

**MEMORANDUM**

March 21, 2019

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 19-01, Accessory Residential Uses – Accessory Apartments

PURPOSE: Worksession #2 – approve recommendations for the Council’s consideration

**Expected Participants:**

Claire Iseli, Special Assistant to the County Executive  
Timothy Goetzinger, Acting Director, Department of Housing and Community Affairs (DHCA)  
Francene Hill, License and Registration Manager, DHCA  
Ehsan Motazedi, Department of Permitting Services (DPS)  
Casey Anderson, Chair, Planning Board  
Gwen Wright, Director, Planning Department  
Jason Sartori, Division Chief, Planning Department  
Lisa Govoni, Housing Specialist, Planning Department

**Expected Agenda:** The Committee will start developing recommendations that the Committee may wish to make to the Council. The Committee expressed a desire to begin their worksession with the issues concerning the size of ADUs (detached and attached). The Committee may require an additional worksession on April 4 to continue its review of ZTA 19-01.

**Last Worksession (March 18):** The Committee agreed to proceed with its review of possible amendments to the ZTA. Planning Department staff was asked to provide a “heat” map of where ADUs are currently located and illustrations on how detached ADUs could fit on various size lots, given the setback and building coverage restrictions in the R-200, R-90, and R-60 zones. The map and illustrations are attached to this memorandum starting on © 30.

Most ADUs are located in small lot zones (R-60, R-90, and R-200) even though none of these are detached units. The distribution of ADUs by zone and ADU category is as follows:

ZONE	ADU (SE/CU)	ADU (Class 3)	RLU	Total
AR	7	2	3	12
PD-3	1	1		2
PNZ	1			1
R-10	1			1
R-200	31	45	14	90
R-40			1	1
R-60	97	84	11	192
R-90	51	48	9	108
RC	5	3	6	14
RE-1	5	9	3	17
RE-2	4	12	9	25
RE-2C		5	1	6
RNC		1		1
T-S		1	1	2
<b>Total</b>	203	211	58	472

The **Issue** section reviews all changes proposed in ZTA 19-01, alternatives to those proposed changes, and actions the Council may wish to consider in future Bills. The issues are reordered from the March 18 memorandum so that the Committee can address the issues concerning any size restriction on ADUs first.

### Summary of ZTA 19-01 as Introduced

Zoning Text Amendment (ZTA) 19-01, lead sponsor Councilmember Riemer, was introduced on January 15, 2018. ZTA 19-01 would delete many of the current restrictions on having an accessory apartment. In almost every other jurisdiction except Montgomery County, “accessory apartment units” are called “accessory dwelling units” (ADUs). The remainder of this memorandum uses “ADU” to refer to what the Zoning Ordinance calls Accessory Apartment Unit.<sup>1</sup>

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);

<sup>1</sup> Key words: #MoCoTinyHouse, plus search terms in-law suite, cottage, basement apartment, accessory apartments, accessory apartments.

- 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.

## Issues

- 1) *Should the absolute maximum size of an ADU (1,200 square feet) be deleted?*

ZTA 19-01 would amend the Code to allow ADUs larger than 1,200 square feet, provided that the floor area is less than 50% of the floor area of the main house.

Under California law, the size of an ADU attached to the main house is limited to a maximum of 1,200 square feet or half the size of the existing residence, whichever is smaller.<sup>2</sup> Detached units can't be larger than 1,200 square feet. Local jurisdictions may not increase the maximum size of these units.

Portland has an extremely successful ADU program. There, the maximum size of an ADU may be no more than 75% of the living area of the house or 800 square feet, whichever is less. Testimony suggested reducing the maximum size unit allowed in the County to 900 square feet.

Some potential ADU providers have houses with a floor plate larger than 1,200 square feet. Converting the basement to an ADU may require the construction of walls to prevent the ADU from going over 1,200 square feet. Some of these walls would be unnecessary if there is no limit on the maximum size unit.

The Council considered eliminating the maximum unit size requirement in 2003 and 2013. The number of adults allowed in an accessory unit remains at 2. Larger units have a higher likelihood of having higher rents. If more moderate rents are a goal, larger units run against that goal.

There certainly are houses that have basements with more than 1,200 square feet of floor area. In those circumstances, it might be costly (and wasteful) to wall off excess space to meet the 1,200 square foot maximum.

All accessory structures must also continue to adhere to the lot coverage requirements of the applicable zone. The lot coverage limit is 25% in the R-200 zone, 30% in the R-90 zone, and 35% in the R-60 zone.

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<sup>2</sup> In 2005, the average single-family house in the US was just above 2,400 square feet. <https://www.census.gov/const/C25Ann/sfttotalmedavgsqft.pdf>.

Planning staff recommended deleting a maximum size. In their opinion, restricting units to 50% of the gross floor area of the house is a sufficient limitation.

All accessory structures in R-200, R-90, and R-60 zones are limited in their footprint size to 50% of the footprint of the principle dwelling or 600 square feet, whichever is greater. Councilmember Friedson raised the idea of limiting the size of detached ADUs to 1,200 square feet of gross floor area and establishing a maximum building footprint for the detached ADU of 10% of the lot area (instead of 50% of the floor area of the main house). On lots that are 6,000 square feet in size, 10% of the site equals the current maximum footprint size or 600 square feet allowed for a detached ADU. Use 10% of the lot area as a limit would allow a 1,200 square footprint on any lot larger than 12,000 square feet. The footprint size would increase regardless of the footprint of the principal dwelling.

**Staff recommends retaining the 1,200 square foot limit on an ADU, provided that the floor area is less than 50% of the floor area of the main house, except for attached units where an existing floor plate of the dwelling (basement or cellar) is larger than 1,200 square feet and the ADU will be in the basement or cellar.**

- 2) *Should the measure of the size of an ADU be changed from 50% of gross floor area to 50% of habitable floor area?*

ZTA 19-01 as introduced would amend the Code (Section 3.3.3.B.2.c.iii) in part as follows:

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...

Gross floor area, the maximum area for an accessory apartment under the current Code, is the sum of the gross horizontal areas of all floors, measured from exterior faces of exterior walls. Habitable floor area is a subset of gross floor area and is more complicated to calculate:

Habitable space is defined as “any room meeting the requirements in the Building Officials Conference of America Code as approved by the Montgomery County Council for sleeping, living, cooking or dining purposes, **excluding** such places as closets, pantries, bath or toilet rooms, hallways, laundries, storage spaces, utility rooms and similar spaces, and excluding rooms which are not heated [emphases added].<sup>3</sup>

The effect of expressing the maximum size of an ADU in terms of habitable space would allow for larger ADUs. It would also necessitate a much more complicated review to determine if the standard was met.

One reason to use the term “habitable” floor area is because of the pre-existing size of a basement larger than 1,200 square feet and the 1,200 square foot size maximum size limit for the ADU. Counting only habitable space reduces the square footage measured in the basement as part of the ADU.

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<sup>3</sup> The DHCA checklist for accessory apartment licenses says in part, “Every room must have at least one window which can be easily opened or such device as will adequately ventilate the room”; and “Every room occupied for sleeping purposes by one occupant must contain at least 70 square feet of floor area and must be at least 7 feet in width. Every room occupied for sleeping purposes by more than one person must contain at least 50 square feet of floor area for each occupant.”

If the Council agrees with ZTA 19-01 regarding deleting the 1,200 square foot maximum limit, there is no need to use the word “habitable”.

Staff believes that allowing an ADU in any size basement resolves the problem. (The next issue concerns the 1,200 square foot maximum issue, which ZTA 19-01 would delete.)

**Staff recommends retaining the expression of the size limit as “gross floor area”.** (This recommendation is put in context and would revise the text at the end of issue 3.)

3) *Should the term “basement” be added to where an ADU may be located?*

ADUs are currently allowed in a cellar. The Code defines a cellar as follows:

Cellar: The portion of a building below the first floor joists of which at least half of the clear ceiling height is below the average elevation of the finished grade along the perimeter of the building.

A basement is defined as follows:

Basement: The portion of a building below the first floor joists of which at least half of its clear ceiling height is above the average elevation of the finished grade along the perimeter of the building.

In the opinion of Planning staff, the inclusion of the “basement” is unnecessary because a basement is already within the definition of gross floor area.<sup>4</sup> The problem is that, as introduced, the phrase “gross floor area” does not refer to the total area of the dwelling. It only refers to the size of the ADU.

**Staff recommends the provision be amended to read as follows:**

...the maximum **gross** floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the **gross** floor area in the principal

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<sup>4</sup> Gross Floor Area (GFA): The sum of the gross horizontal areas of all floors of all buildings on a tract, measured from exterior faces of exterior walls and from the center line of walls separating buildings. Gross floor area includes:

1. basements;
2. elevator shafts and stairwells at each floor;
3. floor space used for mechanical equipment with structural headroom of 6 feet, 6 inches or more, except as exempted in the LSC and Industrial zones;
4. floor space in an attic with structural headroom of 6 feet, 6 inches or more (regardless of whether a floor has been installed); and
5. interior balconies and mezzanines.

Gross floor area does not include:

1. mechanical equipment on rooftops;
2. cellars;
3. unenclosed steps, balconies, and porches;
4. parking;
5. floor area for publicly owned or operated uses or arts and entertainment uses provided as a public benefit under the optional method of development;
6. interior balconies and mezzanines for common, non-leasable area in a regional shopping center;
7. in the LSC and Industrial zones, floor space used for mechanical equipment; and
8. any floor space exclusively used for mechanical equipment for any Medical/Scientific Manufacturing and Production use.

dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling...

4) *Should detached ADUs be allowed as a limited use in R-200, R-90, and R-60 zones?*

ZTA 19-01 would allow detached ADUs in small lot zones where such units are not allowed under any circumstances today. These units would be more visible to neighboring residents than attached ADUs or basement units.

Generally, the minimum side setbacks for accessory structures are 12 feet in the R-200 zone and 5 feet in the R-90 and R-60 zones. Generally, the minimum rear setback is 12 feet in the R-200 zone, 5 feet in the R-90 zone, and 20 feet in the R-60 zone. Setbacks may be increased by two feet for every one foot of building height of the accessory structure over 15 feet.<sup>6</sup>

Testimony expressed a fear that the more permissive rules for ADUs in ZTA 19-01 would diminish the living environment homeowners have sought. The neighborhoods and schools would be overrun by ADUs, adding traffic to their quiet neighborhoods and students to overcrowded schools.<sup>7</sup> In the view of some civic associations, ZTA 19-01 is **likely** to cause substantial negative impacts on existing single-family residential neighborhoods—especially in R-60 and R-90 zones. Some testimony declared, “Single family neighborhoods are a way of life in Montgomery County that is historically valuable.”

In the opinion of the Executive:

...the current standards were adopted because many single-family neighborhoods have narrow streets, shared driveways, congested on-street parking conditions, and overcrowded schools. Unlike the urban areas now adopting ADU initiatives, we are a county whose suburban areas are not well served by transit. If our strategy is to dramatically increase the number of ADUs in these areas, we will add density and sprawl where it is not intended to go.

The Town of Brookville, where the town has zoning authority and allowed many units in town to have ADUs, reports a positive experience with ADUs:

Speaking from our 20 years’ experience, the Town has not experienced negative impacts from ADUs— such as parking shortages, vandalism, lowered property values or degradation to the historic village atmosphere.

There are illustrations in the record of detached buildings on small lots with a floor plate of 800 square feet and higher than one story. There are some possible configurations that, in Staff’s opinion, do not look compatible with the principal dwellings or neighbors.

**If the Council desires to expand the possibilities for detached ADUs in small lot zones to a lesser degree than ZTA 19-01 as introduced, the Council may wish to consider:**

- 1) **allowing detached ADUs as a conditional use in small lot zones;**
- 2) **having a minimum lot size for ADUs larger than that is more than the minimum for lots in the zone (See issue #6);**

<sup>6</sup> Under ZTA 19-01, a pre-existing detached garage may be converted into an ADU, but the structure may not be increased in height above 15 feet if it lacks the Code-required setback.

<sup>7</sup> Planning Staff found that the school yield for a principle dwelling with an ADU was just fractionally less than the school yield of a dwelling without an ADU.

- 3) **limiting the building heights of detached ADUs (see issue #5); and**
- 4) **retaining the maximum size limit for a detached ADU (See issue #1).**

5) *What are the height limits for detached accessory apartments?*

Each zone has a separate maximum height for the principal structure and accessory structures in the zone:

Zone	Maximum Principal Building Height (Measure to the highest point)	Maximum Accessory Structure Height
R-200	50' to 35' depending on lot size	35'
R-90	35'	20'
R-60	35'	20'

A 20' height limit can accommodate a 2 story structure. On a small lot or lots with small houses, the combination of a maximum 600 square foot footprint and a 1,200 square foot maximum floor area, will result in a 2 story house.

