

MEMORANDUM

November 1, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Legislative Attorney

SUBJECT: Zoning Text Amendment 12-11, Accessory Apartments – Amendments

Zoning Text Amendment (ZTA) 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012. The ZTA would allow accessory apartments under certain conditions without a special exception.¹ It would still require a special exception approval whenever all those circumstances are not present. The Council treatment of ZTA 12-11 will guide the Planning Board in its deliberations on the Zoning Ordinance Rewrite.

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. There were requests for specific information; Staff hopes the October 8 packet for the Committee satisfied these requests.

On October 8, the Committee reviewed background information on current law, facts on current accessory apartments, information on current enforcement by DHCA, and the purpose of ZTA 12-11. The Committee had the benefit of hearing from the Planning Board Chair, the Acting Planning Director, the Director of DHCA, the Director of DPS, and the Executive Director of the Board of Appeals at that meeting.

October 22, 2012, the Committee met again with Rick Nelson, Rose Krasnow, Françoise Carrier, Lynn Robeson, Greg Russ, Katherine Freeman, Dan McHugh, and Pamela Dunn. The Committee recommended amending the Planning Board proposed requirements for an accessory apartment as follows:

¹ Testimony indicated that, under ZTA 12-11, accessory apartments would be allowed “as of right”. To the extent that a special exception would not be required, that is correct; however, a landowner must satisfy numerous conditions in order to have an accessory apartment. The Planning Board Chair would call this a use allowed by administrative review.

| Approval conditions | Proposed condition for a license but no special exception | Committee recommended conditions (3-0 unless noted otherwise) |
|---|--|---|
| <i>Limit one unit per one-family dwelling lot (non-agricultural zone)</i> | Allowed without regard to age of the house | Same (2-1, Councilmember Elrich dissenting) |
| <i>Part of the pre-existing principal dwelling</i> | No acreage distinction | Same |
| <i>Additions to existing structure</i> | Allowed | Same |
| <i>Separate structure</i> | Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1, up to 1,200 square feet | Same |
| <i>Occupancy of principal house</i> | Resident owner and family required at least 6 months per year – no room rentals except in agricultural zones | Require the address to be the primary residence of the owner |
| <i>Registered living units</i> | Prohibited when an accessory apartment is approved | Same |
| <i>External attributes</i> | Entrance must be on the side or rear yard; or require a special exception | Allow a separate side or rear yard entrance, a separate front entrance if it pre-existed the application, and a common front entrance |
| <i>Street Address</i> | Must be the same as the main dwelling | Same |
| <i>Development standards</i> | Zoning classification controls; no minimum lot size | Same |
| <i>Maximum number of people</i> | 3 | 2 adults; no limit on minors except housing code |
| <i>Unit size</i> | 800 square feet in R-90 and R-60; 1,200 square feet in larger lot residential zones | Limit floor area to less than 50% of main dwelling |
| <i>Excessive concentration</i> | 300 feet from another accessory apartment on the same block face in the R-90, R-60 and RNC zones, 500 feet in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones | Same but subject to waiver; no prohibition on back to back apartments |
| <i>Parking</i> | 1 on-site space required in addition to any required on-site place required for the main dwelling | Same if existing driveway; if new driveway is required, 2 spaces in addition to main dwelling spaces |
| <i>Sunset provision</i> | After the 2,000 licenses issued by DHCA, reverts back to the current special exception process | Require a report by DHCA after the 2,000 th license is issued |

The Committee changes are reflected in the draft amended ZTA, except for the “primary residence” requirement. That requirement was made a condition of the license and not zoning. The Committee did not define how old a person must be to be considered an adult. The draft defines an adult as age 18 or older, as recommended by the Director of DHCA.

The Committee agreed with the DHCA Director’s idea that notice and the right to appeal accessory housing licensing decisions should be included in the process for licensing an accessory apartment. The Committee asked the Director of DHCA to provide detail to this basic outline.² The draft Bill provides that detail.

The draft Bill would establish the criteria for issuing an accessory apartment license. In addition, the draft bill would:

- 1) require notice of an application;
- 2) require deadlines for review;
- 3) incorporate the zoning requirements and add a “principal residence” requirement;
- 4) allow for DHCA to grant waivers for on-site parking and minimum distance requirements;
- 5) allow the applicant to get a hearing if the application is denied by DHCA;
- 6) allow an aggrieved party to get a hearing if there is an objection to the DHCA’s finding or an assertion that the on-street parking is inadequate;
- 7) authorize the Hearing Examiner to hear objections to the Director’s findings;
- 8) have fewer requirements for a renewal of a license;
- 9) require DHCA to maintain a list and a map of licensed apartments.

The Committee or individual Councilmembers may introduce this Bill as proposed or as it pleases. A new public hearing would be required. The County Executive has not formally requested introduction of the Bill, although the DHCA Director reports that he endorsed the concepts in the Bill.

Councilmember Floreen would recommend a different solution. She endorses the Planning Board proposed process (accessory apartment permit under DHCA licensing and a special exception for any waiver of requirements) with 2 significant changes from the Board’s recommendation:

- 1) the zoning criteria would be amended to reflect the Committee’s changes (see page 2); and
- 2) a license for an accessory apartment would follow the notice and administrative appeal process of building permits. (An approved building permit must be posted on the site when the license is issued; objecting parties have a right to an administrative appeal to the Board of Appeals if the appeal is filed within 30 days from the issuance of the permit.)

This alternative would also require the introduction of a Bill to change DHCA’s licensing process for accessory apartments and a new public hearing.

Issues concerning DHCA licensing process

When should notice be provided?

Different processes have different noticing requirements. Whenever the standard of review is more subjective, a Department’s action traditionally requires more notice. Special exceptions have many

² Staff would characterize the Director’s idea expressed at the last PHED meeting as a “cept”. A “cept” is the essence of a concept that is not fully formed.

subjective standards. Special Exceptions require notice **when an application is filed** by a sign (of a regulated size) on the property and mailed notice to neighbors of the hearing and the Hearing Examiner's recommendations. Building permits have objective standards. Building permits require notice **after** the permit is issued, only posting the permit on the site (a separate sign is not required).

The notice required by DHCA's draft Bill would be less notice than a special exception would get but more notice than a building permit. A sign (of a size determined by the Director of DHCA) on-site would be required when an application for an accessory apartment license was filed and notice to individuals would be required when the Director makes findings.

What findings are subject to an objection?

Any of Director's findings regarding the particular requirements of the zone (see page 2) and the license requirements (primary residence) may be subject to an objection. The objection could state how the Director's findings were based on an error of fact. An objection could not change the standards established by the Council.

In addition, notwithstanding the standards, a party could object to a finding of adequate on-street parking. An objection may be raised if the on-street parking is insufficient for residents within 300 feet of the proposed accessory apartment to park on-street near their residence on a regular basis and the parking situation would be made worse by the proposed accessory apartment. The Hearing Examiner may find that more than the minimum on-site parking is required if the evidence supports a finding of insufficient parking.

Under Councilmember Floreen's alternative, The Director of DHCA would not be granted any discretion. The applicant would be required to get a special exception to reduce the minimum required on-site parking or to reduce the minimum distance between accessory apartments. In this respect, it is the same as ZTA 12-11 as recommended by the Planning Board.

What is required for proof that the owner's primary residence is the same address as that of the accessory apartment?

The Committee did not want an owner to be required to live at the subject property for a particular portion of the year. The Committee endorsed the concept of "primary residence". DHCA's draft Bill would require any one of the following means of proving the owner's primary residence:

- the owner's voter registration card;
- the owner's most recent Maryland income tax return;
- the owner's current Maryland driver's license; or
- the owner's real estate tax bill for the address of the proposed accessory apartment.

How should waivers be granted?

DHCA is an administrative agency. The Department lacks the capacity to deliberate on purely subjective questions such as, "Is parking on-street adequate?" The Department would want to issue waivers only when the standard is objective. The DHCA draft Bill would have an objective standard to determine when parking was adequate. (This determination would allow reduced on-site parking and a waiver of the minimum distance otherwise required between accessory apartments.) Parking would be adequate if not more than 80 percent of the on-street parking within 300 feet of the side lot line of the applicant's lot is in use after

9:00 PM Monday through Thursday night on at least 2 visits. This standard uses a variation of the metric used by Alexandria. The Council should satisfy itself that this is an appropriate standard.³

If aggrieved parties want to object to the on-site parking requirements or a finding that the minimum distance between accessory apartment should be waived, they may have the Hearing Examiner review whether on-street parking is insufficient for residents within 300 feet of the proposed accessory apartment to park on-street near their residence on a regular basis and the parking situation would be made worse by the proposed accessory apartment. The subjective standard is appropriate for a hearing; there may be a variety of opinions on whether the standard is satisfied.

Councilmember Floreen would not allow any waivers by DHCA. Parking and distance variations would require a special exception.

Who should hear objections to the Director's findings?

The draft Bill would authorize the Hearing Examiner to hear objections and provides for an appeal to the Circuit Court. The Council could assign the Board of Appeals to undertake appeals. Currently, administrative appeals are the purview of the Board of Appeals and not of the Hearing Examiner.

If the Council wanted the accessory apartment process to mirror the special exception process, the Hearing Examiner would conduct the hearing and write recommendations for approval by the Board of Appeals. Even though the Hearing Examiner conducts the public hearing, any party may request oral argument before the Board of Appeals. If the Council wanted to mirror the building permit process, the Hearing Examiner would have no role. The Board of Appeals conducts the hearing and issues its decision.

Councilmember Floreen's alternative would follow the current appeal process of an administrative decision; the appeal would go to the Board of Appeals, not to the Hearing Examiner.

Should the standards for license renewal be different than those for getting a new license?

The DHCA draft Bill has different standards for the renewal of an accessory apartment license than for the renewal of a license. A license renewal would not have the appeal rights that are afforded a new license.

³ Lynn Robeson did an internet survey of potential standards governing (1) denial of a license after an objection based on lack of adequate parking has been filed, and (2) grant of a waiver of the parking requirements. Some of these included model ordinances from different local government organizations, the AARP, and non-profit groups.

Most of the model ordinances recommend a waiver of the number of required parking spaces where there are transit options within a reasonable walking distance (not always defined). Some use ¼ mile from a transit stop. Others assess parking spaces (not technically a waiver) based on the number of bedrooms in the apartment in an attempt to be more flexible in addressing the impact of the use. This may not be appropriate with the PHED Committee's recommendation to limit the accessory apartment to two adults. Some jurisdictions have no waiver of the minimum number, but allow waivers of other parking requirements (i.e., covered parking, setbacks, tandem parking, etc.)

