending **attached** accessory apartments within 500 feet. In the R-90 (including Plan Development zones), R-60, and RNC zones, there must be no approved or pending **attached** accessory apartments within 300 feet. In the RE-2, RE-2C, and RE-1 zones, there must be no approved or pending **detached** accessory apartments within 500 feet.
  - If a property does not meet this requirement, the property owner can apply for a waiver with the Hearing Examiner.
- If there is an existing driveway, one on-site parking space is required in addition to any required on-site parking space required for principal dwelling; however, if a new driveway must be constructed for the accessory apartment, then two on-site parking spaces must be provided. If your property does not meet this requirement, you can apply for a waiver with the Hearing Examiner.

## ZTA 19-01 Provisions

ZTA 19-01 would delete or modify many of the current restrictions on having an accessory apartment as follows:

- Allow **detached** accessory apartments as a limited use in R-200, R-90, and R-60 zones (within Residential Zones, detached accessory apartments are currently only allowed as a limited use in RE-1, RE-2, and RE-2C zones and on a minimum lot area of one acre). **Staff has no objection to this provision given that all accessory structures must continue to adhere to the building coverage requirements of the applicable zone and the greater of the current setback requirements for accessory structures in the zone or the same minimum side setback as the principal dwelling and a minimum rear setback of 12 feet. Setbacks potentially can be greater based on the height of the accessory structure. Also, accessory structures are limited in footprint to 50% of the footprint of the principle dwelling or 600 square feet, whichever is greater. This provision, in addition to the maximum floor area provisions for accessory apartments will assist in minimizing any visual impacts of a detached accessory apartment in the smaller lot Residential Zones.**
- Require 2 off-street parking spaces (3 spaces are currently required if 2 off-street parking spaces are required for the principal dwelling). **Staff believes that the language on lines 38 and 39 of the legislation needs to be clarified to reflect the intent; either that the two on-site parking spaces are in addition to any required on-site parking for the principal dwelling or that the two on-site parking spaces are inclusive of the principal dwelling and the accessory apartment. In either case, the Hearing Examiner waiver provision under Section 29-26(b) will still be an option for an applicant.**
- Allow an accessory apartment in a basement (accessory apartments are currently allowed in a cellar<sup>1</sup>). **Staff believes that there has been some confusion on the current provision under lines 43 through 49 concerning the calculation of the maximum gross floor area for an accessory apartment. In fact, most attached accessory apartments are located in the basement of the principle dwelling. The current language under lines 43-49, *“the maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling, or 1,200 square feet, whichever is less”* does not exclude accessory apartments from locating in a basement, but is inclusive of the floor area of a cellar in the calculation of the *maximum gross floor area*, given**

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<sup>1</sup> **Basement:** The portion of a building below the first floor joists of which at least half of its clear ceiling height is above the average elevation of the finished grade along the perimeter of the building.

**Cellar:** The portion of a building below the first floor joists of which at least half of the clear ceiling height is below the average elevation of the finished grade along the perimeter of the building.

**that the definition of *Gross Floor Area*<sup>2</sup> does not include cellar space. Staff does not believe that the addition of the word “basement” is needed under lines 43 through 49.**

- Change the measure of the maximum size of an accessory apartment from 50% of gross floor area to 50% of habitable floor area.
- Delete the absolute maximum size of an accessory apartment (the absolute maximum size is currently 1,200 square feet). **Staff has no objection given the maximum size would be proportionate throughout all zones-less than 50% of the habitable floor area.**
- Delete the maximum size of an addition that can be used as an accessory apartment (currently limited to 800 square feet). **Lot coverage and setback provisions are still applicable and will minimize any impacts to surrounding properties.**
- Delete the requirement that the unit must be in a structure that is at least 5 years old.

