CORRECTED
Ordinance No.: 19-06
Zoning Text Amendment No.: 19-01
Concerning: Accessory Residential Uses – Accessory Apartments
Draft No. & Date: 7 – 7/23/19
Introduced: January 15, 2019
Public Hearing: February 26, 2019
Adopted: July 23, 2019
Effective: December 31, 2019

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

Lead Sponsor: Councilmember Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

Division 1.4. “Defined Terms”
Section 1.4.2. “Specific Terms and Phrases Defined”
Division 3.1. “Use Table”
Section 3.1.5. “Transferable Development Rights”
Section 3.1.6. “Use Table”
Division 3.3. “Residential Uses”
Section 3.3.3. “Accessory Residential Uses”
Division 3.5. “Commercial Uses”
Section 3.5.6. “Lodging”
Division 4.1. “Rules for All Zones”
Section 4.1.2. “Compliance Required”
Division 4.2. “Agricultural Zone”
Section 4.2.1. “Agricultural Reserve Zone (AR)”
Zoning Text Amendment (ZTA) 19-01, lead sponsor Councilmember Reimer, was introduced on January 15, 2019. ZTA 19-01 would liberalize the standards for allowing an accessory apartment.

ZTA 19-01 would:
1) allow detached ADUs as a limited use in R-200, R-90, and R-60 zones (within Residential zones; detached ADUs are currently only allowed as a limited use in RE-1, RE-2, and RE-2C zones);
2) require two off-street parking spaces (three spaces are currently required if two off-street parking spaces are required for the principal dwelling);
3) allow an ADU in a basement (accessory apartments are currently allowed in a cellar);
4) change the measure of the size of an ADU from 50% of gross floor area to 50% of habitable floor area;
5) delete the absolute maximum size of an ADU (the absolute maximum size is currently 1,200 square feet);
6) delete the maximum size of an addition that can be used as an ADU (currently limited to 800 square feet);
7) delete the requirement that the unit must be in a structure that is at least 5 years old;
8) delete the distance requirement between ADUs (currently 500 feet in large lot zones and 300 feet in smaller lot zones);
9) allow an accessory structure built before May 31, 2012 to be used as an ADU without regard to setbacks;
10) specifically require the owner of the site of the ADU to live on the site (this is consistent with licensing requirements);
11) allow a separate entrance for an attached ADU to be on any side of the dwelling; and
12) delete the requirement that a detached ADU be on a lot at least 1 acre in size.

In its report to the Council, the Montgomery County Planning Board and Planning staff agreed with the sponsor of ZTA 19-01 in recognizing the importance of increasing the supply of Accessory Dwelling Units in the County, while also working to minimize any negative impacts
on residential neighborhoods. The Planning Board recommended two modifications; the second recommendation was also recommended by Planning staff:

1) Create a simplified process that objectively accounts for the ability to park along a street, based on minimum street widths or minimum frontage widths; and
2) Limit the provision to allow any structure existing before May 31, 2012 to be used as an accessory apartment without regard to setbacks to those buildings that were LEGALLY constructed.

The Council conducted a public hearing on February 26, 2019. Supporters saw reduced standards for permitting ADUs as an essential part of the answer for providing moderate-cost housing. A failure to approve ZTA 19-01 would, in their opinion, deprive aging homeowners of the only means of being able to afford to stay in their homes. Families wishing to provide some privacy to their aging relatives would be deprived of the opportunity for proximity to intergenerational relationships.

The opponents saw the destruction of their investment in quiet single-unit neighborhoods with the inability of the County to enforce any regulations. Opponents envisioned so many houses turned into two dwellings that parking would be impossible, emergency vehicles would be unable to navigate local streets, and schools would be overcrowded. The elimination of a limit on the maximum size of an ADU will create uncontrolled water runoff and more buildings than backyards.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

The PHED Committee held worksessions on March 18, March 25, and April 4, 2019. The Committee recommended approving ZTA 19-01 with amendments:

1) Revise the maximum gross floor area for an Accessory Apartment (hereafter referred to as an ADU (Accessory Dwelling Unit)):
   a) For attached ADUs, 1,200 square feet of gross floor area; however, if the footprint of the principal structure is greater than 1,200 square feet, an ADU may occupy the basement or cellar of that structure without a square footage limit.
   b) For detached ADUs, the maximum gross floor area must be the least of:
      i) 50% of the gross floor area in the principal dwelling;
      ii) 10% of the lot area; or
      iii) 1,200 square feet of gross floor area.
2) Retain the current code on-site parking requirement for ADUs located more than 1 mile away from any Metrorail or Purple Line Station. Within 1 mile of such stations or within the boundaries of the City of Takoma Park, delete the additional on-site parking requirement for an ADU.
3) Retain the current code prohibition for a newly-constructed ADU entrance on the front (street) side of a dwelling.
4) Allow an ADU up to 32 feet long without additional setbacks.
5) Allow an accessory structure built before May 31, 2012 to be used as an ADU without regard to setbacks, if it was legally constructed and there is no increase to the footprint or
height of the structure. If it is a structure that does not meet current setbacks, a new window on any wall on the side of any setback violation may not be constructed.

6) Clarify the prohibition on any other rentals on a property where an ADU is licensed.

7) Delete the ownership requirement in ZTA 19-01. (Revise the ownership requirement in the licensing requirements under a Bill to allow the required on-site owner to live either in the ADU or the principal dwelling unit.)

After worksessions on June 18 and July 9, 2019 and a final meeting on July 23, 2019, the Council, for the most part, agreed with the recommendation of the Committee, with the following changes:

1) Limit the size of a new detached unit to the least of “50% of the footprint of the principle dwelling; 10% of the lot area; or 1,200 square feet of gross floor area” instead of 50% of the gross floor area of the principle dwelling;

2) In addition to changing the parking standards within 1 mile and outside 1 mile of Metrorail and Purple Line stations and within the City of Takoma Park, change the parking standards in an identical manner for MARC rail stations; and

3) Require an additional setback (of one foot for every one foot the unit is longer than 24 feet) for any unit longer than 24 feet.

On July 23, a motion was made and seconded to require screening of detached units in the R-60 and R-90 zones. That motion failed.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 19-01 will be approved as amended.

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 1.4 is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

* * *

Accessory [[Apartment]] Dwelling Unit: See Section 3.3.3.A.1

* * *

Attached Accessory [[Apartment]] Dwelling Unit: See Section 3.3.3.B.1

* * *

Detached Accessory [[Apartment]] Dwelling Unit: See Section 3.3.3.C.1

* * *

Sec. 2. DIVISION 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.5. Transferable Development Rights

A. The following uses are prohibited if the lot or parcel on which the use is located is in the AR zone and is encumbered by a recorded Transfer of Development Rights easement:

1. Agricultural
   Agricultural Auction Facility

2. Residential
   a. Attached Accessory [[Apartment]] Dwelling Unit
   b. Detached Accessory [[Apartment]] Dwelling Unit

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.
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**Key:** P = Permitted Use  L = Limited Use  C = Conditional Use  Blank Cell = Use Not Allowed

Sec. 3. DIVISION 59-3.3 is amended as follows:

Division 3.3. Residential Uses

Section 3.3.3. Accessory Residential Uses

A. Accessory Dwelling Unit, In General

1. Defined, In General

Accessory Dwelling Unit or Accessory Apartment means a second dwelling unit that is subordinate to the principal dwelling. An Accessory Dwelling Unit includes an Attached Accessory Dwelling Unit and a Detached Accessory Dwelling Unit.

2. Use Standards for all Accessory Dwelling Units

Where an Accessory Dwelling Unit is allowed as a limited use, it must satisfy the following standards:

a. Only one Accessory Dwelling Unit is permitted for each lot.
b. The Accessory Apartment was approved as a conditional use special exception before May 20, 2013 and satisfies the conditions of the conditional use special exception approval; or [the Accessory Apartment] satisfies Subsection c.

c. [The] If the Accessory [Apartment] Dwelling Unit does not satisfy [subsection] Subsection b, the Accessory [Apartment] Dwelling Unit is must be licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and

i. the [apartment] Accessory Dwelling Unit has must have the same street address as the principal dwelling;

ii. except for lots located within 1 mile of any Metrorail, Purple Line, or MARC Rail Station, either:

(a) one on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2) one on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Dwelling Unit, then a total of at least two on-site parking spaces must be provided; or

(b) the Hearing Examiner finds under the waiver in Section 29-26(b) that there is adequate on-street parking;
iii. [[the maximum [gross] habitable floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar or basement, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling[, or 1,200 square feet, whichever is less];]]

iv. the maximum floor area used for an Accessory Apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the footprint of the principal dwelling; and]

[v][iv.] the maximum number of occupants is limited by Chapter 26 (Section 26-5); however, the total number of occupants residing in the Accessory [[Apartment]] Dwelling Unit who are 18 years or older is limited to 2[.]; [[and]]

[[v. the principal dwelling or accessory apartment must be the primary residence of the applicant for an accessory apartment rental license.]]

iv. the maximum footprint of an Accessory Dwelling Unit, in combination with other structures on the site, is limited by the total lot coverage limit in the underlying zone and the maximum gross floor area of the unit; and

v. unless modified by the use standards for an Accessory Dwelling Unit, an Accessory Dwelling Unit must comply with the setback, height, and building lot coverage
100 standards of an accessory structure in the underlying zone.
101
d. An Accessory [[Apartment]] Dwelling Unit must not be located on a lot where any [other allowed] short-term rental Residential use exists or is licensed[; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Labor Housing Unit or a Guest House].
108 e. In the Agricultural and Rural Residential zones, an Accessory [[Apartment]] Dwelling Unit is excluded from any density calculations. If the property associated with an Accessory [[Apartment]] Dwelling Unit is subsequently subdivided, the Accessory [[Apartment]] Dwelling Unit is included in the density calculations.
114 f. Screening under Division 6.5 is not required.
115 g. In the AR zone, any [[accessory apartment]] Accessory Dwelling Unit may be prohibited under Section 3.1.5, Transferable Development Rights.

B. Attached Accessory [[Apartment]] Dwelling Unit

1. Defined

Attached Accessory Apartment or Accessory Dwelling Unit means a second dwelling unit that is part of a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. An Attached Accessory [[Apartment]] Dwelling Unit is subordinate to the principal dwelling.

2. Use Standards
Where an Attached Accessory [[Apartment]] Dwelling Unit is allowed as a limited use, it must [[have a separate entrance and]] satisfy the use standards for all Accessory [][[Apartments]] Dwelling Units under Section 3.3.3.A.2[I] [[and the following standards:]] and the following standards:

[a. A separate entrance is located:
   i. on the side or rear of the dwelling;
   ii. at the front of the principal dwelling, if the entrance existed before May 20, 2013; or
   iii. at the front of the principal dwelling, if it is a single entrance door for use of the principal dwelling and the Attached Accessory Apartment.]

a. A separate entrance is located:
   i. on the side or rear of the dwelling;
   ii. at the front of the principal dwelling, if the entrance existed before May 20, 2013; or
   iii. at the front of the principal dwelling, if it is a single entrance door for use of the principal dwelling and the Attached Accessory Dwelling Unit.

[b. The detached house in which the Accessory Apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for a license.]

[b. The detached house in which the Accessory Apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for a license.]

[c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached Accessory Apartment is located at least 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.]
[d. In the RNC, R-90, and R-60 zones, the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.]

[e. Under Section 29-26(b), the Hearing Examiner may grant a waiver from the parking and distance separation standards.]

b. The maximum gross floor area for an Attached Accessory Dwelling Unit, including any floor area used for an Accessory Dwelling Unit in a cellar, must be:

i. 1,200 square feet of gross floor area; or

ii. if the basement or cellar is used for the Attached Accessory Dwelling Unit, the gross floor area for the Attached Accessory Dwelling Unit may equal the square footage area of the basement or cellar.

C. Detached Accessory [[Apartment]] Dwelling Unit

1. Defined

Detached Accessory Apartment or Accessory Dwelling Unit means a second dwelling unit that is located in a separate accessory structure on the same lot as a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. A Detached Accessory [[Apartment]] Dwelling Unit is subordinate to the principal dwelling.

