

Zoning Text Amendment No.: 19-01
Concerning: Accessory Residential
Uses – Accessory
Apartments
Draft No. & Date: 1 – 1/10/19
Introduced: January 15, 2019
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**

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 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.

[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.*

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 59-3.1 is amended as follows:**

2 **Division 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be
6 modified in Overlay zones under Division 4.9.

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

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

8 * * *

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

10 **Division 3.3. Residential Uses**

11 * * *

12 **Section 3.3.3. Accessory Residential Uses**

13 **A. Accessory Apartment, In General**

14 **1. Defined, In General**

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

19 **2. Use Standards for all Accessory Apartments**

20 Where an Accessory Apartment is allowed as a limited use, it must
21 satisfy the following standards:

- 22 a. Only one Accessory Apartment is permitted for each lot.
- 23 b. The Accessory Apartment was approved as a [conditional use]
24 special exception before May 20, 2013 and satisfies the
25 conditions of the conditional use approval[;] or the Accessory
26 Apartment satisfies Subsection c.
- 27 c. [The] If the Accessory Apartment does not satisfy subsection b,
28 the Accessory Apartment [is] must be licensed by the
29 Department of Housing and Community Affairs under Chapter
30 29 (Section 29-19); and
- 31 i. the apartment [has] must have the same street address as
32 the principal dwelling;
- 33 ii. either:
- 34 (a) [one on-site parking space is provided in addition
35 to any required on-site parking space for the
36 principal dwelling; however, if a new driveway
37 must be constructed for the Accessory Apartment,
38 then 2] two on-site parking spaces must be
39 provided; or
- 40 (b) the Hearing Examiner finds under the waiver in
41 Section 29-26(b) that there is adequate on-street
42 parking;
- 43 iii. the maximum [gross] habitable floor area for an
44 Accessory Apartment, including any floor area used for
45 an Accessory Apartment in a cellar or basement, must be
46 less than 50% of the total floor area in the principal

- 47 dwelling, including any floor area used for an Accessory
48 Apartment in the cellar of the principal dwelling[, or
49 1,200 square feet, whichever is less];
- 50 [iv. the maximum floor area used for an Accessory
51 Apartment in a proposed addition to the principal
52 dwelling must not be more than 800 square feet if the
53 proposed addition increases the footprint of the principal
54 dwelling; and]
- 55 [v]iv. the maximum number of occupants is limited by Chapter
56 26 (Section 26-5); however, the total number of
57 occupants residing in the Accessory Apartment who are
58 18 years or older is limited to 2[.]; and
- 59 v. the principal dwelling or accessory apartment must be the
60 primary residence of the applicant for an accessory
61 apartment rental license.
- 62 d. An Accessory Apartment must not be located on a lot where
63 any [other allowed] short-term rental Residential use exists or is
64 licensed [; however, an Accessory Apartment may be located
65 on a lot in an Agricultural or Rural Residential zone that
66 includes a Farm Labor Housing Unit or a Guest House].
- 67 e. In the Agricultural and Rural Residential zones, an Accessory
68 Apartment is excluded from any density calculations. If the
69 property associated with an Accessory Apartment is
70 subsequently subdivided, the Accessory Apartment is included
71 in the density calculations.
- 72 f. Screening under Division 6.5 is not required.

73 g. In the AR zone, any accessory apartment may be prohibited
74 under Section 3.1.5, Transferable Development Rights.

75 **B. Attached Accessory Apartment**

76 **1. Defined**

77 Attached Accessory Apartment means a second dwelling unit that is
78 part of a detached house building type and includes facilities for
79 cooking, eating, sanitation, and sleeping. An Attached Accessory
80 Apartment is subordinate to the principal dwelling.

81 **2. Use Standards**

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

- 86 [a. A separate entrance is located:
- 87 i. on the side or rear of the dwelling;
 - 88 ii. at the front of the principal dwelling, if the entrance
89 existed before May 20, 2013; or
 - 90 iii. at the front of the principal dwelling, if it is a single
91 entrance door for use of the principal dwelling and the
92 Attached Accessory Apartment.]
- 93 [b. The detached house in which the Accessory Apartment is to be
94 created or to which it is to be added must be at least 5 years old
95 on the date of application for a license.]
- 96 [c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached
97 Accessory Apartment is located at least 500 feet from any other
98 Attached or Detached Accessory Apartment, measured in a line
99 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.]

C. Detached Accessory Apartment

1. Defined

Detached Accessory Apartment 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 is subordinate to the principal dwelling.

2. Use Standards

a. Where a Detached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments 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.]

[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

126 restrictive accessory building or structure setback standards are
127 required under Article 59-4.]

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

129 b. Any structure constructed before May 31, 2012 may be used for
130 a detached Accessory Apartment without regard to setbacks.

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

136 * * *

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

139

140 This is a correct copy of Council action.

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142 _____

143 Megan Davey Limarzi, Esq.

144 Clerk of the Council