

MEMORANDUM

April 2, 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)
Gwen Wright, Director, Planning Department
Jason Sartori, Division Chief, Planning Department
Lisa Govoni, Housing Specialist, Planning Department

Last Worksession (March 26): The Committee recommended revising measurement standards for accessory dwelling:

- 1) Revise the maximum gross floor area for an Accessory Apartment (hereafter referred to as ADU (Accessory Dwelling Unit)):

If the footprint of the principal structure is greater than 1,200 square feet, an ADU may occupy one level of that structure without a square footage limit.

If the ADU does not qualify for more than 1,200 square feet of floor area, the maximum gross floor area (which, under the current Code definition, includes basements and for this purpose would include cellars) must be the least of:

- (a) 50% of the gross floor area in the principal dwelling, including any floor area used for an ADU in the cellar of the principal dwelling;
- (b) 10% of the lot area; or
- (c) 1,200 square feet of gross floor area.

- 2) Retain the current code on-site parking requirement for ADUs located more than 1 mile away from any Metrorail or Purple Line Station. Within 1 mile of such stations, delete the additional on-site parking requirement for an ADU. (See map attached on ©30.)
- 3) Retain the current code prohibition for a newly-constructed ADU entrance on the front (street) side of a dwelling.
- 4) Allow an ADU up to 32 feet long without additional setbacks.
- 5) Allow an accessory structure built before May 31, 2012 be used as an ADU without regard to setbacks, if it was legally constructed and there is no increase to the footprint or height of the structure.
- 6) Retain the following provisions of ZTA 19-01 as introduced:
 - Detached ADU should be allowed as a limited use in R-200, R-90, and R-60 zones.
 - The minimum 1-acre lot size for a detached ADU should be deleted.
 - The distance requirement between ADUs should be deleted.
 - The maximum size of an addition that can be used as an ADU should be deleted.
 - The requirement that the unit must be in a structure that is at least 5 years old should be deleted.
 - Retain the current height limits for accessory structures.

Issues

1) *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. Montgomery County has municipalities that lack zoning powers but have other authority: Barnesville; Chevy Chase, Town of; Chevy Chase View; Chevy Chase Village; Chevy Chase, Village of, Section 3; Chevy Chase, Village of, Section 5; Friendship Heights; Garrett Park; Glen Echo; Kensington; Martin's Additions; North Chevy Chase; Oakmont; Somerset; and Takoma Park.

Under Section 20-509 of the State Land Use Article, municipalities may:

- ...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.

This is not a delegation of zoning authority. It speaks to a relatively narrow range of issues. The Council may not delegate zoning authority to municipalities that did not get that authority from the General Assembly.

Within the scope of this provision, a municipality may have more restrictive conditions under any of these topics. (This is not an exercise of zoning authority; most municipalities have their own building codes.) The County zoning code would apply.

Some municipalities require municipal building permit approval before the Department of Permitting Services (DPS) reviews an application.¹ Some municipalities require DPS approval before issuing a permit.² A few jurisdictions allow a simultaneous approval of permits.³ Only Friendship Heights and Oakmont do not review building permits.

The Town of Chevy Chase believes that the approval of ZTA 19-01 is being rushed, with limited public visibility. In their opinion, ZTA 19-01 would be a sea change in the character of residential neighborhoods. The Village of Chevy Chase Section 3 opposes the approval of ZTA 19-01 and requested more data analysis.

The City Council of Takoma Park, Maryland supports ZTA 19-01 with the following conditions:

That a municipality be allowed to reduce the number of required on-site parking spaces from the number required by Montgomery County or establish an alternative parking waiver process; and

Applications for ADUs within existing single family homes, not requiring review for setbacks or other external zoning issues, be exempt from the County permitting process provided they are inspected and approved for licensing through a comparable municipal licensing program.

