

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)”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

OPINION

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.

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

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

29 * * *

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

31 **Division 3.3. Residential Uses**

32 * * *

33 **Section 3.3.3. Accessory Residential Uses**

34 **A. Accessory [[Apartment]] Dwelling Unit, In General**

35 **1. Defined, In General**

36 Accessory Dwelling Unit or Accessory Apartment means a second
 37 dwelling unit that is subordinate to the principal dwelling. An
 38 Accessory [[Apartment]] Dwelling Unit includes an Attached
 39 Accessory [[Apartment]] Dwelling Unit and a Detached Accessory
 40 [[Apartment]] Dwelling Unit.

41 **2. Use Standards for all Accessory [[Apartments]] Dwelling Units**

42 Where an Accessory [[Apartment]] Dwelling Unit is allowed as a
 43 limited use, it must satisfy the following standards:

- 44 a. Only one Accessory [[Apartment]] Dwelling Unit is permitted
 45 for each lot.

- 46 b. The Accessory Apartment was approved as a [conditional use]
47 special exception before May 20, 2013 and satisfies the
48 conditions of the [[conditional use]] special exception
49 approval[;] or [[the Accessory Apartment]] satisfies Subsection
50 c.
- 51 c. [The] If the Accessory [[Apartment]] Dwelling Unit does not
52 satisfy [[subsection]] Subsection b, the Accessory
53 [[Apartment]] Dwelling Unit [is] must be licensed by the
54 Department of Housing and Community Affairs under Chapter
55 29 (Section 29-19); and
- 56 i. the [[apartment]] Accessory Dwelling Unit [has] must
57 have the same street address as the principal dwelling;
58 ii. except for lots located within 1 mile of any Metrorail,
59 Purple Line, or MARC Rail Station, either:
- 60 (a) [one on-site parking space is provided in addition
61 to any required on-site parking space for the
62 principal dwelling; however, if a new driveway
63 must be constructed for the Accessory Apartment,
64 then 2] one on-site parking space is provided in
65 addition to any required on-site parking space for
66 the principal dwelling; however, if a new driveway
67 must be constructed for the Accessory Dwelling
68 Unit, then a total of at least two on-site parking
69 spaces must be provided; or
- 70 (b) the Hearing Examiner finds under the waiver in
71 Section 29-26(b) that there is adequate on-street
72 parking;

- 73 iii. [[the maximum [gross] habitable floor area for an
74 Accessory Apartment, including any floor area used for
75 an Accessory Apartment in a cellar or basement, must be
76 less than 50% of the total floor area in the principal
77 dwelling, including any floor area used for an Accessory
78 Apartment in the cellar of the principal dwelling[, or
79 1,200 square feet, whichever is less];]
- 80 [iv. the maximum floor area used for an Accessory
81 Apartment in a proposed addition to the principal
82 dwelling must not be more than 800 square feet if the
83 proposed addition increases the footprint of the principal
84 dwelling; and]
- 85 [v][[iv.]] the maximum number of occupants is limited by
86 Chapter 26 (Section 26-5); however, the total number of
87 occupants residing in the Accessory [[Apartment]]
88 Dwelling Unit who are 18 years or older is limited to
89 2[.]; [[and]]
- 90 [[v. the principal dwelling or accessory apartment must be the
91 primary residence of the applicant for an accessory
92 apartment rental license.]]
- 93 iv. the maximum footprint of an Accessory Dwelling Unit,
94 in combination with other structures on the site, is limited
95 by the total lot coverage limit in the underlying zone and
96 the maximum gross floor area of the unit; and
- 97 v. unless modified by the use standards for an Accessory
98 Dwelling Unit, an Accessory Dwelling Unit must comply
99 with the setback, height, and building lot coverage

100 standards of an accessory structure in the underlying
101 zone.

102 d. An Accessory [[Apartment]] Dwelling Unit must not be located
103 on a lot where any [other allowed] short-term rental Residential
104 use exists or is licensed]; however, an Accessory Apartment
105 may be located on a lot in an Agricultural or Rural Residential
106 zone that includes a Farm Labor Housing Unit or a Guest
107 House].

