


Action

MEMORANDUM

October 5, 2018

TO: County Council 
FROM: Jeffrey L. Zyontz, Senior Legislative Analyst
SUBJECT: Zoning Text Amendment 18-07, Accessory Residential Uses – Accessory Apartments
PURPOSE: Approve, disapprove, or revise and approve recommendations of the Planning, Housing, and Economic Development Committee on ZTA 18-07

Expected Participants:

Gwen Wright, Director, Planning Department
Pam Dunn, Chief, Functional Planning and Policy
Greg Russ, Planner Coordinator, Planning Department
Stephanie Killian, Division Chief, DHCA

PHED Recommendation: On September 24, 2018, the Committee (3-0) recommended approval of ZTA 18-07 with an amendment to allow the Hearing Examiner to waive the separation requirements for detached accessory apartments.

Background

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 (PHED) 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.

The Planning Board supported the overall intent of ZTA 18-07, but recommended that parking should be presumed to be adequate unless an objection is raised by an adjacent property owner. Planning staff recommended approval with a revision to clarify that the intent of the waiver process is to affect both attached and detached accessory apartments.

On September 11, 2018, the Council conducted a public hearing concerning ZTA 18-07. The speakers who favor increased bonus density for MPDUs in ZTA 18-06 also spoke in favor of ZTA 18-07, for its contribution to affordable housing. Supporters cited increased housing opportunities in areas with existing infrastructure. The Village of Chevy Chase Section 3 opposed eliminating the conditional use requirement. In the Village's opinion, narrow streets and shared driveways make a hearing valuable for identifying particular problems. The Village notes that Section 3 is among the most densely populated municipalities in the County.

Issues

1) Why make any changes to the current provisions for accessory apartments?

The Hearing Examiner cited the unnecessary burdens of the current code and recommended a solution:

...Zoning Ordinance §59.7.3.1.B.2, as currently written, requires each application for a conditional use to provide all of that information and documentation. That is why the back of OZAH's application form calls for it....We do not need all that information to make our decisions in these accessory apartment cases, so Zoning Ordinance §59.7.3.1.B.2. could be modified by ZTA to specify that Accessory Apartment CU Applications need less documentation, as follows:

Zoning Ordinance §59.7.3.1.B. Application Requirements

* * *

- 2. The applicant must submit the following for review, except that applicants for an accessory apartment conditional use under Zoning Ordinance §59.3.3.3 need only include the materials listed in subsections 2.a. through 2.f. below:*

This simple change would eliminate all of the additional filing materials required in Subsections §59.7.3.1.B.2. g through m. If the ZTA passed, OZAH would amend the instructions on the back of its application form accordingly.

However, an even better solution would be to eliminate the conditional use process for accessory apartments (which is very limited in scope now) and go entirely with an expansion of the DHCA Objection process, which would then be an Objection-Waiver process....

The current accessory apartment conditional use process allows a conditional use only for three reasons – to deviate from the limited use standards for the number of on-site parking spaces; to deviate from the minimum distance from any other accessory apartment; or to allow a detached accessory apartment in AR, R or RC Zones. Since we have not had even one detached accessory apartment CU application in the last four years, the only practical reason for the current accessory apartment conditional system is to provide a waiver from statutory standards for on-

site parking and minimum distance from other accessory apartments. It does not make sense to have the lengthy conditional use process (120 days of Planning Department review) just to make a waiver decision by the Hearing Examiner.¹

Summer Fellow Jane Lyons reported the following:²

Montgomery County revised accessory apartment regulations in 2012 by relaxing some requirements, which successfully increased production from around 10 units per year to between 40 to 60 units per year. Since 2013, there have been 258 applications submitted, but there are still only 133 licensed accessory apartments. By implementing best practices from around North America, Montgomery County can become a leader in accessory apartments....

Jurisdictional Comparison

<i>Jurisdiction</i>	<i>Population</i>	<i>Accessory Apartment Permits Issued in 2016</i>	<i>Permits Issued Per 10,000 Population in 2016</i>
<i>Portland, OR</i>	<i>639,863</i>	<i>615</i>	<i>9.611</i>
<i>Vancouver, BC</i>	<i>647,540</i>	<i>500</i>	<i>7.722</i>
<i>Santa Cruz, CA</i>	<i>64,465</i>	<i>40</i>	<i>6.205</i>
<i>Barnstable, MA³</i>	<i>44,254</i>	<i>20</i>	<i>4.519</i>
<i>Seattle, WA</i>	<i>704,352</i>	<i>200</i>	<i>2.839</i>
<i>Austin, TX</i>	<i>947,890</i>	<i>227</i>	<i>2.395</i>
<i>Montgomery County, MD</i>	<i>1,040,000</i>	<i>45</i>	<i>0.433</i>
<i>Washington, DC⁴</i>	<i>693,972</i>	<i>30 (approx.)</i>	<i>0.432 (approx.)</i>
<i>Arlington County, VA⁵</i>	<i>229,164</i>	<i>2</i>	<i>0.087</i>

¹ Memorandum to the PHED Committee from Martin Grossman, September 22, 2017.

² Stimulating Accessory Apartment Development in Montgomery County, Jane Lyons, 2018.

³ These numbers are estimated based on an eight-year span.

⁴ These numbers are approximate for the year 2017. (Perry-Brown, Nena. 2018. *The Essential Guide to Building an Accessory Dwelling Unit in DC*. June 28.)

⁵ Arlington County, VA. 2018. "Affordable Housing Master Plan Annual Report." *Arlington County, VA*. January 15. https://housing.arlingtonva.us/wp-content/uploads/sites/15/2018/01/FY-2017-AHMP-Indicators_Final.pdf.

Common Challenges to Building Accessory Apartments

According to a survey of accessory unit owners in Portland, Seattle, and Vancouver, the biggest barriers to entry for homeowners are (1) zoning and permitting; (2) a lack of capital; (3) being intimidated by the process. Therefore, the top three factors that lead homeowners to initiate the applicant process are (1) the easing of land use rules (42 percent); (2) obtaining enough money to begin (19 percent); and (3) learning about accessory units through an educational website, event, or tour (15 percent). The most consequential zoning and land use factors were changes to the minimum lot size and allowable floor area.

Findings – Data from Montgomery County

Overview

There are currently 133 accessory apartments in Montgomery County that are licensed and 22 that are pending.⁶ Only 61 percent of the 258 applications submitted since May 2013 have been approved. Of the unapproved applications, the most common results are the application being withdrawn, given a conditional finding, pending, or denied.

<i>Result of Application</i>	<i>Number of Applications</i>
<i>Approved</i>	<i>158</i>
<i>Withdrew</i>	<i>25</i>
<i>Finding Conditional</i>	<i>21</i>
<i>Pending</i>	<i>22</i>
<i>Denied</i>	<i>16</i>
<i>Exception</i>	<i>9</i>
<i>Eliminated</i>	<i>6</i>
<i>Revoked/Suspended</i>	<i>1</i>
<i>Total</i>	<i>258</i>

The current conditional process allows for more resident input, but the burdens of that process outweigh its benefits. The more visible change to neighborhoods is the allowance for detached accessory apartments, but there has been little interest in pursuing that option by property owners.

2) Should there be a presumption that parking is adequate unless a neighboring resident or property owner objects?

There are no standards in the zoning code for accessory apartment parking. The licensing requirement in Chapter 29 is as follows:

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

⁶ Montgomery County Department of Housing and Community Affairs. 2018. "Class 3 Accessory Apartment Applications." *Montgomery County Department of Housing and Community Affairs*. Accessed July 2018.

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.

Without any change, the issue of parking is only raised when there is an objection to a license.

3) Should the distance between detached accessory apartments be allowed to be waived?

Planning staff recommends including the phrase "unless the Hearing Examiner grants a waiver under Section 29-26(b)" to the section concerning the distance between detached accessory apartments.

4) How are ZTA 18-07 and Bill 26-18 related?

ZTA 18-07 deletes the possibility of a conditional use and allows for the possibility of a waiver within the licensing approval process. Bill 26-18 does the same in the Chapter concerning licensing. The "waiver" concept is new in terms of the Hearing Examiner's authority. In the absence of Bill 26-18, the Hearing Examiner would not have the authority to grant a waiver.

If the Council does not approve ZTA 18-07, it should not approve Bill 26-18.

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Zoning Text Amendment No.: 18-07
Concerning: Accessory Residential
Uses – Accessory
Apartments
Draft No. & Date: 3 – 9/24/18
Introduced: July 17, 2018
Public Hearing: September 11, 2018
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.*

OPINION

Zoning Text Amendment No. 18-07 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.

In its report to the Council, the Planning Board supported the overall intent of ZTA 18-07, but recommended that parking should be presumed to be adequate unless an objection is raised by an adjacent property owner. Planning staff recommended approval with a revision to clarify that the intent of the waiver process is to affect both attached and detached accessory apartments.

The Council's public hearing was conducted on September 11, 2018. The speakers who favor increased bonus density for MPDUs in ZTA 18-06 also spoke in favor of ZTA 18-07, for its contribution to affordable housing. Supporters cited increased housing opportunities in areas with existing infrastructure. The Village of Chevy Chase Section 3 opposed eliminating the conditional use requirement. In the Village's opinion, narrow streets and shared driveways make a hearing valuable for identifying particular problems. The Village notes that Section 3 is among the most densely populated municipalities in the County.

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on September 24, 2018. The Committee recommended approval of ZTA 18-07 with an amendment to allow the Hearing Examiner to waive the separation requirements for detached accessory apartments.

The Council agreed with the recommendation of the Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 18-07 will be approved as amended.

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

* * *

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

Division 3.3. Residential Uses

* * *

Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

1. Defined, In General

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

2. Use Standards for all Accessory Apartments

[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

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

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

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

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

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

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

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

[b. An Accessory Apartment conditional use waiver application may be filed with the Hearing Examiner to deviate from the following limited use standards:

- i. the number of on-site parking spaces; or
- ii. the minimum distance from any other Attached or Detached Accessory Apartment].

[c. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.

- i. Fewer off-street spaces are allowed if there is adequate on-street parking. 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.

- 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

Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

d. In the RNC, R-90, and R-60 zones, the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

e. Under Section 29-26(b), the Hearing Examiner may grant a waiver from the parking and distance separation standards.

C. Detached Accessory Apartment

1. Defined

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

2. Use Standards

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

[i]a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory Apartment [is] must be located a minimum distance of 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face, unless the Hearing Examiner grants a waiver under Chapter 29, Section 26(b).

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

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

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

* * *

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

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.
Clerk of the Council



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

OFFICE OF THE CHAIR

September 10, 2018

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. 18-07

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 18-07 (ZTA 18-07) at its regular meeting on September 6, 2018. By a vote of 4:0 (Commissioner Dreyfuss absent from the hearing), the Planning Board supports the overall intent of the ZTA, 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. Currently, a conditional use application for accessory apartments may be filed to challenge the rejection of an accessory apartment license application by the Department of Housing and Community Affairs (DHCA) based only on a failure of the application to meet statutory minimums for onsite parking and/or separation from an existing accessory apartment in the neighborhood. As introduced, the standard of review would not change under ZTA 18-07. Instead, a waiver process would be added to the existing objection process for accessory apartment cases, as a substitute for the existing abbreviated conditional use process. Just like the existing Zoning Ordinance provisions, the waiver process would allow 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.

In an effort to further reduce the processing time for a parking issue, the Board believes that on-street parking should be presumed adequate to accommodate the accessory apartment unless an objection is raised by a resident within 300 feet of the proposed accessory apartment and the resident provides evidence to that objection. This modification to the responsibility of proof should be clarified under Section 29-26 of the County Code. The Board further believes that lay testimony and evidence should be sufficient to demonstrate the adequacy or inadequacy of the parking at issue.

