


Public Hearing

MEMORANDUM

September 7, 2018

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

SUBJECT: Zoning Text Amendment 18-07, Accessory Residential Uses – Accessory Apartments

PURPOSE: Receive testimony on ZTA 18-07

Zoning Text Amendment (ZTA) 18-07, lead sponsors Councilmembers Floreen and Leventhal, Council President Riemer, and Councilmember Berliner, was introduced on July 17, 2018. ZTA 18-07 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.

Members of the Planning, Housing, and Economic Development Committee recommend reducing barriers to a low-cost means of adding to the housing supply. In the Committee's opinion, the license and appeal process for accessory apartment applications has successfully avoided problems, while giving neighbors the opportunity for a hearing of specific issues. To build on that success, the Committee recommended the introduction of ZTA 18-07 and companion Bill 26-18 to amend licensing requirements.

ZTA 18-07 is tentatively scheduled for a Planning, Housing, and Economic Development worksession on September 24, 2018.

This packet contains
ZTA 18-07

© number
1 – 9

Zoning Text Amendment No.: 18-07
Concerning: Accessory Residential
Uses – Accessory
Apartments
Draft No. & Date: 2 – 2/8/18
Introduced: July 17, 2018
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 Sponsors: Councilmembers Floreen and Leventhal, Council President Riemer, and
Councilmember Berliner

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

ORDINANCE

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

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

Division 3.1. Use Table

* * *

Section 3.1.6. Use Table

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

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential							
			Residential Detached											
			AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	
* * *														
Accessory Residential Uses	3.3.3													* * *
Attached Accessory Apartment	3.3.3.B	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]	L/[C]		
Detached Accessory Apartment	3.3.3.C	[C]L	[C]L	[C]L	L	L/[C]	L/[C]	L/[C]						

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

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

Division 3.3. Residential Uses

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Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

1. Defined, In General

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

2. Use Standards for all Accessory Apartments

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

[i]a. Only one Accessory Apartment is permitted for each lot.

[ii]b. The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or

[iii]c. The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and

[(a)]i. the apartment has the same street address as the principal dwelling;

[(b)]ii. either:

(a) one on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2 on-site parking spaces must be provided; or

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

[(c)]iii. 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

47 principal dwelling, or 1,200 square feet, whichever
48 is less;

49 ~~[(d)]~~iv. the maximum floor area used for an
50 Accessory Apartment in a proposed addition to the
51 principal dwelling must not be more than 800
52 square feet if the proposed addition increases the
53 footprint of the principal dwelling; and

54 ~~[(e)]~~v. the maximum number of occupants is limited by
55 Chapter 26 (Section 26-5); however, the total
56 number of occupants residing in the Accessory
57 Apartment who are 18 years or older is limited to
58 2.

59 [iv]d. An Accessory Apartment must not be located on a lot
60 where any other allowed rental Residential use exists;
61 however, an Accessory Apartment may be located on a
62 lot in an Agricultural or Rural Residential zone that
63 includes a Farm Labor Housing Unit or a Guest House.

64 [v]e. In the Agricultural and Rural Residential zones, an
65 Accessory Apartment is excluded from any density
66 calculations. If the property associated with an Accessory
67 Apartment is subsequently subdivided, the Accessory
68 Apartment is included in the density calculations.

69 [vi]f. Screening under Division 6.5 is not required.

70 [vii]g. In the AR zone, ~~[this use]~~ any accessory apartment may
71 be prohibited under Section 3.1.5, Transferable
72 Development Rights.

- 73 [b. An Accessory Apartment conditional use waiver application
74 may be filed with the Hearing Examiner to deviate from the
75 following limited use standards:
76 i. the number of on-site parking spaces; or
77 ii. the minimum distance from any other Attached or
78 Detached Accessory Apartment].
- 79 [c. Where an Accessory Apartment conditional use application is
80 filed under Section 3.3.3.A.2.b, the Hearing Examiner may
81 approve a conditional use for the Accessory Apartment under
82 Section 7.3.1, except that the findings under Section 7.3.1.E are
83 not applicable to this type of conditional use. The limited use
84 standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply
85 to all accessory apartment conditional use applications. In
86 addition, the limited use standards of Section 3.3.3.B.2 apply to
87 Attached Accessory Apartment applications, and the limited
88 use standards of Section 3.3.3.C.2.a apply to Detached
89 Accessory Apartment applications.
- 90 i. Fewer off-street spaces are allowed if there is adequate
91 on-street parking. On-street parking is inadequate if:
92 (a) the available on-street parking for residents within
93 300 feet of the proposed Accessory Apartment
94 would not permit a resident to park on-street near
95 his or her residence on a regular basis; and
96 (b) the proposed Accessory Apartment is likely to
97 reduce the available on-street parking within 300
98 feet of the proposed Accessory Apartment.

- ii. When considered in combination with other existing or approved Accessory Apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.]

B. Attached Accessory Apartment

1. Defined

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

2. Use Standards

Where an Attached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:

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

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

134 **C. Detached Accessory Apartment**

135 **1. Defined**

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

141 **2. Use Standards**

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

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

151 [ii]b. A Detached Accessory Apartment built after May 30,
152 2012 must have the same minimum side setback as the

153 principal dwelling and a minimum rear setback of 12
154 feet, unless more restrictive accessory building or
155 structure setback standards are required under Article 59-
156 4.

157 [iii]c. The minimum lot area is one acre.

158 [b. Where a Detached Accessory Apartment is allowed only as a
159 conditional use, it may be permitted by the Hearing Examiner under
160 all limited use standards and Section 7.3.1, Conditional Use].

161 * * *

162 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
163 date of Council adoption.

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165 This is a correct copy of Council action.

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169 Megan Davey Limarzi, Esq.
Clerk of the Council