6) *Should the minimum 1-acre lot size for a detached ADU be deleted?*

Zoning regulates minimum lot size. In the zones where ADUs are allowed as a limited use, all of the minimum lot sizes are at least 1 acre. ZTA 19-01 would allow detached units in the R-200, R-90, and R-60 zones. The current minimum lot size for a detached ADU is 1 acre.<sup>8</sup> The minimum size matches the minimum lot size in the zones where detached accessory units are allowed (RE-1 RE-2, Rural and Agricultural zones). The minimum lot size currently applies to all zones. ZTA 19-01 would allow detached ADUs in small lot zones. There are very few R-90 and R-60 lots that are 1 acre or larger.

Minimum lot size allows large setbacks and screening from neighbors. It allows space for avoiding trees or making provisions for stormwater. It does, however, severely limit the number of sites that would be allowed to build accessory units.

Minimum lot size, if larger than the minimum for a single-family lot in the zone, could reduce the potential number of lots that could have ADUs in any one neighborhood and allow for some design alternatives. The Council received drawings in testimony that laid out how ZTA 19-01 would work with no minimum lot sizes other than the minimum in the zone.

**Assuming the Council agrees with deleting the requirement for a minimum distance between ADUs, does not establish a maximum percentage of ADUs in a neighborhood, and the Council wants to expand the opportunities for ADUs to a lesser extent than ZTA 19-01 as introduced, Staff recommends the consideration of minimum lot sizes in lots where the minimum lot size is less than 20,000 square feet.**

**The R-200 zone which has a 20,000 square foot minimum lot size, includes 37,900 lots. All of those lots would be potential lots available for detached ADUs.**

<sup>8</sup> Since 2003, the Council replaced a 2-acre minimum lot size with the current 1-acre minimum.

**A 12,000 square foot minimum lot size in the R-90 zone would add 10,400 lots with ADU potential out of a possible 28,200 R-90 zoned lots.**

**A 9,000 square foot minimum lot size in the R-60 zone would add 12,800 lots out of a possible 55,000 for detached ADUs.**

- 7) *Should the distance requirement between ADUs (currently 500 feet in large lot zones and 300 feet in smaller lot zones) be deleted?*

The distance separation provision prevents an over-concentration of ADUs. It provides space for on-street parking.<sup>9</sup> The Council received testimony reporting that over-concentration of ADUs was a concern and a real problem.

Prohibiting new licenses within a specific distance is a simple way to accomplish that goal. In 2004, the Executive recommend a more flexible way to accomplish the same goal (ZTA 04-10):

An accessory apartment must not result in an excessive concentration of similar uses, including single-family rental units, in the general neighborhood of the proposed use. An excessive concentration is reached when the number of accessory apartments, rental single-family units, and other similar uses, equals 15 percent or more of the total number of housing units in the neighborhood. In determining the boundaries of the neighborhood, the Director will take into consideration natural boundaries, including streams, major roads, public facilities, and land in non-residential zones. The Director may exceed the 15 percent requirement if the Director finds that there will be no adverse impact on the neighborhood.

This text is much more work for DHCA than just locating approved ADUs on a map and measuring. DHCA must determine neighborhood boundaries and keep track of all approvals within each area. The benefit to this idea is flexibility. Today, if homeowners on the same block want to build ADUs, the second applicant will be out of luck. Under the 2004 proposal, both may be approved, but the ADU that brings it above 15% in the neighborhood would be denied. ZTA 04-10 was not approved by the Council.

Councilmember Friedson would recommend a requirement in a Bill to study ADU activity to determine if over concentration is a problem. In his view, such a study could be repeated every 2 years.

**If the County is concerned about an over-concentration of ADUs in any one area, alternatives to retaining a minimum distance are:**

- 1) **having a minimum lot size larger than the minimum lot size of the zone;**
  - 2) **allowing one other ADU within the distance separation; or**
  - 3) **allowing a percentage of a neighborhood to have ADUs.**
- 8) *Should two off-street parking spaces be required (3 spaces are currently required if two off-street parking spaces are required for the principal dwelling)?*

The current Code has the following requirement for ADU parking:

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<sup>9</sup> Distances between ADUs also means how much street frontage between ADUs. A separation of 500 feet in large lot zones, if also equal to the street front, is sufficient space for parking for approximately 20 cars (assuming 5 driveways and 20 linear feet for each car). A separation of 300 feet, if also equal to the street front, is sufficient space for parking for approximately 10 cars (assuming 5 driveways and 20 linear feet for each car).



one on-site parking space [must be] 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 on-site parking spaces must be provided.

The provision for parking in ZTA 19-01 would require either:

- (a) two on-site parking spaces; or
- (b) that the Hearing Examiner finds under the waiver in Section 29-26(b) that there is adequate on-street parking;

In most situations, ZTA 19-01's requirement for two on-site parking spaces (total for both the principal dwelling and the ADU) does not require any additional parking space for the ADU. All houses built after June 1, 1957 are required to have two off-street parking spaces. The current Code would require those dwellings with driveways to add one additional space for an ADU. The requirement would be three parking spaces for most dwellings under the current Code. For dwellings that have no current driveway (built before 1957), two off-street spaces are required (one space to make up for the loss of an on-street space due to the need for driveway access and one for the ADU). The effect of the proposed amendment would be to reduce the amount of on-site parking required. In addition, the Hearing Examiner may grant a waiver under Section 29-26(b) if the Examiner finds that there is adequate on-street parking.

The trend on car availability per household for work trips (without regard to transit availability) is estimated as follows:

**MEANS OF TRANSPORTATION TO WORK BY SELECTED CHARACTERISTICS**  
**2010 American Community Survey 1-Year Estimates**

	<b>2007</b>	<b>2017</b>
No vehicles	4.2%	3.3%
One Vehicle	20.8%	22.2%
2 Vehicles	42.9%	43.0%
3 or more vehicles	32.1%	31.6%

Although the percentage of households without a car has decreased, the decrease is within the margin of error for the survey.

Testimony has suggested no parking requirement at all or at least no parking required for an ADU near Metro. Other testimony noted the problem of on-street parking even without additional ADUs. Some people suggested limiting ADUs to streets that could accommodate parking on both sides of the street and two travel lanes (44 feet of paving). The Planning Board recommended "having objective standards that take into account the ability to park along the street based on minimum street width and/or minimum lot frontage width" with a waiver process if those standards cannot be met. Planning staff believes that the intent of ZTA 19-01 to require less parking than the current requirement requires clarification; is it two spaces for the ADU plus the spaces required for the principal dwelling?

The Planning Board recommended creation of a simplified process that objectively accounts for the ability to park along a street, based on minimum street widths and minimum frontage widths. *The Council could reduce the parking standards as proposed as long as the confronting road is sufficiently wide for two*

*lanes of travel and two lanes of parking (44 feet of paving width) or the house has at least 100 feet of road frontage.*

Councilmember Friedson recommends retaining the current parking requirements for dwellings located more than ½ mile from Metrorail and Purple Line stations. He does not recommend any required parking for units closer to those stations. He is also interested in accommodating the City of Takoma Park's request to allow a municipality to reduce the number of required on-site parking spaces from the number required by Montgomery County or establish an alternative parking objection process.<sup>10</sup>

**Staff recommends retaining the existing on-site parking requirement. The procedures for a parking waiver make the current requirement sufficiently flexible.**

**If the Council wants to reduce the parking required, the parking provision should be clear that the on-site parking spaces are for both the principal dwelling and the ADU.**

**The Council may have zero additional parking requirement in municipalities (See issue #15).**

9) *Should the maximum size of an addition that can be used as an ADU (currently limited to 800 square feet) be deleted?*

A size limit on an addition had two purposes: 1) keep the rental cost down by limiting new construction; and 2) minimize changes to the outward appearance to the neighborhood.

If the Council's goal is to maximize the potential number of rental units, removing this limit is consistent with that goal.

**If the Council's interest is increasing affordable units or limiting changes to the appearance of existing dwellings, Staff recommends retaining a limit on the maximum size of additions.**

10) *Should the requirement that the unit must be in a structure that is at least 5 years old be deleted?*

The existing provision was enacted to prevent a form of duplex housing at initial construction.<sup>11</sup> The intent statement for residential zones is to provide designated areas of the County for residential use at specific densities. The predominant use in Residential zones is a single-unit detached house. The Council vision in approving the older-than-5-year requirement was in line with an opinion written Justice William O. Douglas:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.<sup>12</sup>

<sup>10</sup> The applicant for a new license for an accessory apartment may object to an adverse finding of fact by the Director by filing an objection and a request for a hearing with the Office of Zoning and Administrative Hearings. The Hearing Examiner may find that on-street parking is inadequate if:

- (A) the available on-street parking for residents within 300 feet of the proposed accessory apartment would not permit a resident to park on- street near his or her residence on a regular basis; and
- (B) the proposed accessory apartment is likely to reduce the available on- street parking within 300 feet of the proposed accessory apartment.

The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license.

<sup>11</sup> ADUs with two front doors leading to separate units is a form of duplex where one dwelling is twice the size of the other dwelling. Most duplexes are of equal size and are on their own unique lot.

<sup>12</sup> Village of Belle Terre v. Boraas , 416 U.S. 1 (1974).

One of the goals of ADUs is to allow residents to age in place by having an income source to replace wages. New construction has nobody in place to age. New construction is more disruptive as infill development than less dramatic changes to existing households. Testimony included the following observation:

There is a substantial amount of existing older single family homes in the County which are modest in size, such as one story ramblers, small two story homes, located in many areas of the County, e.g. Wheaton, Kensington, Silver Spring, Bethesda, etc. This existing housing stock sells or rents for much lower /more affordable prices than larger homes. Under ZTA 19-01, each of the lots on which these existing homes is located will be permitted to have two dwelling units. The market price of these properties will be driven upward as two dwelling units normally return more profit than one dwelling unit. The most likely scenario is that developers will buy the current lower priced housing, tear it down, construct a new principal dwelling and a new accessory dwelling, with the principal dwelling unit selling for substantially more than the original property and the new accessory dwelling unit having rent well above the affordable level. Thus, the goal of ZTA 19-01 will not be achieved but it will do the opposite, decrease the amount of lower priced housing.

One of the goals of ADUs is to have a source of moderately-priced rental housing by taking advantage of unused space in existing structures. Allowing ADUs in an all-new unit eliminates the lower construction costs associated with reusing existing improved space.

If the Council goal is to promote the possibility of multi-generational housing, it would agree with deleting the prohibition on new construction.

**If the Council wants to minimize visual changes to a neighborhood, Staff recommends retaining the current provision to prohibit attached ADUs in newly constructed houses.**

11) *Should an accessory structure built before May 31, 2012 be used as an ADU without regard to setbacks?*

Garages have been built in the County without any respect to side setbacks. Some of these structures may have been built illegally. The Planning Board recommends only allowing a grandfathering of current setback when the structure being used was **legally** constructed. Under ZTA 19-01, these structures may be converted to habitable detached ADUs.

Additional setbacks are required when a structure is higher than 15 feet. In some instances, a second story addition would not be permitted with the pre-existing setback of a garage. ZTA 19-01 refers to “constructed” structures.

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

In the opinion of DPS staff, adding a second floor to a structure or adding an addition to a structure would remove it from the class of structures *constructed* before May 31, 2012. A structure adding a second story or making an addition would have to satisfy setback standards under ZTA 19-01 as introduced.

The City of Takoma Park recommends a larger exception to ADUs in existing structures. They recommend (at least for the City of Takoma Park) that applications for ADUs within existing single-unit

homes not be required to be review for setbacks or other external zoning issues<sup>13</sup>eyond zoning, the City further recommends that existing single-family homes be exempt from the County permitting process. If the dwellings are inspected and approved for licensing through a comparable municipal licensing program.

**Staff agrees with the Planning Board that the proposed exception to setback requirements should only apply to legally-built buildings. The same “standard” could apply to existing unmodified structures used for attached ADUs.**

12) *Should the setback increases for buildings longer than 24 feet be changed for ADUs?*

Any building longer than 24 feet must have an increased setback of one foot for every foot longer than 24. There are manufactured ADU options with a standard length of 32 feet. On small lots, the increased setback pushes the ADU toward the principal dwelling. **The Council may wish to exempt ADUs longer than 24 feet from the additional setback.**

13) *Should a separate entrance for an attached ADU be on any side of the dwelling?*

The current Code only allows a separate front entrance if the entrance existed before the standards for an ADU were liberalized in 2013. ZTA 19-01 would delete that provision and require a separate entrance on any side of the dwelling.

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.]

This issue is a design question. Does a neighborhood feel better about itself if two units in one house are not obvious? Prior Councils thought it was not a good idea to allow accessory dwellings to make a house look like a duplex. The Planning Board and Planning staff have no problem with the proposed change.

14) *Should the owner of the site of the ADU be required to live on the site?*

Both the Accessory Apartment licensing requirements under Section 29-19(b)<sup>14</sup> and the Zoning Ordinance require the principal dwelling or ADU to be the primary residence of the owner. **Staff recommends deleting the ownership resident requirement in the Zoning Ordinance and, if the Council wants changes to the requirement, making those changes in a Bill amending Section 29-19.**

A literature review found considerable support for an association between resident homeownership and improved property maintenance and longer lengths of tenure. The analysis of census data indicated less residential mobility and greater property value appreciation in areas with greater resident home

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<sup>13</sup> Exempting existing single-unit dwelling for a setback or building height review for existing dwellings would expand the universe of places where ADU may be built.