2. Use Standards

a. Where a Detached Accessory [[Apartment]] Dwelling Unit is allowed as a limited use, it must satisfy the use standards for all Accessory [[Apartments]] Dwelling Units under Section 3.3.3.A.2. [and the following standards:]
[a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory Apartment must be located a minimum distance of 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face, unless the Hearing Examiner grants a waiver under Chapter 29, Section 26(b).]

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

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

b. Any structure constructed legally before May 31, 2012 that is not increased in size or building height and does not have new windows on a wall nearest an abutting property may be used for a [detached] Detached Accessory [Apartment] Dwelling Unit without regard to setbacks or floor area.

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

d. For any Detached Accessory Dwelling Unit with a length along a rear or side lot line that is longer than 24 feet, the minimum side or rear setback must be increased at a ratio of 1 foot for every 1 foot that the dimension exceeds 24 linear feet. The
additional rear setback is from a 12-foot setback as its starting point.

e. The maximum gross floor area for a Detached Accessory Dwelling Unit must be the least of:
   i. 50% of the footprint of the principal dwelling;
   ii. 10% of the lot area; or
   iii. 1,200 square feet of gross floor area.

F. Guest House

1. Defined

   Guest House means a detached dwelling that is intended, arranged, or designed for occupancy by transient, nonpaying visitors of the resident owner of the principal dwelling.

2. Use Standards

   Where a Guest House is allowed as a limited use, it must satisfy the following standards:

   a. A Guest House must not be located on a lot:
      i. that is occupied by a renter;
      ii. that has an [[accessory apartment]] Accessory Dwelling Unit; or
      iii. where the owner of the lot resides off-site for more than 6 months in any calendar year.

I. Short-Term Residential Rental

1. Defined
Short-Term Residential Rental means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days. Short-Term Residential Rental is not a Bed and Breakfast.

2. Use Standards

Where Short-Term Residential Rental is allowed as a limited use, it must satisfy the following standards:

a. Short-Term Residential Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory [[Apartment]] Dwelling Unit.

Sec. 4. DIVISION 3.5 is amended as follows:

Division 3.5 Commercial Uses

Section 3.5.6. Lodging

B. Bed and Breakfast

2. Use Standards

a. Where a Bed and Breakfast is allowed as a limited use, it must satisfy the following standards:

i. A Bed and Breakfast is prohibited in a dwelling unit that also provides guest rooms for roomers, or in a Farm Labor Housing Unit, or on a site that includes an Accessory [[Apartment]] Dwelling Unit.

Sec. 5. DIVISION 4.1 is amended as follows:

Division 4.1. Rules for All Zones
Section 4.1.2. Compliance Required

C. In the Agricultural, Rural Residential, and Residential Detached zones, only one detached house is allowed per lot, except as allowed under Section 3.1.6 for a Detached Accessory [[Apartment]] Dwelling Unit, Farm Labor Housing Unit, or Guest House, or under Section 7.7.1.A.1 for an Existing Structure on October 30, 2014.

Sec. 6. DIVISION 4.2 is amended as follows:

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)

D. Special Requirements for the Transfer of Density

1. In General

a. Under Section 4.9.15.B and in conformance with a general plan, master plan, or functional master plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the AR zone to a TDR Overlay zone. A development right is not required for the following dwelling units on land in the AR zone as long as the dwelling unit remains accessory to Farming and the principal dwelling:

i. Farm Labor Housing Unit; and

ii. Detached Accessory [[Apartment]] Dwelling Unit.

b. If a property is subdivided so that any Farm Labor Housing Units or Detached Accessory [[Apartments]] Dwelling Units
are no longer accessory to the farm as defined in Section 59.3.7.4.B, any Farm Labor Housing Units or Detached Accessory [[Apartments]] Dwelling Units are not excluded from the calculation of density and must have retained a development right in addition to the retained development right for any newly created lot; however, these dwellings are excluded from the density calculation and need not have a retained development right if:

* * *

Sec. 7. Effective date. This ordinance becomes effective [[90 days after the date of Council adoption]] on December 31, 2019.

This is a correct copy of Council action.

Mary Anne Paradise
Acting Clerk of the Council