108 e. In the Agricultural and Rural Residential zones, an Accessory
109 [[Apartment]] Dwelling Unit is excluded from any density
110 calculations. If the property associated with an Accessory
111 [[Apartment]] Dwelling Unit is subsequently subdivided, the
112 Accessory [[Apartment]] Dwelling Unit is included in the
113 density calculations.

114 f. Screening under Division 6.5 is not required.

115 g. In the AR zone, any [[accessory apartment]] Accessory
116 Dwelling Unit may be prohibited under Section 3.1.5,
117 Transferable Development Rights.

118 **B. Attached Accessory [[Apartment]] Dwelling Unit**

119 **1. Defined**

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

125 **2. Use Standards**

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

- 131 [a. A separate entrance is located:
- 132 i. on the side or rear of the dwelling;
 - 133 ii. at the front of the principal dwelling, if the entrance
 - 134 existed before May 20, 2013; or
 - 135 iii. at the front of the principal dwelling, if it is a single
 - 136 entrance door for use of the principal dwelling and the
 - 137 Attached Accessory Apartment.]
- 138 a. A separate entrance is located:
- 139 i. on the side or rear of the dwelling;
 - 140 ii. at the front of the principal dwelling, if the entrance
 - 141 existed before May 20, 2013; or
 - 142 iii. at the front of the principal dwelling, if it is a single
 - 143 entrance door for use of the principal dwelling and the
 - 144 Attached Accessory Dwelling Unit.
- 145 [b. The detached house in which the Accessory Apartment is to be
- 146 created or to which it is to be added must be at least 5 years old
- 147 on the date of application for a license.]
- 148 [c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached
- 149 Accessory Apartment is located at least 500 feet from any other
- 150 Attached or Detached Accessory Apartment, measured in a line
- 151 from side lot line to side lot line along the same block face.]

- 152 [d. In the RNC, R-90, and R-60 zones, the Attached Accessory
153 Apartment is located at least 300 feet from any other Attached
154 or Detached Accessory Apartment, measured in a line from side
155 lot line to side lot line along the same block face.]
- 156 [e. Under Section 29-26(b), the Hearing Examiner may grant a
157 waiver from the parking and distance separation standards.]
- 158 **b.** The maximum gross floor area for an Attached Accessory
159 Dwelling Unit, including any floor area used for an Accessory
160 Dwelling Unit in a cellar, must be:
- 161 **i.** 1,200 square feet of gross floor area; or
162 **ii.** if the basement or cellar is used for the Attached
163 Accessory Dwelling Unit, the gross floor area for the
164 Attached Accessory Dwelling Unit may equal the square
165 footage area of the basement or cellar.

166 **C. Detached Accessory [[Apartment]] Dwelling Unit**

167 **1. Defined**

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

174 **2. Use Standards**

- 175 **a.** Where a Detached Accessory [[Apartment]] Dwelling Unit is
176 allowed as a limited use, it must satisfy the use standards for all
177 Accessory [[Apartments]] Dwelling Units under Section
178 3.3.3.A.2. [and the following standards:]

- 179 [a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory
 180 Apartment must be located a minimum distance of 500 feet
 181 from any other Attached or Detached Accessory Apartment,
 182 measured in a line from side lot line to side lot line along the
 183 same block face.]
- 184 [b. A Detached Accessory Apartment built after May 30, 2012
 185 must have the same minimum side setback as the principal
 186 dwelling and a minimum rear setback of 12 feet, unless more
 187 restrictive accessory building or structure setback standards are
 188 required under Article 59-4.]
- 189 [c. The minimum lot area is one acre.]
- 190 b. Any structure constructed legally before May 31, 2012 that is
 191 not increased in size or building height and does not have new
 192 windows on a wall nearest an abutting property may be used for
 193 a ~~[[detached]] Detached Accessory ~~[[Apartment]] Dwelling~~~~
 194 Unit without regard to setbacks or floor area.
- 195 c. A Detached Accessory ~~[[Apartment]] Dwelling Unit~~ built after
 196 May 30, 2012 must have the same minimum side setback as the
 197 principal dwelling and a minimum rear setback of 12 feet[[,
 198 unless more restrictive accessory building or structure setback
 199 standards are required under Article 59-4]].
- 200 d. For any Detached Accessory Dwelling Unit with a length along
 201 a rear or side lot line that is longer than 24 feet, the minimum
 202 side or rear setback must be increased at a ratio of 1 foot for
 203 every 1 foot that the dimension exceeds 24 linear feet. The
 204 additional rear setback is from a 12-foot setback as its starting
 205 point.