<sup>14</sup> Attached.

ownership.<sup>15</sup> Owners tended to be higher in life satisfaction and self-esteem and more likely to be members of community improvement groups.<sup>16</sup> Schools benefit by the longer tenure of the owner's children and their higher school attainment.<sup>17</sup>

A requirement of owner-occupancy as in the current Code may give bankers the jitters. Nervous bankers may prevent some homeowners from securing home loans to finance the ADU construction if the justification for the loan is rental income. To the extent that an owner-occupancy limits the value appraisers can assign to a house and ADU, it would make the property less valuable as loan collateral. If a bank forecloses on a house and the accessory dwelling is covered by an owner-occupancy rule, it cannot rent out both units.

Portland (237,000 dwelling units, compared to 390,000 dwelling units in Montgomery County) repealed its owner-occupancy provision in 1998. Most communities with ADU programs have a provision requiring an owner to live on the property.<sup>18</sup> Portland has nearly 3,000 ADUs; the County has 458.

A resident owner requirement does restrict who can have an ADU. According to the US Census Bureau, some 65% of dwelling units are owner-occupied.<sup>19</sup> Resident ownership provides neighborhood stability. It retains the accessory nature of an ADU. When a resident owner is absent, the ADU is not accessory to the owner's home; it is part of a commercial rental use.

One of the idyllic visions of a permissive ADU policy is allowing for an extended family and multi-generational living. That seems a cloudier vision with allowance for the rental of both units. Military and state department families who create an ADU and then are deployed have a problem. If the entire family moves, there is no resident owner. The only choice is rent the house but not the ADU for the duration of their deployment. Staff could not find any ADU provisions in other jurisdictions that provided relief for a deployed owner with an ADU. Veterans Affairs (VA) mortgages require an owner-occupied house. VA mortgages allow for deployment without calling the mortgage due. The plain English version of that provision is as follows:

If you are deployed after purchasing your home, your occupancy status is not affected by the deployment. You are considered to be in a "temporary duty status" and are able to provide a valid intent to occupy certification. This requirement is met regardless of whether or not your spouse will be occupying the property while you're deployed.

15) *Should changes to zoning for ADUs affect municipalities?*

Clearly, municipalities with their own zoning authority (Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove) are not affected by any changes to County zoning. Under Section 20-509 of the State Land Use Article, other municipalities may:

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<sup>15</sup> "Homeownership and Neighborhood Stability," Rohe and Stewart Housing Policy Debate, Volume 7, Issue 1 (1996).

<sup>16</sup> "The social benefits of homeownership: Empirical evidence from national surveys", Peter H. Rossi & Eleanor Weber. Published online, 31 Mar 2010.

<sup>17</sup> "A Note on the Benefits of Homeownership," Daniel Aaronson, Journal of Urban Economics, Volume 47, Issue 3, May 2000, Pages 356-369.

<sup>18</sup> Portland has about 2,900 ADUs and is getting 600 ADU applications a year. <https://accessorydwellings.org/2019/01/14/adu-permit-trends-in-portland-in-2017-and-2018/>.

<sup>19</sup> 65% percentage of owner-occupation is higher than the national average of 63.1%. <https://www.census.gov/quickfacts/fact/table/montgomerycountymaryland/PST045217>.

regulate only the construction, repair, or remodeling of single-family residential houses or buildings on land zoned for single-family residential use as it relates to:

- residential parking;
- the location of structures, including setback requirements;
- the dimensions of structures, including height, bulk, massing, and design; and
- lot coverage, including impervious surfaces.

Within the scope of this provision, a municipality may have more restrictive conditions under any of these topics.

16) *Should the term “Accessory Apartment Unit” be changed in County Code to “Accessory Dwelling Unit?”*

In almost every other jurisdiction except Montgomery County, “accessory apartment units” are called “accessory dwelling units” (ADUs). This memorandum uses “ADU” to refer to what the Zoning Ordinance calls Accessory Apartment Units. **Staff recommends making this change in County Code.**

17) *Should the ZTA reference any HOA covenants?*

Many homeowners associations (HOAs) have restrictions against renting property or having more than one unit on any property. Covenants between a homeowner and an HOA are private binding documents. Just as with other private contracts, the courts enforce the contracts when asked to do so by one of the parties involved. The County does not enforce private covenants.

Under existing licensing procedures, the HOA would get notice of an application by signage on the property. The licensing requirements for an ADU require a sign posted on the applicant’s site within five days of an accepted application. The sign provided by DPS remains in place on the lot for a period of time and in a location determined by DPS.

The treatment of HOA restrictions was raised to the Council when it was dealing with provisions for short-term rental licenses. The Code requires an applicant for a short-term rental license to certify that the ADU is not prohibited by any homeowners association.<sup>20</sup>

The Code allows an HOA to challenge the issuance of a license:

A challenge to any required certification made by the applicant may be filed with the Director within 30 days after the application is filed by:

- (1) a resident or owner of real property located within 300 feet of a licensed or proposed license;
- (2) the municipality in which the residence is located;
- (3) any applicable homeowners association, condominium, housing cooperative; or
- (4) the owner of the unit or the owner’s rental agent, if the applicant is not the owner.<sup>21</sup>

The short-term licensing requirements do not require HHS to know or enforce HOA restrictions; it only makes them a possible challenger to a license. However, the HOA is free to enforce its covenants through its own efforts in court.

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<sup>20</sup> Section 54-43.

<sup>21</sup> Section 54-46.

Councilmember Friedson would recommend a Bill to address this issue.

**If the Council wants acknowledgement that the HOA does not prohibit an ADU, Staff recommends introducing a Bill to amend Section 29-19 to do so.**

18) *Should the minimum height for habitable space be changed (building permit Bill required)?*

The building code definition for habitable space requires at least 50% of a habitable room to be 7 feet between the ceiling and the floor.<sup>22</sup> Height allows for air circulation, light, less confining space, and a measure of fire safety.

Some 15% of males are 6 feet or taller. Anyone taller than 6 feet who puts their arm straight up over their head would have their fingers at around 7 ½ feet. For tall people, a 7-foot ceiling is unusually confining. Most buildings have ceiling heights of at least 8 feet.<sup>23</sup>

For fire safety reasons, a 7-foot ceiling makes sense. A 7-foot ceiling height allows for a differential between the doors and the ceiling. The standard door is 6'8". The difference between that height and the ceiling height is space for smoke if a fire occurs. The requirement as stated in the DHCA checklist is:

If the permit for building a single family dwelling or addition was issued before October 2000, all one and two family dwellings shall have a finished basements with minimum ceiling heights of 6'8" and not less than 6'4" to the finished bottom surface at beams, columns, ducts and similar obstructions that are a minimum 4' on center. If the permit for building a single family dwelling or addition was issued after October 2000, all one and two family dwellings shall have finished or unfinished basement rooms with minimum ceiling heights of 7' with minimum 6'6" to beams and girders spaced not more than 4' on center.

Many houses were constructed with a basement or cellar that has a ceiling less than 7 feet from the floor. Without considerable expense to lower the floor (or a change in the definition of habitable space), this space would not be available for an ADU.

DPS does have an available procedure for Code modification to address unique circumstances. The International Residential Construction Code has a 7-foot height minimum for habitable space. Some California jurisdictions use 6'8" as the minimum height.

**If the Council wants to change the 7-foot height requirement, it should do so by introducing a Bill to amend Chapter 8.**

19) *Does a detached ADU building permit application require a sediment control permit?*

Under Section 19-02, sediment control permit is not required for any minor land-disturbing activity. Minor land disturbing activity is activity that:

- (1) is not associated with construction of a new residential or commercial building;
- (2) involves less than 100 cubic yards of earth movement;
- (3) disturbs less than 5,000 square feet of surface area;

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<sup>22</sup> Section 26-5(d).

<sup>23</sup> Standard lumber and drywall are manufactured in 8-foot lengths.



- (4) is not associated with a change of use from residential to any other use; and
- (5) is promptly stabilized to prevent erosion and sedimentation.

DPS treats a new detached accessory dwelling/apartment like an accessory building; a sediment control permit is **not** required.<sup>24</sup> The average cost for a sediment control permit including permit fees and engineered plans by a private design consultant is \$10,000.

Any change to this requirement would require a Bill to amend Chapter 19 (Section 19-2) of the County Code.

20) *Does DHCA have the capacity to enforce any ADU restrictions?*

DHCA estimated the following staffing needs if ZTA 19-01 is approved:

- 2 Full Time Equivalents (FTE) (1 Program Manager I (\$100,000) and 1 Principal Administrative Aide (\$75,000)) dedicated solely to ADUs.
- If a 50% per year increase in applications is assumed (the average of 57 applications increases to 165 in FY21) and the 50% per year increase continues past FY21, DHCA would need an additional FTE Program Specialist in FY22.

Annual inspections of licensed ADUs were suggested in testimony. The burden of annual inspections would increase as the number of licensed ADUs increases. For Code Enforcement, DHCA would estimate the following additional staffing needs, assuming a 50% rate of increase for ADU applications and licenses (371 applications by FY23) and a requirement for annual inspections:

- 1 FTE Inspector for FY20 (\$95,000 plus one-time costs for fleet acquisition)
- 2 FTE Inspectors for FY21
- 3 FTE Inspectors for FY22, etc.

DHCA reports that an annual inspection regime for ADUs may be excessive, as owners reside at their properties and historically few ADU complaints are reported. A triennial inspection regime would reduce the Housing Code Enforcement staffing need.

The Department's revenue from Class 3 Accessory Apartment licensing was \$34,508 in FY18. That amount would be expected to increase as homeowners take advantage of the changes to ADU regulations adopted by the Council in 2013 and 2018. The FY19 average personnel cost per employee in the Licensing and Registration Section was \$114,000 (FY19 \$455,000, including personnel costs for 4 FTEs).

Councilmember Friedson would recommend a Bill to reserve all ADU licensing fees to fund ADU inspectors.

21) *Should an ADU be allowed to convert to a short-term rental license?*

ADUs are a long-term housing option. The addition of an ADU, even if used for free housing for a family member, adds to the County's supply of housing. Short-term rentals are mini-hotels that allow for visitation but not new residents.

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<sup>24</sup> The zoning ordinance speaks to Accessory Apartments which are defined as "a second dwelling unit that is subordinate to the principal dwelling. An Accessory Apartment includes an Attached Accessory Apartment and a Detached Accessory Apartment." A "Detached Accessory Apartment" is further defined as "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."



Montgomery County Code allows either an ADU or a short-term rental on a single property, but not both. It is possible to get a construction permit or well/septic for an ADU approved by DPS, get licensed by DHCA as an ADU for 1 year, and then get a short-term rental license from HHS once the ADU license has expired.

If the Council wants further restrictions on ADUs converting to short term rentals, those limitations on the issuance of a short-term rental license should be addressed in an amendment to Chapter 54 (Section 54-43) of the County Code.

<u>This packet contains</u>	<u>© number</u>
ZTA 19-01 revised with editorial changes	1 – 8
Planning Board recommendation	9 – 11
Planning staff recommendation	12 – 18
Executive recommendation	19 – 25
Sec. 29-19. Licensing procedures.	26 – 27
Sec. 29-26. Appeals and Objections.	28
Sec. 54-43. Certification for a (Bed and Breakfast Short-Term Rental) License	29
Planning Staff Map of ADUs	30 – 31
Planning Staff Exist ADU information	32 – 34
Planning Staff Exist ADU Illustration	35 – 40

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**

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Lead Sponsor: Councilmember Riemer

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**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:*

**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.

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	L	L	L	L	
* * *													

**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]] 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

- 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 on  
 65 a lot in an Agricultural or Rural Residential zone that includes a  
 66 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.

141

142

143 \_\_\_\_\_  
143 Megan Davey Limarzi, Esq.  
144 Clerk of the Council



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

OFFICE OF THE CHAIR

February 21, 2019

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. 19-01

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 19-01 (ZTA 19-01) at its regular meeting on February 14, 2019. By a vote of 4:0, (Commissioner Cichy absent from the hearing) the Planning Board recommends approval of the ZTA with modifications (as depicted in the attached technical staff report) and additional comments (as discussed below), to revise the limited use provisions for attached and detached accessory apartments.

Overall, the Planning Board agrees with the sponsor in recognizing the importance of increasing the supply of accessory apartments in the County while also working to minimize any negative impacts on residential neighborhoods. Many of the concerns pertaining to accessory apartments in the smaller lot zones stem from the ability to enforce applicable code provisions and to provide adequate parking (on-street or on-site). The Planning Board believes that the parking requirement should include a simplified process that provides objective standards that take into account the ability to park along the street based on a minimum street width and/or a minimum lot frontage width. A waiver provision through the Hearing Examiner's process should continue to be applicable for situations that can't meet the off-street or lot width/street width requirements.