The Board acknowledges that ZTA 18-07 (and associated Bill 26-18) as introduced would reduce the processing time for consideration of these issues, since under the new process, the Planning Department would not have to review the matter. Instead, the Hearing Examiner would rely on testimony from the DHCA inspector, the Applicant and neighbors. While the conditional use process takes 4 to 5 months to complete, the new process would take half that time, in that hearings would be set within 30 days of the filing of the application for a waiver, and the Hearing Examiner's report would be filed within 30 days thereafter. However, as stated above, the Board believes that the processing time could be further reduced with the recommendation that parking be presumed adequate unless an objection is raised by adjacent property owners.



The Honorable Hans Riemer
September 10, 2018
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As such, the new process, including the Board's proposed changes, will not diminish anyone's rights to be heard on these issues, as both the home owner and the neighbors will remain able to testify at the hearing if an objection is raised.

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, September 6, 2018.



Casey Anderson
Chair

CA:GR



Zoning Text Amendment (ZTA) No. 18-07, Accessory Residential Uses – Accessory Apartments

GR

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PD

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Completed: 08/30/18

Description

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 amends the provisions for accessory apartments.

Summary

Staff recommends approval, as modified by staff, of ZTA No. 18-07 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 to allow a waiver of the distance separation between both attached and detached accessory apartments (lines 132-133 and 150-152).

Background/Analysis

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 a companion Bill 26-18 to amend licensing requirements.

ZTA 18-07, in conjunction with Bill 26-18, would streamline accessory apartment procedures without changing the nature of the issues reviewed by the Office of Zoning and Administrative Hearings (OZAH) under the current conditional use process for accessory apartments.

Conditional Use Process for Accessory Apartments

Currently, a conditional use application for accessory apartments may be filed to challenge the rejection of an accessory apartment license application by the Department of Housing and Community Affairs

(DHCA) based only on a failure of the application to meet statutory minimums for onsite parking and/or separation from an existing accessory apartment in the neighborhood (*Section 59.3.3.3.A.2.b.*). The usual findings the Hearing Examiner must make for other kinds of conditional uses under Section 7.3.1.E “are not applicable to this type of conditional use (*Section 59.3.3.3.A.2.c.*)”.

Proposed Waiver Process for Accessory Apartments under ZTA 18-07

The aforementioned standard of review would not change under ZTA 18-07. Instead, a waiver process would be added to the existing objection process for accessory apartment cases, as a substitute for the existing abbreviated conditional use process. Just like the existing Zoning Ordinance provisions, the waiver process would allow 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 advantage to the new process would be a reduction in the processing time for consideration of these issues, since under the new process, the Planning Department would not have to review the matter; instead, the Hearing Examiner would rely on testimony from the DHCA inspector, the Applicant and neighbors. While the conditional use process takes 4 to 5 months to complete, the new process would take half that time, in that hearings would be set within 30 days of the filing of the application for a waiver, and the Hearing Examiner’s report would be filed within 30 days thereafter.

As such, the new process will not diminish anyone’s rights to be heard on these issues, as both the home owner and the neighbors will remain able to testify at the hearing.

Applications for Accessory Apartment Conditional Uses

According to the Office of Zoning and Administrative Hearings (Hearing Examiners Office), applications for accessory apartment conditional uses have been rather rare since the new accessory apartment process began in FY 2014, and opposition to them has been even more rare, as demonstrated in the tables below:

ACCESSORY APARTMENT SEs AND CUs FILED SINCE THE INCEPTION OF THE NEW SYSTEM (i.e., FY 2014 THROUGH FY 2018):

Accessory Apartment SEs and CUs filed in the last 5 fiscal years	FILED IN FY 2014	FILED IN FY 2015	FILED IN FY 2016	FILED IN FY 2017	FILE IN FY 2018	TOTALS
	1 SE	2 CUs	5 CUs	3 CUs	2 CUs	13

ACCESSORY APARTMENT – SPECIAL EXCEPTION & CONDITIONAL USE CASES (FY 2014- FY 2018)

CASE NO:	CASE NAME	ATTACHED OR DETACHED	OPPOSITION	ACTION TAKEN	DATE GRANTED
CU 18-02	<i>Newell</i>	Attached	No	Granted, with Conditions	02/21/18
CU 18-01	<i>Kennelly</i>	Attached	No	Granted, with Conditions	01/19/18
CU 17-13	<i>Tenenholtz</i>	Attached	No	Granted, with Conditions	07/18/17

CU 17-07	<i>Mitchell-Gilkey</i>	Attached	No	Granted, with Conditions	07/05/17
CU 17-01	<i>Pepe</i>	Attached	Yes	Granted, with Conditions	12/23/16
CU 16-12	<i>Boschma</i>	Attached	No	Granted, with Conditions	08/01/16
CU 16-08	<i>Ferguson</i>	Attached	No	Granted, with Conditions	04/18/16
CU 16-06	<i>Maresha</i>	Attached	No	Granted, with Conditions	04/11/16
CU 16-02	<i>Cohen</i>	Attached	No	Granted, with Conditions	12/23/15
CU 16-05	<i>Leotta</i>	Attached	No	Granted, with Conditions	03/03/16
CU 15-09	<i>Brablec</i>	Attached	No	Granted, with Conditions	10/21/15
CU 15-01	<i>Troxler</i>	Attached	Yes	Granted, with Conditions	08/05/15
AA 14-05	<i>Trippe</i>	Attached	No	Granted, with Conditions	06/05/15

As shown above, a total of 13 accessory apartment conditional use applications were filed in the last five fiscal years; only two were opposed by neighbors; and all were granted, with conditions.

Conclusion

In sum, the new process will likely apply to two or three cases a year and will have no substantive impact on residential neighborhoods. The time required to process cases will decrease, but the issues considered and the right of neighbors to participate (public hearing) will be unchanged. Staff recommends approval of ZTA 18-07 as modified. The modifications provide clarification of the intent to allow a waiver of the distance separation between both attached and detached accessory apartments (lines 132-133 and 150-152). Staff has provided Bill 26-18 as an attachment for the convenience of the reader of this staff report.

Attachments

1. ZTA No. 18-07 as modified by staff
2. Bill 26-18

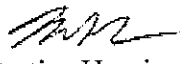


MONTGOMERY COUNTY, MARYLAND

MEMORANDUM

September 22, 2017

TO: Councilmembers Nancy Floreen, George Leventhal and Hans Riemer
Planning, Housing & Economic Development (PHED) Committee
Montgomery County Council

FROM: Martin L. Grossman, Director 
Office of Zoning and Administrative Hearings (OZAH)

SUBJECT: Issues Regarding Accessory Apartment Objections and Conditional Use Applications
filed since FY 2014

At the PHED Committee's September 18, 2017 review of the accessory apartment application process, the Committee requested additional data from OZAH, and discussed the possibility of simplifying the application process. This memorandum responds to those issues in three parts, below. Part I supplies the data on accessory apartment Objections and Conditional Use applications over the last four fiscal years; Part II addresses the application simplification issue raised by Planning Board Chair Casey Anderson; and Part III provides a recommended alternative to the current accessory apartment conditional use process by substituting a waiver procedure similar to the current Objection procedure.

Part I – Data on Accessory Apartment Objections and Conditional Use Applications

The new system for processing Accessory Apartment Applications went into effect on May 20, 2013. The following chart sets forth the numbers of Accessory Apartment Conditional Use Applications and Accessory Apartment Objections filed with OZAH in each fiscal year since the inception of the new system (*i.e.*, FY 2014 through FY 2017):

Type of Case Listing Year of Filing	Filed in FY 2014	Filed in FY 2015	Filed in FY 2016	Filed in FY 2017	Totals
ACC Apt SEs and CUs	1 SE	2 CUs	5 CUs	3 CUs	11 ¹
Objections	5	2	1	2	10 ¹

Two detailed Tables are set forth below. The first shows Accessory Apartment Special Exception and Conditional Use applications, with the data broken down by the Case Number,

¹ At the PHED Committee session, I Mentioned 11 Accessory Apartment Objection Cases and 10 Accessory Apartment conditional use applications filed since the new system was initiated. Actually, the 11th case thought to be an Objection was in fact a special exception application which predated the 2014 Zoning Ordinance, but not the new accessory apartment process established on May 20, 2013. Therefore, it should more properly be listed with the conditional use applications, not the Objection cases. The final total of accessory apartment related cases handled by OZAH since the new system went into effect in 2013 is 10 Objection cases and 11 accessory apartment conditional use and special exception applications, as reflected in the above chart.

Case Name, type of accessory apartment sought, whether there was opposition, the disposition of each case and the disposition date. Note that all of the listed special exception and conditional use applications were for attached accessory apartments and only two of the eleven had any opposition, as shown below.

ACCESSORY APARTMENT – SPECIAL EXCEPTION & CONDITIONAL USE CASES

CASE NO:	CASE NAME	ATTACHED OR DETACHED	OPPOSITION	ACTION TAKEN	DATE GRANTED
CU 17-13	<i>Tenenholtz</i>	Attached	No	Granted, with Conditions	07/18/17
CU 17-07	<i>Mitchell-Gilkey</i>	Attached	No	Granted, with Conditions	07/05/17
CU 17-01	<i>Pepe</i>	Attached	Yes	Granted, with Conditions	12/23/16
CU 16-12	<i>Boschma</i>	Attached	No	Granted, with Conditions	08/01/16
CU 16-08	<i>Ferguson</i>	Attached	No	Granted, with Conditions	04/18/16
CU 16-06	<i>Maresha</i>	Attached	No	Granted, with Conditions	04/11/16
CU 16-02	<i>Cohen</i>	Attached	No	Granted, with Conditions	12/23/15
CU 16-05	<i>Leotta</i>	Attached	No	Granted, with Conditions	03/03/16
CU 15-09	<i>Brablec</i>	Attached	No	Granted, with Conditions	10/21/15
CU 15-01	<i>Troxler</i>	Attached	Yes	Granted, with Conditions	08/05/15
AA 14-05	<i>Trippe</i>	Attached	No	Granted, with Conditions	06/05/15

The second Table (displayed on the next page) shows the Objections to the DHCA Director's Findings on DHCA Accessory Apartment License Applications filed with OZAH. The data is broken down by the Case Number, the DHCA License Application Number, type of accessory apartment sought, whether the Objection was filed by the license Applicant or by objecting neighbors, the resolution of each case and the resolution date. Of the 10 Objection cases, 2 were filed by the license Applicant and 8 were filed by neighbors.

In 4 of the 8 Objection cases filed by neighbors, the license applicant withdrew the license applications, thereby mooting these cases. In 2 of the Objection cases brought by neighbors, the neighbors withdrew the objections, thereby mooting those cases. In 2 of the Objection cases brought by neighbors, the Hearing Examiner upheld the DHCA Director's findings, after a hearing, and denied the objections (although in one of those cases, additional on-site parking was required by the Hearing Examiner).

In the 2 Objection cases filed by license applicants, one objection was denied, confirming DHCA's denial of the license and the other was placed on hold while the applicant pursued a remedy with the Landlord and Tenant Commission.