The City of Takoma Park is entirely within one mile of a public transit station (the Takoma Metro Station or the Takoma Langley Transit Center). The parking provision recommended by the Committee at its March 26 meeting has the effect of complying with Takoma Park's parking request.

If the Council wants to allow municipalities to be exempt from the County permitting process for some buildings, it may do so in a Bill that amends Chapter 8.⁴ Even if the Council undertakes this action, it would be appropriate to forgo the County's building permit review in light of a municipality's permit review. It may be problematic to forgo a building permit review for a licensing program.

2) *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)⁵ and the Zoning Ordinance require the principal dwelling or the ADU to be the primary residence of the owner. **Staff recommends deleting the ownership resident requirement in the Zoning Ordinance and keeping that requirement in the licensing provisions. If the Council wants changes to the requirement for ownership, those changes should be made in a Bill amending Section 29-19.⁶**

¹ Barnesville, Brookeville, Chevy Chase Village, Laytonsville, Poolesville, Takoma Park, Village of Drummond, and Washington Grove.

² Town of Chevy Chase, Chevy Chase Section 3, Chevy Chase Section 5, Chevy Chase Village, Glen Echo, Kensington, Martin's Additions, Somerset.

³ Village of North Chevy Chase, Garrett Park, and Chevy Chase View.

⁴ The Staff memo for the March 26 PHED meeting mistakenly implied that Takoma Park wants to exempt more structures from setbacks and other external zoning issues. That is not the case. Their request applies where the County has no setback or external zoning issues with a structure.

⁵ Attached.

⁶ 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.

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 homeownership.⁷ Owners tended to be higher in life satisfaction and self-esteem and more likely to be members of community improvement groups.⁸ Schools benefit by the longer tenure of the owner's children and their higher school attainment.⁹

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.¹⁰ 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.¹¹ 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 ADUs and then are deployed have problems. If the entire family moves, there is no resident owner. The only choice is to 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.

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.

⁷ "Homeownership and Neighborhood Stability," Rohe and Stewart Housing Policy Debate, Volume 7, Issue 1 (1996).

⁸ "The Social Benefits of Homeownership: Empirical Evidence from National Surveys", Peter H. Rossi & Eleanor Weber. Published online, 31 Mar 2010.

⁹ "A Note on the Benefits of Homeownership," Daniel Aaronson, Journal of Urban Economics, Volume 47, Issue 3, May 2000, Pages 356-369.

¹⁰ 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/>.

¹¹ 65% percentage of owner-occupation is higher than the national average of 63.1%.

<https://www.census.gov/quickfacts/fact/table/montgomerycountymaryland/PST045217>.

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.

In Staff’s opinion, any resident ownership requirement is best left to Section 29-19 in the County Code and not in the Zoning Ordinance. Having the same requirement in 2 places would mean that 2 separate departments must make their own findings on the same issue. DPS must have assurance the Zoning Ordinance is satisfied. DHCA must be satisfied that the licensing provisions are satisfied. The same requirement in 2 places is a trap for the unwary. Future Councils may make contradictory provisions in future amendments.

- 3) *Should ZTA 19-01 be amended to provide for shared driveways that may be the subject of easements between property owners?*

The issue of private easements was raised in Council correspondence. The responsibility of enforcing private easements is with the parties that have rights to that easement. ZTA 19-01 does not change the rights of private parties; it neither expands nor contracts private rights.

The ZTA **could** require any ADU with a driveway to have on-site access to a street. This added provision would prohibit ADUs with some shared driveways.

- 4) *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 Unit” is called “Accessory Dwelling Unit” (ADU). This memorandum uses “ADU” to refer to what the Zoning Ordinance calls Accessory Apartment Units. The phrase “Accessory Apartment” is used 43 times in the Zoning Ordinance and 35 times in the County Code. Any change to the term should occur simultaneously in both areas of County law. **If the Council thinks this is a worthwhile effort, Staff will put this work on his “to do” list.**

- 5) *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.¹²

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.¹³

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.