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<sup>2</sup> **Gross Floor Area (GFA):** The sum of the gross horizontal areas of all floors of all buildings on a tract, measured from exterior faces of exterior walls and from the center line of walls separating buildings. Gross floor area includes:

1. basements;
2. elevator shafts and stairwells at each floor;
3. floor space used for mechanical equipment with structural headroom of 6 feet, 6 inches or more, except as exempted in the LSC and Industrial zones;
4. floor space in an attic with structural headroom of 6 feet, 6 inches or more (regardless of whether a floor has been installed); and
5. interior balconies and mezzanines.

Gross floor area does not include:

1. mechanical equipment on rooftops;
2. cellars;
3. unenclosed steps, balconies, and porches;
4. parking;
5. floor area for publicly owned or operated uses or arts and entertainment uses provided as a public benefit under the optional method of development;
6. interior balconies and mezzanines for common, non-leasable area in a regional shopping center;
7. in the LSC and Industrial zones, floor space used for mechanical equipment; and
8. any floor space exclusively used for mechanical equipment for any Medical/Scientific Manufacturing and Production use.

- Delete the distance requirement between accessory apartments (currently 500 feet in large lot zones and 300 feet in smaller lot zones).
- Allow an accessory structure built before May 31, 2012 to be used as an accessory apartment without regard to setbacks. **Staff believes that this provision (line 129) should be clarified to allow any structure legally constructed before May 31, 2012 (effective date of allowing an accessory apartment without requiring special exception or conditional use approval) to be used as an accessory apartment without regard to setbacks.**
- Specifically require the owner of the site of the accessory apartment to live on the site. **Staff agrees with this provision given that it makes the Zoning Code consistent with current language in the licensing requirements.**
- Delete the requirement that a detached accessory apartment be on a lot at least one acre in size. **This deletion is necessary to allow an accessory apartment in the smaller lot Residential Zones. As stated above, all current accessory structure setback, floor area and footprint requirements and existing lot coverage requirements remain applicable, thereby minimizing visual impacts of a detached accessory apartment.**

#### Other Jurisdictions

##### **Washington, DC**

- Zoning amendments went into effect in 2016
- Allowed by-right in many residential zones
- Owner-occupancy requirement, no more than 3 people can live in an accessory unit
- No new parking spaces are required
- Pre-permitting consultation with the Department of Consumer and Regulatory Affairs, which costs between \$400 and \$600
- Building permit process typically takes between two to six months

##### **Arlington, VA**

- Only about 20 ADUs approved in Arlington from 2009 to 2017
- Zoning change in 2017
- Max occupancy of 3 persons
- Max size of 750sf or 35% of the combined area of the main and ADU; No limit on size of an ADU located within a basement
- No annual limit on the number of accessory apartments that can be created in county
- Parking requirements vary
- Application is reviewed by Zoning Division staff and then a formal review by the Zoning Administrator

#### **Conclusions**

Staff agrees with the sponsor in recognizing the importance of increasing the supply of accessory apartments in the County while also working to minimize any negative impacts on residential neighborhoods. Accessory Apartments also help provide supplemental income to homeowners thereby allowing many of our senior population to age in place and in many cases, providing affordable living arrangements for others. Many of the concerns pertaining to accessory apartments in the smaller lot zones stem from the ability to provide adequate parking (on-street or on-site). Staff believes that maintaining a parking requirement, with the ability to waive it through the Hearing Examiner process, will be key to minimizing any negative impacts on surrounding neighborhoods.