Some jurisdictions have standards particular to accessory apartments by which the zoning official could require more than the standard number of parking spaces. These tend to be more flexible to address the different situations that may occur in different neighborhoods. The same standards could be used for denial of license after an objection that parking is inadequate to serve the use.

Would accessory apartments previously approved by special exception change?

The DHCA draft Bill would allow current accessory apartments approved by special exception to continue under the conditions of their special exception. If an applicant believes that the accessory apartment satisfies the new standards, then the owner can apply for a license and forgo their rights and obligations under the special exception.

How long would it take for the Director to issue a new license for an accessory apartment?

Under the DHCA draft Bill, an application that is not the subject of an objection would be issued a license within 60 days of the application date. If there is an objection, the license could be issued or denied within 100 days. (This assumes that the Hearing Examiner tentatively schedules a hearing when the application is filed. The tentative date would be 70 days after the date of the application. Under the 100-day timeline, the Hearing Examiner gives notice of the hearing date immediately after an objection is filed. The Hearing Examiner has 30 days from the close of the hearing to report the Examiner's findings.) Under the DHCA alternative, accessory apartments would be a permitted use; a special exception would not be required.

Under Councilmember Floreen's alternative, a permit could be issued by DHCA within 30 days of the application, subject to an administrative appeal within 30 days. If an appeal is taken, it would take 135 days from the application to get a final decision. (The Board of Appeals gives 30 days notice of the Board of Appeals hearing date and 45 days after hearing to report its decision.) If a parking or distance waiver is requested, a special exception would be required; a special exception takes approximately 7 months.

| <u>This packet includes</u> | <u>© page</u> |
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Zoning Text Amendment No.: 12-11
Concerning: Accessory Apartments –
Amendments
Draft No. & Date: 2-10\24\12
Introduced:
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**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definitions for one-family dwelling and one-family detached dwelling-unit;
- establish definitions for an attached accessory apartment and a detached accessory apartment to replace the definition for an accessory apartment;
- revise the standards and requirements for a registered living unit;
- establish standards for attached and detached accessory apartments as permitted uses;
- amend the land use table in one-family residential zones and agricultural zones to add attached and detached accessory apartments as a permitted use under certain circumstances; and
- establish special exception standards for attached and detached accessory apartments
- and generally amend all provisions concerning accessory apartments

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

| | |
|----------------------------|--|
| DIVISION 59-A-2 | “DEFINITIONS AND INTERPRETATION.” |
| DIVISION 59-A-6 | “USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.” |
| Adding Section 59-A-6.19 | “Attached <u>and</u> Detached accessory apartments.” |
| [[Adding Section 59-A-6.20 | “Detached accessory apartments.”]] |
| DIVISION 59-C-1 | “RESIDENTIAL ZONES, ONE-FAMILY.” |
| Section 59-C-1.3 | “Standard development.” |
| Section 59-C-1.5 | “Cluster development.” |

| | |
|---------------------------|---|
| Section 59-C-1.6 | “Development including moderately priced dwelling units.” |
| DIVISION 59-C-9 | “AGRICULTURAL ZONES.” |
| Sec. 59-C-9.3 | “Land uses.” |
| Sec. 59-C-9.4 | “Development standards.” |
| DIVISION 59-G-2. | “SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.” |
| Sec. 59-G-2.00. | “Accessory apartment.” |
| [[Adding Sec. 59-G-2.00.6 | “Attached accessory apartment.”]] |
| [[Adding Sec. 59-G-2.00.7 | “Detached accessory apartment.”]] |

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 that text 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-A-2 is amended as follows:**

2 DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

3 * * *

4 **59-A-2.1. Definitions.**

5 * * *

6 **[Accessory apartment:** A second dwelling unit that is part of an existing one-
7 family detached dwelling, or is located in a separate existing accessory structure on
8 the same lot as the main dwelling, with provision within the accessory apartment
9 for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to
10 the main dwelling.]

11 **Accessory apartment, attached:** A second dwelling unit that is part of a one-
12 family detached dwelling and provides for cooking, eating, sanitation, and
13 sleeping. An attached accessory apartment [[has a separate entrance and]] is
14 subordinate to the principal dwelling.

15 **Accessory apartment, detached:** A second dwelling unit that is located in a
16 separate accessory structure on the same lot as a one-family detached dwelling and
17 provides for cooking, eating, sanitation, and sleeping. A detached accessory
18 apartment is subordinate to the principal dwelling.

19 * * *

20 **Dwelling and dwelling units:**

21 **Dwelling:** A building or portion [[thereof]] of a building arranged or designed to
22 contain one or more dwelling units.

23 * * *

24 **Dwelling, one-family:** A dwelling containing not more than one dwelling
25 unit. An accessory apartment[, if approved by special exception,] or a
26 registered living unit may also be part of a one-family dwelling. A one-

27 family dwelling with either of these subordinate uses is not a two-family
28 dwelling[,] as defined in this section.

29 * * *

30 **Dwelling unit:** A building or portion ~~[[thereof]]~~ of a building providing complete
31 living facilities for not more than one family, including, at a minimum, facilities
32 for cooking, sanitation, and sleeping.

33 **Dwelling unit, one-family detached:** A dwelling unit that is separated and
34 detached from any other dwelling unit on all sides, except where the
35 dwelling is modified to include an accessory apartment[, if approved by
36 special exception,] or a registered living unit.

37 * * *

38 **Sec. 2. DIVISION 59-A-6 is amended as follows:**

39 DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF
40 ZONE.

41 * * *

42 **59-A-6.10. Registered living unit--Standards and requirements.**

43 A registered living unit, permitted in[,] agricultural, one-family residential, and
44 planned unit development zones[,] must:

45 * * *

- 46 (i) be removed whenever it is no longer occupied as a registered living unit,
47 unless the owner applies for and ~~[[is]]~~ was granted ~~[[either]]~~ a special
48 exception under Section 59-G-2.00 or [[a]]is granted a license for an
49 attached accessory apartment [in accordance with Section 59-G-2.00]
50 [[under Section 59-G-2.00.6 or Section 59-A-6.19]] by the Department of
51 Housing and Community Affairs under Section 29-19 , or whenever the one-

52 family detached dwelling unit in which it is located is no longer occupied by
53 the owner.

54 * * *

55 **Sec. 59-A-6.19 Attached and detached accessory apartment.**

56 (a) Where an attached or detached accessory apartment is permitted in a zone,
57 only one accessory apartment is permitted for each lot and it is only
58 permitted under the following standards:

59 (1) the apartment was approved as a special exception before
60 {EFFECTIVE DATE} and satisfies the conditions of the special
61 exception approval; or

62 (2) the apartment is [[registered with]] licensed by the Department of
63 Housing and Community Affairs [[in the same manner as a registered
64 living unit under Subsection 59-A-6.10(a)(3)]] under Section 29-19;
65 and

66 (A) [[the owner of the lot occupies a dwelling unit on the lot at
67 least 6 months of every calendar year]];

68 [[B]] the apartment has the same street address as the principal
69 dwelling;

70 [[C]] (B) a separate entrance is located

71 (i) on the side yard or rear yard,

72 (ii) at the front of the principal dwelling if the
73 entrance existed before the {EFFECTIVE
74 DATE}, or

75 (iii) at the front of the principal dwelling if it is a single
76 entrance door for use of the principal dwelling and
77 the accessory apartment;

78 [[(D)]] (C) one on-site parking space is provided in addition to any
79 required on-site parking for the principal dwelling; however, if
80 a new driveway must be constructed for the accessory
81 apartment, then two on-site parking spaces must be provided;

82 [[(E)]] (D) an attached accessory apartment

83 (i) in the RE-2, RE-2C, RE-1, R-200, RMH-200, and
84 R-150 zones, is located at least 500 feet from any other
85 attached or detached accessory apartment, measured in a
86 [[straight]] line from side lot line to side lot line along the
87 same block face;

88 [[(F)]] (ii) in the R-90, R-60, and RNC zones, is located at
89 least 300 feet from any other attached or detached
90 accessory apartment, measured in a [[straight]] line from
91 side lot line to side lot line along the same block face;

92 (E) A detached accessory apartment

93 (i) in the RE-2, RE-2C, and RE-1 zones, is located a
94 minimum distance of 500 feet from any other attached or
95 detached accessory apartment, measured in a line from
96 side property line to side property along the same block
97 face;

98 (ii) built after {EFFECTIVE DATE} must have the
99 same minimum side yard setback requirement as the
100 principal dwelling and a minimum rear yard setback
101 requirement of 12 feet, unless more restrictive accessory
102 building or structure yard setback standards are required
103 under Section 59-C-1.326;

104 (iii) must be located on a lot with an area of one acre or
105 larger.

106 [[G] the rear lot line of the lot with the accessory apartment does not
107 abut a lot with another accessory apartment;]]

108 [[H] if the accessory apartment is limited to a floor area of 800
109 square feet, it must be no greater than 50% of the principal
110 dwelling or 800 square feet, whichever is less;]]

111 [[I] if the accessory apartment is limited to a floor area of 1,200
112 square feet, it must be no larger than 50% of the principal
113 dwelling or 1,200 square feet, whichever is less; and]]

114 (F) The maximum gross floor area including, the cellar for an
115 accessory, apartment must be less than 50 percent of the total
116 floor area, including the cellar, of the principal dwelling, or
117 2,500 square feet, whichever is less.

118 [[J]] (G) the maximum number of total occupants is limited [[to 3
119 persons]] by Section 26-5, however, the total number of
120 occupants residing in the accessory apartment who are 18 years
121 or older is limited to 2.

122 (3) [[The]] An accessory apartment must not be located on a lot where
123 any of the following otherwise allowed residential uses exist: guest
124 room for rent; boardinghouse; registered living unit; or any other
125 rental residential use[[, other than an accessory dwelling in an
126 agricultural zone]]]; however, an accessory apartment maybe located
127 on a lot in an agricultural zone that includes a tenant dwelling, a farm
128 tenant mobile home or a guest house.

129 (b) (1) [[An attached accessory apartment special exception petition may be
130 filed with the Board of Appeals to deviate from any permitted use
131 standard regarding:

132 (A) location of the separate entrance;

133 (B) number of on-site parking spaces; or

134 (C) minimum distance from any other attached or detached
135 accessory apartment.

136 (2) To approve a special exception filed under Subsection (b)(1), the
137 Board of Appeals must find, as applicable, that:

138 (A) the separate entrance is located so that the appearance of a
139 single-family dwelling is preserved;

140 (B) adequate on-street parking permits fewer off-street spaces; or

141 (C) when considered in combination with other existing or
142 approved accessory apartments, the deviation in distance
143 separation does not result in an excessive concentration of
144 similar uses, including other special exception uses, in the
145 general neighborhood of the proposed use.]]

146 The number of required on-site parking spaces may be increased or
147 decreased in the course of licensing the accessory apartment under
148 Section 29-19.