One other modification recommended by the Planning Board provides clarification of the intent (Line 129) to allow any structure legally constructed before May 31, 2012 (effective date of allowing an accessory apartment without requiring special exception or conditional use approval) to be used as an accessory apartment without regard to setbacks.

ZTA 19-01 would delete or modify many of the current restrictions on having an accessory apartment as follows:

- Allow detached accessory apartments as a limited use in R-200, R-90, and R-60 zones (within Residential Zones, detached accessory apartments are currently only allowed as a limited use in RE-1, RE-2, and RE-2C zones and on a minimum lot area of one acre). **The Planning Board has no objection to this provision given that all accessory structures must continue to adhere to the building coverage requirements of the applicable zone and the greater of the current setback requirements for accessory structures in the zone or the same minimum side setback as the principal dwelling and a minimum rear setback of 12 feet.** Setbacks potentially can be greater based on the height of the accessory structure. Also, accessory structures are limited in

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footprint to 50% of the footprint of the principle dwelling or 600 square feet, whichever is greater. This provision, in addition to the maximum floor area provisions for accessory apartments will assist in minimizing any visual impacts of a detached accessory apartment in the smaller lot Residential Zones.

- Require 2 off-street parking spaces (3 spaces are currently required if 2 off-street parking spaces are required for the principal dwelling). **The Planning Board believes that the parking requirement should include a simplified process that provides objective standards that take into account the ability to park along the street based on a minimum street width and/or a minimum lot frontage width.**
- Allow an accessory apartment in a basement (accessory apartments are currently allowed in a cellar). The Board believes that there has been some confusion on the current provision under lines 43 through 49 concerning the calculation of the maximum gross floor area for an accessory apartment. In fact, most attached accessory apartments are located in the basement of the principle dwelling. The current language under lines 43-49, *"the maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, 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,"* does not exclude accessory apartments from locating in a basement. Rather, this language was intended to clarify that the calculation of the *maximum gross floor area* should be inclusive of the floor area of a cellar, given that the definition of *Gross Floor Area* does not include cellar space, but does include basement space. **The Planning Board does not believe that the addition of the word "basement" is needed under lines 43 through 49.**
- Change the measure of the maximum size of an accessory apartment from 50% of gross floor area to 50% of habitable floor area.
- Delete the absolute maximum size of an accessory apartment (the absolute maximum size is currently 1,200 square feet). **The Board has no objection given the maximum size would be proportionate throughout all zones-less than 50% of the habitable floor area.**
- Delete the maximum size of an addition that can be used as an accessory apartment (currently limited to 800 square feet). Lot coverage and setback provisions are still applicable and will minimize any impacts to surrounding properties.
- Delete the requirement that the unit must be in a structure that is at least 5 years old.
- Delete the distance requirement between accessory apartments (currently 500 feet in large lot zones and 300 feet in smaller lot zones).
- Allow an accessory structure built before May 31, 2012 to be used as an accessory apartment without regard to setbacks. **The Planning Board believes that this provision (line 129) should be clarified to allow any structure legally constructed before May 31, 2012 (effective date of allowing an accessory apartment without requiring special exception or conditional use approval) to be used as an accessory apartment without regard to setbacks.**
- Specifically require the owner of the site of the accessory apartment to live on the site. **The Planning Board agrees with this provision given that it makes the Zoning Code consistent with current language in the licensing requirements.**
- Delete the requirement that a detached accessory apartment be on a lot at least one acre in size. This deletion is necessary to allow an accessory apartment in the smaller lot Residential Zones. As stated above, all current accessory structure setback, floor area and footprint

requirements and existing lot coverage requirements remain applicable, thereby minimizing visual impacts of a detached accessory apartment.

**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, February 14, 2019.



Casey Anderson  
Chair

CA:GR:aj



**Zoning Text Amendment (ZTA) No. 19-01, Accessory Residential Uses – Accessory Apartments**

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Completed: 02/7/19

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**Description**

ZTA 19-01 would 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 deleting many of the current restrictions on having an accessory apartment.

**Summary**

Staff recommends approval, as modified by staff, of ZTA No. 19-01 to remove the requirement for conditional use approval for all accessory apartments, and to revise the limited use provisions for attached and detached accessory apartments. The modifications provide clarification of the intent (Line 129) to allow any structure legally constructed before May 31, 2012 (effective date of allowing an accessory apartment without requiring special exception or conditional use approval) to be used as an accessory apartment without regard to setbacks. Overall, staff agrees with the sponsor in recognizing the importance of increasing the supply of accessory apartments in the County while also working to minimize any negative impacts on residential neighborhoods. Accessory Apartments also help provide supplemental income to homeowners thereby allowing many in our senior population to age in place and in many cases, providing affordable living arrangements for others. Many of the concerns pertaining to accessory apartments in the smaller lot zones stem from the ability to provide adequate parking (on-street or on-site). Staff believes that maintaining a parking requirement, with the ability to waive it through the Hearing Examiner process, will be key to minimizing any negative impacts on surrounding neighborhoods.

**Background/Analysis**

Recent Zoning Changes

ZTA 18-07, Accessory Residential Units – Accessory Apartments was introduced on July 17, 2018 as a way to remove barriers to the creation of Accessory Apartments. ZTA 18-07 allowed for the removal of the requirement for conditional use approval for all accessory apartments that do not meet the spacing

and parking requirements. The ZTA was adopted October 9, 2018 and became effective on October 29, 2018.

Prior to ZTA 18-07, applicants were required to pursue the conditional use process if they wanted to challenge the rejection of an accessory apartment license application by the Department of Housing and Community Affairs (DHCA) based on a failure of the application to meet statutory minimums for onsite parking and/or separation from an existing accessory apartment in the neighborhood.

Under ZTA 18-07, the waiver process was added to the existing objection process for accessory apartment cases as a substitute for the existing conditional use process. The waiver process allows the Hearing Examiner to consider challenges to the rejection of an accessory apartment license application by DHCA based on failure of the application to meet statutory minimums for on-site parking and/or separation from an existing accessory apartment in the neighborhood.

The new process, under ZTA 18-07, reduces the processing time for consideration of these issues, since the Planning Department is not required to review the waiver request; instead, the Hearing Examiner relies on testimony from the DHCA inspector, the applicant and neighbors. While the conditional use process typically takes 4 to 5 months to complete, the new process can take half that time, given that hearings are set within 30 days of the filing of the application for a waiver, and the Hearing Examiner's report must be filed within 30 days thereafter.

ZTA 19-01 further relaxes the standards for accessory apartment approvals as depicted below.

#### Permitting Data

Since 2013, when the County moved from the special exception approval process previously required for accessory apartments to Class 3 licensed accessory apartments, the County has processed 237 Accessory Dwelling Units applications. This includes 148 total licensed accessory apartments (about 30 a year, on average), 5 approved by the Hearing Examiner, 16 conditionally approved by the Hearing Examiner, 11 denied, 26 currently pending, and 31 withdrawn.

Status	Count
Finding Approved by the Hearing Examiner	5
Finding Conditional by the Hearing Examiner	16
Finding Denied	11
Licensed by DHCA	148
Pending	26
Withdrawn	31
<b>Grand Total</b>	<b>239</b>

### Current Accessory Apartment Provisions

An Accessory Dwelling Unit (or Accessory Apartment) is a second dwelling that is subordinate to an existing one-family detached home and has its own provisions for cooking, eating, sanitation and sleeping. Montgomery County's Accessory Dwelling Unit (ADU) program permits accessory apartments as long as the following conditions are met:

- The property must be the owner's primary residence.
- *Attached* Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, RE-1, R-200, R-90 and R-60 zones following all limited use standards.
- *Detached* Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, and RE-1 zones if the property is a minimum of one acre in size, and all limited use standards are met.
- The house must be at least 5 years old.
- The accessory apartment must have the same street address as the main house.
- The accessory apartment must be internal to the main dwelling on a property smaller than one acre. Complete internal separation of the units is required.
- Only one accessory apartment may be created on the same lot as an existing one family detached dwelling. Accessory apartments are prohibited in Townhomes.
- The maximum floor area for an accessory apartment, including any floor area used for an accessory apartment in a cellar, must be less than 50 percent of the total gross 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. Maximum floor area is measured from the exterior of the house.
- 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 floor plate of the principal dwelling. Maximum floor area is measured from the exterior of the house.
- In the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, there must be no approved or pending **attached** accessory apartments within 500 feet. In the R-90 (including Plan Development zones), R-60, and RNC zones, there must be no approved or pending **attached** accessory apartments within 300 feet. In the RE-2, RE-2C, and RE-1 zones, there must be no approved or pending **detached** accessory apartments within 500 feet.
  - If a property does not meet this requirement, the property owner can apply for a waiver with the Hearing Examiner.
- If there is an existing driveway, one on-site parking space is required in addition to any required on-site parking space required for principal dwelling; however, if a new driveway must be constructed for the accessory apartment, then two on-site parking spaces must be provided. If your property does not meet this requirement, you can apply for a waiver with the Hearing Examiner.

#### ZTA 19-01 Provisions

ZTA 19-01 would delete or modify many of the current restrictions on having an accessory apartment as follows:

- Allow **detached** accessory apartments as a limited use in R-200, R-90, and R-60 zones (within Residential Zones, detached accessory apartments are currently only allowed as a limited use in RE-1, RE-2, and RE-2C zones and on a minimum lot area of one acre). **Staff has no objection to this provision given that all accessory structures must continue to adhere to the building coverage requirements of the applicable zone and the greater of the current setback requirements for accessory structures in the zone or the same minimum side setback as the principal dwelling and a minimum rear setback of 12 feet. Setbacks potentially can be greater based on the height of the accessory structure. Also, accessory structures are limited in footprint to 50% of the footprint of the principle dwelling or 600 square feet, whichever is greater. This provision, in addition to the maximum floor area provisions for accessory apartments will assist in minimizing any visual impacts of a detached accessory apartment in the smaller lot Residential Zones.**
- Require 2 off-street parking spaces (3 spaces are currently required if 2 off-street parking spaces are required for the principal dwelling). **Staff believes that the language on lines 38 and 39 of the legislation needs to be clarified to reflect the intent; either that the two on-site parking spaces are in addition to any required on-site parking for the principal dwelling or that the two on-site parking spaces are inclusive of the principal dwelling and the accessory apartment. In either case, the Hearing Examiner waiver provision under Section 29-26(b) will still be an option for an applicant.**
- Allow an accessory apartment in a basement (accessory apartments are currently allowed in a cellar<sup>1</sup>). **Staff believes that there has been some confusion on the current provision under lines 43 through 49 concerning the calculation of the maximum gross floor area for an accessory apartment. In fact, most attached accessory apartments are located in the basement of the principle dwelling. The current language under lines 43-49, *"the maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, 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"* does not exclude accessory apartments from locating in a basement, but is inclusive of the floor area of a cellar in the calculation of the *maximum gross floor area*, given**

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<sup>1</sup> **Basement:** The portion of a building below the first floor joists of which at least half of its clear ceiling height is above the average elevation of the finished grade along the perimeter of the building.

**Cellar:** The portion of a building below the first floor joists of which at least half of the clear ceiling height is below the average elevation of the finished grade along the perimeter of the building.



that the definition of *Gross Floor Area*<sup>2</sup> does not include cellar space. Staff does not believe that the addition of the word "basement" is needed under lines 43 through 49.

- Change the measure of the maximum size of an accessory apartment from 50% of gross floor area to 50% of habitable floor area.
- Delete the absolute maximum size of an accessory apartment (the absolute maximum size is currently 1,200 square feet). **Staff has no objection given the maximum size would be proportionate throughout all zones-less than 50% of the habitable floor area.**
- Delete the maximum size of an addition that can be used as an accessory apartment (currently limited to 800 square feet). **Lot coverage and setback provisions are still applicable and will minimize any impacts to surrounding properties.**
- Delete the requirement that the unit must be in a structure that is at least 5 years old.

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<sup>2</sup> **Gross Floor Area (GFA):** The sum of the gross horizontal areas of all floors of all buildings on a tract, measured from exterior faces of exterior walls and from the center line of walls separating buildings. Gross floor area includes:

1. basements;
2. elevator shafts and stairwells at each floor;
3. floor space used for mechanical equipment with structural headroom of 6 feet, 6 inches or more, except as exempted in the LSC and Industrial zones;
4. floor space in an attic with structural headroom of 6 feet, 6 inches or more (regardless of whether a floor has been installed); and
5. interior balconies and mezzanines.

Gross floor area does not include:

1. mechanical equipment on rooftops;
2. cellars;
3. unenclosed steps, balconies, and porches;
4. parking;
5. floor area for publicly owned or operated uses or arts and entertainment uses provided as a public benefit under the optional method of development;
6. interior balconies and mezzanines for common, non-leasable area in a regional shopping center;
7. in the LSC and Industrial zones, floor space used for mechanical equipment; and
8. any floor space exclusively used for mechanical equipment for any Medical/Scientific Manufacturing and Production use.