ACCESSORY APARTMENT - OBJECTION CASES²

CASE NO:	DHCA LICENSE APPLICATION NO.	Attached or Detached	Filed by License Applicant or by Neighbor	Action Taken	DATE OF ACTION ON OBJECTION
AAO 17-02	No. 95591	Attached	Neighbors	License Application Withdrawn at Hearing & Denied - Objection Dismissed as Moot	7/7/17
AAO 17-01	No. 92918	Attached	Neighbors	License Application Withdrawn & Denied - Objection Dismissed as Moot	7/14/17
AAO 16-01	No. 85740	Attached	Applicant	At the Hearing, the Objection was Placed on Hold while the Applicant pursues a Remedy with Landlord and Tenant Commission	8/6/15
AAO 15-02	No. 85801	Attached	Applicant	Objection Denied after Hearing, and License Application Denied	4/09/15
AAO 15-01	No. 85402	Attached	Neighbors	Objection Withdrawn & Objection Dismissed as Moot	10/15/14
AAO 14-06	No. 47848	Attached	Neighbors	License Application Withdrawn & Objection Dismissed as Moot	7/1/14
AAO 14-04	No. 81414	Attached	Neighbors	Objection Withdrawn & Objection Dismissed as Moot	7/9/14
AAO 14-03	No. 84414	Attached	Neighbor	License Application Withdrawn & Objection Dismissed as Moot	6/6/14
AAO 14-02	No. 83032	Attached	Neighbors	Objection Denied after Hearing, and License Application Approved, but with Additional Parking Required	8/28/14
AAO 14-01	No. 70811	Attached	Neighbor	Objection Denied after Hearing & Grant of License Application Upheld	8/30/13

² There is no Case AAO 14-05. As mentioned in footnote 1, above, that case was actually AA-14-05, an application for an accessory apartment special exception, not an Objection case.

Part II – The Application Simplification Issue Raised by the Planning Board Chair

At the PHED Committee review, Planning Board Chair, Casey Anderson, raised a question as to whether all the information called for on the back of the Accessory Apartment Conditional Use Application form is needed under the current law.

The simple answer is that Zoning Ordinance §59.7.3.1.B.2, as currently written, requires each application for a conditional use to provide all of that information and documentation. That is why the back of OZAH's application form calls for it. However, Mr. Anderson raised a good point at the PHED Committee review. We do not need all that information to make our decisions in these accessory apartment cases, so Zoning Ordinance §59.7.3.1.B.2. could be modified by ZTA to specify that Accessory Apartment CU Applications need less documentation, as follows:

Zoning Ordinance §59.7.3.1.B. Application Requirements

* * *

2. The applicant must submit the following for review, except that applicants for an accessory apartment conditional use under Zoning Ordinance §59.3.3.3 need only include the materials listed in subsections 2.a. through 2.f. below:

This simple change would eliminate all of the additional filing materials required in Subsections §59.7.3.1.B.2. g through m. If the ZTA passed, OZAH would amend the instructions on the back of its application form accordingly.

However, an even better solution would be to eliminate the conditional use process for accessory apartments (which is very limited in scope now) and go entirely with an expansion of the DHCA Objection process, which would then be an Objection-Waiver process, as outlined in Part III., below.

Part III – A Recommended Alternative to the Current Accessory Apartment Conditional Use Process

The current accessory apartment conditional use process allows a conditional use only for three reasons – to deviate from the limited use standards for the number of on-site parking spaces; to deviate from the minimum distance from any other accessory apartment; or to allow a detached accessory apartment in AR, R or RC Zones. Since we have not had even one detached accessory apartment CU application in the last four years, the only practical reason for the current accessory apartment conditional system is to provide a waiver from statutory standards for on-site parking and minimum distance from other accessory apartments. It does not make sense to have the lengthy conditional use process (120 days of Planning Department review) just to make a waiver decision by the Hearing Examiner.

Therefore, OZAH recommends eliminating the accessory apartment conditional use process and merging the waiver elements of the current conditional use process into a new Objection and Waiver process, which is much faster (30 days from filing to hearing) and eliminates the need for Planning Department review of accessory apartment conditional use cases. It would become an "Objection and Waiver" process. Under this new process, the Objection

proceedings would remain unchanged, except for modifying the time limits from 5 days to 10 days to send out notice of the hearing and for modifying the date of the hearing from 20 days after filing to 30 days.

To accomplish these changes, amendments to the following provisions would be required: Code Section 2-140(c), regarding the powers of the Hearing Examiner; Code Section 29-19(b), regarding Licensing Procedures; Code Section 29-26, regarding Appeals, Objections and Waivers; Zoning Ordinance §59.3.1.6, to eliminate the "Cs" in the Conditional Use Table pertaining to accessory apartments; and Zoning Ordinance §59.3.3.3 to eliminate the references to conditional uses pertaining to accessory apartments, and to substitute a reference to the new waiver procedure in Subsection 59.3.3.3.A.2.b.

All of these proposed changes are set forth and highlighted in two attached documents. The first outlines the changes that should be made to the Zoning Ordinance and the second the changes that should be made to the County Code. If these changes as outlined in Part III are made, there will be no need for the ZTA regarding conditional use applications in §59.7.3.1.B.2 suggested in Part II of this memorandum because there will no longer be an accessory apartment conditional use.

The proposed changes would eliminate all future accessory apartment conditional use applications and substitute a Waiver procedure, similar to the current Objection procedure, under a modified Code Section 29-26.

These changes are proposed because since the implementation of the DHCA licensing procedure for accessory apartments in May of 2013, the accessory apartment conditional use procedure has been infrequently used (11 times in 4 fiscal years) and is even more rarely opposed by the neighbors (only two of the eleven had any opposition). This is not surprising because the only basis for applying for an accessory apartment conditional use under the new system is to waive the rules concerning either the number of on-site parking spaces or the minimum distance from any other accessory apartment. Thus, what has been labelled a conditional use proceeding for accessory apartments is actually only a waiver proceeding, and it should be called that and designed to work with the same speed and efficiency as the current Objection proceeding. The Waiver proceeding would rely on fact gathering by DHCA, as in the Objection proceeding, and would not require a review by the Planning Department. Instead of 120 days to calendar a hearing, it could be scheduled for 30 days, the time period we recommend for the Objection proceedings.

We also note that whichever simplification solution is employed, there is still a need to modify County Code Section 29-26(b)(4) – to require a Hearing Notice within 10 days (not 5) after filing an Objection with OZAH; and a Hearing within 30 days (not 20) after filing an Objection with OZAH.

It is also still necessary to update the reference in Code Section 29-19(b)(1)(C)(i) from the standards in 2004 Zoning Ordinance §59-A-6.20 to the standards in 2014 Zoning Ordinance §59.3.3.3. Similarly, Code Section 29-19(b)(1)(C)(ii) should be updated to add the words "or under 2014 Zoning Ordinance §59.3.3.3 as a conditional use."

cc: Councilmembers Nancy Floreen, George Leventhal and Hans Riemer
Linda McMillan, Senior Legislative Analyst
Jeff Zyontz, Legislative Attorney
Casey Anderson, Planning Board Chair
Rose Krasnow, Planning Department
Clarence Snuggs, DHCA Director
Francene Hill, Timothy Goetzinger and Sheila Price, DHCA
Lynn Robeson, Hearing Examiner

**Attachment 1 - Proposed changes to 2014 Zoning Ordinance §§59.3.1.6 and 3.3.3 to
Substitute a Waiver Provision for the Current Accessory Apartment Conditional Use
Provision**

Section 3.1.6. Use Table

The *current* portion of the Use Table relating to accessory apartments is depicted below:

USE OR USE GROUP	Definitions and Standards		Rural Residential			Residential Detached					
			R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60
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
Detached Accessory Apartment	3.3.3.C	C	C	C		L/C	L/C	L/C			

The proposed ZTA would remove all the Cs under the accessory apartment provisions in all Zones where they currently exist (leaving the Ls), and would add Ls in place of the Cs for Detached Accessory Apartments in the AR, R and RC Zones.

Section 3.3.3. Accessory Residential Uses

Below are the highlighted changes to Zoning Ordinance that we propose:

A. Accessory Apartment, In General

* * *

b. An Accessory Apartment [conditional use] waiver application may be filed with the Hearing Examiner under Code Section 29-26 to deviate from the following limited use standards:

- i. the number of on-site parking spaces; or
- ii. the minimum distance from any other Attached or Detached Accessory Apartment.

[c. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.

- i. Fewer off-street spaces are allowed if there is adequate on-street parking. 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.
- 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

* * *

- 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. Detached Accessory Apartment

* * *

2. Use Standards

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

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

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

- iii. The minimum lot area is one acre.

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

Attachment 2 –County Code Amendments to Implement a Waiver Procedure for
Accessory Apartment License Applications

Sec. 2-140. Powers, duties and functions.

* * *

(c) The Office may hear, and submit a written report and decision to the specified officer or body on, any:

- (1) petition to the County Council to modify or revoke a special exception or conditional use, as provided in Chapter 59;
- (2) designation by the County Council of a geographic area as a community redevelopment area;
- (3) matter referred by the Board of Appeals under Section 2-112(b); or
- (4) objection to a finding made by the Director of the Department of Housing and Community Affairs concerning an application for an accessory apartment rental housing license under Section 29-26[.];
- (5) conditional use application or application to modify a conditional use; or
- (6) request for a waiver of accessory apartment standards under Section 29-

26.

* * *

Section 29-19. Licensing Procedures.

(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 shall identify any waivers requested under Section 29-26. 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-A-6.20] 59-3.3.3, and if needed, a waiver has been granted by the Hearing Examiner under Section 29-26; or

(ii) the accessory apartment was approved under Article 59-G of the 2004 Zoning Ordinance as a special exception or under Section 59.3.3.3 of the 2014 Zoning Ordinance as a conditional use.

* * *

Section 29-26. Appeals, [and] Objections[,], and Waivers

* * *

- (b) Objections concerning any new accessory apartment license.

* * *

(4) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within [5] 10 days after the objection is received and conduct any such hearing within [20] 30 days of the date the objection is received unless the Hearing Examiner determines that necessary parties are unable to meet that schedule.

* * *

[(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.]

- (c) Waivers concerning any new accessory apartment license.

(1) Requests to waive the minimum number of parking spaces required for accessory apartments by Section 59-6.2.4. of the Zoning Ordinance and the minimum distance between two accessory apartments under Section 59-3.3.3 of the Zoning Ordinance may be filed with the Hearing Examiner within 30 days after the DHCA Director issues a report that a license may not be granted without a waiver from the minimum parking space requirement and/or the minimum distance requirement.

(2) A waiver of the minimum on-site parking requirements for accessory apartments contained in Section 59-6.2.4 may be granted when on-street parking is adequate. On-street parking is adequate when:

(A) the available on-street parking for residents within 300 feet of the proposed accessory apartment would permit a resident to park on- street near his or her residence on a regular basis; and

(B) the proposed accessory apartment is not likely to reduce the available on- street parking within 300 feet of the proposed accessory apartment.

(3) A waiver of the minimum distance required between accessory apartments by Section 59-3.3.3.B.2 may be granted if, 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.

(4) The Hearing Examiner may impose conditions on the grant of a waiver to ensure that on-street parking is adequate or that the deviation in distance separation does not result in an excessive concentration of similar uses.

- (5) Procedures for requesting a waivers.

(A) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant for a waiver request and to any aggrieved person who opposes it within 10 days after the waiver request is filed with OZAH, and must conduct any such hearing within 30 days of the date the waiver request is received, unless the Hearing Examiner determines that necessary parties are unable to meet that schedule

(B) For requests to waive of the minimum distance between apartments, OZAH may consult the Department of Housing and Community Affairs as to its recommendation solely as to whether the deviation in distance separation does or does not result in an excessive concentration of similar uses in the general neighborhood of the proposed use.

(C) The Hearing Examiner may consolidate public hearings on the requested waiver and any objection to the Director's findings that involve the same license application.

(D) The Hearing Examiner must issue a Decision within 30 days of the date the record closing of the public hearing on the waiver request. If both a waiver application and an objection relating to the same accessory apartment license application is filed, the Hearing Examiner has 30 days from the latest date the record closes in either case.

(6) Appeals from Objections and Waivers. Any aggrieved party who objected under subsection 29-26(b) or requested a waiver under subsection 29-26(c) 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.