149 (2) The distance between accessory apartments may be decreased in the
150 course of licensing the accessory apartment under Section 29-19.

151

152 **[[Sec. 59-A-6.20 Detached accessory apartment.**

153 (a) Where a detached accessory apartment is permitted in a zone: it must be

154 located on a lot one acre or greater in size; only one accessory apartment is

155 permitted for each lot; and it is only permitted under the following
156 standards:

- 157 (1) the accessory apartment was approved as a special exception before
158 {EFFECTIVE DATE} and satisfies the conditions of the special
159 exception approval; or
- 160 (2) the accessory apartment is registered with the Department of Housing
161 and Community Affairs in the same manner as a registered living unit
162 under Subsection 59-A-6.10(a)(3); and
- 163 (A) the owner of the lot occupies a dwelling unit on the lot at least 6
164 months of every calendar year;
- 165 (B) the apartment has the same street address as the principal
166 dwelling;
- 167 (C) a separate entrance is located on the side yard or rear yard;
- 168 (D) one on-site parking space is provided in addition to any
169 required on-site parking for the principal dwelling;
- 170 (E) in the RE-2, RE-2C, and RE-1 zones, the detached accessory
171 apartment is located a minimum distance of 500 feet from any
172 other attached or detached accessory apartment, measured in a
173 straight line from side property line to side property along the
174 same block face;
- 175 (F) the rear lot line of the lot with the accessory apartment does not
176 abut a lot with another accessory apartment;
- 177 (G) if the accessory apartment is limited to a floor area of 800
178 square feet, it must be no greater than 50% of the principal
179 dwelling or 800 square feet, whichever is less;

- 180 (H) if the accessory apartment is limited to a floor area of 1,200
181 square feet, it must be no greater than 50% of the principal
182 dwelling or 1,200 square feet, whichever is less;
- 183 (I) the maximum number of occupants is limited to 3 persons; and
184 (J) any structure built after {EFFECTIVE DATE} to be occupied
185 as an accessory apartment must have the same minimum side
186 yard setback requirement as the principal dwelling and a
187 minimum rear yard setback requirement of 12 feet, unless more
188 restrictive accessory building or structure yard setback
189 standards are required under Section 59-C-1.326.
- 190 (3) The accessory apartment must not be located on a lot where any of the
191 following otherwise allowed residential uses exist: guest room for
192 rent; boardinghouse; registered living unit; or any other rental
193 residential use, other than an accessory dwelling in an agricultural
194 zone.
- 195 (b) (1) A detached accessory apartment special exception petition may be
196 filed with the Board of Appeals to deviate from any permitted use
197 standard regarding:
- 198 (A) location of the separate entrance;
199 (B) number of on-site parking spaces; or
200 (C) minimum distance from any other attached or detached
201 accessory apartment.
- 202 (2) To approve a special exception filed under Subsection (b)(1), the
203 Board of Appeals must find, as applicable, that:
- 204 (A) the separate entrance is located so that the appearance of a
205 single-family dwelling is preserved;
206 (B) adequate on-street parking permits fewer off-street spaces; or

207 (C) when considered in combination with other existing or
208 approved accessory apartments, the deviation in distance
209 separation does not result in an excessive concentration of
210 similar uses, including other special exception uses, in the
211 general neighborhood of the proposed use. ||

212 * * *

213 **Sec. 3. DIVISION 59-C-1 is amended as follows:**

214 DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

215 * * *

216 **Sec. 59-C-1.3. Standard development.**

217 The procedure for approval is specified in Chapter 50.

218 **59-C-1.31. Land uses.**

219 No use is allowed except as indicated in the following table:

220 **-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the
221 zones indicated, subject to all applicable regulations.

222 **-Special Exception Uses.** Uses designated by the letters "SE" may be authorized
223 as special exceptions under Article 59-G.

224

| | RE-2 | RE-2C | RE-1 | R-200 | R-150 | R-90 | R-60 | R-40 | R-4plex | RMH 200 |
|--|---------------------------------|---------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|------|---------|-------------------------------|
| (a) Residential | | | | | | | | | | |
| [Accessory apartment. ⁴] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | | | [SE] |
| <u>Accessory apartment, attached</u> [[[up to 800 square feet)]]. ⁴ | $\frac{P^*[[/SE^{***}}{}}{}}$ | $\frac{P^*[[/SE^{***}}{}}{}}$ | $\frac{P^*[[/SE^{***}}{}}{}}$ | $\frac{P^*[[/SE^{***}}{}}{}}$ | $\frac{P^*[[/SE^{***}}{}}{}}$ | $\frac{P^*[[/SE^{***}}{}}{}}$ | $\frac{P^*[[/SE^{***}}{}}{}}$ | | | $\frac{P^*[[/SE^{***}}{}}{}}$ |
| [[<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u>] ⁴]] | $\frac{[[P^*/SE^{***}}{}}{}}$ | $\frac{[[P^*/SE^{***}}{}}{}}$ | $\frac{[[P^*/SE^{***}}{}}{}}$ | $\frac{[[P^*/SE^{***}}{}}{}}$ | $\frac{[[P^*/SE^{***}}{}}{}}$ | $\frac{[[P^*/SE^{***}}{}}{}}$ | $\frac{[[P^*/SE^{***}}{}}{}}$ | | | $\frac{[[P^*/SE^{***}}{}}{}}$ |
| <u>Accessory apartment, detached</u> [(up to 800 square feet)]]. ⁴ | $\frac{P^*[[*/SE^{****}}{}}{}}$ | $\frac{P^*[[*/SE^{****}}{}}{}}$ | $\frac{P^*[[*/SE^{****}}{}}{}}$ | | | | | | | |
| [[<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u>] ⁴]] | $\frac{[[P^*/SE^{****}}{}}{}}$ | $\frac{[[P^*/SE^{****}}{}}{}}$ | $\frac{[[P^*/SE^{****}}{}}{}}$ | | | | | | | |

225 * * *

226 ⁴ Not permitted in a mobile home.

227 ^{*} See Sec. 59-A-6.19. Attached and detached accessory apartment.

228 $\frac{[[**}{}}{}}$ See Sec. 59-A-6.20. Detached accessory apartment.]]

229 $\frac{[[***}{}}{}}$ See Sec. 59-G-2.00.6. Attached accessory apartment.]]

230 $\frac{[[****}{}}{}}$ See Sec. 59-G-2.00.7. Detached accessory apartment.]]

231 * * *

232 **Sec. 59-C-1.5. Cluster development.**

233 * * *

234 **59-C-1.53. Development standards.**

235 All requirements of the standard method of development in the respective zones, as
 236 specified in Section 59-C-1.3, apply, except as expressly modified in this section.

| | RE-2C | RE-1 | R-200 | R-150 | R-90 | R-60 | RMH 200 |
|--|------------------------|------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 59-C-1.531. Uses Permitted. No uses shall be permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31.</u> | | | | | | | |
| * * * | | | | | | | |
| [Accessory apartment. ²] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] |
| <u>Accessory apartment, attached</u> <u>[[(up to 800 square feet)]].²</u> | <u>P*[[/SE**]]</u> | <u>P*[[/SE**]]</u> | <u>P*[[/SE**]]</u> | <u>P*[[/SE**]]</u> | <u>P*[[/SE**]]</u> | <u>P*[[/SE**]]</u> | <u>P*[[/SE**]]</u> |
| <u>[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).²]]</u> | <u>[[P*/SE**]]</u> | <u>[[P*/SE**]]</u> | <u>[[SE**]]</u> | <u>[[SE**]]</u> | <u>[[SE**]]</u> | <u>[[SE**]]</u> | <u>[[SE**]]</u> |
| <u>Accessory apartment, detached</u> <u>[[(up to 800 square feet)]].²</u> | <u>P*[[**/SE****]]</u> | <u>P*[[**/SE****]]</u> | | | | | |
| <u>[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).²]]</u> | <u>[[P***/SE****]]</u> | <u>[[P***/SE****]]</u> | | | | | |

237 * * *

238 ² Not permitted in a townhouse, one-family attached dwelling unit, or mobile
 239 home.

240 * See Sec. 59-A-6.19. Attached and detached accessory apartment.

241 [[^{**} See Sec. 59-G-2.00.6. Attached accessory apartment.]]

242 [[^{***} See Sec. 59-A-6.20. Detached accessory apartment.]]

243 [[^{****} See Sec. 59-G-2.00.7. Detached accessory apartment.]]

244 * * *

245 **Sec. 59-C-1.6. Development including moderately priced dwelling units.**

246 * * *

247 **59-C-1.62. Development standards.**

248

| | RE-2C ⁸ | RE-1 ⁸ | R-200 | R-150 | R-90 | R-60 | R-40 |
|---|---|---|------------------------------|------------------------------|------------------------------|------------------------------|------|
| 59-C-1.621. Uses Permitted. No uses are permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31</u> , [title "Land Uses,"] subject to [the provisions of article] <u>Article 59-G</u> . | | | | | | | |
| * * * | | | | | | | |
| Registered living unit. ^{3,5} | P | P | P | P | P | P | |
| [Accessory apartment. ³] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | |
| <u>Accessory apartment, attached</u> [[(up to 800 square feet)]]. ³ | <u>P*/</u> [[<u>SE**</u>]] | <u>P*/</u> [[<u>SE**</u>]] | <u>P*/</u> [[<u>SE**</u>]] | <u>P*/</u> [[<u>SE**</u>]] | <u>P*/</u> [[<u>SE**</u>]] | <u>P*/</u> [[<u>SE**</u>]] | |
| [[<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet)</u>]. ³]] | [[<u>P*/</u> [[<u>SE**</u>]]]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | |
| <u>Accessory apartment, detached</u> [[(up to 800 square feet). ³]] | <u>P*/</u> [[<u>SE****</u>]]]] | <u>P*/</u> [[<u>SE****</u>]]]] | | | | | |
| [[<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet)</u>]. ³]] | [[<u>P****</u> [[<u>SE****</u>]]]]]] | [[<u>P****</u> [[<u>SE****</u>]]]]]] | | | | | |

249

* * *

250 ³ Not permitted in a townhouse, one-family attached dwelling unit, or mobile
251 home.

252 ^{*} See Sec. 59-A-6.19. Attached and detached accessory apartment.

253 ^{**} See Sec. 59-G-2.00.6. Attached accessory apartment.]]

254 ^{****} See Sec. 59-A-6.20. Detached accessory apartment.]]

255 [[^{****} See Sec. 59-G-2.00.7. Detached accessory apartment.]]