The Community Association Institute opposed ZTA 19-01 as introduced. Councilmember Friedson would recommend a Bill to address this issue.

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

6) *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.¹⁴ 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.¹⁵

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 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.

¹² Section 54-43.

¹³ Section 54-46.

¹⁴ Section 26-5(d).

¹⁵ Standard lumber and drywall are manufactured in 8-foot lengths.

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.

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

Under Section 19-02, a 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;
- (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.¹⁶ 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.

8) *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)

¹⁶ The Zoning Ordinance speaks to Accessory Apartment, 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."

- 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.

Civic Associations recommend a better enforcement mechanism be instituted by creating a Housing Court in Montgomery County,¹⁷ ensuring that the County has the ability to impose much stiffer fines for non-compliance (the City of San Francisco’s fine schedule could be a model for Montgomery County).¹⁸ These proposals would require legislation outside of ZTA 19-01.

9) *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.

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.

The Planning Board’s graphic presentation made at the March 26 PHED meeting is available at: <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/packet/ADUPlanningPresentation.pdf>.

<u>This packet contains</u>	<u>© number</u>
ZTA 19-01 revised with PHED recommendations and editorial changes	1 – 10
Planning Board recommendation	11 – 13
Planning staff recommendation	14 – 20
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Sec. 29-19. Licensing procedures.	28 – 29
Sec. 29-26. Appeals and Objections.	30
Sec. 54-43. Certification for a (Bed and Breakfast Short-Term Rental) License	31
1-Mile Radius Map	32

¹⁷ Similar to that in Cleveland; see: <http://www.clevelandhousingcourt.org/>.

¹⁸ See https://sfdbi.org/ftp/uploadedfiles/dbi/Key_Information/Code%20Enforcement%20Process.pdf.

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.

Zoning Text Amendment No.: 19-01
Concerning: Accessory Residential
Uses – Accessory
Apartments
Draft No. & Date: 2 – 3/27/19
Introduced: January 15, 2019
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmember Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2 **Division 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

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

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential						* * *	
			Residential Detached				RE-2	RE-2C	RE-1	R-200	R-90	R-60		R-40
		AR	R	RC	RNC									
* * *														
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		
* * *														

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

8 * * *

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

10 **Division 3.3. Residential Uses**

11 * * *

12 **Section 3.3.3. Accessory Residential Uses**

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

14 **1. Defined, In General**

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

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

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

- 22 a. Only one Accessory Apartment is permitted for each lot.
- 23 b. The Accessory Apartment was approved as a [conditional use]
24 special exception before May 20, 2013 and satisfies the
25 conditions of the conditional use approval[;] or [[the Accessory
26 Apartment]] satisfies Subsection c.
- 27 c. [The] If the Accessory Apartment does not satisfy
28 [[subsection]] Subsection b, the Accessory Apartment [is] must
29 be licensed by the Department of Housing and Community
30 Affairs under Chapter 29 (Section 29-19); and
- 31 i. the apartment [has] must have the same street address as
32 the principal dwelling;
- 33 ii. except for lots located within 1 mile of any Metrorail or
34 Purple Line Station, either:
- 35 (a) [one on-site parking space is provided in addition
36 to any required on-site parking space for the
37 principal dwelling; however, if a new driveway
38 must be constructed for the Accessory Apartment,
39 then 2]one on-site parking space must be provided
40 in addition to any required on-site parking space
41 for the principal dwelling; however, if a new
42 driveway must be constructed for the Accessory
43 Apartment, then two on-site parking spaces must
44 be provided; or