MONTGOMERY COUNTY COUNCIL

STIMULATING ACCESSORY APARTMENT DEVELOPMENT 2018

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About the Fellow

Jane is a current Master of Public Policy student at the University of Maryland, College Park. She is passionate about creating sustainable, equitable communities through data driven decision-making. Her objective is to help state and local governments utilize affordable housing, multi-modal transit, and other smart growth strategies to spur economic development, improve quality of life, and protect the environment. At school, Jane sits on the University Senate's Student Conduct Committee and can be heard on WMUC 88.1 FM in her fifth year as a college radio DJ.

**Overview**

Accessory apartments can help to increase the stock of affordable housing in a community, match current demographic trends, and provide mortgage relief to homeowners. In Montgomery County, there are currently 133 licensed accessory apartments for a population of over one million, a ratio which falls significantly behind the most successful jurisdictions. This report recommends seven methods Montgomery County can use to increase production and make the process more accessible.

Acknowledgements

Thank you to the Montgomery County Council and the Central Staff for hosting the summer fellows program. This report would not be possible without the expert guidance of Jeff Zyontz; assistance from Timothy Goetzinger, Martin Grossman, Sheila Price, and Francene Hill; and support from Marlene Michaelson.

Executive Summary

Background

An accessory apartment is a dwelling unit that is either attached to or on the same lot as an existing single-family detached home. Accessory apartments increase the supply of affordable housing, match the county's demographic trends, and provide mortgage relief to homeowners. Finding ways to incentivize the development of accessory apartments is especially important at a time when 50 percent of renters and 28 percent of homeowners are burdened by housing costs. By diversifying the housing stock where land is limited, the county can provide more affordable options for young professionals, empty nesters, non-nuclear households, multi-generational households, immigrants, and seniors who wish to age-in-place.

Montgomery County revised accessory apartment regulations in 2012 by relaxing some requirements, which successfully increased production from around 10 units per year to between 40 to 60 units per year. Since 2013, there have been 258 applications submitted, but there are still only 133 licensed accessory apartments. By implementing best practices from around North America, Montgomery County can become a leader in accessory apartments.

Recommendations

1. Offer homeowners assistance with financing development.
 - Cost is the number one reason why homeowners withdraw their application in Montgomery County.
 - Lenders often will not finance accessory apartment projects.
2. Increase outreach, education, and technical assistance.
 - Fifteen percent of homeowners applied because they learned through educational websites, events, or a tour.
 - Twenty percent would have wanted a how-to guide to help them through the process.
3. Eliminate conditional use by passing ZTA 18-07.
 - The current process for a conditional use permit takes 120 days.
 - In the past five years, the process has only been used to make waiver decisions, which allows for more relaxed parking and distance standards.
4. Apply uniform maximum floor area standards to attached and detached units.
5. Provide amnesty for illegal apartments.
6. Relax the owner-occupancy requirement.
7. Eliminate on-site parking requirements within a certain distance of transit.

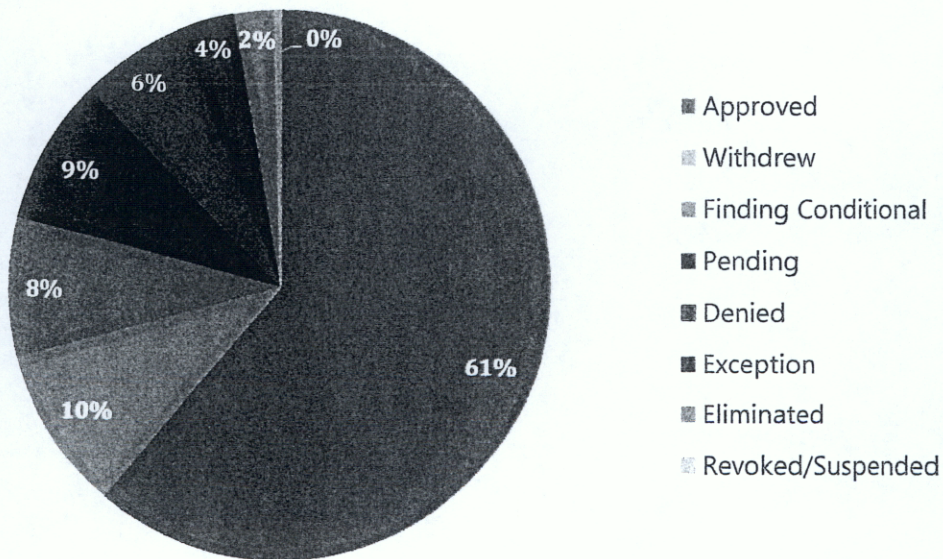
Data Highlights

- Forty-seven percent of the county's housing stock is single-family detached homes
- Thirty percent of households in the county are non-family, meaning that they are people who live alone or share their residence with unrelated individuals
- 815 MCC311 calls regarding accessory apartments since 2014
- Forty-two percent of homeowners began the process due to an easy of land rules¹

¹ Based on survey results from accessory apartment owners in the Pacific Northwest.

Jurisdictional Comparison

Jurisdiction	Population	Accessory Apartments Permits Issued in 2016	Permits Issued Per 10,000 Population in 2016
Portland, OR	639,863	615	9.611
Vancouver, BC	647,540	500	7.722
Santa Cruz, CA	64,465	40	6.205
Barnstable, MA ²	44,254	20	4.519
Seattle, WA	704,352	200	2.839
Austin, TX	947,890	227	2.395
Montgomery County, MD	1,040,000	45	0.433
Washington, DC ³	693,972	30 (approx.)	0.432 (approx.)
Arlington County, VA ⁴	229,164	2	0.087

Breakdown of Applications

² These numbers are estimated based on an eight-year span.

³ These numbers are approximate for the year 2017. (Perry-Brown, Nena. 2018. *The Essential Guide to Building an Accessory Dwelling Unit in DC*. June 28.)

⁴ Arlington County, VA. 2018. "Affordable Housing Master Plan Annual Report." *Arlington County, VA*. January 15. https://housing.arlingtonva.us/wp-content/uploads/sites/15/2018/01/FY-2017-AHMP-Indicators_Final.pdf.

Research Introduction

Definitions

Accessory Apartment: A Class 3 Accessory Apartment is a second dwelling that is part of (but subordinate to or on the same lot as) an existing one-family detached home and has its own provisions for cooking, eating, sanitation, and sleeping.⁵ An accessory apartment can be an addition (attached) or separate structure on the same lot (detached).

Background

County Data Highlights

- 47 percent of the county's housing stock is single-family detached homes.
- Median mortgage is \$2,393 and median rent is \$1,662, which are both higher than the Washington, D.C. and national averages.
- 50 percent of renters and 28.4 percent of owners with mortgages spend more than 30 percent of their income on housing costs.
- 30 percent of households are non-family and 30 percent are a married couple with no children under 18
- Population is expected to increase by 182,000

Benefits of Accessory Apartments

Accessory apartments (also commonly referred to as accessory dwelling units, secondary units, carriage houses, granny flats, ancillary units) have many economic, environmental, and societal benefits. Environmentally, accessory apartments typically use less energy and take up less land due to their smaller size, are located closer to public transit than new homes on green fields, and use existing resources (e.g., roads, sewers). Economic benefits include the creation construction jobs, an enhancement of the property tax base, an increase in the supply of affordable housing, and mortgage relief for homeowners. The affordability component is increasingly important as housing costs continue to rise in the county. Fifty percent of renters and 28.4 percent of owners with mortgages spend more than 30 percent of their income on housing costs. Thirty-eight percent of homeowners build accessory units as a way to receive extra income and 58 percent of accessory apartment owners rented below the market rate.⁶

Accessory apartments help to diversify the housing stock in places where land is limited and create more affordable options for young professionals, non-nuclear households, multigenerational households, empty nesters, immigrants, and seniors aging-in-place. The shares of those key demographic groups are increasing. In 2016, 30 percent of households were non-family and 8 percent were a single-parent with a child under 18, meaning 38 percent of households are within the target demographic for accessory apartments. Further, the percentage of seniors is expected to increase from 12 percent in 2010 to 21 percent in 2040; and between 2015 to 2040 the overall population is expected to increase by 182,000, or 18 percent. In a study of the Pacific Northwest region, it was found that 46 percent of accessory units are rented to those with a relationship to the homeowner. Often, they are rented to elderly family members.

Common Challenges to Building an Accessory Apartments

According to a survey of accessory unit owners in Portland, Seattle, and Vancouver, the biggest barriers to entry for homeowners are (1) zoning and permitting; (2) a lack of capital; (3) being intimidated by the

⁵ Montgomery County Department of Housing and Community Affairs. 2015. "Class 3 Accessory Apartment Fact Sheet." *Montgomery County Office of Zoning and Administrative Hearings*. August 20. https://www.montgomerycountymd.gov/OZAH/Resources/Files/pdf/2015/class3accyapt_factsheet.pdf.

⁶ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

process.⁷ Therefore, the top three factors that lead homeowners to initiate the applicant process are (1) the easing of land use rules (42 percent); obtaining enough money to begin (19 percent); and learning about accessory units through an educational website, event, or tour (15 percent).⁸ The most consequential zoning and land use factors were changes to the minimum lot size and allowable floor area.⁹

Of those who were originally denied a permit in the Pacific Northwest, 36 percent reported issues with the permitting process, 22 said there was poor professional assistance, and 16 percent had existing infrastructure problems.¹⁰ When asked what resources they wished they had had while developing their accessory unit, the responses from the survey included:

- Professionals with knowledge of accessory unit development (24 percent);
- An easy-to-understand and comprehensive guide through the entire process (20 percent);
- Better assistance from local government (15 percent); and
- Better financing options (10 percent).¹¹

Furthermore, the biggest challenges faced by homeowners who successfully build accessory units were: (1) obtaining a loan (34 percent) and paying for the cost of construction (18 percent).¹²

Accessory Apartment Regulations in Montgomery County

Regulations for accessory apartments were revised in 2012, which increased the production of accessory apartments from about 10 per year before 2012 to about 40 to 60 per year after 2012. Currently, the existing principal dwelling must be an owner-occupied, detached single-family unit that is at least five years old. There must be on-site parking provided in addition to any required on-site parking for the principal dwelling and a separate entrance so that the appearance of a one-family home is preserved. Depending on zoning, attached accessory apartments must either be at least 500 feet or 300 feet away from any other approved or pending accessory apartment. Detached accessory apartments must be located a minimum distance of 500 feet from any approved or pending accessory apartment. The Department of Housing and Community Affairs (DHCA) offers a Class 3 Accessory Apartment Proximity Calculator on its website.¹³

The accessory apartment must be less than 50 percent of the total floor area of the principal dwelling or 1,200 square feet – whichever is less. The maximum floor area for an addition is 800 square feet. If the lot is one acre or less, the accessory unit must be internal to the existing home. Further, it must have the same address as the main house and be the only additional living unit or residential use on a lot or parcel. The unit may not be occupied by more than two persons 18 years of age or older.¹⁴ Additional building

⁷ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Montgomery County Department of Housing and Community Affairs. 2018. *Class 3 Accessory Apartments Proximity Calculator*. <https://apps.montgomerycountymd.gov/DHCA-Licensing/Class3/CalculateProximity>.