256 * * *

257 **Sec. 4. DIVISION 59-C-9 is amended as follows:**

258 DIVISION 59-C-9. AGRICULTURAL ZONES.

259 * * *

260 **Sec. 59-C-9.3. Land uses.**

261 No use is allowed except as indicated in the following table:

262 — **Permitted uses.** Uses designated by the letter “P” are permitted on any lot in
263 the zones indicated, subject to all applicable regulations.

264 — **Special exception uses.** Uses designated by the letters “SE” may be authorized
265 as special exceptions under Article 59-G.

266

| | Rural | RC | LDRC | RDT | RS | RNC | RNC/ TDR |
|---|-------------------------------------|-------------------------------------|-------------------------------------|--|----|----------------------------------|-------------|
| * * * | | | | | | | |
| (e) Residential: ² | | | | | | | |
| [Accessory apartment. ^{6,7}] | [SE] | [SE] | [SE] | [SE ⁴⁸] | | [SE] | [SE] |
| Accessory dwelling. ⁷ | SE | SE | SE | SE ⁴⁸ | SE | SE | SE |
| Accessory dwelling for agricultural workers. ⁴² | | | | P | | | |
| <u>Accessory apartment, attached</u> <u>[[(up to 800 square feet)]]</u> . ^{6,7} | $\frac{P^*[[SE^{**}]]}{SE^{**}}$ | $\frac{P^*[[SE^{**}]]}{SE^{**}}$ | $\frac{P^*[[SE^{**}]]}{SE^{**}}$ | $\frac{P^{48,*}[[SE^{48,**}]]}{SE^{48,**}}$ | | $\frac{P^*[[SE^{**}]]}{SE^{**}}$ | |
| <u>[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet.^{6,7})]]</u> | $\frac{[[P^*/SE^{**}]]}{SE^{**}}$ | $\frac{[[P^*/SE^{**}]]}{SE^{**}}$ | $\frac{[[P^*/SE^{**}]]}{SE^{**}}$ | $\frac{[[P^{48,*}/SE^{48,**}]]}{SE^{48,**}}$ | | $\frac{[[SE^{**}]]}{SE^{**}}$ | |
| <u>Accessory apartment, detached</u> <u>[[(up to 800 square feet)]]</u> . ^{6,7} | $\frac{[[SE^{***}]]}{[[P^*]]}$ | $\frac{[[SE^{***}]]}{[[P^*]]}$ | $\frac{[[SE^{***}]]}{[[P^*]]}$ | $\frac{[[SE^{48,***}]]}{[[P^{48,*}]]}$ | | | |
| <u>[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet.^{6,7})]]</u> | $\frac{[[SE^{***}]]}{[[SE^{***}]]}$ | $\frac{[[SE^{***}]]}{[[SE^{***}]]}$ | $\frac{[[SE^{***}]]}{[[SE^{***}]]}$ | $\frac{[[SE^{48,***}]]}{[[SE^{48,***}]]}$ | | | |

267

* * *

268

⁶ Not permitted in a mobile home.

269

⁷ [As a special exception regulated by divisions 59-G-1 and 59-G-2, such a] [[An]]

270

Any accessory dwelling unit[[, including an attached or detached accessory

271

apartment,]] is excluded from the density calculations [set forth] in [sections]

272

Sections 59-C-9.41[, title "Density in RDT Zone,"] and 59-C-9.6[, title "Transfer

273

of Density-Option in RDT Zone."]. Once the property is subdivided, such a

274 dwelling would no longer comply with [the special exception regulations or with]
275 this exclusion. A special exception is not required for a dwelling that was a farm
276 tenant dwelling in existence [prior to] before June 1, 1958[, provided, that] if the
277 dwelling meets all applicable health and safety regulations.

278 * * *

279 ⁴⁸ If property is encumbered by a recorded transfer of developments rights
280 easement, this use is prohibited. However, any building existing on October 2,
281 2007 may be repaired or reconstructed if the floor area of the building is not
282 increased and the use is not changed.

283 * * *

284 * See Sec. 59-A-6.19. Attached and detached accessory apartment.

285 [[** See Sec. 59-G-2.00.6. Attached accessory apartment.]]

286 [[*** See Sec. 59-G-2.00.7. Detached accessory apartment.]]

287 * * *

288 **Sec. 59-C-9.4. Development standards.**

289 * * *

290 **59-C-9.41. Density in RDT zone.**

291 Only one one-family dwelling unit per 25 acres is permitted. (See [section] Section
292 59-C-9.6 for permitted transferable density.) The following dwelling units on land
293 in the RDT zone are excluded from this calculation, provided that the use remains
294 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- 295 (a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined
296 in [section] Section 59-A-2.1 [, title "Definitions."].
- 297 (b) An accessory apartment or accessory dwelling [[regulated]] licensed by the
298 Department of Housing and Community Affairs licensing under Section 29-
299 19 and the special exception provisions of Division 59-G-1 and 59-G-2 [[and
300 Sections 59-A-6.19 and 59-A-6.20]].

301 * * *

302 **Sec. 5. DIVISION 59-G-2 is amended as follows:**

303 DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND
304 REQUIREMENTS.

305 The uses listed in this Division, as shown on the index table below, may be
306 allowed as special exceptions in any zone where they are so indicated, as provided
307 in this Article, subject to the standards and requirements in this Division and the
308 general conditions specified in Section 59-G-1.21.

309 **USE SECTION**

310 * * *

| | |
|--|-------------------|
| 311 Accessory apartment | G-2.00 |
| 312 <u>[[Accessory apartment, attached</u> | <u>G-2.00.6]]</u> |
| 313 <u>[[Accessory apartment, detached</u> | <u>G-2.00.7]]</u> |

314 * * *

315 **Sec. 59-G-2.00. Accessory apartment. (The standards below reflect the**
316 **conditions required only for an accessory apartment approved before**
317 **{EFFECTIVE DATE}.)**

318 A special exception may be granted for an accessory apartment on the same lot as
319 an existing one-family detached dwelling, subject to the following standards and
320 requirements:

321 * * *

322 **[[Sec. 59-G-2.00.6 Attached accessory apartment.**

323 A special exception may be granted for an attached accessory apartment on the
324 same lot as an existing one-family detached dwelling, subject to the special
325 exception provisions of Division 59-G-1 and the standards and requirements of
326 Section 59-A-6.19.]]

327 **[[Sec. 59-G-2.00.7. Detached accessory apartment.**
328 **Where a detached accessory apartment is permitted in a zone, only one detached**
329 **accessory unit is permitted for each lot and it is only permitted under the special**
330 **exception provisions of Division 59-G-1 and the standards and requirements of**
331 **Section 59-A-6.20.]]**

332

333 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the
334 date of Council adoption.

335

336 **Sec. 7. Review.** After the 2,000th accessory apartment license is issued by
337 the Department of Housing and Community Affairs. The Director of the
338 Department of Housing and Community Affairs must issue a report concerning any
339 problems or resident complaints and must recommend any changes in legislation
340 the Department deems warranted.

341

342 This is a correct copy of Council action.

343

344

345 _____
Linda M. Lauer, Clerk of the Council

Bill No. XX-12
 Concerning: Rental License – Accessory
Apartments - Established
 Revised: October 24, 2012 Draft No. 1
 Introduced: _____
 Expires: _____
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: The Planning Housing, and Economic Development Committee

AN ACT to:

- (1) require an accessory apartment rental license issued by the Department of Housing and Community Affairs;
- (2) require notice of the proposed accessory apartment;
- (3) authorize the Hearing Examiner to hear objections to the Department’s findings concerning an accessory apartment rental license; and
- (4) generally amend the law governing an accessory apartment and appeals for rental licenses.

By amending

Montgomery County Code
 Chapter 2, Administration
 Sections 2-112 and 2-140
 Chapter 29, Landlord-Tenant Relations
 Sections 29-16, 29-19, and 29-26

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 2-140, 29-16, 29-19, and 29-26 are amended as follows:**

2 **2-140. Powers, duties and functions.**

3 (a) The Office of Zoning and Administrative Hearings must:

4 (1) schedule and conduct public hearings on any appeal or other
5 matter assigned by law or by the County Council, County
6 Executive, or other officer or body authorized to assign matters to
7 a hearing examiner;

8 (2) issue a subpoena, enforceable in any court with jurisdiction, when
9 necessary to compel the attendance of a witness or production of
10 a document at any hearing, and administer an oath to any witness;

11 (3) allow each party in any hearing a reasonable opportunity to cross
12 examine each witness not called by that party on matters within
13 the scope of that witness' testimony;

14 (4) forward a written report, with a recommendation for decision, to
15 the body that assigned the matter, including findings of fact and
16 conclusions of law where required or appropriate;

17 (5) adopt regulations, subject to Council approval under method (2),
18 to govern the conduct of public hearings and other activities of
19 the Office.

20 (b) The Office may act as an administrative office or agency designated by
21 the District Council, as prescribed in the Regional District Act (Article
22 28 of the Maryland Code).

23 (c) The Office may hear, and submit a written report and recommendation
24 to the specified officer or body on, any:

25 (1) petition to the County Council to grant, modify, or revoke a
26 special exception, as provided in Chapter 59;

- 27 (2) designation by the County Council of a geographic area as a
28 community redevelopment area; [or]
29 (3) matter referred by the Board of Appeals under Section 2-112(b);
30 or
31 (4) objection to a finding made by the Director of the Department of
32 Housing and Community Affairs concerning an application for
33 an accessory apartment rental housing license under Section 29-
34 26.
- 35 (d) When the County Executive or a designee must conduct an
36 administrative hearing under any law, the Executive may authorize the
37 Office of Zoning and Administrative Hearings to conduct the hearing or
38 any particular class of hearings.

39 **29-16. Required.**

- 40 (a) The owner of a dwelling unit must obtain a rental housing license before
41 operating the dwelling unit as rental housing. If the owner is a
42 corporation, the corporation must be qualified to do business in
43 Maryland under state law. Each owner must certify to the Department
44 the name, address and telephone number of an agent who resides in
45 Maryland and is qualified to accept service of process on behalf of the
46 owner.
- 47 (b) The Director must issue [two] three classes of rental housing licenses.
48 Class 1 is a multifamily rental housing license. Class 2 is a single-family

49 rental housing license. Class 3 is a single-family accessory apartment
50 license.

51 (c) A Class 1 rental housing license is required for each apartment complex
52 and personal living quarters building, and for each multifamily dwelling
53 unit operated as rental housing. A Class 2 rental housing license is
54 required for each single-family dwelling unit operated as rental housing.
55 A Class 3 license is required for each single-family residence with an
56 accessory apartment that does not have a special exception approved
57 before {EFFECTIVE DATE}.

58 * * *

59 **29-19. Licensing procedures.**

60 (a) To obtain a rental housing license, the prospective operator must apply
61 on a form furnished by the Director and must pay the required fee. If the
62 Director notifies the applicant of any violation of law within 30 days,
63 the Director may issue a temporary license for a period of time the
64 Director finds necessary to achieve compliance with all applicable laws.