- 45 (b) the Hearing Examiner ~~[[finds]]~~ must find under the
46 waiver in Section 29-26(b) that there is adequate
47 on-street parking;
- 48 iii. except where the footprint of the principal structure is
49 greater than 1,200 square feet and the Accessory
50 Apartment occupies one level of that structure, the
51 maximum [gross] ~~[[habitable]]~~ gross floor area for an
52 Accessory Apartment, including any floor area used for
53 an Accessory Apartment in a cellar ~~[[or basement]]~~, must
54 be the least of:
- 55 (a) ~~[[less than]]~~ 50% of the ~~[[total]]~~ gross floor area in
56 the principal dwelling, including any floor area
57 used for an Accessory Apartment in the cellar of
58 the principal dwelling[, or 1,200 square feet,
59 whichever is less];
- 60 (b) 10% of the lot area; or
- 61 (c) 1,200 square feet of gross floor area;
- 62 [iv. the maximum floor area used for an Accessory
63 Apartment in a proposed addition to the principal
64 dwelling must not be more than 800 square feet if the
65 proposed addition increases the footprint of the principal
66 dwelling; and]
- 67 [v]iv. the maximum number of occupants is limited by Chapter
68 26 (Section 26-5); however, the total number of
69 occupants residing in the Accessory Apartment who are
70 18 years or older is limited to 2[.]; and

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

74 v. the maximum footprint of an accessory dwelling, in
75 combination with other structures on the site, is limited
76 only by the total lot coverage limit in the underlying
77 zone.

78 vi. Unless modified by the use standards for Accessory
79 Apartments, an Accessory Apartment must comply with
80 the setback, height, and building lot coverage standards
81 of an accessory structure in the underlying zone.

82 d. An Accessory Apartment must not be located on a lot where
83 any [other allowed] short-term rental Residential use exists or is
84 licensed]; however, an Accessory Apartment may be located on
85 a lot in an Agricultural or Rural Residential zone that includes a
86 Farm Labor Housing Unit or a Guest House].

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

92 f. Screening under Division 6.5 is not required.

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

95 **B. Attached Accessory Apartment**

96 **1. Defined**

97 Attached Accessory Apartment means a second dwelling unit that is
98 part of a detached house building type and includes facilities for
99 cooking, eating, sanitation, and sleeping. An Attached Accessory
100 Apartment is subordinate to the principal dwelling.

101 **2. Use Standards**

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

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

113 and a separate entrance must be located:

- 114 a. on the side or rear of the dwelling;
- 115 b. at the front of the principal dwelling, if the entrance existed
116 before May 20, 2013; or
- 117 c. at the front of the principal dwelling, if it is a single entrance
118 door for use of the principal dwelling and the Attached
119 Accessory Apartment.

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

- 123 [c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached
124 Accessory Apartment is located at least 500 feet from any other
125 Attached or Detached Accessory Apartment, measured in a line
126 from side lot line to side lot line along the same block face.]
- 127 [d. In the RNC, R-90, and R-60 zones, the Attached Accessory
128 Apartment is located at least 300 feet from any other Attached
129 or Detached Accessory Apartment, measured in a line from side
130 lot line to side lot line along the same block face.]
- 131 [e. Under Section 29-26(b), the Hearing Examiner may grant a
132 waiver from the parking and distance separation standards.]

133 **C. Detached Accessory Apartment**

134 **1. Defined**

135 Detached Accessory Apartment means a second dwelling unit that is
136 located in a separate accessory structure on the same lot as a detached
137 house building type and includes facilities for cooking, eating,
138 sanitation, and sleeping. A Detached Accessory Apartment is
139 subordinate to the principal dwelling.

140 **2. Use Standards**

141 a. Where a Detached Accessory Apartment is allowed as a limited
142 use, it must satisfy the use standards for all Accessory
143 Apartments under Section 3.3.3.A.2, [and the following
144 standards:]

145 [a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory
146 Apartment must be located a minimum distance of 500 feet
147 from any other Attached or Detached Accessory Apartment,
148 measured in a line from side lot line to side lot line along the
149 same block face.]