- Delete the distance requirement between accessory apartments (currently 500 feet in large lot zones and 300 feet in smaller lot zones).
- Allow an accessory structure built before May 31, 2012 to be used as an accessory apartment without regard to setbacks. **Staff believes that this provision (line 129) should be clarified to allow any structure legally constructed before May 31, 2012 (effective date of allowing an accessory apartment without requiring special exception or conditional use approval) to be used as an accessory apartment without regard to setbacks.**
- Specifically require the owner of the site of the accessory apartment to live on the site. **Staff agrees with this provision given that it makes the Zoning Code consistent with current language in the licensing requirements.**
- Delete the requirement that a detached accessory apartment be on a lot at least one acre in size. **This deletion is necessary to allow an accessory apartment in the smaller lot Residential Zones. As stated above, all current accessory structure setback, floor area and footprint requirements and existing lot coverage requirements remain applicable, thereby minimizing visual impacts of a detached accessory apartment.**

#### Other Jurisdictions

##### **Washington, DC**

- Zoning amendments went into effect in 2016
- Allowed by-right in many residential zones
- Owner-occupancy requirement, no more than 3 people can live in an accessory unit
- No new parking spaces are required
- Pre-permitting consultation with the Department of Consumer and Regulatory Affairs, which costs between \$400 and \$600
- Building permit process typically takes between two to six months

##### **Arlington, VA**

- Only about 20 ADUs approved in Arlington from 2009 to 2017
- Zoning change in 2017
- Max occupancy of 3 persons
- Max size of 750sf or 35% of the combined area of the main and ADU; No limit on size of an ADU located within a basement
- No annual limit on the number of accessory apartments that can be created in county
- Parking requirements vary
- Application is reviewed by Zoning Division staff and then a formal review by the Zoning Administrator

#### **Conclusions**

Staff agrees with the sponsor in recognizing the importance of increasing the supply of accessory apartments in the County while also working to minimize any negative impacts on residential neighborhoods. Accessory Apartments also help provide supplemental income to homeowners thereby allowing many of our senior population to age in place and in many cases, providing affordable living arrangements for others. Many of the concerns pertaining to accessory apartments in the smaller lot zones stem from the ability to provide adequate parking (on-street or on-site). Staff believes that maintaining a parking requirement, with the ability to waive it through the Hearing Examiner process, will be key to minimizing any negative impacts on surrounding neighborhoods.

#### **Attachments**

1. ZTA No. 19-01 as modified by staff

Good evening. Claire Iseli testifying on behalf of County Executive Elrich.

The County Executive recognizes the importance of addressing the persistent housing affordability problems in Montgomery County. He believes we need to be clear about the problems we are trying to solve and how best to solve them. Because ZTA 19-01 creates more problems than it solves, the Executive recommends retaining the current standards while we explore other options.

ZTA 19-01 amends legislation adopted just a few months ago. ZTA 18-07 and Bill 26-18 became effective at the end of October 2018, relaxing the standards by allowing all accessory apartments as a limited use (rather than the more restrictive conditional use) and by creating a waiver process for anyone seeking relief from the on-site parking and distance separation standards. Not enough time has passed to see whether these changes will have a positive effect, or whether further tweaks are needed.

ZTA 19-01 does more than tweak the standards. It would eliminate the parking and distance separation standards, increase the allowable size of the units, and allow detached ADUs in the county's smallest-lot zones (the only residential zones where they are currently not allowed). The ZTA's lead sponsor is proposing these changes because "the current zoning code views ADUs more as a nuisance to be prevented than a beneficial solution to be encouraged." But legislative action over the past several years clearly indicates the county's shift toward recognizing the value of these units in response to the need for more affordable housing as well as residents' requests for greater flexibility in adapting the use of their homes as needs change over their lifetime.

At the same time, the current standards were adopted because many single-family neighborhoods have narrow streets, shared driveways, congested on-street parking conditions, and overcrowded schools. Unlike the urban areas now adopting ADU initiatives, we are a county whose suburban areas are not well served by transit. If our strategy is to dramatically increase the number of ADUs in these areas, we will add density and sprawl where it is not intended to go. The burden of such a policy would be borne disproportionately by about 40% of all single-family units in the county – those in older neighborhoods not governed by common ownership communities that restrict ADUs. Meanwhile, the Planning Department's 2017 Rental Housing Study reports that existing Metro-accessible neighborhoods have unmet demand for price-appropriate rental housing for those at or below 50% of AMI. Since more ADUs in non-Metro-accessible areas won't meet this need, we should be asking why the county isn't imposing requirements for price-appropriate housing construction in the urban cores where it is most needed and where the units would actually be accessible to transit.

And the unintended consequences shouldn't be minimized. In the absence of grid street networks and public transportation, additional density in our suburban areas will lead to more car-dependent housing – and more traffic on already overcrowded roads. Additionally, older neighborhoods have been particularly impacted by school overcrowding due to ill-advised county decisions decades ago to give up school sites for other uses. The County Executive

points out that the carrying capacity of an area is a real thing – the ability to provide transportation, schools, parks and infrastructure is related to the anticipated population – something that could dramatically increase if your goal is to produce hundreds more family-sized ADUs a year.

The Executive also points out that the real housing crisis is not the slow rate of housing growth but rather an affordability crisis for people at 30% of AMI for whom no housing is being constructed. The county is already zoned for more units than are needed on a 10-, 20-, or 30-year horizon. What's missing is a strategy to provide a range of price-appropriate housing that addresses the supply/demand imbalance identified by the Rental Housing Study – an oversupply for households from 50% - 100% of AMI and a significant undersupply for those under 30% of AMI. (See attachment to this testimony.) As a result, thousands of households are cost-burdened, with 50%-60% of their incomes spent for rent in the available higher-priced units. ADUs in suburban neighborhoods do not address this underlying problem.

Finally, the ZTA can't address two other major problems: the high cost of building an ADU (widely recognized as the biggest impediment) and the amount of rent the homeowner charges for the unit. Because of the high cost of construction, ADU rents – while lower than those for a single-family home – are not low enough to be affordable to households with lower incomes. Viewed through an equity lens, the benefits associated with relying heavily on ADUs to increase the rental housing stock can disproportionately accrue to wealthier households who can afford to build them, while failing to serve those already cost-burdened by rents.

Attachment #1 provides excerpts from the Planning Department's 2017 Rental Housing Study and a study of Seattle, Washington's ADU initiative. Attachment #2 is a summary sheet from the Planning Department's 2017 Rental Housing Study.

The County Executive recognizes the problem but does not view ZTA 19-01 as part of the solution. He encourages councilmembers to consider other initiatives with real potential to provide affordable housing where and for whom it is needed most.

Thank you.

Attachment #1 to County Executive's Testimony:  
ZTA 19-01 - Amendments to Accessory Residential Uses – Accessory Apartments

**Excerpts from *Montgomery County Rental Housing Study/June 2017:***

<https://montgomeryplanning.org/tools/research/special-studies/rental-housing-study/>

*From the Introduction:*

"Despite the pioneering efforts Montgomery County has initiated surrounding the development and the preservation of price-appropriate rental housing for a range of income levels, housing market conditions within the Washington, DC metropolitan area continue to put substantial pressure on the county's rental housing market . . . with documented research showing existing market-rate affordable housing steadily diminishing as rental rates increase faster than income. Exacerbating this challenge is the sustained pressure from the development community to maximize the development potential within the county. This focuses on those properties that have the potential to yield substantially higher returns if existing development is demolished and replaced with higher-density, more lucrative development. Regional investment patterns reveal suburban-scale retail centers and older, less dense garden apartment complexes tend to be most targeted. The repositioning of older, less competitive apartment complexes, which then to have the most affordable rental rates, for newer, more upscale mixed-use developments adversely affects price diversity."

*Page 12:*

"Households at the lowest incomes are the least served in the county. There are more renter households earning 50% of AMI or less than rental units that are priced appropriately and affordable for these households. The shortage of units is most notable for households earning 30% of AMI or less."

*Page 20:*

" . . . changes to land use or zoning will be appropriate in some parts of the county and not others and these policy decisions should be made as part of broader comprehensive planning efforts."

"Preservation policies can target resources to specific units or buildings or can more generally focus on preserving residents' access to a certain number or share of affordable units in a particular neighborhood or area. Preserving units can mean preserving rents at certain below-market levels or can go further to require that units be occupied by renters with incomes below a particular threshold."

"Because the largest source of rental housing that is affordable to lower-income households is found within the existing housing stock, identifying a clear and comprehensive preservation strategy is critical to ensuring that there are housing options affordable to lower-income households."

*Page 27:*

"Existing Metro-accessible neighborhoods face the challenge of having substantial unmet demand for price-appropriate rental housing for households with incomes at or below 50% of AMI . . ."

*Page 32:*

"Low- and moderate-income households benefit from having access to housing that is close to transit options."

*Page 37:*

"Create and maintain [an] up-to-date . . . inventory of both subsidized and non-subsidized affordable rental properties in the county to be able to plan for strategic investments in the preservation of affordable rental housing."

**Excerpts from *A Racial Equity Toolkit on Policies for Accessory Dwelling Units, Seattle, Washington*:**

[http://seattle.legistar.com/View.ashx?M=F&ID=6669924&GUID=CC73E51B-848B-478F-B325-93BA05E03F2B&fbclid=IwAR39tiWg8PIGCNpiwP52q4WNft1P561TOI5RNi9qIB3\\_m5nt4Tkje9HDzI4](http://seattle.legistar.com/View.ashx?M=F&ID=6669924&GUID=CC73E51B-848B-478F-B325-93BA05E03F2B&fbclid=IwAR39tiWg8PIGCNpiwP52q4WNft1P561TOI5RNi9qIB3_m5nt4Tkje9HDzI4)

*Letter from Councilmember Mike O'Brien, Seattle City Council District 6:*

"When considering actions the City could take to make it easier for people to build accessory dwelling units (ADUs), we want to understand how the policy might increase or decrease racial disparities. What we learned through both the environmental review and RET [Racial Equity Toolkit] process is that removing regulatory barriers in the Land Use Code will help us achieve the objective of increasing the number and variety of housing choices in single-family zones . . . However, the analysis also highlighted that the Land Use Code changes alone are insufficient to address racial disparities . . . due, at least in part, because absent other policy intervention, wealthy, primarily White homeowners are most likely to have access to the capitol (sic) needed to construct an ADU. Further, because of the high cost of construction, while ADUs may rent at lower price points than a traditional single family home due to the smaller size, they are still typically priced above what households with lower-incomes and households of color can afford."

*Pages 5 – 6: Learning from other cities – models to consider:*

**Synopsis of Austin Alley Flats Initiative and S.M.A.R.T Housing Program:**

The S.M.A.R.T. acronym stands for Safe, Mixed-Income, Accessible, Reasonably-priced, Transit-oriented. The goal is to reduce barriers to detached ADU construction, make them accessible to lower-income renters, and provide technical assistance and support to homeowners who want to construct ADUs. **Applicants to the initiative must commit to renting to households with income at or below 80% of AMI and rent may not be more than 28% of a tenant's household monthly income.** In return, applicants receive reduced fees, expedited review, and "advocacy" in resolving other issues.

Synopsis of Los Angeles – LA-Mas Backyard Home Project:

The goal is to support the creation of more affordable housing units in the City of LA for Section 8 voucher holders. **The program enables low-moderate income homeowners to finance, design, and build affordable ADUs in turn for a five-year commitment to rent to Section 8 voucher holders.**

Synopsis of West Denver Single Family Plus Initiative:

**WDSF+ is a homeowner-focused initiative addressing the threat of involuntary displacement in west Denver.** It connects homeowners to essential resources and existing housing service providers, along with a pilot program to help qualified homeowners design-finance-build an ADU. This hasn't been rolled out yet due to lack of funding.

Synopsis of Portland-Dweller Initiative:

**Dweller is a Portland-based company specializing in producing low-cost ADUs by building and installing the ADU at an "affordable cost" to the homeowner.**

*Pages 9 – 10: Key takeaways from interviews:*

"We learned a lot about the reasons why people are interested in creating additional living space on their property and what their experience has been researching the process . . . A key theme . . . was a desire for more flexibility through the creation of an additional unit. Many talked about wanting to adapt the use of their home as needs change over their lifetime, such as housing a family member or caregiver, earning supplemental income and helping house community members . . . Most were interested in building a backyard cottage . . . At the same time, many respondents did not have a clear idea about the cost of building a detached ADU and were surprised that the cost is often \$200,000 or more. Some had not previously considered less expensive options such as creating an additional bedroom or apartment and may be open to converting existing space as a lower-cost option . . . Respondents reported that they needed help: navigating the permitting process; learning about what building options would work on their property; understanding the costs; financing the project; understanding the zoning regulations and inspection process; and navigating the laws once becoming a landlord . . . Multiple homeowners envisioned a government-supported program to help them navigate the permit, financing, and construction process, even if it only helped them understand if a project is possible and financially feasible."