65 (b) Accessory apartment rental license.

66 (1) An owner of [an accessory apartment] a lot or parcel in a zone
67 that permits accessory apartments may obtain [and keep] a
68 license to operate an accessory apartment if [the occupancy of the
69 accessory apartment is limited to]:

70 [(1) One or more individuals who live and cook together as a single
71 housekeeping unit and are related by:

- 72 (A) Blood;
- 73 (B) Marriage; or
- 74 (C) Adoption; or
- 75 (2) No more than 2 individuals who live and cook together as a
- 76 single housekeeping unit.]
- 77 (A) the owner posts notice on the lot or parcel of the proposed
- 78 accessory apartment within 5 days after applying for the
- 79 license;
- 80 (B) the principal dwelling on the lot or parcel required for the
- 81 proposed accessory apartment is the owner's primary
- 82 residence. Evidence of primary residence includes:
- 83 (i) the owner's voter registration card;
- 84 (ii) the owner's most recent Maryland income tax
- 85 return;
- 86 (iii) the owner's current Maryland driver's license, or
- 87 (iv) the owner's real estate tax bill for the address of the
- 88 proposed accessory apartment; and
- 89 (C) the Director finds that:
- 90 (i) the accessory apartment satisfies the standards for
- 91 an accessory apartment in Section 59-A-6.19; or
- 92 (ii) the on-site parking requirement or the minimum
- 93 distance between accessory apartments should be
- 94 decreased because of adequate on-street parking and

95 the accessory apartment satisfies all of the
96 remaining standards in Section 59-A-6.19.

97 (iii) the on-site parking requirement or the minimum
98 distance between accessory apartments may be
99 reduced if the Director finds that there is adequate
100 on-street parking by determining that not more than
101 80 percent of the on-street parking within 300 feet
102 of the side lot line of the applicant's lot is in use
103 after 9:00 PM Monday through Thursday night on at
104 least 2 visits. If the parking is not found to be
105 adequate, then the Director may not reduce the on-
106 site parking requirement.

107 (3) Upon receipt of an application for an accessory apartment
108 license, the Director must:

109 (A) send a copy of the application to the Hearing Examiner's
110 office within 5 days after the date the application was filed;

111 (B) inspect the lot or parcel identified in the application and
112 the proposed accessory apartment;

113 (C) complete a report on any repairs or improvements needed
114 to approve the application;

115 (D) issue a report on all required findings within 30 days after
116 the date the application was filed;

- 117 (F) provide a copy of the Director's report on findings to the
118 applicant, owners of adjoining and confronting properties,
119 any other person that contacted the Department concerning
120 the application, and the Hearing Examiner.
- 121 (F) the Director may issue or deny a new license 30 days after
122 the issuance of the Director's report unless a timely
123 objection is filed under Section 29-26.
- 124 (4) The Director may renew a license for an accessory apartment at
125 the request of the applicant if
- 126 (A) the applicant:
- 127 (i) attests that the number of occupants will not exceed
128 the requirements of Section 26-5 and there will be
129 no more than 2 residents in the apartment who are
130 older than 18 years;
- 131 (ii) attests that one of the dwelling units on the lot or
132 parcel will be the primary residence of the owner;
133 and
- 134 (iii) acknowledges that by obtaining a the license the
135 applicant gives the Director the right to inspect the
136 lot or parcel including the accessory apartment; or
- 137 (5) The Director may renew a Class 1 license for an accessory
138 apartment that was approved as a special exception, as a Class 1

139 license if the conditions of the special exception remain in effect
 140 and the applicant is in compliance with those conditions.

141 (6) The Director must maintain a public list and map showing each
 142 Class 3 license and each accessory apartment with a Class 1
 143 license.

144 (c) Where a rental building has not been completely constructed or
 145 renovated, the Director may issue a temporary license for that part of the
 146 building that has been completely constructed or renovated if the
 147 landlord has:

148 (1) obtained a temporary certificate of occupancy under Chapter 8;
 149 and

150 (2) complied with all other applicable laws.

151 However, the temporary license expires when a license to operate the
 152 entire building is issued.

153 (d) The Director must not issue a rental housing license for a personal
 154 living quarters building unless the applicant has submitted a satisfactory
 155 management plan. The plan must specify who will manage the building
 156 and explain what the manager will do to achieve acceptable levels of
 157 safety, sanitation, and security in the building's common areas.

158 (e) Each licensee must give the Department a current address for the receipt
 159 of mail. If the Department sends first class or certified mail to the
 160 licensee at the designated address and the mail is returned as

161 undeliverable, the Department may treat the mail as having been
 162 received.

163 * * *

164 **29-26. Appeals and Objections.**

165 (a) Any person aggrieved by a final action of the Commission rendered
 166 under this Article may appeal to the Circuit Court [in accordance with]
 167 under the Maryland Rules of Procedure for [a review of the action]
 168 judicial review of a final administrative agency decision. An appeal
 169 does not stay enforcement of the Commission's order.

170 (b) Objections concerning any new Accessory apartment license.

171 (1) The applicant for a new license for an accessory apartment may
 172 object to the Office of Zoning and Administrative Hearings any
 173 finding by the Director that would result in the denial of a license.

174 (2) Any other aggrieved party may object to the Office of Zoning
 175 and Administrative Hearings any finding of fact by the Director
 176 that would result in the Director granting a new license for an
 177 accessory apartment or that on-street parking is inadequate.

178 (3) A request for a review by the Hearing Examiner must state the
 179 finding in dispute, the basis for the objection and be submitted to
 180 the Office of Zoning and Administrative Hearings within 30 days
 181 after the date the Director issues the report of the Director's
 182 findings.

- 183 (4) The Hearing Examiner must schedule an adjudicatory hearing
184 within 10 days after the objection is received.
- 185 (5) The Hearing Examiner may only resolve the issues raised by the
186 objection.
- 187 (5) Notwithstanding the standard applicable to the Director, the
188 Hearing Examiner may find inadequate parking if the on-street
189 parking is insufficient for residents within 300 feet of the
190 proposed accessory apartment to park on-street near their
191 residence on a regular basis and the parking situation would be
192 made worse by the proposed accessory apartment. The Hearing
193 Examiner may find that more than the minimum on-site parking
194 is required.
- 195 (5) The Hearing Examiner must issue findings within 30 days after
196 the close of the adjudicatory hearing.
- 197 (6) The Director must issue the license or deny the license based on
198 the findings of the Hearing Examiner.
- 199 (7) Any party aggrieved by the actions of the Director on a license for
200 an accessory apartment may file for judicial review of a final
201 administrative agency decision under the Maryland Rules of
202 Procedure to the Circuit Court. An appeal does not stay the effect
203 of the Director's action to issue or deny the license.
- 204

30

205 *Approved:*

206

207 _____

208 Roger Berliner, President, County Council

_____ Date

209 *Approved:*

210

211 _____

212 Isiah Leggett, County Executive

_____ Date

213 *This is a correct copy of Council action.*

214

215 _____

216 Linda M. Lauer, Clerk of the Council

_____ Date

217

Standards for Waiver of Parking Requirements

Anne Arundel County Code:

Parking waiver for all uses: (a) **Reduced parking requirements.** Upon written application, the Planning and Zoning Officer may reduce the parking requirements of this subtitle if the applicant demonstrates that the facility to be served would not require in its day-to-day operation a full complement of parking. The application shall be accompanied by a parking needs study that includes an estimate of the parking needs for the use, a thorough explanation of the basis for the estimate, any data used in calculating the estimate, including parking generation studies and previous experience with similar uses, and an explanation of any other relevant considerations, such as availability of commercial or public parking areas.

Seattle, WA, *Client Assistance Memo #117*, Department of Planning and Zoning

In single-family zones, the Director of the Department of Planning and Development (DPD) may waive the requirement for one or both stalls where "topography or location of existing principal or accessory structures makes provision of one or both of the parking spaces unduly burdensome." The two spaces can be provided in tandem (i.e., one behind the other.)

The second criterion to allow a waiver of parking is to demonstrate that the topography or location of existing structures would make it difficult to provide one or both of the required parking spaces. This information should be shown on the site plan.

If steep topography is the reason that parking cannot be provided, then the site plan should include information which clearly demonstrates the location and steepness of the slope on the site. The site plan should include contour lines which reflect the existing grades at two foot intervals. If retaining walls or rookeries exist on the site, the site plan should indicate the elevation at the top and bottom of these features.

For additions or new construction where the existing grades will be disturbed, a topographic survey (stamped by a licensed surveyor) will be required. The Land Use Code contains some exceptions to the allowed location of parking based on slope of the lot. There are also limitations to the slope and design of a driveway. The land use plans examiner reviewing the project will consider these factors when determining whether the slope is steep enough to warrant further consideration of a waiver.

Marin County, CA

Marin County Code, §26.56.040: The lot on which the **second** unit is located shall have a minimum of one off-street parking space assigned to a studio or one-bedroom **second** unit or two off-street parking spaces assigned to a two-or-more-bedroom **second** unit. Off-street parking spaces assigned to the **second** unit shall be independently accessible and shall be in addition to those required for the primary residence. This finding shall be waived upon approval of a parking exception by the Department of Public Works.

§24.04.330: Parking Exception: If particular circumstances justify an **exception**, the amount and dimensions of required **parking** and loading spaces may be increased or decreased by the agency through design review or other appropriate process of the community development agency. Such approvals shall include a finding citing the particular circumstances and reasons why the **exception** was made and may also include provisions for periodic review to establish actual **parking** needs and to allow for revision of the **parking** requirements.

Tompkins County (Central New York State)

- **Parking waivers / Relaxed Parking Requirements** - Reducing the requirements for parking spaces per unit reduces overall costs and increases land efficiency and housing units per site. Measures to reduce parking burden include reducing the minimum number or size of spaces, and allowing underground, structured, or tandem parking. Parking requirements are easily controlled by linking to the number of bedrooms per unit (For example, 1.35 spaces for one-bedrooms, and 1.5 spaces for 2 bedrooms).

For example, Denver, Colorado, waives 10 required parking spaces for each additional affordable unit, up to a total of 20 percent of the original parking requirement.

Massachusetts Model By-Law

RECOMMENDED POSITION: Require one additional parking space and consider allowing a waiver when transit is a reasonable option.

City of Santa Cruz, CA

1. Parking. One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)

PARKING INCENTIVES: 2. Covered Parking. The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided.

3. Front or Exterior Yard Parking. Three parking spaces may be provided in the front or exterior yard setback under this incentive with the parking design subject to approval of the Zoning Administrator. The maximum impervious surfaces devoted to the parking area shall be no greater than the existing driveway surfaces at time of application. Not more than 50% of the front yard width shall be allowed to be parking area.