## **Attachments**

1. ZTA No. 19-01 as modified by staff

# ATTACHMENT 1

Zoning Text Amendment No.: 19-01  
Concerning: Accessory Residential  
Uses – Accessory  
Apartments  
Draft No. & Date: 1 – 1/10/19  
Introduced: January 15, 2019  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Councilmember Riemer

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- remove the requirement for conditional use approval for all accessory apartments;
- revise the limited use provisions for attached and detached accessory apartments;  
and
- generally amend the provisions for accessory apartments

By amending the following sections of the Montgomery County Zoning Ordinance,  
Chapter 59 of the Montgomery County Code:

Division 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
Division 3.3.	“Residential Uses”
Section 3.3.3.	“Accessory Residential Uses”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*



*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

1           **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2           **Division 3.1. Use Table**

3           \* \* \*

4           **Section 3.1.6. Use Table**

5           The following Use Table identifies uses allowed in each zone. Uses may be  
6           modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential						* * *
		AR	R	RC	RNC	Residential Detached							
						RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	
* * *													
ACCESSORY RESIDENTIAL USES	3.3.3												* * *
Attached Accessory Apartment	3.3.3.B	L	L	L	L	L	L	L	L	L	L		
Detached Accessory Apartment	3.3.3.C	L	L	L	L	L	L	L	<u>L</u>	<u>L</u>	<u>L</u>		
* * *													

7           **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

8           \* \* \*

9           **Sec. 2. DIVISION 59-3.3 is amended as follows:**

10          **Division 3.3. Residential Uses**

11          \* \* \*

12          **Section 3.3.3. Accessory Residential Uses**

13          **A. Accessory Apartment, In General**

14            **1. Defined, In General**

15            Accessory Apartment means a second dwelling unit that is  
16            subordinate to the principal dwelling. An Accessory Apartment  
17            includes an Attached Accessory Apartment and a Detached Accessory  
18            Apartment.

19            **2. Use Standards for all Accessory Apartments**

20 Where an Accessory Apartment is allowed as a limited use, it must  
21 satisfy the following standards:

- 22 a. Only one Accessory Apartment is permitted for each lot.
- 23 b. The Accessory Apartment was approved as a [conditional use]  
24 special exception before May 20, 2013 and satisfies the  
25 conditions of the conditional use approval[;] or the Accessory  
26 Apartment satisfies Subsection c.
- 27 c. [~~The~~] If the Accessory Apartment does not satisfy subsection b,  
28 the Accessory Apartment [is] must be licensed by the  
29 Department of Housing and Community Affairs under Chapter  
30 29 (Section 29-19); and
- 31 i. the apartment [has] must have the same street address as  
32 the principal dwelling;
- 33 ii. either:
- 34 (a) [one on-site parking space is provided in addition  
35 to any required on-site parking space for the  
36 principal dwelling; however, if a new driveway  
37 must be constructed for the Accessory Apartment,  
38 then 2] two on-site parking spaces must be  
39 provided; or
- 40 (b) the Hearing Examiner finds under the waiver in  
41 Section 29-26(b) that there is adequate on-street  
42 parking;
- 43 iii. the maximum [gross] habitable floor area for an  
44 Accessory Apartment, including any floor area used for  
45 an Accessory Apartment in a cellar or basement, must be  
46 less than 50% of the total floor area in the principal

- 47 dwelling, including any floor area used for an Accessory  
48 Apartment in the cellar of the principal dwelling[, or  
49 1,200 square feet, whichever is less];
- 50 [iv. the maximum floor area used for an Accessory  
51 Apartment in a proposed addition to the principal  
52 dwelling must not be more than 800 square feet if the  
53 proposed addition increases the footprint of the principal  
54 dwelling; and]
- 55 [v]iv. the maximum number of occupants is limited by Chapter  
56 26 (Section 26-5); however, the total number of  
57 occupants residing in the Accessory Apartment who are  
58 18 years or older is limited to 2[.]; and
- 59 v. the principal dwelling or accessory apartment must be the  
60 primary residence of the applicant for an accessory  
61 apartment rental license.
- 62 d. An Accessory Apartment must not be located on a lot where  
63 any [other allowed] short-term rental Residential use exists or is  
64 licensed [; however, an Accessory Apartment may be located  
65 on a lot in an Agricultural or Rural Residential zone that  
66 includes a Farm Labor Housing Unit or a Guest House].
- 67 e. In the Agricultural and Rural Residential zones, an Accessory  
68 Apartment is excluded from any density calculations. If the  
69 property associated with an Accessory Apartment is  
70 subsequently subdivided, the Accessory Apartment is included  
71 in the density calculations.
- 72 f. Screening under Division 6.5 is not required.