\*\*\*\*\*



# MONTGOMERY COUNTY RENTAL HOUSING STUDY

## ABOUT THE STUDY

The Rental Housing Study is the culmination of a comprehensive, two-year effort to analyze countywide and subarea rental housing data to better understand the characteristics of renter households and units. Interviews with public and private sector housing industry representatives, a national scan of best housing practices, a review of existing county policies and a detailed financial feasibility analysis were all part of the research process. In addition, an advisory committee of public and private sector experts provided direction and feedback throughout the study.

## KEY FINDINGS AT-A-GLANCE

**RENTAL HOUSING ACCOUNTS FOR 33% OF ALL HOUSING IN THE COUNTY.**



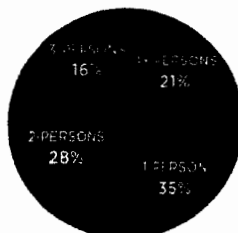
**ONLY 14% OF COUNTY SUPPLY WAS CONSTRUCTED SINCE 2000 WHILE 55% WAS BUILT PRIOR TO 1980.**



**OVER 70% OF MULTIFAMILY UNITS ARE RENTALS COMPARED TO ONLY 8% OF SINGLE FAMILY DETACHED & 23% OF SINGLE FAMILY ATTACHED.**

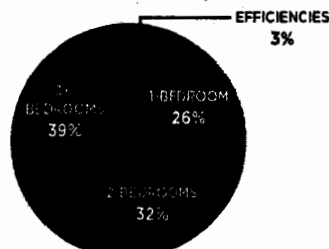


RENTER OCCUPIED UNITS,  
BY HOUSEHOLD SIZE, 2014



SOURCE: ACS 2014

RENTAL HOUSING UNITS,  
BY BEDROOM COUNT, 2014



SOURCE: 2014 COUNTY ASSESSMENT, 2014 COUNTY RENTAL SURVEY, ACS 2014

**74% OF RENTERS EARN LESS THAN 100% AMI (MEDIAN INCOME).**



**66% OF RENTERS ARE OLDER THAN 35-YEARS OLD.**



**37% OF RENTER HOUSEHOLDS HAVE 3+ PERSONS.**



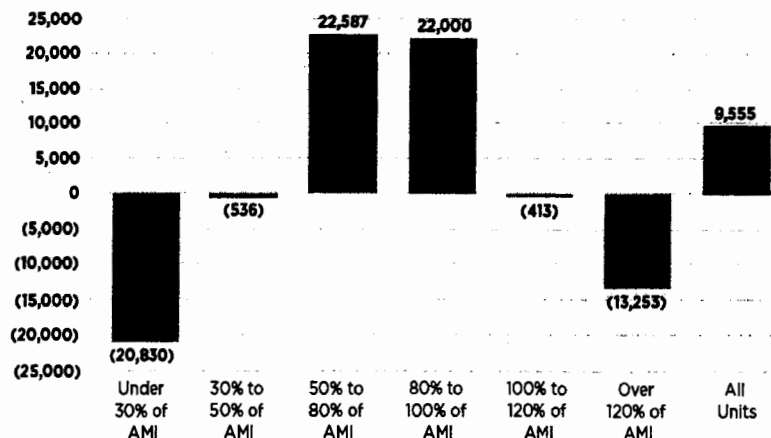
**HOUSEHOLDS EARNING BELOW 50% AMI ACCOUNT FOR 38% OF THE DEMAND FOR RENTAL HOUSING, BUT ONLY 19% OF UNITS ARE AFFORDABLE AT THAT INCOME.**



**APPROXIMATELY 50% OF ALL RENTER HOUSEHOLDS ARE COST BURDENED. INCLUDING 80% OF HOUSEHOLDS MAKING LESS THAN 50% AMI (\$48,150)**



SUPPLY/DEMAND EQUILIBRIUM  
ALL RENTAL UNITS, 2014



SOURCE: 2014 COUNTY ASSESSMENT, 2014 COUNTY RENTAL SURVEY, ACS 2014

# RENTAL HOUSING POLICY RECOMMENDATIONS

The study provided a menu of recommendations on how to increase the amount of rental housing, with a focus on affordable rental housing, in the County.

## **MPDU PROGRAM\***

**INCREASE REQUIREMENT:** Increase the base affordability requirement from 12.5% to 15%.

**FAR-BASED OPTION:** Calculate MPDU requirements based on floor area ratio (FAR) rather than number of units.

**SLIDING SCALE OPTION:** Create a menu of income targets and set-aside percentages from which developers can choose.

**OFF-SITE OPTION (WITHIN PLANNING AREA):** Allow developers to build affordable units on alternate sites within the same planning area with approval from the DHCA.

## **LAND USE/ZONING TOOLS**

**ADAPTIVE RE-USE:** Convert underutilized buildings into rental housing.

**MODIFIED BONUS DENSITY\*:** Revise current density bonus programs to better incentivize the development of more affordable rental housing.

**PUBLIC LAND/CO-LOCATION\*:** Expand the availability of land owned by the government and non-profits for affordable housing.

**REDUCED PARKING REQUIREMENTS:** Revisit parking requirements, including for MPDUs.

## **PRESERVATION TOOLS**

**EXPANDED RIGHT OF FIRST REFUSAL\*:** Expand the County's Right of First Refusal program by increasing resources dedicated to affordable housing.

**REDEVELOPMENT/PRESERVATION INCENTIVES:** Allow on-site density shifts as part of redevelopment in exchange for the preservation of existing affordable units.

**INVENTORY OF AT-RISK PROPERTIES:** Create a comprehensive inventory of affordable rental properties to plan for strategic investments in housing preservation.

## **FINANCIAL TOOLS**

**FINANCIAL EDUCATION:** Provide credit counseling for income-qualified households to make them more creditworthy tenants.

**GENERAL APPROPRIATIONS:** Increase County funding for affordable rental housing preservation and development.

**DEMOLITION FEES:** Implement a fee or tax on property owners for every demolished multifamily rental residential unit.

**9% LIHTC SET ASIDE:** Initiate a regional effort to lobby the state for a special set aside of 9% LIHTC for the Maryland suburbs of Washington, DC.

**LOCAL HOUSING VOUCHERS:** Expand local housing voucher program with dedicated funding.

**TAX INCREMENT FINANCING:** Develop a tax increment financing program and use increment revenues to support the production and preservation of affordable rental housing.

**FEE IN LIEU FOR SMALL PROJECTS:** Require a payment to the Housing Initiative Fund for projects less than 20 units, which are currently exempt from MPDU requirements.

\*Revisions to current County policies.



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FOR MORE INFORMATION AND ANALYSIS, VISIT

MONTGOMERYPLANNING.ORG/RENTALHOUSINGSTUDY

Sec. 29-19. Licensing procedures.

- (a) To obtain a rental housing license, the prospective operator must apply on a form furnished by the Director and must pay the required fee. If the Director notifies the applicant of any violation of law within 30 days, the Director may issue a temporary license for a period of time the Director finds necessary to achieve compliance with all applicable laws.
- (b) Accessory apartment rental license.
  - (1) An owner of a lot or parcel in a zone that permits accessory apartments may obtain a license to operate an accessory apartment if:
    - (A) the owner places a sign provided by the Director on the lot of the proposed accessory apartment within 5 days after the Director accepts an application license, unless a sign is required as part of an application for a special exception. The sign provided by the Director must remain in place on the lot for a period of time and in a location determined by the Director.
    - (B) the principal dwelling on the lot or parcel required for the proposed accessory apartment is the owner's primary residence. Evidence of primary residence includes:
      - (i) the owner's most recent Maryland income tax return;
      - (ii) the owner's current Maryland driver's license; or
      - (iii) the owner's real estate tax bill for the address of the proposed accessory apartment; and
    - (C) the Director finds that:
      - (i) the accessory apartment satisfies the standards for an accessory apartment in Section 59.3.3.3; or
      - (ii) the accessory apartment was approved under Article 59-G as a special exception or under 2014 Zoning Ordinance §59.3.3.3 as a conditional use.
  - (2) Upon receipt of an application for an accessory apartment license, the Director must:
    - (A) send a copy of the application to the Office of Zoning and Administrative Hearings within 5 days after the date the application was accepted by the Director;
    - (B) inspect the lot or parcel identified in the application and the proposed accessory apartment;
    - (C) complete a report on any repairs or improvements needed to approve the application;
    - (D) issue a report on all required findings within 30 days after the date the application was accepted by the Director;
    - (E) post a copy of the Director's report on findings on the internet web site identified on the applicant's sign; and
    - (F) issue or deny a new license 30 days after the issuance of the Director's report unless:
      - (i) a timely objection is filed under Section 29-26; or
      - (ii) improvements to the property are required before the license may be approved.
  - (3) The Director may renew a license for an accessory apartment at the request of the applicant if:
    - (A) the applicant:

- (i) attests that the number of occupants will not exceed the requirements of Section 26-5 and there will be no more than 2 residents in the apartment who are older than 18 years;
  - (ii) attests that one of the dwelling units on the lot or parcel will be the primary residence of the owner; and
  - (iii) acknowledges that by obtaining a license the applicant gives the Director the right to inspect the lot or parcel including the accessory apartment.
- (4) The Director may renew a Class 1 license for an accessory apartment that was approved as a special exception, as a Class 1 license if the conditions of the special exception remain in effect and the applicant is in compliance with those conditions.
- (5) The Director may transfer an accessory apartment license to a new owner of a licensed apartment if the new owner applies for the transfer. The conditions and fees for any transfer are the same as the conditions and fees for a license renewal.
- (6) The Director must maintain a public list and map showing each Class 3 license and each accessory apartment with a Class 1 license.

Sec. 29-26. Appeals and Objections.

- (a) Any person aggrieved by a final action of the Commission rendered under this Article may appeal to the Circuit Court under the Maryland Rules of Procedure for judicial review of a final administrative agency decision. An appeal does not stay enforcement of the Commission's order.
- (b) Objections concerning any new accessory apartment license.
  - (1) The applicant for a new license for an accessory apartment may object to an adverse finding of fact by the Director by filing an objection and a request for a hearing with the Office of Zoning and Administrative Hearings.
  - (2) Any other aggrieved person may file an objection and request for a hearing with the Office of Zoning and Administrative Hearings by:
    - (A) objecting to any finding of fact by the Director; or
    - (B) alleging that on-street parking is inadequate when a special exception is not required.
  - (3) A request for a review by the Hearing Examiner must be submitted to the Office of Zoning and Administrative Hearings within 30 days after the date of the Director's report and must state the basis for the objection.
  - (4) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within 5 days after the objection is received and conduct any such hearing within 20 days of the date the objection is received unless the Hearing Examiner determines that necessary parties are unable to meet that schedule.
  - (5) The Hearing Examiner may only decide the issues raised by the objection.
  - (6) The Hearing Examiner may find that on-street parking is inadequate if:
    - (A) the available on-street parking for residents within 300 feet of the proposed accessory apartment would not permit a resident to park on- street near his or her residence on a regular basis; and
    - (B) the proposed accessory apartment is likely to reduce the available on- street parking within 300 feet of the proposed accessory apartment.
  - (7) The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license.
  - (8) The Hearing Examiner must issue a final decision within 30 days after the close of the adjudicatory hearing.
  - (9) The Director must issue or deny the license based on the final decision of the Hearing Examiner.
  - (10) Any aggrieved party who objected under subsection 29-26(b) may request the Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Procedure. An appeal to the Circuit Court does not automatically stay the Director's authority to grant a license.