¹⁴ Montgomery County Department of Housing and Community Affairs. n.d. "Class 3 Accessory Apartment Affidavit." *Montgomery County Department of Housing and Community Affairs*. Accessed July 2018. https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/licensing/class3accyapt_affidavit.pdf.

code requirements for accessory units, such as requirements for kitchen facilities, minimum ceiling heights, and habitable rooms.¹⁵

Current Accessory Apartment Approval Process¹⁶

1. The applicant obtains a Rental Housing License from DHCA Licensing and Registration. License holders must pay an annual license fee each year, which is \$101 dollars for a Class 3 Accessory Apartment.¹⁷ If the accessory apartment was built before 1978, the applicant must register with the Maryland Department of the Environment and pass a lead paint inspection.
2. Properties with well and/or septic must contact the Department of Permitting Services (DPS) to make sure it meets required code for total individuals living on the property.
3. The applicant applies for a Class 3 Accessory Apartment license through DHCA Licensing. The package must include:
 - a. The application;
 - b. Required fees (\$250 filing fee and \$220 sign fee);
 - c. Detailed drawing with dimensions of accessory apartment;
 - d. Drawing with dimensions of driveway(s) and/or garage;
 - e. Signed affidavit of understanding form; and
 - f. Any permits from DPS issued.The application is reviewed for completeness within five days of receipt.
4. DHCA sends a written notification of the application acceptance or returns the application and all fees with a written explanation regarding missing documents.
5. The Hearing Examiner receives a copy of the application with documents of acceptance of the application.
6. DHCA posts the information on the website and map of accessory apartment.
7. Applicant posts a sign on yard within five days of acceptance of the application by DHCA which remains posted for 30 days after the issuance of the DHCA Director's findings.
8. Licensing reviews the application for compliance with zoning ordinances and the Housing Code Enforcement inspects for compliance with housing code and zoning standards. The applicant has 30 days to repair and/or replace any violations, and then will receive a final inspection for all corrected violations. If the accessory apartment is new construction, then the construction must be completed within 180 days and all required permits must be obtained from DPS.¹⁸
9. The DHCA Director issues a report on the findings of the Licensing review and Housing Code inspection.
10. A license is issued or denied 30 days after the issuance of the DHCA Director's report.
11. The sign is returned within 15 days after the end of the posting period.
12. The applicant contacts their homeowners association and follows their rules and regulations regarding accessory apartments.
13. Any changes to the information provided on the original application must be reported to DHCA Licensing immediately.

¹⁵ Montgomery County Department of Housing and Community Affairs. 2016. "Class 3 Accessory Apartment Owner Reference Checklist." *Montgomery County Department of Housing and Community Affairs*. September 26.
https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/licensing/class3accyapt_checklist.pdf.

¹⁶ Montgomery County Department of Housing and Community Affairs. 2015. "Class 3 Accessory Apartment Fact Sheet." *Montgomery County Office of Zoning and Administrative Hearings*. August 20.

¹⁷ Montgomery County Department of Housing and Community Affairs. n.d. *Rental Housing License Fees*. Accessed July 2018.
<https://montgomerycountymd.gov/DHCA/housing/licensing/fees.html>.

¹⁸ Montgomery County Department of Housing and Community Affairs. 2017. "Class 3 Accessory Apartment." *Step by Step Instructions*. January 9.
https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/licensing/class3accyapt_stepbystep.pdf.

14. When accessory apartment meets all requirements, a license will be issued.

The total amount due with the application is \$571.¹⁹ Applicants can check their application status online at any time.²⁰ To help clarify the process, DHCA offers to meet with potential applicants and provides a owner reference checklist on its website and step by step application instructions, along with other explanatory documents.^{21 22} DHCA estimates that the application process typically takes three to six months on average, with the code inspection taking the longest.

Conditional Use

If the application is rejected by DHCA, then applicants may file an application to obtain a conditional use permit only to (1) deviate from the requirements for on-site parking and/or for distance from other accessory apartments or (2) permit a detached accessory apartment in the AR, R, and RC zones.²³

Objections

If the property does not meet the requirements, the applicant can object within the Office of Zoning and Administrative Hearings (OZAH) and request a hearing within 30 days of the DHCA Director's report. If the applicant knows prior to applying that parking or zone requirements would not pass, they may apply with the OZAH for approval as a conditional use.²⁴ Any other aggrieved person may file an objection with OZAH to (1) challenge any finding of fact by the DHCA Director or (2) allege that on-street parking is inadequate.²⁵ For both types of objections, OZAH must hold a public hearing within 20 days of filing.

Aims

- Detect onerous administrative burdens in the application process.
- Review the application processes in jurisdictions with successful accessory apartment programs.

Methodology

- Consult with county staff members who administer the accessory apartment program to better understand the application process and what applicants find the most challenging.
- Review data from the Department of Housing and Community Affairs to determine the total number of inquiries, total applications, total approved properties, total approved after appeal, total approved with conditional use, and total denied properties; then conduct a geographical and longitudinal analysis.
- Determine which jurisdictions have the most successful accessory apartment programs and compare their process and regulations to Montgomery County.

¹⁹ Montgomery County Department of Housing and Community Affairs. n.d. "Class 3 Accessory Apartment Fee Schedule." *Montgomery County Department of Housing and Community Affairs*. Accessed July 2018.
https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/licensing/class3accapt_fee_schedule.pdf.

²⁰ Montgomery County Department of Housing and Community Affairs. 2018. "Class 3 Accessory Apartment Applications." *Montgomery County Department of Housing and Community Affairs*. Accessed July 2018.
<https://apps.montgomerycountymd.gov/DHCA-Licensing/Class3/List>.

²¹ Montgomery County Department of Housing and Community Affairs. 2015. "Class 3 Accessory Apartment Fact Sheet." *Montgomery County Office of Zoning and Administrative Hearings*. August 20.

²² Montgomery County Department of Housing and Community Affairs. 2017. "Class 3 Accessory Apartment." *Step by Step Instructions*. January 9.

²³ Montgomery County Office of Zoning and Administrative Hearings. n.d. *Accessory Apartment Licenses*. Accessed July 2018.
https://www.montgomerycountymd.gov/OZAH/Accessory_Apartments.html.

²⁴ Montgomery County Department of Housing and Community Affairs. 2015. "Class 3 Accessory Apartment Fact Sheet." *Montgomery County Office of Zoning and Administrative Hearings*. August 20.

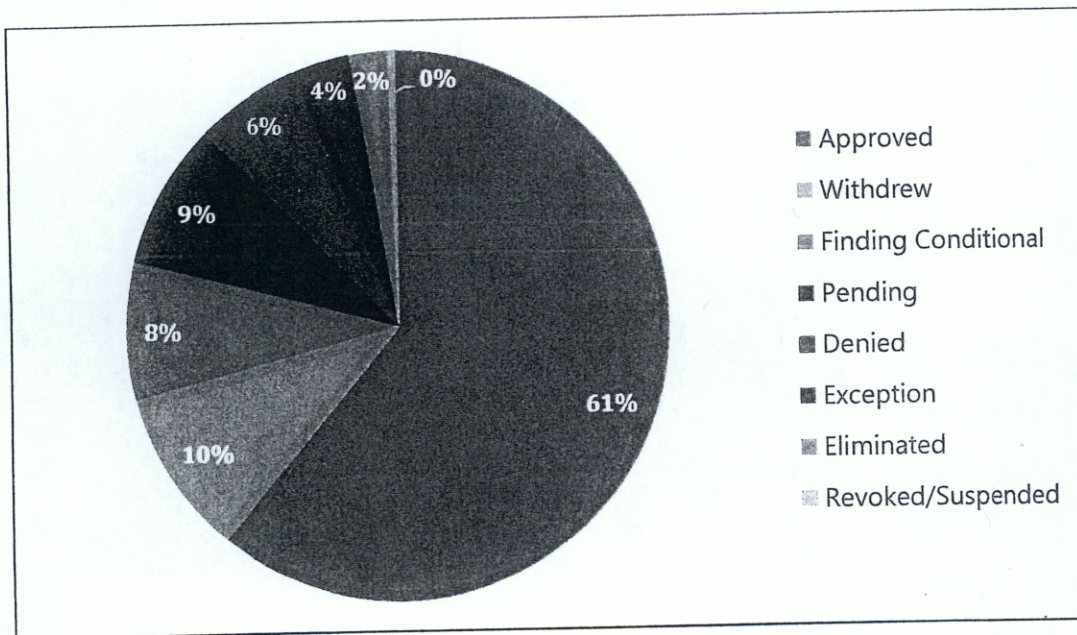
²⁵ Montgomery County Office of Zoning and Administrative Hearings. n.d. *Accessory Apartment Licenses*. Accessed July 2018.

Findings – Data from Montgomery County

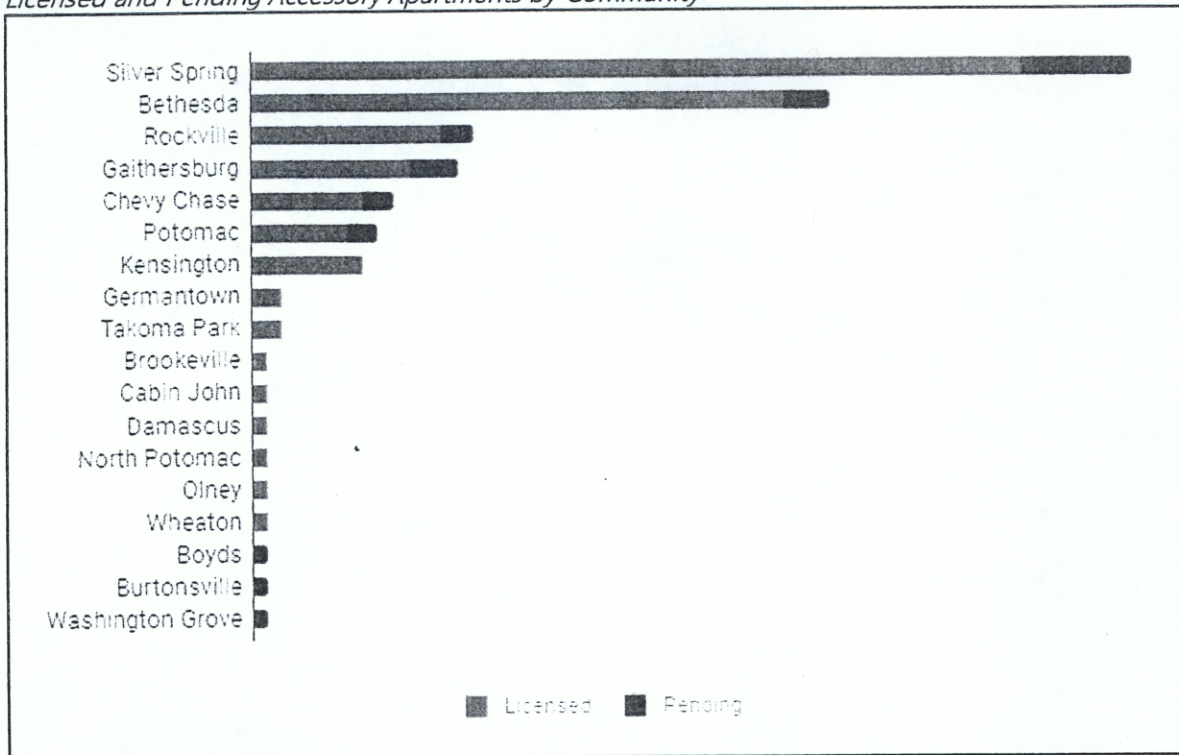
Overview

There are currently 133 accessory apartments in Montgomery County that are licensed and 22 that are pending.²⁶ Only 61 percent of the 258 applications submitted since May 2013 have been approved. Of the unapproved applications, the most common results are the application being withdrawn, given a conditional finding, pending, or denied.

Result of Application	Number of Applications
Approved	158
Withdrew	25
Finding Conditional	21
Pending	22
Denied	16
Exception	9
Eliminated	6
Revoked/Suspended	1
Total	258



²⁶ Montgomery County Department of Housing and Community Affairs. 2018. "Class 3 Accessory Apartment Applications." *Montgomery County Department of Housing and Community Affairs*. Accessed July 2018.

