

MEMORANDUM

November 21, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Zoning Text Amendment 12-15, Guest House – Conditions

Zoning Text Amendment (ZTA) 12-15, sponsored by Councilmember Floreen, was introduced on September 25, 2012. The Department of Permitting Services interprets the Zoning Ordinance as allowing a guest house for the use of the transient owner of the property when the principal dwelling is rented to a different household. ZTA 12-15 would establish that a guest house must be for the guests of the resident homeowner and that the rental of the principal dwelling would extinguish the right to build a guest house.

The Planning Board recommended tabling ZTA 12-15. In their opinion, the issue of guest houses is better addressed in the Zoning Ordinance Rewrite process. (The staff draft of the Zoning Ordinance Rewrite would treat accessory apartments, registered living units, and guest houses the same; a detached unit of any type (currently called accessory, registered living, or guest house) would require large lot zoning and at least one acre of land. If the Council wishes to proceed with ZTA 12-15, the Planning Board recommends approving Planning Staff's recommendation in the Zoning Ordinance Rewrite for combining the treatment of all these additional units. Planning Staff recommended approval of ZTA 12-15 as introduced.

The Council's advertised public hearing for October 30, 2012 was not held but was continued to a later date due to Super-storm Sandy. The Council held a public hearing on November 13, 2012. Eight people spoke, including the representative from the Planning Board. Most speakers supported ZTA 12-15 because, in their view, DPS's interpretation of current law created a loophole that was unintended by the Council. Those who opposed ZTA 12-15 questioned why having a resident owner in the principal house was good public policy; a non-resident owner (who lived nearby) would be as capable of managing the property as a resident owner. Those who opposed ZTA 12-15 would at least want to add some form of grandfathering provision.

Issues

What is a Guest house?

The Zoning Ordinance defines a guest house as a “detached *dwelling* that is intended, arranged or designed for occupancy by *transient*, nonpaying visitors.” Two of the terms in the definition, identified in *italics*, are further defined by the Ordinance. A dwelling unit is “a building or portion thereof providing complete living facilities for not more than one family, including, at a minimum, facilities for cooking, sanitation and sleeping.” A transient visitor is “A person residing in the county for any one period of time not exceeding 6 months....”¹

The definition of guest house does not limit who may invite the guest except by inference. If the owner does not invite the guest, then the owner must at least authorize the tenant to invite the guest. One applicant for a guest house argued that the owner can be the guest in the house while the principal dwelling is rented. Under this interpretation, the owner may not occupy the guest house for more than 6 months at any one visit.

A guest house is an accessory use allowed as-of-right in all residential zones. The Ordinance limits the size of building with accessory uses to no more than 50 percent of the footprint of the principal structure on a lot where the principal building has a footprint of 1,200 square feet or more. Any guest house on a lot where the footprint of principal dwelling is less than 1,200 square feet may have a footprint up to 600 square feet. In the R-40, R-60, and R-90 zones, the accessory building may not exceed 2 stories or 20 feet in height.

How many guest houses are there?

DPS cannot answer this question. Guest houses are accessory buildings permitted as of right. DPS does not distinguish between a guest house and any other type of accessory building. DPS can only inform the Council on the number of permits issued for all accessory buildings.

Guest houses may not be rented. The Department of Housing and Community Affairs does not issue permits for guest houses. Occupancy permits issued by DPS have only been required in the last few years. These permits cannot be used to inventory guest houses.

How are guest houses different from accessory apartments and registered living units?

Guest Houses, accessory apartments, and registered living units all have one thing in common: all of the uses result in 2 dwelling units, with separate kitchen, sanitation, and sleeping areas, on a one-family lot. A guest house is required to be a detached unit without regard to lot size. A registered living unit is required to be part of the principal dwelling. An accessory apartment must generally be part of the principal dwelling; however, it may be a detached unit on larger lots.

¹ Guest houses became a permitted use in 1958. Even though Benjamin Franklin had long before said, “Fish and guests stink in 3 days”, guests were allowed for anytime less than 6 months by the original authors of the provision.

The following table indicates current differences between guest houses, accessory apartments, and registered living units.

	Accessory Apartment (current requirements)	Registered Living Unit	Guest House (current DPS interpretation)
Owner occupancy on site	Required	Required	Not required
Rental of the additional unit	Permitted	Permitted	Prohibited
Approval procedure	Special Exception	Permitted	Permitted
Detached Unit	Permitted on lots on at least 1 acre and the building existed in 1983, otherwise 2 acres	Prohibited	Required
Relation of the occupant to the owner	Tenant (renter)	Employee or related by blood or marriage	Guest of the owner, guest of the renters in the principal dwelling, or the owner him- or herself
Number of occupants	Limited only by housing code	2 people related to each other if 1 person is owner- employed; 3 people related to the owner but 1 of the 3 people may be an unrelated caregiver	Limited only by housing code
Limit on excessive concentration	Determination in the Special Exception process	None	None

How would ZTA 12-15 change the requirements for guest houses?