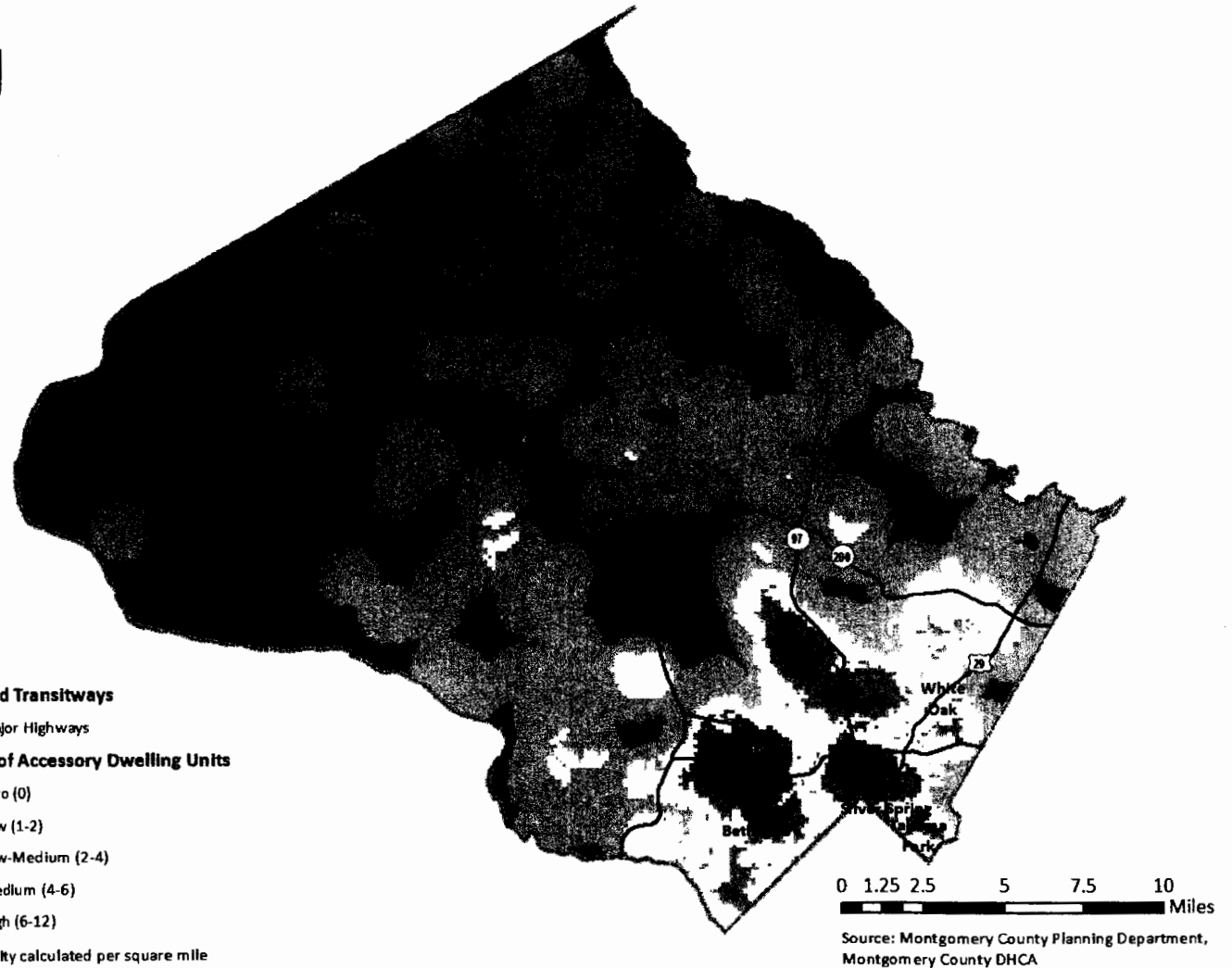
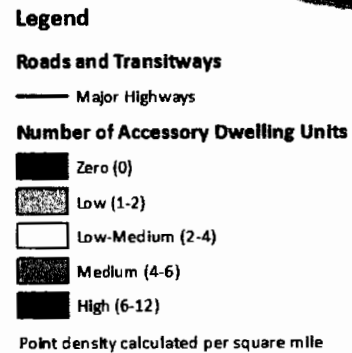
Sec. 54-43. Certification for a License.

An application for a bed and breakfast license or short-term residential rental or a license renewal for either use must be signed by the applicant and include the State Sales Tax and Use Registration number. The applicant must certify that:

- (a) the building in which the bed and breakfast or short-term residential rental is located complies with all applicable zoning standards under Chapter 59 of this Code;
- (b) the total number of overnight guests in the short-term residential rental who are 18 years or older is limited to 6, and the total number of overnight guests over 18 years of age per bedroom is limited to 2;
- (c) only habitable rooms will be used by guests;
- (d) smoke detectors in all units and carbon monoxide detectors in all units using natural gas operate as designed;
- (e) sanitation facilities operate as designed;
- (f) the applicant has not been found guilty of a violation of this Chapter in the past 12 months;
- (g) all local taxes and required fees are paid in full;
- (h) the dwelling unit where the bed and breakfast or short-term residential rental is located is the primary residence of the applicant;
- (i) the applicant is the owner or owner-authorized agent of the facility;
- (j) the applicant posted rules and regulations inside the rental, including contact information for a representative designated for emergency purposes;
- (k) the designated representative resides within 15 miles of the unit and be accessible for the entirety of any contract where the primary resident is not present;
- (l) a record of all overnight visitors will be maintained and readily available for inspection;
- (m) where applicable, the following parties were notified:
  - in a single-unit or attached unit, abutting and confronting neighbors,
  - in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit, the municipality in which the residence is located, any applicable home owner association, condominium, housing cooperative, and the owner of the unit or the owner's rental agent, if the applicant is not the owner;
- (n) the application is not prohibited by any Home Owner's Association or condominium document, or a rental lease;
- (o) the common ownership community fees for the dwelling unit are no more than 30 days past due;
- (p) except for persons visiting the primary resident, only registered guests will be allowed on the property; and
- (q) any on-line rental listing will include the short-term residential rental license number.

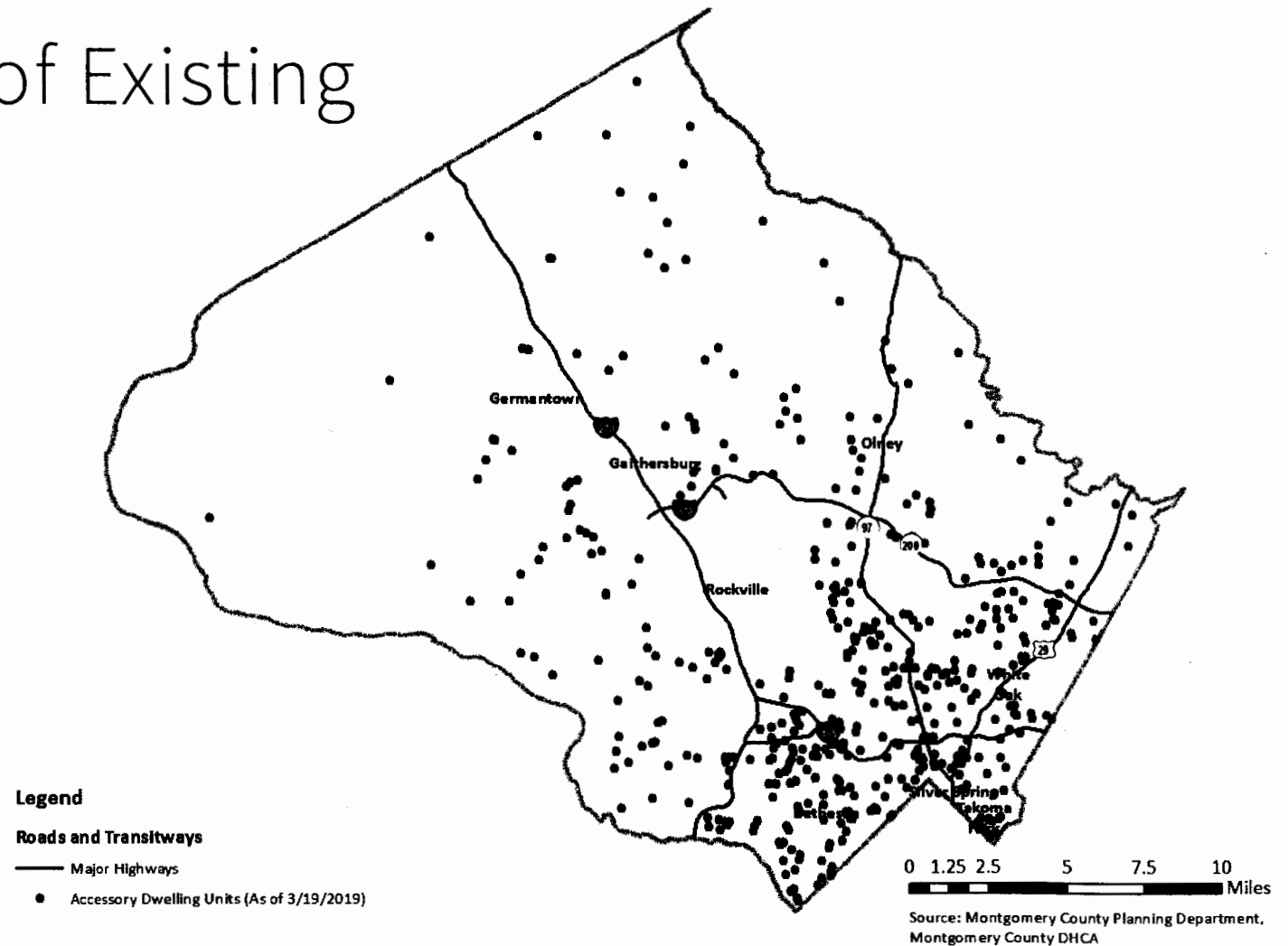
# Existing ADU Heat Map

30



# Location of Existing ADUs

31



## Accessory Dwelling Units in Montgomery County



# Existing ADU Counts

ADUs (SE/CU)	<ul style="list-style-type: none"> <li>• Approved under Special Exception or Conditional Use standards</li> <li>• Approved prior to May 20, 2013</li> </ul>	203
ADUs (Class 3 License)	<ul style="list-style-type: none"> <li>• Meet Limit Use standards</li> <li>• Approved since May 20, 2013</li> </ul>	212
32 Registered Living Units	<ul style="list-style-type: none"> <li>• Generally for family and caregivers</li> <li>• Cannot charge rent</li> <li>• In the process of being relicensed as ADUs</li> </ul>	58
<b>TOTAL as of March 19, 2019</b>		<b>473</b>

# Existing ADUs by Zone

ZONE	ADU (SE/CU)	ADU (Class 3)	RLU	Total
AR	7	2	3	12
PD-3	1	1		2
PNZ	1			1
R-10	1			1
R-200	31	45	14	90
R-40			1	1
R-60	97	84	11	192
R-90	51	48	9	108
RC	5	3	6	14
RE-1	5	9	3	17
RE-2	4	12	9	25
RE-2C		5	1	6
RNC		1		1
T-S		1	1	2
<b>Total</b>	<b>203</b>	<b>211</b>	<b>58</b>	<b>472*</b>

\* One existing ADU is within the Gaithersburg city limits.

# Student Generation Rate Comparison

Parcels containing a Single Family Detached unit  
*Countywide*

0.465  
students per unit  
on average

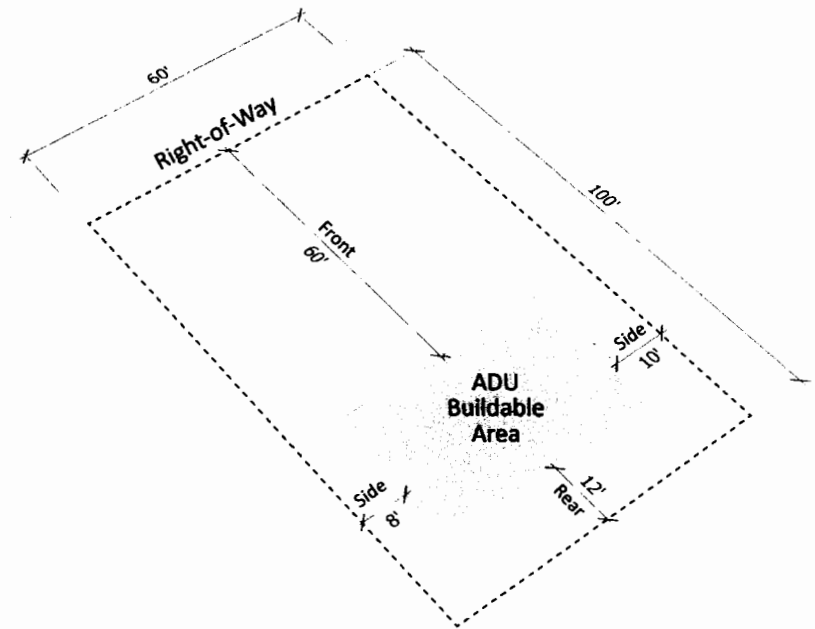
34  
Parcels containing a licensed ADU\*  
*Countywide*

0.464  
students per unit  
on average

\* For parcels with an ADU, we are unable to determine whether a student is living in the principal structure or the ADU.