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

211 * * *

212 **F. Guest House**

213 1. Defined

214 Guest House means a detached dwelling that is intended, arranged, or

215 designed for occupancy by transient, nonpaying visitors of the

216 resident owner of the principal dwelling.

217 2. Use Standards

218 Where a Guest House is allowed as a limited use, it must satisfy the

219 following standards:

220 a. A Guest House must not be located on a lot:

- 221 i. that is occupied by a renter;
- 222 ii. that has an [[accessory apartment]] Accessory Dwelling
- 223 Unit; or
- 224 iii. where the owner of the lot resides off-site for more than 6
- 225 months in any calendar year.

226 * * *

227 **I. Short-Term Residential Rental**

228 1. Defined

229 Short-Term Residential Rental means the residential occupancy of a

230 dwelling unit for a fee for less than 30 consecutive days. Short-Term

231 Residential Rental is not a Bed and Breakfast.

232 2. Use Standards

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

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

238 * * *

239 **Sec. 4. DIVISION 3.5 is amended as follows:**

240 **Division 3.5 Commercial Uses**

241 * * *

242 **Section 3.5.6. Lodging**

243 * * *

244 **B. Bed and Breakfast**

245 * * *

246 **2. Use Standards**

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

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

253 * * *

254 **Sec. 5. DIVISION 4.1 is amended as follows:**

255 **Division 4.1. Rules for All Zones**

256 * * *

257 **Section 4.1.2. Compliance Required**

258 * * *

- 259 C. In the Agricultural, Rural Residential, and Residential Detached
260 zones, only one detached house is allowed per lot, except as allowed

261 under Section 3.1.6 for a Detached Accessory ~~[[Apartment]]~~ Dwelling
262 Unit, Farm Labor Housing Unit, or Guest House, or under Section
263 7.7.1.A.1 for an Existing Structure on October 30, 2014.

264 * * *

265 **Sec. 6. DIVISION 4.2 is amended as follows:**

266 **Division 4.2. Agricultural Zone**

267 **Section 4.2.1. Agricultural Reserve Zone (AR)**

268 * * *

269 **D. Special Requirements for the Transfer of Density**

270 **1. In General**

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

279 i. Farm Labor Housing Unit; and

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

281 b. If a property is subdivided so that any Farm Labor Housing
282 Units or Detached Accessory ~~[[Apartments]]~~ Dwelling Units
283 are no longer accessory to the farm as defined in Section
284 59.3.7.4.B, any Farm Labor Housing Units or Detached
285 Accessory ~~[[Apartments]]~~ Dwelling Units are not excluded
286 from the calculation of density and must have retained a
287 development right in addition to the retained development right

288 for any newly created lot; however, these dwellings are
289 excluded from the density calculation and need not have a
290 retained development right if:

291 * * *

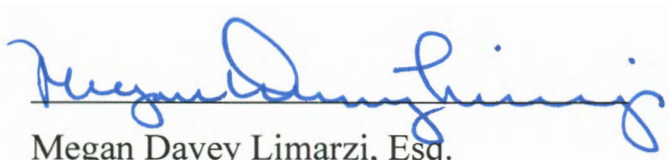
292

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

295

296 This is a correct copy of Council action.

297



298

299 Megan Davey Limarzi, Esq.
300 Clerk of the Council