An owner who wants to have an accessory apartment must be an on-site resident and is not allowed to rent the principal dwelling or any part of the principal dwelling. ZTA 12-15 would apply those same requirements and would maintain the prohibition on renting the guest house itself:

A guest house is for the transient, nonpaying visitors of the resident owner of the principal dwelling. A guest house must not be located on a lot:

- (a) that is occupied by a renter;
- (b) where a guest room for rent or a boardinghouse exist; or
- (c) where the owner of the lot resides off-site for more than 6 months in any calendar year.

Why are accessory apartments, registered living units, and guest houses under ZTA 12-15 different from other uses?

Guest house, accessory apartment, and registered living unit describe WHO may use a building. Generally, the Zoning Ordinance describes WHAT uses are allowed. A guest house may not be occupied by renters.² The occupants of a registered living unit must have some relationship (blood, marriage, or employee) with the owner occupant. An accessory apartment may be occupied by a household without any relationship to the owner occupant.

What has changed since ZTA 12-15 was introduced?

The Committee is recommending significant changes to the provisions for accessory apartments. The standards would create an easier process for an owner to get approval for an accessory apartment. Most accessory apartments would not require a special exception; it would be a permitted use but subject to new licensing requirements. There would also be a limit on the number of adult occupants. The lot where the accessory apartment is located must be the owner's principal residence.

Should all new guest houses be treated like new accessory apartments?

The Planning Board suggested treating guest houses like accessory apartments (if the Council did not wish to defer action). Detached accessory apartments are only allowed in large one-family zones on lots 1 acre in size or larger. Under the licensing provision proposed, it would be an allowable use as long as the site of the application was the primary residence of the owner of the lot.

The simple way to accomplish the Planning Board's recommendation would be to eliminate guest house as an allowable use. If the PHED Committee's recommendations concerning accessory apartments are approved, any owner who wanted a guest house would name it an accessory apartment and go through a licensing process. *Staff recommends this approach.*

² Owners are thought to be more responsive to any nuisance that might be caused by their renter than would other renters. The Council felt it was essential to retain the owner-occupancy requirement in order to ensure ownership responsibility when the provisions for accessory apartment were first approved. A zoning provision for owner-occupancy of accessory apartments was upheld as a valid exercise of zoning authority in *Anderson v. Provo City Corp.*, Supreme Court of Utah, 108 P.3d 701 (2005) and in *Kasper v. Town of Brookhaven et al.*, Supreme Court of New York, Appellate Division, 142 A.D.2d 213 (1988) but was overturned as being beyond the scope of zoning powers in *City of Wilmington v. Broadus E. Hill, III*, Court of Appeals of North Carolina, 657 S.E.2d 670(2008).

Maryland Courts have not ruled on accessory apartment or registered living unit ownership provisions. The Court of Special Appeals in *Queen Anne's County v. Days Cove Reclamation Company*, 713 A.2d 351 (1998) found a zoning provision that prohibited publicly zoned reclamation facilities but allowed publicly owned facilities to be beyond the scope of zoning powers under Article 66B, because it was regulating ownership rather than land use, density, and structures.

Owners are not prevented from renting their homes; they would be prevented from both renting their home and building a guest house. In this manner, it is regulating land use, not ownership. The Maryland Courts may agree or disagree. A safer way to retain the same concept would be to put the requirement in licensing standards, where the Council would be acting under its broader authority to act to protect the welfare of the community.

What are some alternatives to ZTA 12-15 to deal with guest houses?

- 1) Disapprove ZTA 12-15 because guest houses have not been a problem and are not anticipated to be a problem.
- 2) Amend the land use table to prohibit guest houses in small lot zones. There are no physical differences between a detached accessory apartment (which is prohibited in small lots) and a detached guest house.
- 3) Require that any new guest house be on a lot of one acre or more without regard to zoning.
- 4) Authorize DHAC to issue licenses for guest houses similar to the license that will be required for accessory apartments. This would be a better way to require that the site be the owner's primary residence than having a similar requirement in the Zoning Ordinance.

This Packet Contains

ZTA 12-15

Planning Board Recommendation

Planning Staff Recommendation

© number

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Zoning Text Amendment No.: 12-15
Concerning: Guest House - Conditions
Draft No. & Date: 1 – 9/12/12
Introduced: September 25, 2012
Public Hearing:
Adopted:
Effective:

**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: Councilmember Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- add conditions necessary for a guest house

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

DIVISION 59-A-2. “DEFINITIONS AND INTERPRETATION.”
Section 59-A-2.1. “Definitions.”

And adding the following section:

DIVISION 59-A-6. “USES PERMITTED IN MORE THAN ONE CLASS OF
ZONE.”
Section 59-A-6.19. “Guest House.”

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:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

Sec. 59-A-2.1. Definitions.

* * *

House, guest: A detached dwelling that is intended, arranged or designed for occupancy by transient, nonpaying visitors of the resident owner of the principle dwelling.

* * *

Division 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

* * *

Sec. 59-A-6.19. Guest House.

A guest house is for the transient, nonpaying visitors of the resident owner of the principle dwelling. A guest house must not be located on a lot:

- (a) that is occupied by a renter;
- (b) where a guest room for rent or a boardinghouse exist; or
- (c) where the owner of the lot resides off-site for more than 6 months in any calendar year.