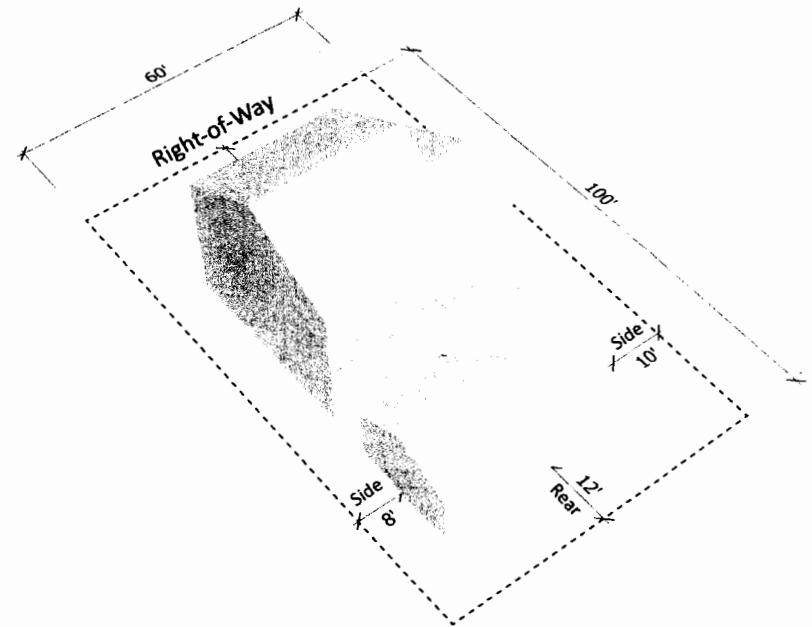
# R-60 Zone

- **Lot Area:** 6,000 sf lot
- **Lot Dimensions:** 60 ft wide by 100 ft in depth
- **Principal Building:** 1,500 sf footprint, 2,500 sf in floor area, 35 ft tall at the highest point of the roof
- **Accessory Dwelling Unit:** 600 sf footprint, 1 story, 15 ft in height
- **Accessory Dwelling Unit Setbacks:** 8 ft side, 12 ft rear
- **Lot coverage** = 35%



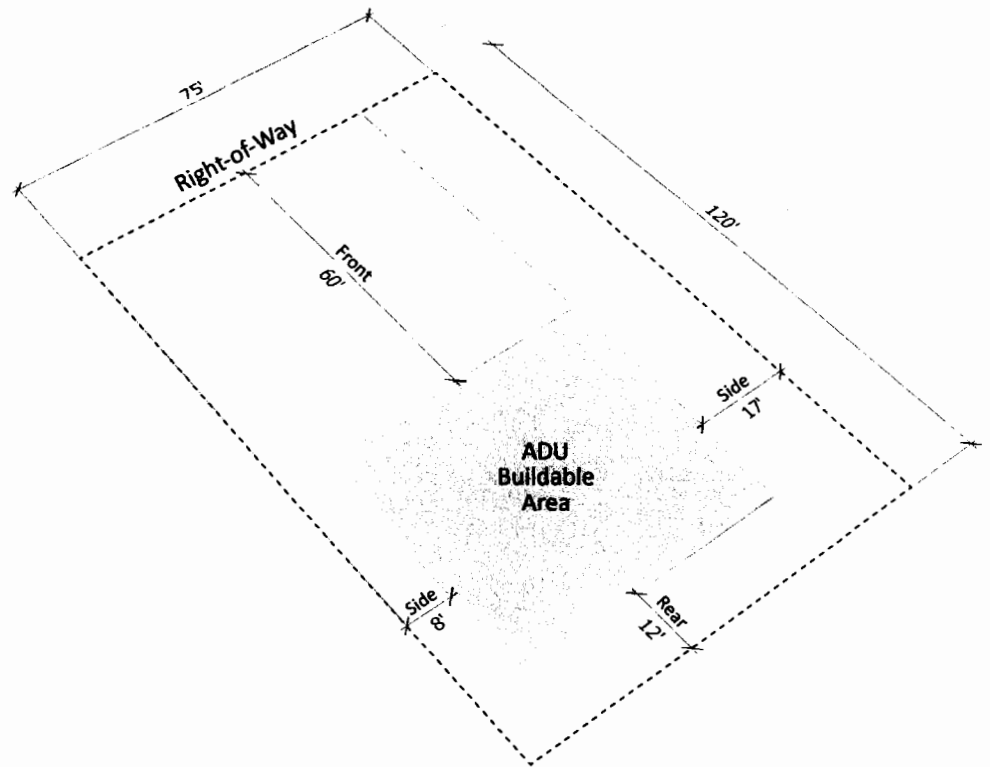
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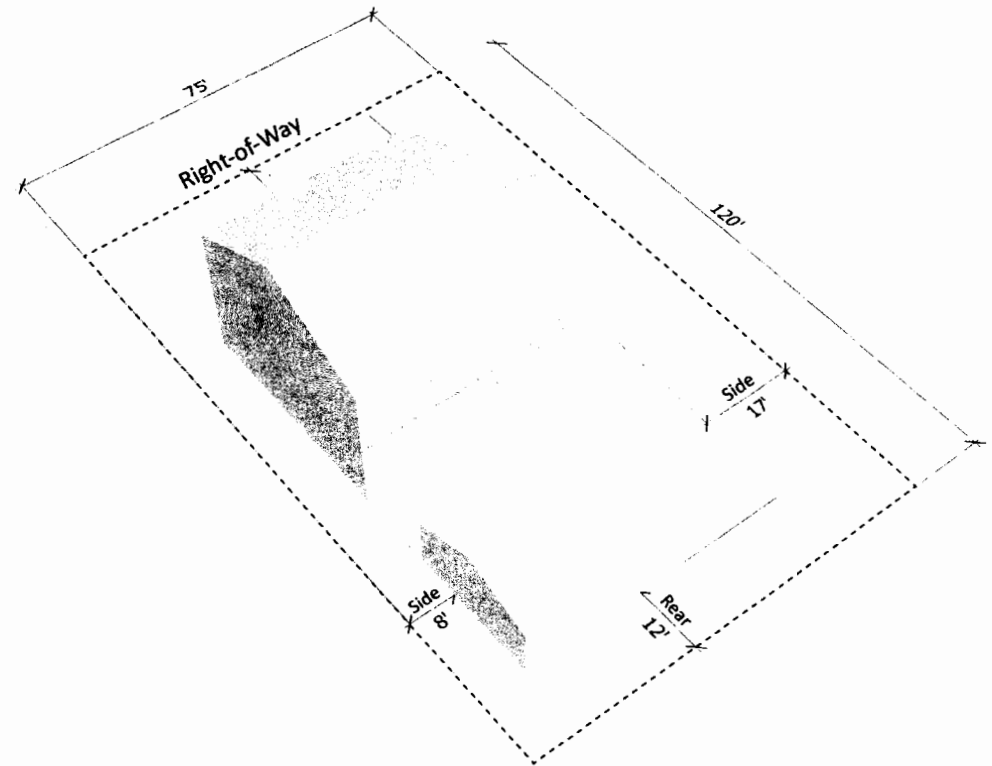
## R-90 Zone

- **Lot Area:** 9,000 sf lot
- **Lot Dimensions:** 75 ft wide by 120 ft in depth
- **Principal Building:** 2,000 square feet footprint, 3,500 sf in floor area, 35 ft tall at the highest point of the roof
- **Accessory Dwelling Unit:** 700 sf footprint, 1 story, 15 ft in height
- **Accessory Dwelling Unit Setbacks:** 8 ft side, 12 ft rear
- **Lot Coverage** = 30%



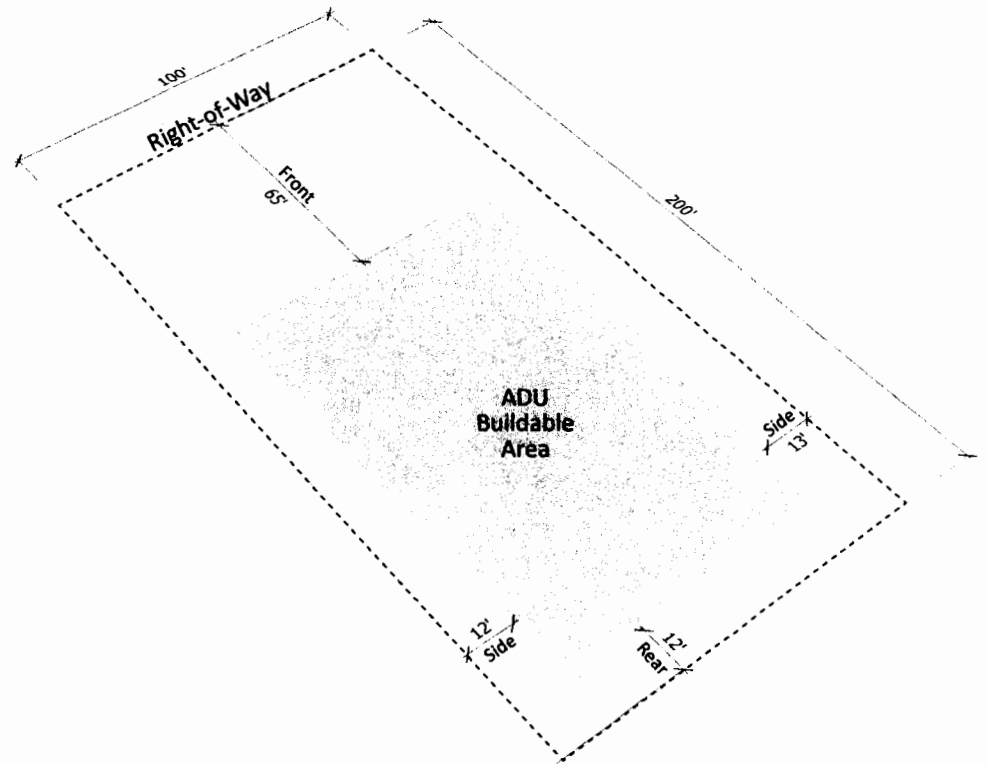
## R-90 Zone

- **Lot Area:** 9,000 sf lot
- **Lot Dimensions:** 75 ft wide by 120 ft in depth
- **Principal Building:** 2,000 square feet footprint, 3,500 sf in floor area, 35 ft tall at the highest point of the roof
- **Accessory Dwelling Unit:** 700 sf footprint, 1 story, 15 ft in height
- **Accessory Dwelling Unit Setbacks:** 8 ft side, 12 ft rear
- **Lot Coverage** = 30%



## R-200 Zone

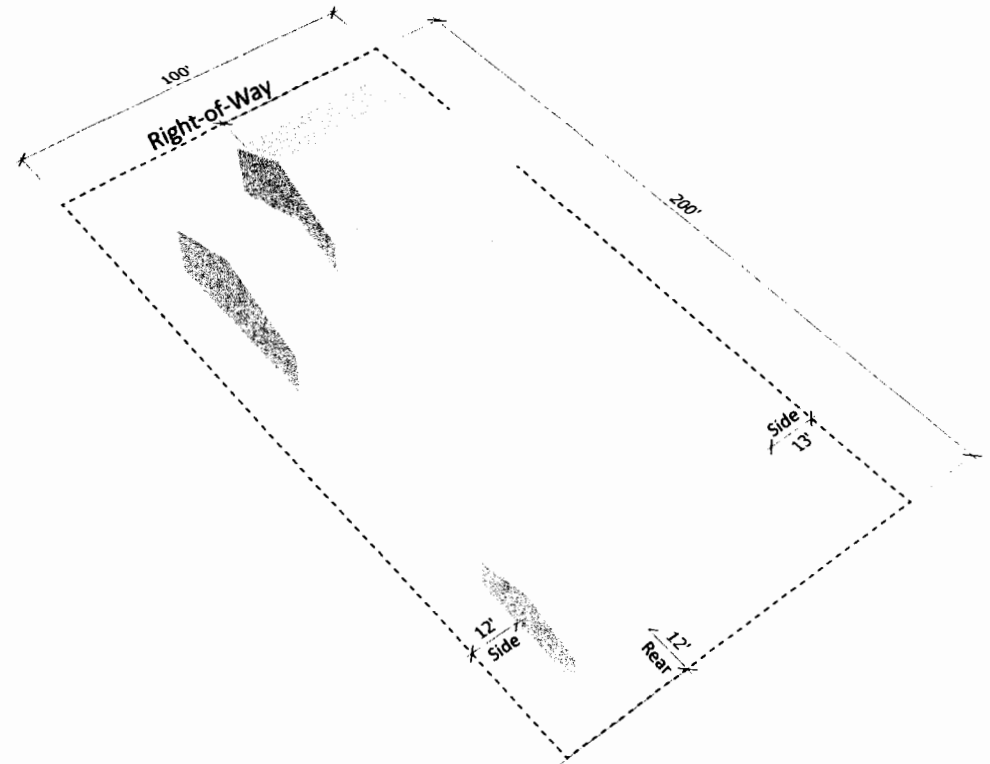
- **Lot Area:** 20,000 sf lot
- **Lot Dimensions:** 100 ft wide by 200 ft in depth
- **Principal Building:** 3,800 sf footprint, 4,500 sf in floor area, 40 ft tall at the highest point of the roof
- **Accessory Apartment Unit:** 1,200 sf footprint, 1 story, 15 ft in height
- **Accessory Apartment Unit Setbacks:** 12 ft side, 12 ft rear
- **Lot Coverage** = 25%





## R-200 Zone

- **Lot Area:** 20,000 sf lot
- **Lot Dimensions:** 100 ft wide by 200 ft in depth
- **Principal Building:** 3,800 sf footprint, 4,500 sf in floor area, 40 ft tall at the highest point of the roof
- **Accessory Apartment Unit:** 1,200 sf footprint, 1 story, 15 ft in height
- **Accessory Apartment Unit Setbacks:** 12 ft side, 12 ft rear
- **Lot Coverage** = 25%



(47)