4. Tandem Parking. For a parcel with a permitted accessory dwelling unit, required parking spaces for the primary residence and the accessory dwelling unit may be provided in tandem on a driveway. A tandem arrangement consists of one car behind the other. No more than three total cars in tandem may be counted towards meeting the parking requirement.

Zoning Text Amendment No.: 12-11
Concerning: Accessory Apartments –
Amendments
Draft No. & Date: 3 -11\1\12
Introduced:
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**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definitions for one-family dwelling and one-family detached dwelling-unit;
- establish definitions for an attached accessory apartment and a detached accessory apartment to replace the definition for an accessory apartment;
- revise the standards and requirements for a registered living unit;
- establish standards for attached and detached accessory apartments as permitted uses;
- amend the land use table in one-family residential zones and agricultural zones to add attached and detached accessory apartments as a permitted use under certain circumstances; and
- establish special exception standards for attached and detached accessory apartments
- and generally amend all provisions concerning accessory apartments

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

| | |
|----------------------------|--|
| DIVISION 59-A-2 | “DEFINITIONS AND INTERPRETATION.” |
| DIVISION 59-A-6 | “USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.” |
| Adding Section 59-A-6.19 | “Attached accessory apartments.” |
| [[Adding Section 59-A-6.20 | “Detached accessory apartments.”]] |
| DIVISION 59-C-1 | “RESIDENTIAL ZONES, ONE-FAMILY.” |
| Section 59-C-1.3 | “Standard development.” |
| Section 59-C-1.5 | “Cluster development.” |

| | |
|---------------------------|---|
| Section 59-C-1.6 | “Development including moderately priced dwelling units.” |
| DIVISION 59-C-9 | “AGRICULTURAL ZONES.” |
| Sec. 59-C-9.3 | “Land uses.” |
| Sec. 59-C-9.4 | “Development standards.” |
| DIVISION 59-G-2. | “SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.” |
| Sec. 59-G-2.00. | “Accessory apartment.” |
| Adding Sec. 59-G-2.00.6 | “Attached accessory apartment.” |
| [[Adding Sec. 59-G-2.00.7 | “Detached accessory apartment.”]] |

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 that text 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-A-2 is amended as follows:**

2 DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

3 * * *

4 **59-A-2.1. Definitions.**

5 * * *

6 **[Accessory apartment:** A second dwelling unit that is part of an existing one-
7 family detached dwelling, or is located in a separate existing accessory structure on
8 the same lot as the main dwelling, with provision within the accessory apartment
9 for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to
10 the main dwelling.]

11 **Accessory apartment, attached:** A second dwelling unit that is part of a one-
12 family detached dwelling and provides for cooking, eating, sanitation, and
13 sleeping. An attached accessory apartment [[has a separate entrance and]] is
14 subordinate to the principal dwelling.

15 **Accessory apartment, detached:** A second dwelling unit that is located in a
16 separate accessory structure on the same lot as a one-family detached dwelling and
17 provides for cooking, eating, sanitation, and sleeping. A detached accessory
18 apartment is subordinate to the principal dwelling.

19 * * *

20 **Dwelling and dwelling units:**

21 **Dwelling:** A building or portion thereof arranged or designed to contain one or
22 more dwelling units.

23 * * *

24 **Dwelling, one-family:** A dwelling containing not more than one dwelling
25 unit. An accessory apartment[, if approved by special exception,] or a
26 registered living unit may also be part of a one-family dwelling. A one-

27 family dwelling with either of these subordinate uses is not a two-family
28 dwelling[,] as defined in this section.

29 * * *

30 **Dwelling unit:** A building or portion [thereof] of a building providing complete
31 living facilities for not more than one family, including, at a minimum, facilities
32 for cooking, sanitation, and sleeping.

33 **Dwelling unit, one-family detached:** A dwelling unit that is separated and
34 detached from any other dwelling unit on all sides, except where the
35 dwelling is modified to include an accessory apartment[, approved by
36 special exception,] or a registered living unit.

37 * * *

38 **Sec. 2. DIVISION 59-A-6 is amended as follows:**

39 DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF
40 ZONE.

41 * * *

42 **59-A-6.10. Registered living unit--Standards and requirements.**

43 A registered living unit, permitted in[,] agricultural, one-family residential, and
44 planned unit development zones[,] must:

45 * * *

- 46 (i) be removed whenever it is no longer occupied as a registered living unit,
47 unless the owner applies for and is granted either a special exception or a
48 license for an attached accessory apartment [in accordance with Section 59-
49 G-2.00] under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the
50 one-family detached dwelling unit in which it is located is no longer
51 occupied by the owner.

52 * * *

53 **Sec. 59-A-6.19 Attached and detached accessory apartment.**

54 (a) Where an attached or detached accessory apartment is permitted in a zone,
55 only one accessory apartment is permitted for each lot and it is only
56 permitted under the following standards:

57 (1) the apartment was approved as a special exception before
58 {EFFECTIVE DATE} and satisfies the conditions of the special
59 exception approval; or

60 (2) the apartment is [[registered with]] licensed by the Department of
61 Housing and Community Affairs [[in the same manner as a registered
62 living unit under Subsection 59-A-6.10(a)(3)]] under Section 29-19;
63 and

64 (A) [[the owner of the lot occupies a dwelling unit on the lot at
65 least 6 months of every calendar year]];

66 ~~[[B]]~~ the apartment has the same street address as the principal
67 dwelling;

68 ~~[[C]]~~ (B) a separate entrance is located

69 (i) on the side yard or rear yard,

70 (ii) at the front of the principal dwelling if the
71 entrance existed before the {EFFECTIVE
72 DATE}, or

73 (iii) at the front of the principal dwelling if it is a single
74 entrance door for use of the principal dwelling and
75 the accessory apartment;

76 ~~[[D]]~~ (C) one on-site parking space is provided in addition to any
77 required on-site parking for the principal dwelling; however, if
78 a new driveway must be constructed for the accessory
79 apartment, then two on-site parking spaces must be provided;

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[[(E)]] (D) an attached accessory apartment

(i) in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, is located at least 500 feet from any other attached or detached accessory apartment, measured in a
[[straight]] line from side lot line to side lot line along the same block face;

[[F]]

(ii) in the R-90, R-60, and RNC zones, is located at least 300 feet from any other attached or detached accessory apartment, measured in a
[[straight]] line from side lot line to side lot line along the same block face;

(E) A detached accessory apartment

(i) in the RE-2, RE-2C, and RE-1 zones, is located a minimum distance of 500 feet from any other attached or detached accessory apartment, measured in a line from side property line to side property along the same block face;

(ii) built after {EFFECTIVE DATE} must have the same minimum side yard setback requirement as the principal dwelling and a minimum rear yard setback requirement of 12 feet, unless more restrictive accessory building or structure yard setback standards are required under Section 59-C-1.326;

(iii) must be located on a lot with an area of one acre or larger.

[[G) the rear lot line of the lot with the accessory apartment does not
abut a lot with another accessory apartment;]]

106 [[H) if the accessory apartment is limited to a floor area of 800
107 square feet, it must be no greater than 50% of the principal
108 dwelling or 800 square feet, whichever is less;]]

109 [[I) if the accessory apartment is limited to a floor area of 1,200
110 square feet, it must be no larger than 50% of the principal
111 dwelling or 1,200 square feet, whichever is less; and]]

112 (F) The maximum gross floor area including, the cellar for an
113 accessory, apartment must be less than 50 percent of the total
114 floor area, including the cellar of the principal dwelling, or
115 2,500 square feet, whichever is less.

116 [[J)] (G) the maximum number of total occupants is limited [[to 3
117 persons]] by Section 26-5, however, the total number of
118 occupants residing in the accessory apartment who are 18 years
119 or older is limited to 2.

120 (3) [[The]] An accessory apartment must not be located on a lot where
121 any of the following otherwise allowed residential uses exist: guest
122 room for rent; boardinghouse; registered living unit; or any other
123 rental residential use[[, other than an accessory dwelling in an
124 agricultural zone]]; however, an accessory apartment maybe located
125 on a lot in an agricultural zone that includes a tenant dwelling, a farm
126 tenant mobile home or a guest house.

127 (b) (1) An attached or detached accessory apartment special exception
128 petition may be filed with the Board of Appeals to deviate from any
129 permitted use standard regarding:

130 (A) [[location of the separate entrance;

131 (B)]] number of on-site parking spaces; or

132 ~~[(C)]~~ [(B)] minimum distance from any other attached or detached
133 accessory apartment.

134 (2) To approve a special exception filed under Subsection (b)(1), the
135 Board of Appeals must find, as applicable, that:

136 (A) [[the separate entrance is located so that the appearance of a
137 single-family dwelling is preserved;

138 (B) [(B)] adequate on-street parking permits fewer off-street spaces; or

139 [(C)] [(B)] when considered in combination with other existing or
140 approved accessory apartments, the deviation in distance
141 separation does not result in an excessive concentration of
142 similar uses, including other special exception uses, in the
143 general neighborhood of the proposed use.

144 **[(Sec. 59-A-6.20 Detached accessory apartment.**

145 (a) Where a detached accessory apartment is permitted in a zone: it must be
146 located on a lot one acre or greater in size; only one accessory apartment is
147 permitted for each lot; and it is only permitted under the following
148 standards:

149 (1) the accessory apartment was approved as a special exception before
150 {EFFECTIVE DATE} and satisfies the conditions of the special
151 exception approval; or

152 (2) the accessory apartment is registered with the Department of Housing
153 and Community Affairs in the same manner as a registered living unit
154 under Subsection 59-A-6.10(a)(3); and

155 (A) the owner of the lot occupies a dwelling unit on the lot at least 6
156 months of every calendar year;

157 (B) the apartment has the same street address as the principal
158 dwelling;

- 159 (C) a separate entrance is located on the side yard or rear yard;
160 (D) one on-site parking space is provided in addition to any
161 required on-site parking for the principal dwelling;
162 (E) in the RE-2, RE-2C, and RE-1 zones, the detached accessory
163 apartment is located a minimum distance of 500 feet from any
164 other attached or detached accessory apartment, measured in a
165 straight line from side property line to side property along the
166 same block face;
167 (F) the rear lot line of the lot with the accessory apartment does not
168 abut a lot with another accessory apartment;
169 (G) if the accessory apartment is limited to a floor area of 800
170 square feet, it must be no greater than 50% of the principal
171 dwelling or 800 square feet, whichever is less;
172 (H) if the accessory apartment is limited to a floor area of 1,200
173 square feet, it must be no greater than 50% of the principal
174 dwelling or 1,200 square feet, whichever is less;
175 (I) the maximum number of occupants is limited to 3 persons; and
176 (J) any structure built after {EFFECTIVE DATE} to be occupied
177 as an accessory apartment must have the same minimum side
178 yard setback requirement as the principal dwelling and a
179 minimum rear yard setback requirement of 12 feet, unless more
180 restrictive accessory building or structure yard setback
181 standards are required under Section 59-C-1.326.
182 (3) The accessory apartment must not be located on a lot where any of the
183 following otherwise allowed residential uses exist: guest room for
184 rent; boardinghouse; registered living unit; or any other rental

185 residential use, other than an accessory dwelling in an agricultural
186 zone.