73 g. In the AR zone, any accessory apartment may be prohibited  
74 under Section 3.1.5, Transferable Development Rights.

75 **B. Attached Accessory Apartment**

76 **1. Defined**

77 Attached Accessory Apartment means a second dwelling unit that is  
78 part of a detached house building type and includes facilities for  
79 cooking, eating, sanitation, and sleeping. An Attached Accessory  
80 Apartment is subordinate to the principal dwelling.

81 **2. Use Standards**

82 Where an Attached Accessory Apartment is allowed as a limited use,  
83 it must have a separate entrance and satisfy the use standards for all  
84 Accessory Apartments under Section 3.3.3.A.2. [and the following  
85 standards:]

- 86 [a. A separate entrance is located:
- 87 i. on the side or rear of the dwelling;
  - 88 ii. at the front of the principal dwelling, if the entrance  
89 existed before May 20, 2013; or
  - 90 iii. at the front of the principal dwelling, if it is a single  
91 entrance door for use of the principal dwelling and the  
92 Attached Accessory Apartment.]
- 93 [b. The detached house in which the Accessory Apartment is to be  
94 created or to which it is to be added must be at least 5 years old  
95 on the date of application for a license.]
- 96 [c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached  
97 Accessory Apartment is located at least 500 feet from any other  
98 Attached or Detached Accessory Apartment, measured in a line  
99 from side lot line to side lot line along the same block face.]

- 100 [d. In the RNC, R-90, and R-60 zones, the Attached Accessory
- 101 Apartment is located at least 300 feet from any other Attached
- 102 or Detached Accessory Apartment, measured in a line from side
- 103 lot line to side lot line along the same block face.]
- 104 [e. Under Section 29-26(b), the Hearing Examiner may grant a
- 105 waiver from the parking and distance separation standards.]

106 **C. Detached Accessory Apartment**

107 **1. Defined**

108 Detached Accessory Apartment means a second dwelling unit that is  
109 located in a separate accessory structure on the same lot as a detached  
110 house building type and includes facilities for cooking, eating,  
111 sanitation, and sleeping. A Detached Accessory Apartment is  
112 subordinate to the principal dwelling.

113 **2. Use Standards**

114 a. Where a Detached Accessory Apartment is allowed as a limited  
115 use, it must satisfy the use standards for all Accessory  
116 Apartments under Section 3.3.3.A.2. [and the following  
117 standards:]

118 [a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory  
119 Apartment must be located a minimum distance of 500 feet  
120 from any other Attached or Detached Accessory Apartment,  
121 measured in a line from side lot line to side lot line along the  
122 same block face.]

123 [b. A Detached Accessory Apartment built after May 30, 2012  
124 must have the same minimum side setback as the principal  
125 dwelling and a minimum rear setback of 12 feet, unless more

126 restrictive accessory building or structure setback standards are  
127 required under Article 59-4.]

128 [c. The minimum lot area is one acre.]

129 b. Any structure legally constructed before May 31, 2012 may be  
130 used for a detached Accessory Apartment without regard to  
131 setbacks.

132 c. A Detached Accessory Apartment built after May 30, 2012  
133 must have the same minimum side setback as the principal  
134 dwelling and a minimum rear setback of 12 feet, unless more  
135 restrictive accessory building or structure setback standards are  
136 required under Article 59-4.

137 \* \* \*

138 **Sec. 3. Effective date.** This ordinance becomes effective 90 days after the  
139 date of Council adoption.

140

141 This is a correct copy of Council action.

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143

144 \_\_\_\_\_  
145 Megan Davey Limarzi, Esq.  
Clerk of the Council