Licensed and Pending Accessory Apartments by CommunityInterest

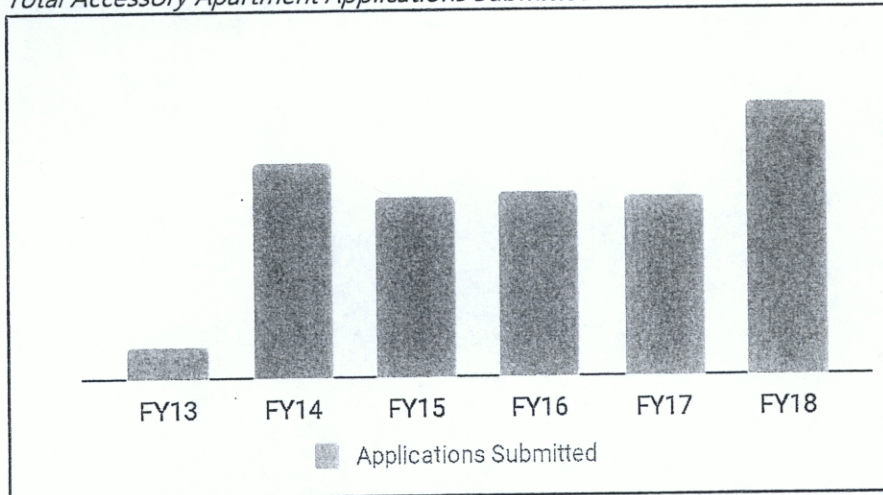
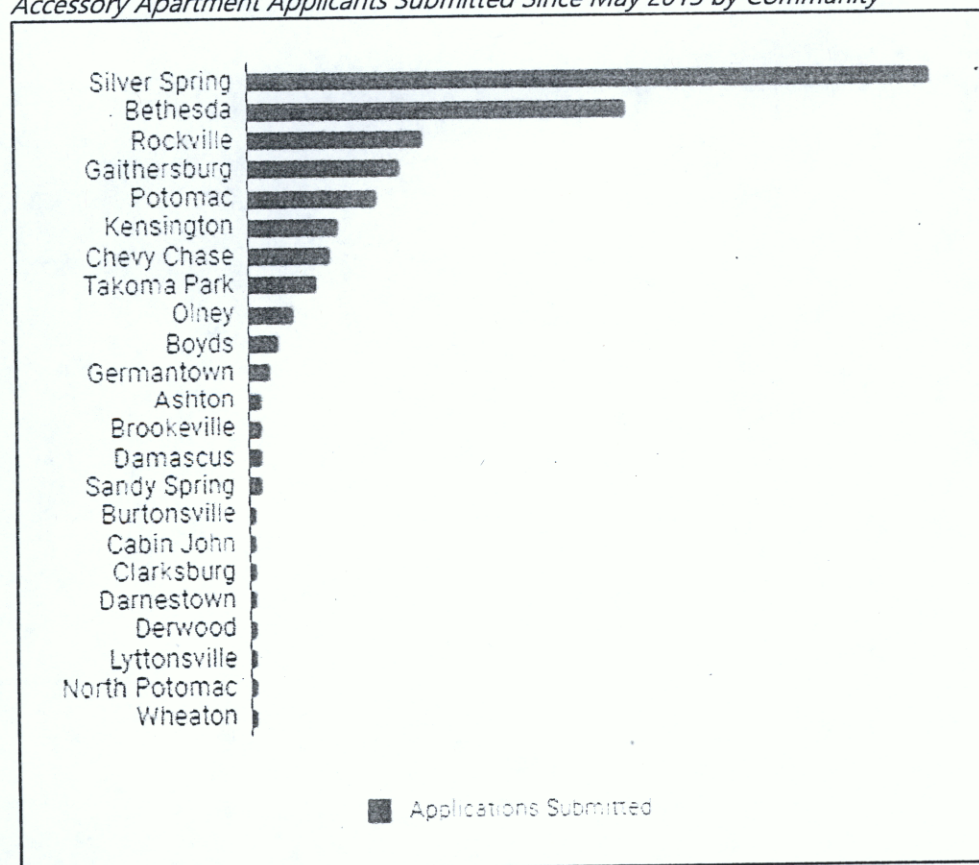
DHCA accepts walk-in and scheduled inquiries regarding accessory apartments, but those are not recorded. The below table shows the service request calls regarding accessory apartments as of January 1, 2014.²⁷ The overwhelming majority of calls were to inquire about the definition of an accessory apartment and the standards for a Class 3 Accessory Apartment, which implies that there is a lack of clear, easily accessible public information regarding accessory apartments.

Service Request	Calls Recorded since January 2014
Accessory Apartment Inspections	87
Accessory Apartment Public Notice Sign	32
Accessory Apartment Special Exception Transfer	14
Definition of Accessory Apartment	162
Standards for Class 3 Accessory Apartments	520
Total	815

²⁷ DHCA did not use MC311, the county's call center for non-emergency government information and services, until FY 2016, so only Code Seibel Requests were recorded from January 2014 to June 2015.

Submitted Applications

Since May 2013, there have been 258 applications submitted to DHCA. Of those, 158, or 61.24 percent were approved. The most common locations for applications were Silver Spring (88), Bethesda (49), Rockville (23), and Gaithersburg (20). None were approved after an appeal.

Total Accessory Apartment Applications Submitted*Accessory Apartment Applicants Submitted Since May 2013 by Community*

Conditional Use

A conditional use (CU) is allowed for accessory apartments to: (1) deviate from the limited use standards for the number of on-site parking spaces; (2) deviate from the minimum distance from any other accessory apartment; or (3) allow a detached accessory apartment in AR, R, or RC Zones. A CU application required a public hearing before the Hearing Examiner and the process typically takes 120 for the Planning Department review. Between fiscal year (FY) 2014 and FY 2018, there were 13 accessory apartments applications that filed for CU and 10 instances of objections filed with OZAH.²⁸ All were for attached accessory apartments and all were approved. A total of 11 were approved between FY 2016 and FY 2018, five were in Bethesda, four were in Takoma Park, one was in Rockville, and one was in Silver Spring.

Accessory Apartment Special Exception and Conditional Use Cases²⁹

Case No.	Attached or Detached	Opposition	Action Taken	Date Granted
CU 18-01	Attached	No	Granted, with Conditions	1/19/18
CU 18-03	Attached	No	Granted, with Conditions	2/21/18
CU 17-13	Attached	No	Granted, with Conditions	7/18/17
CU 17-07	Attached	No	Granted, with Conditions	7/5/17
CU 17-01	Attached	Yes	Granted, with Conditions	12/23/16
CU 16-12	Attached	No	Granted, with Conditions	8/1/16
CU 16-08	Attached	No	Granted, with Conditions	4/18/16
CU 16-06	Attached	No	Granted, with Conditions	4/11/16
CU 16-02	Attached	No	Granted, with Conditions	12/23/15
CU 16-05	Attached	No	Granted, with Conditions	3/3/16
CU 15-09	Attached	No	Granted, with Conditions	10/21/15
CU 15-01	Attached	Yes	Granted, with Conditions	8/5/15
AA 14-05	Attached	No	Granted, with Conditions	6/5/15

Objections

Between FY 2014 and FY 2018, there were 10 instances of objections filed with OZAH, all of which were for attached accessory apartments. Eight objections were filed by neighbors and two by the applicant. In half of the objection cases filed by neighbors, the applicant withdrew the application and in two cases the neighbors withdrew the objection, thereby mooting the cases.³⁰ In two of the objection cases brought by neighbors, the Hearing Examiner upheld the DHCA Director's findings and denied the objections,

²⁸ Grossman, Martin. 2018. *Bill for Hearing Examiner to Waive Accessory Apartment Standards*. June 8.; Grossman, Martin. 2017. *Issues Regarding Accessory Apartment Objections and Conditional Use Applications Filed Since FY 2014*. September 22.

²⁹ Ibid.

³⁰ Ibid.

although in one of those cases additional on-site parking was required.³¹ In the two objection cases filed by applicants, one was denied and the other was placed on hold while the applicant pursued a remedy with the Landlord and Tenant Commission.³²

Accessory Apartment Objection Cases³³

Case No.	Attached or Detached	Filed by License Applicant or by Neighbor	Action Taken	Date of Action on Objection
AAO 17-02	Attached	Neighbors	License Application Withdrawn at Hearing & Denied - Objection Dismissed as Moot	7/7/17
AAO 17-01	Attached	Neighbors	License Application Withdrawn & Denied - Objection Dismissed as Moot	7/14/17
AAO 16-01	Attached	Applicant	At the Hearing, the Objection was Placed on Hold while the Applicant pursues a Remedy with Landlord and Tenant Commission	8/6/15
AAO 15-02	Attached	Applicant	Objection Denied after Hearing, and License Application Denied	4/9/15
AAO 15-01	Attached	Neighbors	Objection Withdrawn & Objection Dismissed as Moot	10/15/14
AAO 14-06	Attached	Neighbors	License Application Withdrawn & Objection Dismissed as Moot	7/1/14
AAO 14-04	Attached	Neighbors	Objection Withdrawn & Objection Dismissed as Moot	7/9/14
AAO 14-03	Attached	Neighbor	License Application Withdrawn & Objection Dismissed as Moot	6/6/14
AAO 14-02	Attached	Neighbors	Objection Denied after Hearing, and License Application Approved, but with Additional Parking Required	8/28/14
AAO 14-01	Attached	Neighbor	Objection Denied after Hearing & Grant of License Application Upheld	8/30/13

Denials

From FY 2014 to FY 2018, there were 16 total denied applications spread across five communities. This included denials in the top four applicant communities: Silver Spring (seven denials), Bethesda (one), Rockville (three), and Gaithersburg (four). Each other these communities had more than 18 applications in

³¹ Grossman, Martin. 2018. *Bill for Hearing Examiner to Waive Accessory Apartment Standards*. June 8; Grossman, Martin. 2017. *Issues Regarding Accessory Apartment Objections and Conditional Use Applications Filed Since FY 2014*. September 22.

³² Ibid.

³³ Ibid.

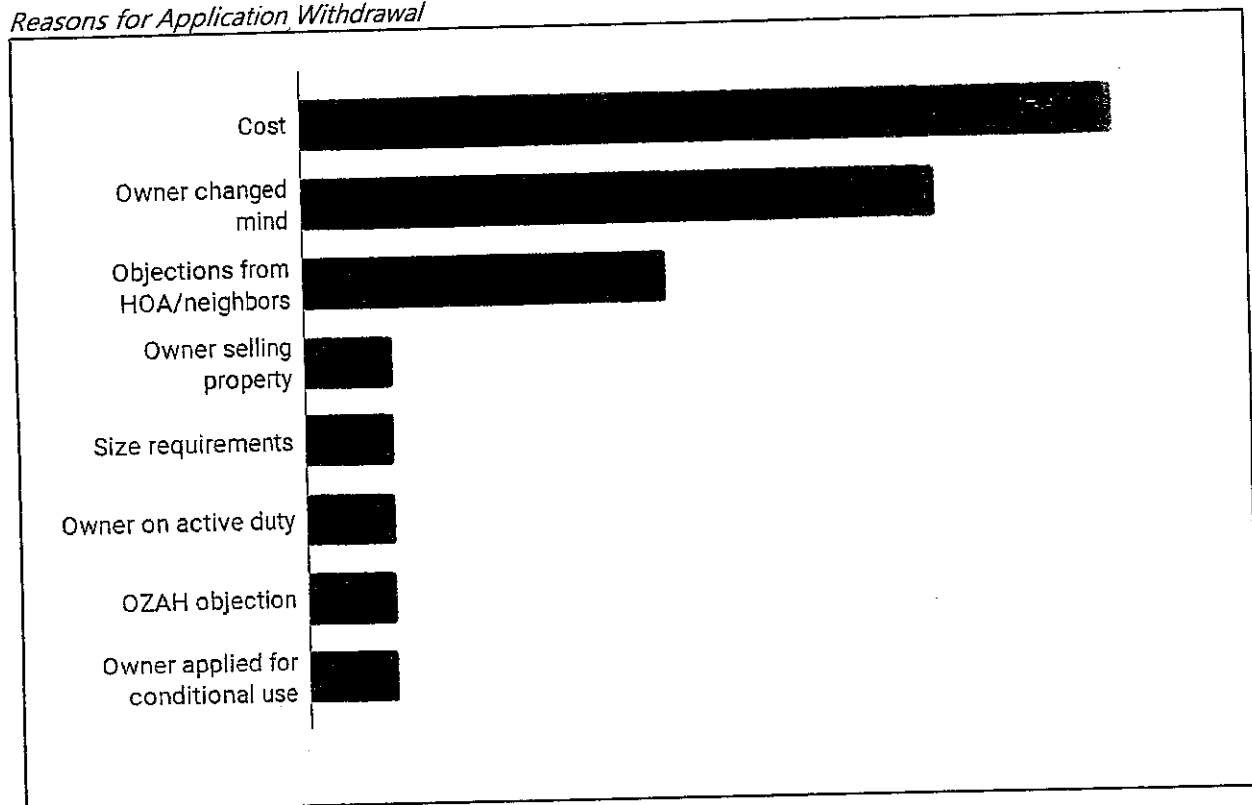
this same time period. The outlier is Germantown, which only submitted three applications between FY 2013 and FY 2018 and had one of those applications denied.