187 (b) (1) A detached accessory apartment special exception petition may be
188 filed with the Board of Appeals to deviate from any permitted use
189 standard regarding:

190 (A) location of the separate entrance;

191 (B) number of on-site parking spaces; or

192 (C) minimum distance from any other attached or detached
193 accessory apartment.

194 (2) To approve a special exception filed under Subsection (b)(1), the
195 Board of Appeals must find, as applicable, that:

196 (A) the separate entrance is located so that the appearance of a
197 single-family dwelling is preserved;

198 (B) adequate on-street parking permits fewer off-street spaces; or

199 (C) when considered in combination with other existing or
200 approved accessory apartments, the deviation in distance
201 separation does not result in an excessive concentration of
202 similar uses, including other special exception uses, in the
203 general neighborhood of the proposed use.]]

204 * * *

205 **Sec. 3. DIVISION 59-C-1 is amended as follows:**

206 DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

207 * * *

208 **Sec. 59-C-1.3. Standard development.**

209 The procedure for approval is specified in Chapter 50.

210 **59-C-1.31. Land uses.**

211 No use is allowed except as indicated in the following table:

212 **-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the
 213 zones indicated, subject to all applicable regulations.

214 **-Special Exception Uses.** Uses designated by the letters "SE" may be authorized
 215 as special exceptions under Article 59-G.

216

| | RE-2 | RE-2C | RE-1 | R-200 | R-150 | R-90 | R-60 | R-40 | R-4plex | RMH 200 |
|---|---|---|---|-----------------|-----------------|-----------------|-----------------|------|---------|-----------------|
| (a) Residential | | | | | | | | | | |
| [Accessory apartment. ⁴] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | | | [SE] |
| <u>Accessory apartment attached (up to 800 square feet).⁴</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | | | <u>P*/SE***</u> |
| <u>Accessory apartment attached [(greater than 800 square feet, up to 1,200 square feet)].⁴</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>P*/SE***</u> | <u>SE***</u> | <u>SE***</u> | | | <u>P*/SE***</u> |
| <u>Accessory apartment detached [(up to 800 square feet)].⁴</u> | <u>[P**/SE****]</u> <u> P*/SE***</u> | <u>[P**/SE****]</u> <u> P*/SE***</u> | <u>[P**/SE****]</u> <u> P*/SE***</u> | | | | | | | |
| <u>[[Accessory apartment detached (greater than 800 square feet, up to 1,200 square feet).⁴]]</u> | <u>[P**/SE****]</u> <u> </u> | <u>[P**/SE****]</u> <u> </u> | <u>[P**/SE****]</u> <u> </u> | | | | | | | |

217 * * *

218 ⁴ Not permitted in a mobile home.

219 * See Sec. 59-A-6.19. Attached accessory apartment.

220 [[** See Sec. 59-A-6.20. Detached accessory apartment.]]

221 *** See Sec. 59-G-2.00.6. Attached and detached accessory apartment.

222 [[**** See Sec. 59-G-2.00.7. Detached accessory apartment.]]

223 * * *

224 **Sec. 59-C-1.5. Cluster development.**

225 * * *

226 **59-C-1.53. Development standards.**

227 All requirements of the standard method of development in the respective zones, as
 228 specified in Section 59-C-1.3, apply, except as expressly modified in this section.

229

| | RE-2C | RE-1 | R-200 | R-150 | R-90 | R-60 | RMH 200 |
|--|----------------------|----------------------|-------------------|-------------------|-------------------|------------------|-------------------|
| 59-C-1.531. Uses Permitted. No uses shall be permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31.</u> | | | | | | | |
| * * * | | | | | | | |
| [Accessory apartment. ²] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] |
| <u>Accessory apartment, attached or detached</u> [[(up to 800 square feet)]. ² | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> |
| [[<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ²]] | [[<u>P*/SE**</u>]] | [[<u>P*/SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE*</u>]] | [[<u>SE**</u>]] |

| | | | | | | | |
|---|--|--|--|--|--|--|--|
| <u>Accessory apartment, detached</u> (up to 800 square feet). ² | [[P^{***}/SE^{****}]] [[P[*]/SE^{**}]] | [[P^{***}/SE^{****}]] [[P[*]/SE^{**}]] | | | | | |
| [[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).²]] | [[P^{***}/SE^{****}]] [[P[*]/SE^{**}]] | [[P^{***}/SE^{****}]] [[P[*]/SE^{**}]] | | | | | |

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231 ² Not permitted in a townhouse, one-family attached dwelling unit, or mobile
 232 home.

233 * See Sec. 59-A-6.19. Attached and detached accessory apartment.

234 ** See Sec. 59-G-2.00.6. Attached and detached accessory apartment.

235 ~~[[** See Sec. 59-A-6.20. Detached accessory apartment.~~

236 ~~**** See Sec. 59-G-2.00.7. Detached accessory apartment.]]~~

237 * * *

238 **Sec. 59-C-1.6. Development including moderately priced dwelling units.**

239 * * *

240 **59-C-1.62. Development standards.**

241

| | RE-2C ⁸ | RE-1 ⁸ | R-200 | R-150 | R-90 | R-60 | R-40 |
|---|--|--|-------------------|-------------------|-------------------|-------------------|------|
| 59-C-1.621. Uses Permitted. No uses are permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31</u> , [title "Land Uses,"] subject to [the provisions of article] <u>Article 59-G</u> . | | | | | | | |
| * * * | | | | | | | |
| Registered living unit. ^{3,5} | P | P | P | P | P | P | |
| [Accessory apartment. ³] | [SE] | [SE] | [SE] | [SE] | [SE] | [SE] | |
| <u>Accessory apartment attached</u> [[(up to 800 square feet)]. ³ | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | |
| [[<u>Accessory apartment attached (greater than 800 square feet, up to 1,200 square feet).</u>] ³] | [[<u>P*/SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | [[<u>SE**</u>]] | |
| <u>Accessory apartment detached</u> [[(up to 800 square feet)]]. ³ | [[<u>P***/SE****</u>]] [[<u>P*/SE**</u>]] | [[<u>P***/SE****</u>]] [[<u>P*/SE**</u>]] | | | | | |
| [[<u>Accessory apartment detached (greater than 800 square feet, up to 1,200 square feet).</u>] ³] | [[<u>P***/SE****</u>]] [[<u>SE****</u>]] | [[<u>P***/SE****</u>]] [[<u>SE****</u>]] | | | | | |

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* * *

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³ Not permitted in a townhouse, one-family attached dwelling unit, or mobile home.

244

245

^{*} See Sec. 59-A-6.19. Attached accessory apartment.

246

^{**} See Sec. 59-G-2.00.6. Attached and detached accessory apartment.

247 See Sec. 59-A-6.20. Detached accessory apartment.]]

248 See Sec. 59-G-2.00.7. Detached accessory apartment.]]

249 * * *

250 **Sec. 4. DIVISION 59-C-9 is amended as follows:**

251 DIVISION 59-C-9. AGRICULTURAL ZONES.

252 * * *

253 **Sec. 59-C-9.3. Land uses.**

254 No use is allowed except as indicated in the following table:

255 — **Permitted uses.** Uses designated by the letter “P” are permitted on any lot in
256 the zones indicated, subject to all applicable regulations.

257 — **Special exception uses.** Uses designated by the letters “SE” may be authorized
258 as special exceptions under Article 59-G.

259

| | Rural | RC | LDRC | RDT | RS | RNC | RNC/ TDR |
|---|-------------------------------------|-------------------------------------|-------------------------------------|---|----|-----------------|-------------|
| * * * | | | | | | | |
| (e) Residential:² | | | | | | | |
| [Accessory apartment. ^{6,7}] | [SE] | [SE] | [SE] | [SE ⁴⁸] | | [SE] | [SE] |
| Accessory dwelling. ⁷ | SE | SE | SE | SE ⁴⁸ | SE | SE | SE |
| Accessory dwelling for agricultural workers. ⁴² | | | | P | | | |
| <u>Accessory apartment, attached</u> [(up to 800 square feet)]. ^{6,7} | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P*/SE**</u> | <u>P^{48,*}/SE^{48,**}</u> | | <u>P*/SE**</u> | |
| <u>[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).^{6,7}]]</u> | <u>[[P*/SE**]]</u> | <u>[[P*/SE**]]</u> | <u>[[P*/SE**]]</u> | <u>[[P^{48,*}/SE^{48,**}]]</u> | | <u>[[SE**]]</u> | |
| <u>Accessory apartment, detached</u> [(up to 800 square feet)]. ^{6,7} | <u>[[SE***]]</u> <u>[[SE**]]</u> | <u>[[SE***]]</u> <u>[[SE**]]</u> | <u>[[SE***]]</u> <u>[[SE**]]</u> | <u>[[SE^{48,***}]]</u> <u>[[SE^{48,**}]]</u> | | | |
| <u>[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).^{6,7}]]</u> | <u>[[SE***]]</u> <u>[[SE**]]</u> | <u>[[SE***]]</u> <u>[[SE**]]</u> | <u>[[SE***]]</u> <u>[[SE**]]</u> | <u>[[SE^{48,*}]]</u> <u>[[SE**]]</u> | | | |

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* * *

261

⁶ Not permitted in a mobile home.

262

⁷ [As a special exception regulated by divisions 59-G-1 and 59-G-2, such a] An accessory dwelling unit, including an attached or detached accessory apartment, is excluded from the density calculations [set forth] in [sections] Sections 59-C-9.41[, title "Density in RDT Zone,"] and 59-C-9.6[, title "Transfer of Density-Option in RDT Zone."]. Once the property is subdivided, such a dwelling would no longer

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267 comply with [the special exception regulations or with] this exclusion. A special
268 exception is not required for a dwelling that was a farm tenant dwelling in
269 existence [prior to] before June 1, 1958[, provided, that] if the dwelling meets all
270 applicable health and safety regulations.

271 * * *

272 ⁴⁸ If property is encumbered by a recorded transfer of developments rights
273 easement, this use is prohibited. However, any building existing on October 2,
274 2007 may be repaired or reconstructed if the floor area of the building is not
275 increased and the use is not changed.

