AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:
Sec. 1. DIVISION 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

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.

<table>
<thead>
<tr>
<th>USE OR USE GROUP</th>
<th>Definitions and Standards</th>
<th>Residential Residential Detached</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>AR</td>
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<tr>
<td>* * *</td>
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<td></td>
</tr>
<tr>
<td>ACCESSORY RESIDENTIAL USES</td>
<td>3.3.3</td>
<td></td>
</tr>
<tr>
<td>Attached Accessory Apartment</td>
<td>3.3.3.B</td>
<td>L</td>
</tr>
<tr>
<td>Detached Accessory Apartment</td>
<td>3.3.3.C</td>
<td>L</td>
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<td>* * *</td>
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</tbody>
</table>

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

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

Division 3.3. Residential Uses

* * *

Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

1. Defined, In General

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

2. Use Standards for all Accessory Apartments
Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:

a. Only one Accessory Apartment 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 approval[;] or the Accessory Apartment satisfies Subsection c.

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

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

ii. 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] 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];

[v] 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 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.

d. An Accessory Apartment 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].

e. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.

f. Screening under Division 6.5 is not required.
g. In the AR zone, any accessory apartment may be prohibited under Section 3.1.5, Transferable Development Rights.

B. Attached Accessory Apartment

1. Defined

Attached Accessory Apartment 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 is subordinate to the principal dwelling.

2. Use Standards

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

[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.]
100 [d. In the RNC, R-90, and R-60 zones, the Attached Accessory
101 Apartment is located at least 300 feet from any other Attached
102 or Detached Accessory Apartment, measured in a line from side
103 lot line to side lot line along the same block face.]
104 [e. Under Section 29-26(b), the Hearing Examiner may grant a
105 waiver from the parking and distance separation standards.]
106 C. Detached Accessory Apartment
107 1. Defined
108 Detached Accessory Apartment means a second dwelling unit that is
109 located in a separate accessory structure on the same lot as a detached
110 house building type and includes facilities for cooking, eating,
111 sanitation, and sleeping. A Detached Accessory Apartment is
112 subordinate to the principal dwelling.
113 2. Use Standards
114 a. Where a Detached Accessory Apartment is allowed as a limited
115 use, it must satisfy the use standards for all Accessory
116 Apartments under Section 3.3.3.A.2 [and the following
117 standards:]
118 [a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory
119 Apartment must be located a minimum distance of 500 feet
120 from any other Attached or Detached Accessory Apartment,
121 measured in a line from side lot line to side lot line along the
122 same block face.]
123 [b. A Detached Accessory Apartment built after May 30, 2012
124 must have the same minimum side setback as the principal
125 dwelling and a minimum rear setback of 12 feet, unless more
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 before May 31, 2012 may be used for a detached Accessory Apartment without regard to setbacks.  

c. 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.

* * *

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

This is a correct copy of Council action.

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Megan Davey Limarzi, Esq.
Clerk of the Council