Withdrawals

There have been 25 application withdrawals, with the most common reasons given being because (1) cost, (2) the owner changed their mind, and (3) objections by Homeowners Associations or neighbors. Other reasons given also included withdrawing because the owner was selling the property, size requirements were too restrictive, the owner was on active military duty, an objection filed with OZAH, and the owner applied for conditional use instead.

Discussions with staff from DHCD revealed a perception that the two biggest barriers to creating a new accessory apartment are: (1) the mental hurdle of becoming a new landlord and (2) the expense of building an accessory apartment, which was estimated at \$10,000.

Reasons for Application Withdrawal



Findings – Jurisdictional Comparison

Portland, OR

Portland has been recognized as one of the most successful accessory apartment programs in the country, mostly due to its high single-family housing stock, flexible requirements, and applicant assistance. The program has relaxed owner-occupancy requirements, allows short-term rentals, requires no additional parking for accessory units, offers fee waivers, and ADUs that meet all the standards are permitted by-right and do not require a land use review.³⁴ Further, the program guide outlines ways to bring existing nonconforming units into compliance.³⁵

To assist applicants, Portland offers an early assistance process to help with project development for ADUs created through the conversion of an existing structure.³⁶ It also provides an ADU financing guide that shows potential applicants how to secure financing whether they are financing with an existing or new main house, based on existing home equity, or independently of the main home.³⁷ This was especially important in Oregon, where it was found that most owners actually built out of their cash savings due to developers not seeing accessory units as providing enough of a profit margin and lending institutions not allowing appraisals to factor in the expected rental income from an accessory unit to estimate the market value of a residential property.³⁸

Since 2010, Portland has issued almost 2,000 ADU permits.³⁹ Fee waivers and public education efforts are cited as having contributed to the doubling of the number of annual ADU permits, from under 300 in 2014 to over 600 in 2016, in a city with a population of about 640,000.⁴⁰

Portland requires applicants to submit a:

- Building Permit Application;
- Water Service Application, if the project will result in more than three bathrooms on-site;
- Erosion Control Plan (may be a part of the Site Plan), if the project will result in ground disturbance;
- Stormwater Plan and/or Mitigation Form, if the project will add more than 500 square feet of impervious surface;
- Tree preservation and/or planting plan, if the project is 5,000 square feet or larger;
- Four copies of Site, Architectural, and Structural Plans;
- Structural Calculations;
- Mechanical, electrical, and plumbing permits if not obtained with Building Permit Application; and
- Major Alteration and Addition Form, if the project meets certain requirements.⁴¹

³⁴ Sage Computing. 2008. *Accessory Dwelling Units: Case Study*. U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Oregon Department of Environmental Quality; Earth Advantage; AccessoryDwellings.org. n.d. "Accessory Dwelling Unit (ADU) Financing Guide." *Oregon Department of Environmental Quality*. Accessed July 2018. <https://www.oregon.gov/deq/FilterDocs/ADU-FinanceGuide.pdf>.

³⁸ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

³⁹ Ibid.

⁴⁰ Municipal Research and Services Center. 2018. *Accessory Dwelling Units*. June 11. Accessed July 2018. <http://mrsc.org/Home/Explore-Topics/Planning/General-Planning-and-Growth-Management/Accessory-Dwelling-Units-in-Plain-English.aspx>.

⁴¹ Portland Bureau of Development Services. 2016. "Adding a Dwelling Unit." *Portland Bureau of Development Services*. April 6. <https://www.portlandoregon.gov/bds/index.cfm?a=92698>.

Vancouver, BC

Accessory apartments account for between a fifth and a quarter of all rental units in Canadian urban areas.⁴² Among them, the city of Vancouver has been especially successful with its laneway house (LWH) program. "Since adopting its LWH program in 2009, Vancouver, a city of roughly 648,000, has permitted over 3,000 ADUs and has set the target of adding another 4,000 by 2028."⁴³ Vancouver amended the program in 2013, which allowed accessory dwellings city-wide, permitted extra floor area, eliminated the garage requirements, and allowed ministerial approval. Further, there is no owner-occupancy requirement.⁴⁴ These changes increased year approvals from around 350 in 2012-2014 to above 500 in 2015-2016.⁴⁵

One reason for its productivity has been the program's ability to get banks to provide lending products tailored to LWH projects that take into account the borrowers' future rental income from the new unit.⁴⁶ Moreover, Vancouver also created a Laneway Housing How-To Guide that provides an overview of the program, how to determine eligibility, an explanation of the steps involved, design aspects, resources, contacts, and frequently asked questions.⁴⁷ Currently, there is "more demand than the city and accommodate, and permitting is considerably backlogged."⁴⁸

Santa Cruz, CA

Santa Cruz adopted a new accessory dwelling unit (ADU) ordinance in 2003 and since then has won numerous awards and been used as a model by other communities.⁴⁹ The program approves an average of 40 to 50 ADU permits per year in a city of about 64,500. The ADU program offers technical assistance, a wage subsidy and apprentice program that is linked to an existing construction jobs training program, and an accessory dwelling unit (ADU) loan program through a partnership with a local credit union.⁵⁰

"As part of the technical assistance program, the city published an ADU Plan Sets Book that contains design concepts developed by local and regional architects. Homeowners can select one of these designs and receive permits in an expedited manner. In addition, the city offers an ADU Manual, which provides homeowners with information on making their ADU architecturally compatible with their neighborhood, zoning regulations relevant to ADUs, and the permitting process."⁵¹ Further, some development fees,

⁴² Harris, Richard, and Kathleen Kinsella. 2017. "Secondary suites: A survey of evidence and municipal policy." *The Canadian Geographer*.

⁴³ Municipal Research and Services Center. 2018. *Accessory Dwelling Units*. June 11. Accessed July 2018.

⁴⁴ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁴⁵ Ibid.

⁴⁶ Municipal Research and Services Center. 2018. *Accessory Dwelling Units*. June 11. Accessed July 2018; Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁴⁷ City of Vancouver. 2016. "Laneway Housing How-To Guide." *City of Vancouver*. November. <https://vancouver.ca/files/cov/laneway-housing-howto-guide.pdf>.

⁴⁸ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁴⁹ Sage Computing. 2008. *Accessory Dwelling Units: Case Study*. U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

⁵⁰ Institute for Local Government. n.d. *Santa Cruz Implements "Granny Flat" Program*. Accessed July 2018. <http://www-ca-ilg.org/sustainability-case-story/santa-cruz-implements-granny-flat-program>.

⁵¹ Sage Computing. 2008. *Accessory Dwelling Units: Case Study*. U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

which are approximately \$13,978, are waived for ADUs made available for low- and very-low-income households.⁵²

Barnstable, MA

Barnstable offers an amnesty program that guides creation of affordable units within existing detached structures or new affordable units within attached structures. Eligibility for the program is limited to single-family properties that are owner-occupied and multifamily properties that are legally permitted. In order to bring a unit into compliance, the property owner must agree to rent to those earning 80 percent or less of the area median income with a minimum lease term of one year. Further, it offers fee waivers for inspection and monitoring of units and designates town staff to assist homeowners through the administrative process. Barnstable uses Community Development Block Grant (CDBG) funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade of an affordable ADU. The program created 160 affordable ADUs over eight years in a town of 47,821.⁵³

Seattle, WA

Seattle has seen a spike in the permitting and construction of ADUs in recent years, likely attributable to its hot housing market.⁵⁴ After the city began to study options to increase production in 2014, permit activity increased from about 30 permits issues per year to about 75. Once the report was released – stirring public discussion and proposing removing parking requirements, changing owner occupancy requirements, and allowing both attached and detached accessory units – the amount of permits issued jumped to 200 in 2016.⁵⁵ The city has recently completed an Draft Environmental Impact Statement on the plan.⁵⁶

Austin, TX

Austin has a hot housing market, expanding city limits, and large infills tracts inside city limits with new home building, including accessory units.⁵⁷ The development of accessory units dramatically increased by 34 percent after the City Council approved a series of reforms in 2015.⁵⁸ The reforms included a lower minimum lot size to 5,750 square feet, increase in the maximum square footage of the ADU, reduction in setbacks, removal of a driveway requirement, and an elimination of the parking requirement for ADUs within a quarter-mile of an activity corridor that is also served by transit.⁵⁹

Washington, DC

Zoning amendments that went into effect in Washington, DC in 2016 allowed accessory units by-right in many residential zones. With this change, there were 30 permits issued in 2017 and DC is on track to issue

⁵² Sage Computing. 2008. *Accessory Dwelling Units: Case Study*. U.S. Department of Housing and Urban Development, Office of Policy Development and Research.; Santa Cruz Economic Development. 2016. "Accessory Dwelling Units Fee Waiver Information and Application." *City of Santa Cruz*. <http://www.cityofsantacruz.com/home/showdocument?id=53802>.

⁵³ Ibid.

⁵⁴ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁵⁵ Ibid.

⁵⁶ Seattle City Council. 2018. *Accessory Dwelling Units EIS*. June. <http://www.seattle.gov/council/adu-eis>.

⁵⁷ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁵⁸ Menez, Gene. 2017. *What You Need To Know About Accessory Dwelling Units*. April 17. <http://www.austinmonthly.com/AHM/Spring-2017/What-You-Need-to-Know-about-Accessory-Dwelling-Units/>.

⁵⁹ Austin Development Services Department. n.d. *Accessory Dwelling Units*. Accessed July 2018. <https://www.austintexas.gov/page/adu>.

more than 30 this year.⁶⁰ The minimum gross floor area (GFA) of the ADU, depending on the zone, is either 2,000 or 1,200 square feet. There is an owner-occupancy requirement, no more than three people can live in an accessory unit, and no new parking spaces are required.⁶¹ The application process requirement applicants to have a pre-permitting consultation with the Department of Consumer and Regulatory Affairs, which costs between \$400 to \$600, where applicants are told anything that is wrong with their plans before they apply for a building permit.⁶² The building permit process typically takes between two to six months.⁶³ Finally, homeowners are also required to have the unit inspected and must apply for a Single Family Business license if renting out the unit.⁶⁴

Arlington County, VA

Arlington County has begun to promote affordable dwellings (ADs) after incorporating them into its Affordable Housing Master Plan. This manifested in changes to the zoning code in November 2017. The application process has three stages: pre-submission, submission, and review. In the pre-submission process, homeowners must determine whether they are eligible, which includes an owner-occupancy requirement and parking requirements. The application packet includes an accessory dwelling permit application, declaration of covenants, affidavit of compliance, occupancy survey, floor plan of the existing main dwelling and proposed AD, and certified plat showing all existing improvements on the property.⁶⁵ The application then has a preliminary review by the Zoning Division staff and then a formal review by the Zoning Administrator, who determines whether a permit is issued.⁶⁶

⁶⁰ Perry-Brown, Nena. 2018. *The Essential Guide to Building an Accessory Dwelling Unit in DC*. June 28. <https://dc.urbanturf.com/articles/blog/want-to-build-an-adu-here-are-some-basics/14165>.