276 * * *

277 ^{*} See Sec. 59-A-6.19. Attached accessory apartment.

278 ^{**} See Sec. 59-G-2.00.6. Attached and detached accessory apartment.

279 ^{***} See Sec. 59-G-2.00.7. Detached accessory apartment.]]

280 * * *

281 **Sec. 59-C-9.4. Development standards.**

282 * * *

283 **59-C-9.41. Density in RDT zone.**

284 Only one one-family dwelling unit per 25 acres is permitted. (See [section] Section
285 59-C-9.6 for permitted transferable density.) The following dwelling units on land
286 in the RDT zone are excluded from this calculation, provided that the use remains
287 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- 288 (a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined
289 in [section] Section 59-A-2.1[, title "Definitions."].
- 290 (b) An accessory apartment or accessory dwelling regulated by the special
291 exception provisions of Division 59-G-1 and 59-G-2 and Sections 59-A-6.19
292 and 59-A-6.20.

293 * * *

294 **Sec. 5. DIVISION 59-G-2 is amended as follows:**

295 DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND
296 REQUIREMENTS.

297 The uses listed in this Division, as shown on the index table below, may be
298 allowed as special exceptions in any zone where they are so indicated, as provided
299 in this Article, subject to the standards and requirements in this Division and the
300 general conditions specified in Section 59-G-1.21.

| 301 USE | SECTION |
|--|-------------------|
| 302 * * * | |
| 303 Accessory apartment | G-2.00 |
| 304 <u>Accessory apartment, attached</u> | <u>G-2.00.6</u> |
| 305 <u>[[Accessory apartment, detached</u> | <u>G-2.00.7]]</u> |

306 * * *

307 **Sec. 59-G-2.00. Accessory apartment. (The standards below reflect the**
308 **conditions required only for an accessory apartment approved before**
309 **{EFFECTIVE DATE}.**

310 A special exception may be granted for an accessory apartment on the same lot as
311 an existing one-family detached dwelling, subject to the following standards and
312 requirements:

313 * * *

314 **Sec. 59-G-2.00.6 Attached and detached accessory apartment.**

315 A special exception may be granted for an attached and detached accessory
316 apartment on the same lot as an existing one-family detached dwelling, subject to
317 the special exception provisions of Division 59-G-1 and the standards and
318 requirements of Section 59-A-6.19.

319 **[[Sec. 59-G-2.00.7. Detached accessory apartment.**
320 **Where a detached accessory apartment is permitted in a zone, only one detached**
321 **accessory unit is permitted for each lot and it is only permitted under the special**
322 **exception provisions of Division 59-G-1 and the standards and requirements of**
323 **Section 59-A-6.20.]]**

324

325 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the
326 date of Council adoption.

327

328 **Sec. 7. Reporting.** After the 2,000th accessory apartment license is issued by
329 the Department of Housing and Community Affairs. The Director of the
330 Department of Housing and Community Affairs must issue a report concerning any
331 problems or resident complaints and must recommend any changes in legislation
332 the Department deems warranted.

333

334

335 This is a correct copy of Council action.

336

337

338 _____
Linda M. Lauer, Clerk of the Council

Bill No. XX-12
 Concerning: Rental License – Accessory
Apartments - Established
 Revised: October 24, 2012 Draft No. 1
 Introduced: _____
 Expires: _____
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: The Planning Housing, and Economic Development Committee

AN ACT to:

- (1) Authorize the Board of Appeals to decide administrative appeals from DHCA accessory apartment licensing decisions;
- (2) require an accessory apartment rental license issued by the Department of Housing and Community Affairs;
- (3) require notice of the proposed accessory apartment; and
- (4) generally amend the law governing an accessory apartment and appeals for rental licenses.

By amending

Montgomery County Code
 Chapter 2, Administration
 Sections 2-112 and 2-140
 Chapter 29, Landlord-Tenant Relations
 Sections 29-16, 29-19, and 29-26

| | |
|-------------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 2-112, 29-16, 29-19, and 29-26 are amended as follows:**

2 **2-112. Jurisdiction.**

- 3 (a) The County Board of Appeals must exercise all functions of a Board of
 4 Zoning Appeals. Any reference to a Board of Zoning Appeals for the
 5 County in state or County law means the County Board of Appeals.
- 6 (b) The Board must hear and decide each application for a special
 7 exception, unless Chapter 59 directs otherwise.
- 8 (c) The Board has the following appellate jurisdiction.

9

| The Board must hear and decide each appeal taken under: | Those appeals involve: |
|---|--|
| Section 2B-4 | Agricultural land preservation |
| Section 4-13 | Licenses for places of amusement |
| Section 8-23 | County building code |
| Section 15-18 | Food service facility licenses |
| Section 17-28 | Electricians and electrical contractors licenses |
| Section 18-7 | Removal of diseased trees |
| Section 22-21 | Fire safety licenses and permits |
| Section 23A-11 | Group home licenses and deficiency orders |
| Section 24A-7 | Historic area work permits |
| Section 25-23 | Licenses for hospitals, sanitariums, nursing homes, and care homes |
| <u>Section 29-26</u> | <u>Accessory apartment rental licenses</u> |

10 **29-16. Required.**

- 11 (a) The owner of a dwelling unit must obtain a rental housing license before
 12 operating the dwelling unit as rental housing. If the owner is a

13 corporation, the corporation must be qualified to do business in
14 Maryland under state law. Each owner must certify to the Department
15 the name, address and telephone number of an agent who resides in
16 Maryland and is qualified to accept service of process on behalf of the
17 owner.

18 (b) The Director must issue [two] three classes of rental housing licenses.
19 Class 1 is a multifamily rental housing license. Class 2 is a single-family
20 rental housing license. Class 3 is a single-family accessory apartment
21 license.

22 (c) A Class 1 rental housing license is required for each apartment complex
23 and personal living quarters building, and for each multifamily dwelling
24 unit operated as rental housing. A Class 2 rental housing license is
25 required for each single-family dwelling unit operated as rental housing.
26 A Class 3 license is required for each single-family residence with an
27 accessory apartment.

28 * * *

29 **29-19. Licensing procedures.**

30 (a) To obtain a rental housing license, the prospective operator must apply
31 on a form furnished by the Director and must pay the required fee. If the
32 Director notifies the applicant of any violation of law within 30 days,
33 the Director may issue a temporary license for a period of time the
34 Director finds necessary to achieve compliance with all applicable laws.

35 (b) Accessory apartment rental license.

36 (1) An owner of [an accessory apartment] a lot or parcel in a zone
37 that permits accessory apartments may obtain [and keep] a

38 license to operate an accessory apartment if [the occupancy of the
39 accessory apartment is limited to]:

40 [(1) One or more individuals who live and cook together as a single
41 housekeeping unit and are related by:

42 (A) Blood;

43 (B) Marriage; or

44 (C) Adoption; or

45 (2) No more than 2 individuals who live and cook together as a
46 single housekeeping unit.]

47 (A) the principal dwelling on the lot or parcel required for the
48 proposed accessory apartment is the owner's primary
49 residence. Evidence of primary residence includes:

50 (i) the owner's voter registration card;

51 (ii) the owner's most recent Maryland income tax
52 return;

53 (iii) the owner's current Maryland driver's license, or

54 (iv) the owner's real estate tax bill for the address of the
55 proposed accessory apartment; and

56 (B) the Director finds that the accessory apartment satisfies the
57 standards for an accessory apartment in Section 59-A-6.19.

58 (2) Upon receipt of an application for an accessory apartment
59 license, the Director must:

60 (A) inspect the lot or parcel identified in the application and
61 the proposed accessory apartment property;

- 62 (B) complete a report on any repairs or improvements needed
63 to approve the application;
- 64 (F) the Director must issue or deny a new license 30 days after
65 the application was filed unless a section exception is
66 required.
- 67 (3) The applicant must post the permit issued by the Director in the
68 front yard of the site of the accessory apartment within 2 days
69 from the date the permit is issued.
- 70 (4) The issuance of the permit may be appealed to the Board of
71 Appeals under the procedures for the appeal of an administrative
72 decision within 30 day from the date the permit is posted on the
73 site of the accessory apartment.
- 74 (5) The Director may renew a license for an accessory apartment at
75 the request of the applicant if
- 76 (A) the applicant:
- 77 (i) attests that the number of occupants does not exceed
78 the requirements of Section 26-5 and there are no
79 more than 2 residents in the apartment who are older
80 than 18 years;
- 81 (ii) attests that the primary residence of the owner did
82 not change; and
- 83 (iii) acknowledges that by obtaining a the license the
84 applicant gives the Director the right to inspect the
85 lot or parcel including the accessory apartment; or

86 (B) if the accessory apartment is vacant at the time of the
87 license renewal, the applicant:

88 (i) attests that any future residents will be limited to no
89 more than 2 residents 18 years or older;

90 (ii) attests that the primary residence of the owner did
91 not change; and

92 (iii) acknowledges that by obtaining a license the
93 applicant gives the Director the right to inspect the
94 lot or parcel, including the accessory apartment.

95 (6) The Director may renew a Class 1 license for an accessory
96 apartment that was approved as a special exception, as a Class 1
97 license if the conditions of the special exception remain in effect.

98 (7) The Director must maintain a public list and map showing each
99 Class 3 license and each Class 1 license for an accessory
100 apartment.

101 (c) Where a rental building has not been completely constructed or
102 renovated, the Director may issue a temporary license for that part of the
103 building that has been completely constructed or renovated if the
104 landlord has:

105 (1) obtained a temporary certificate of occupancy under Chapter 8;
106 and

107 (2) complied with all other applicable laws.

108 However, the temporary license expires when a license to operate the
109 entire building is issued.

110 (d) The Director must not issue a rental housing license for a personal
111 living quarters building unless the applicant has submitted a satisfactory
112 management plan. The plan must specify who will manage the building
113 and explain what the manager will do to achieve acceptable levels of
114 safety, sanitation, and security in the building's common areas.

115 (e) Each licensee must give the Department a current address for the receipt
116 of mail. If the Department sends first class or certified mail to the
117 licensee at the designated address and the mail is returned as
118 undeliverable, the Department may treat the mail as having been
119 received.

120 * * *

121 **29-26. Appeals.**

122 Any person aggrieved by a final action of the Commission or the Board of
123 Appeals rendered under this Article may appeal to the Circuit Court [in
124 accordance with] under the Maryland Rules of Procedure for [a review of the
125 action] judicial review of a final administrative agency decision. An appeal
126 does not stay enforcement of the Commission's order.

127 *Approved:*

128

129 _____

130 Roger Berliner, President, County Council

_____ Date

131 *Approved:*

132

133 _____

134 Isiah Leggett, County Executive

_____ Date