- 150 [b. A Detached Accessory Apartment built after May 30, 2012
151 must have the same minimum side setback as the principal
152 dwelling and a minimum rear setback of 12 feet, unless more
153 restrictive accessory building or structure setback standards are
154 required under Article 59-4.]
- 155 [c. The minimum lot area is one acre.]
- 156 b. Any structure constructed before May 31, 2012 that is not
157 increased in size or building height may be used for a
158 [[detached]] Detached Accessory Apartment without regard to
159 setbacks.
- 160 c. A Detached Accessory Apartment built after May 30, 2012
161 must have the same minimum side setback as the principal
162 dwelling and a minimum rear setback of 12 feet, unless more
163 restrictive accessory building or structure setback standards are
164 required under Article 59-4.
- 165 d. For any Detached Accessory Apartment with a length along a
166 rear or side lot line that is longer than 32 feet, the minimum
167 side or rear setback must be increased at a ratio of 2 feet for
168 every 2 feet that the dimension exceeds 32 linear feet.

169 * * *

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

172

173 This is a correct copy of Council action.

174

175

176 Megan Davey Limarzi, Esq.
177 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

(10)

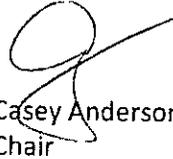
footprint to 50% of the footprint of the principle dwelling or 600 square feet, whichever is greater. This provision, in addition to the maximum floor area provisions for accessory apartments will assist in minimizing any visual impacts of a detached accessory apartment in the smaller lot Residential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

 Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174

 Jason Sartori, Acting Chief, FP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 02/7/19

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
Grand Total	239

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 cellar¹). **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**

¹ **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*² 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.

² **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-84BB-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.

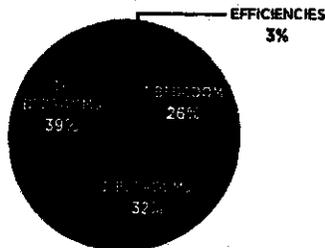


RENTER OCCUPIED UNITS, BY HOUSEHOLD SIZE, 2014



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**.



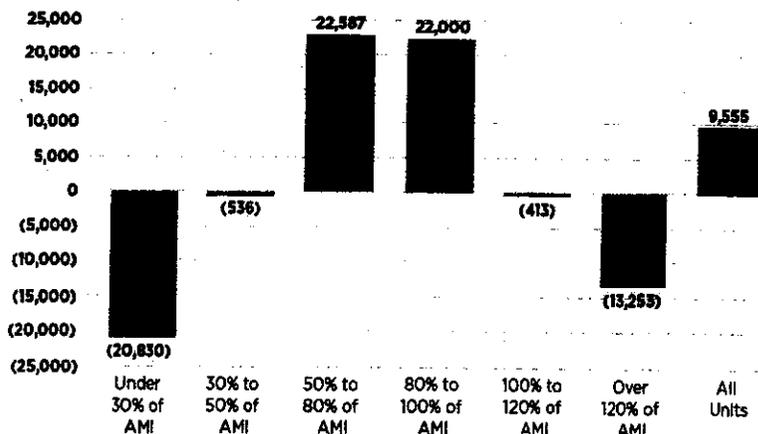
HOUSEHOLDS EARNING BELOW **50% AMI** ACCOUNT FOR **38%** OF THE DEMAND FOR RENTAL HOUSING, BUT ONLY **19%** OF UNITS ARE AFFORDABLE AT THAT INCOME.



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

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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.

1-Mile Purple Line and Red Line Buffer

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Legend

Roads and Transitways

- Major Highways
- Purple Line Stations (Light Rail)
- Metro Rail Stations (Metro Rail)
- Purple Line (Light Rail)
- Red Line (Metro Rail)