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

October 31, 2012

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 12-15

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 12-15 at our regular meeting on October 25, 2012. By a vote of 4:0, the Planning Board recommends that the County Council table the text amendment in favor of a more comprehensive review of guest houses as part of the Zoning Ordinance Rewrite Project and in context with its review of other accessory uses such as accessory apartments and registered living units.

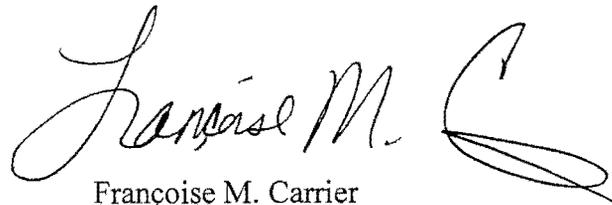
ZTA 12-15 adds conditions necessary for establishing a guest house. Specifically, the ZTA would modify the definition of guest house to state that the owner must reside in the principal dwelling. The ZTA also adds a new section to Section 59-A-6 for a guest house and establishes conditions that limit when a guest house could be located on a lot. The conditions state that a guest house must not be located on a lot: (a) that is occupied by a renter; (b) where a guest room for rent or a boardinghouse exists; or (c) where the owner of the lot resides off-site for more than 6 months in any calendar year.

Although the text amendment proposes applicable standards consistent with those associated with accessory apartments and/or registered living units including the prohibition of rental residential uses on the site and the requirement that the owner live on the site at least 6 months of a calendar year, the Board believes that a more comprehensive approach to reviewing all types of accessory residential uses would be more appropriate. Should the

County Council decide to continue pursuit of the ZTA, the Board recommends that the guest house provision be removed from the Zoning Ordinance, consistent with preliminary staff recommendations for such in the Zoning Ordinance Rewrite Project.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, October 25, 2012.



Françoise M. Carrier
Chair

FC:GR/am

Zoning Text Amendment (ZTA) No. 12-15, Guest House - Conditions

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Completed: 10/18/12

Description

ZTA 12-15 adds conditions necessary for establishing a guest house. Specifically, the ZTA would modify the definition of guest house to clarify that the owner must reside in the principal dwelling. The ZTA also adds a new section to Section 59-A-6 for a guest house and establishes conditions that limit when a guest house could be located on a lot. The conditions state that a guest house must not be located on a lot:

- (a) that is occupied by a renter;
- (b) where a guest room for rent or a boardinghouse exist; or
- (c) where the owner of the lot resides off-site for more than 6 months in any calendar year.

Summary/Analysis

Staff recommends approval of ZTA 12-15 as introduced to clarify that a guest house must be located on a lot where the principal residence is occupied by the owner and where no residential rental use exists.

A guest house is defined as *a detached dwelling that is intended, arranged or designed for occupancy by transient, nonpaying visitors*. The Department of Permitting Services interprets the Zoning Ordinance as allowing a guest house for the use of the transient owner of the property when the principal dwelling is rented to a different household. ZTA 12-15 would establish that a guest house must be for the guests of a resident homeowner and that the rental of the principal dwelling (including the rental of a room or where a boardinghouse exists) would extinguish the right to build a guest house.

Comparison of Applicable Standards consistent with Registered Living Unit and Accessory Apartments

An accessory apartment must not be located on a lot that is occupied by a family of unrelated persons; or where exists a guest room for rent, boardinghouse or a registered living unit or *that contains any rental residential use other than an accessory dwelling in an agricultural zone*. The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period.

A registered living unit is a second dwelling unit that is *part of an owner-occupied one-family detached dwelling*. Some standards associated with this use require that the unit be occupied by no more than 2 persons related to each other by blood, marriage or adoption when one of those persons is a household employee or occupied by no more than 3 persons related by blood, marriage or adoption to the owner- occupant of the main dwelling; except that one may instead be an unrelated care- giver needed to assist a senior adult, ill or disabled relative of the owner-occupant. In addition, *the unit must not be rented for financial remuneration and not be operated on the same lot or parcel as another registered living unit, an accessory apartment, a family of unrelated persons, or any other residential use for which rent is charged*, except an accessory dwelling in an agricultural zone

ZTA 12-15 proposes applicable standards consistent with those associated with accessory apartments and/or registered living units including the prohibition of rental residential uses on the site and the requirement that the owner live on the site at least 6 months of a calendar year. The condition prohibiting a guest house from being located on a lot occupied by a renter (of the principal dwelling) minimizes the potential establishment of illegal detached accessory apartments. (A detached accessory apartment special exception must be on a lot at least one acre in an existing structure before December 2, 1983; on at least two acres thereafter. The property owner can live in the accessory apartment or the principal dwelling).

Conclusion

In staff's opinion, approval of ZTA 12-15 would clarify the intent for use of a guest house while also minimizing the ability to establish detached accessory apartments without special exception approval.

GR/MD/am

ATTACHMENTS

1. ZTA 12-15 as introduced