⁶¹ Ibid.

⁶² Harkin, Nicole. 2017. *You can now build an accessory apartment in DC to make some money! Here's a step-by-step guide*. October 26. <https://ggwash.org/view/65326/you-can-now-build-an-accessory-apartment-in-dc-to-make-some-money-heres-a-step-by-step-guide>.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Arlington County. 2018. "Accessory Dwelling Permit Filing Instructions." *Building Arlington*. January 1. <https://building.arlingtonva.us/wp-content/uploads/sites/38/2018/01/Accessory-Dwelling-Application-Packet.pdf>.

⁶⁶ Ibid.

Summary of FindingsMaximum Floor Areas

City	Maximum Floor Area
Portland, OR	75 percent of the living area of the house or 800 square feet, whichever is less ⁶⁷
Vancouver, BC	None ⁶⁸
Santa Cruz, CA	10 percent of the lot area up to a maximum of 1,200 square feet (detached and attached); 50 percent of principal dwelling (attached) ⁶⁹
Barnstable, MA	None ⁷⁰
Seattle, WA	1,000 square feet in a single-family structure and 650 square feet in a rowhouse or townhouse (attached); 800 square feet of gross floor area in single-family zones and 650 square feet in lowrise zones (detached) ⁷¹
Austin, TX	1,100 square feet or 0.15 FAR, whichever is smaller ⁷²
Montgomery County, MD	50 percent of the total floor area in the principal dwelling or 1,200 square feet (internal and detached), whichever is less; 800 square feet (addition) ⁷³
Washington, DC	35 percent of the total GFA of principal dwelling (attached); 450 square feet or 30 percent of the rear yard, whichever is larger (detached) ⁷⁴
Arlington County, VA	No maximum if in a basement; 35 percent of combined floor area of main and accessory dwelling, up to a maximum of 750 square feet (main dwelling GFA > 1,000 square feet); 45 percent of the combined floor area of the main and accessory dwelling, up to a maximum of 500 square feet (main dwelling GFA < 1,000 square feet) ⁷⁵

⁶⁷ Scarlett, Paul L. 2016. "Accessory Dwelling Units." *City of Portland Bureau of Development Services*. June 22.

<https://www.portlandoregon.gov/bds/index.cfm?a=68689>.

⁶⁸ City of Vancouver. 2016. "Laneway Housing How-To Guide." *City of Vancouver*. November. <https://vancouver.ca/files/cov/laneway-housing-howto-guide.pdf>.

⁶⁹ City of Santa Cruz. 2017. "New Accessory Dwelling Unit (ADU) Ordinance Changes 2014, 2015, and 2017." *City of Santa Cruz*. April 6. <http://www.cityofsantacruz.com/home/showdocument?id=59310>.

⁷⁰ Town of Barnstable, MA. 2002. *Chapter 9: Affordable Housing, Article II: Accessory Apartments and Apartment Units*. October 3. Accessed July 2018. <https://ecode360.com/6556809>.

⁷¹ Seattle Department of Construction & Inspections. n.d. *Accessory Dwelling Unit (Mother-in-Law Apartment)*. Accessed July 2018. <http://www.seattle.gov/dpd/permits/commonprojects/motherinlawunits/default.htm>.

⁷² Austin Development Services Department. n.d. *Accessory Dwelling Units*. Accessed July 2018.

⁷³ Montgomery County Department of Housing and Community Affairs. 2015. "Class 3 Accessory Apartment Fact Sheet." *Montgomery County Office of Zoning and Administrative Hearings*. August 20.

⁷⁴ Perry-Brown, Nena. 2018. *The Essential Guide to Building an Accessory Dwelling Unit in DC*. June 28.

⁷⁵ Arlington County. 2018. "Accessory Dwelling Permit Filing Instructions." *Building Arlington*. January 1.

Permits Issued Per 10,000 Population in 2016

Jurisdiction	Population	Accessory Apartments Permits Issued in 2016	Permits Issued Per 10,000 Population in 2016
Portland, OR	639,863	615	9.611
Vancouver, BC	647,540	500	7.722
Santa Cruz, CA	64,465	40	6.205
Barnstable, MA ⁷⁶	44,254	20	4.519
Seattle, WA	704,352	200	2.839
Austin, TX	947,890	227	2.395
Montgomery County, MD	1,040,000	45	0.433
Washington, DC ⁷⁷	693,972	30 (approx.)	0.432 (approx.)
Arlington County, VA ⁷⁸	229,164	2	0.087

Summary of Strategies from Other Jurisdictions

- Relax owner-occupancy requirements;
- Increase maximum allowable floor area;
- Permit accessory units in townhouses and rowhouses;
- Allow short-term rentals;
- Decrease parking requirements, have no parking requirements, or have no parking requirements in areas with transit nearby;
- Provide fee waivers if unit is provided at an affordable rate to a certain income;
- Allow accessory units by-right;
- Create an amnesty program for illegal units; and
- Increase the amount of tenants allowed.

⁷⁶ These numbers are estimated based on an eight-year span.

⁷⁷ These numbers are approximate for the year 2017. (Perry-Brown, Nena. 2018. *The Essential Guide to Building an Accessory Dwelling Unit in DC*. June 28.)

⁷⁸ Arlington County, VA. 2018. "Affordable Housing Master Plan Annual Report." *Arlington County, VA*. January 15. https://housing.arlingtonva.us/wp-content/uploads/sites/15/2018/01/FY-2017-AHMP-Indicators_Final.pdf.

Recommendations

1. Offer homeowners assistance with financing accessory apartment development.

Cost is by far the number one challenge for accessory apartment development in Montgomery County and around North America.⁷⁹ A lack of financing options makes this barrier even more difficult to overcome. Because of this, it is typically the most affluent homeowners, who can use their savings, that build accessory apartments.⁸⁰ Income from accessory apartments is largely not recognized by the lending system, so is not taken into account by lobby lenders and repurchasers when completing income-based appraisals for properties with accessory apartments.

The most prominent recommendation of the 2018 report by the Urban Land Institute, U.C. Berkeley, and University of Texas at Austin was to focus efforts on making "loans for ADU projects more accessible to more homeowners."⁸¹ To do this, cities have:

- Worked with banks to ensure they would lend to accessory unit projects;
- Provided interest-free loans or forgivable grants; and
- Created an accessory apartment financing guide.

Still, "to date, no city has developed a comprehensive and fully effective approach to assisting homeowners with financing" accessory apartments.⁸² One potential option could be to "create a lending program that uses... rental income as a direct source of security for a... construction loan."⁸³

2. Increase outreach, education, and technical assistance.

The second most common reason homeowners decide not to pursue the development of an accessory apartment is that they "change their mind." This could be attributable to many factors, but is likely to be due to a lack of professional assistance from local government. Public outreach and education can take on many forms, such as quarterly information sessions, marketing campaigns, and providing information on how to schedule one-on-one meetings with staff. In a survey of homeowners in the Pacific Northwest who were originally denied a permit, 20 percent wished they had had an easy-to-understand and comprehensive guide through the entire process.⁸⁴ This would be relieved by DHCA developing a manual, which could include:

- How to determine eligibility;
- Easy to understand and in-depth explanation of the permitting and applicant process;
- Design concepts that allow applicants to receive permits in an expedited manner;
- Architecture guidelines to help applicants make the design more compatible with their home;
- Zoning regulations relevant to accessory apartments; and
- Other resources, contacts, and frequently asked questions.

3. Eliminate conditional use.

Since 2013, there have been no CU applications to allow detached accessory apartment in AR, R, or RC Zones, meaning that the lengthy CU application process has only been used for the Hearing Examiner to

⁷⁹ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Brown, Martin John. 2012. *A research and action agenda for Accessory Dwelling Units and their advocates*. January 10. <https://accessorydwellings.org/2012/01/10/a-research-and-action-agenda-for-accessory-dwelling-units-and-their-advocates/>.

⁸³ Ibid.

⁸⁴ Chapple, Karen, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. 2018. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learning from Portland, Seattle, and Vancouver*. Urban Land Institute.

make a waiver decision. For this reason, OZAH recommended in a 2017 memorandum to the Planning, Housing, and Economic Development (PHED) Committee to eliminate the accessory apartment CU process and merge the waiver elements of the current CU process into a new Objection and Waiver process, which only takes 30 days from filing to hearing and eliminates the need for the Planning Department to review.⁸⁵

Under this recommendation and the currently introduced Zoning Text Amendment 18-07, "Accessory Residential Uses – Accessory Apartments," the objection proceedings "would remain unchanged, except for modifying the time limits from 5 days to 10 days to send out notice of the hearing and for modifying the date of the hearing from 20 days after filing to 30 days."⁸⁶

4. Apply uniform maximum floor area standards to attached and detached units.

When compared with the other jurisdictions analyzed, Montgomery County's maximum allowed floor area for internal and detached accessory apartments is on-par at 50 percent of the total floor area of the principal dwelling or 1,200 square feet, whichever is less. However, a maximum of 800 square feet for accessory apartments that are additions is a distinction not made by other programs and is thus more restrictive than successful programs. Therefore, it is recommended that Montgomery County apply the maximum floor area standards for internal and detached accessory apartments to additions, as well.

5. Provide amnesty for illegal apartments.

There is no indication for how many illegal accessory apartments exist in Montgomery County. An amnesty program would allow the owners of illegal units to come forward and bring their unit into compliance. This could be modeled after Barnstable's amnesty program, which makes the property owner agree to rent to those earning 80 percent or less of the area median income with a minimum lease term of one year. As mentioned above, the program uses CDBG funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade.

6. Relax the owner-occupancy requirement.

Relaxing the owner-occupancy requirement would allow homeowners to rent out the principal dwelling unit for a certain period of time. For example, the county could allow homeowners to rent out the principal dwelling for 30 days each year. This makes accessory apartment development more attractive to homeowners because it allows for flexibility. Relaxing or eliminating owner-occupancy requirements has been a trend in Portland and Vancouver, the two most successful accessory apartment programs analyzed.

7. Eliminate the on-site parking requirement for units within a certain distance of transit.

Relaxing or eliminating parking standards has been a trend in many cities, including Portland; Seattle; Austin; and Washington, DC. To support transit-oriented development, Montgomery County could consider implementing a regulation similar to that of Austin, which eliminates on-site parking requirements for units within a certain distance of transit. For example, Montgomery County could eliminate its on-site parking requirement for accessory apartment units within a quarter-mile of Metrorail stations.

⁸⁵ Grossman, Martin. 2017. *Issues Regarding Accessory Apartment Objections and Conditional Use Applications Filed Since FY 2014*. September 22.

⁸⁶ Ibid.

Conclusion

Montgomery County's accessory apartment production falls far behind the most successful programs in the country. As the county faces rising housing costs, a growing population, limited development space, and a higher share of non-family and senior households, a reliable stock of accessory apartments will become an increasingly important tool to maintain affordable living. To ensure that the accessory apartment program can be as effective as possible, Montgomery County can learn from jurisdictions with successful programs, especially Portland, Vancouver, and Santa Cruz. For the most impact, reforms should be focused on enabling the financing of accessory apartment development, relaxing requirements, and providing comprehensive, accessible information.

1. Offer homeowners assistance with financing development.
2. Increase outreach, education, and technical assistance.
3. Eliminate conditional use by passing ZTA 18-07.
4. Apply uniform maximum floor area standards to attached and detached units.
5. Provide amnesty for illegal apartments.
6. Relax the owner-occupancy requirement.
7. Eliminate on-site parking requirements within a certain distance of transit.

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