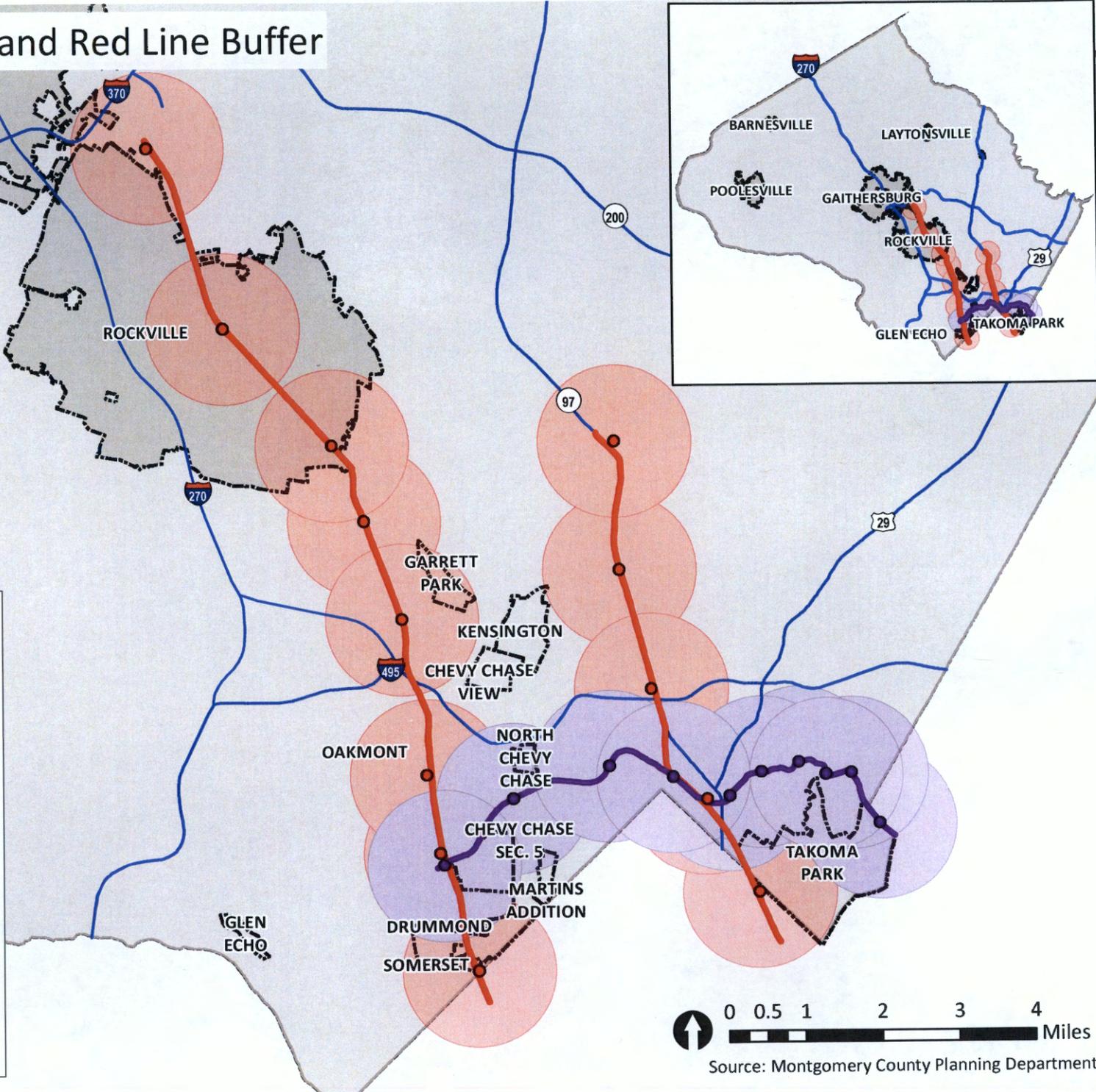
1-Mile Light Rail/Metro Rail Buffer

- Purple Line (Light Rail)
- Red Line (Metro Rail)

Municipalities

Zoning Status

- Independent Zoning
- M-NCPPC Zoning



0 0.5 1 2 3 4 Miles

Source: Montgomery County Planning Department