


**Introduction**

**MEMORANDUM**

January 11, 2019

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

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

PURPOSE: No vote required – Introduction

Zoning Text Amendment (ZTA) 19-01, lead sponsor Councilmember Riemer, is scheduled for introduction on January 15, 2018. ZTA 19-01 would delete many of the current restrictions on having an accessory apartment.<sup>1</sup>

ZTA 19-01 would:

- 1) allow detached accessory apartments as a limited use in R-200, R-90, and R-60 zones (within Residential Zones, detached accessory apartments are currently only allowed as a limited use in RE-1, RE-2, and RE-2C zones);
- 2) require 2 off-street parking spaces (3 spaces are currently required if 2 off-street parking spaces are required for the principal dwelling);
- 3) allow an accessory apartment in a basement (accessory apartments are currently allowed in a cellar);
- 4) change the measure of the size of an accessory apartment from 50% of gross floor area to 50% of habitable floor area;
- 5) delete the absolute maximum size of an accessory apartment (the absolute maximum size is currently 1,200 square feet);
- 6) delete the maximum size of an addition that can be used as an accessory apartment (currently limited to 800 square feet);
- 7) delete the requirement that the unit must be in a structure that is at least 5 years old;
- 8) delete the distance requirement between accessory apartments (currently 500 feet in large lot zones and 300 feet in smaller lot zones);
- 9) allow an accessory structure built before May 31, 2012 to be used as an accessory apartment without regard to setbacks;
- 10) specifically require the owner of the site of the accessory apartment to live on the site (this is consistent with licensing requirements); and

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

11) delete the requirement that a detached accessory apartment be on a lot at least 1 acre in size.

A public hearing concerning ZTA 19-01 is scheduled for February 26 at 7:30 p.m.

This packet contains  
ZTA 19-01

© number  
1 – 8

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Zoning Text Amendment No.: 19-01  
Concerning: Accessory Residential  
Uses – Accessory  
Apartments  
Draft No. & Date: 1 – 1/10/19  
Introduced:  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

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

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Lead Sponsor: Councilmember Riemer

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

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

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

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

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*

***Double underlining** indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

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

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

2   **Division 3.1. Use Table**

3   \* \* \*

4   **Section 3.1.6. Use Table**

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

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

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

8   \* \* \*

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

10   **Division 3.3. Residential Uses**

11   \* \* \*

12   **Section 3.3.3. Accessory Residential Uses**

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

14       **1. Defined, In General**

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

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

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

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

47 dwelling, including any floor area used for an Accessory  
48 Apartment in the cellar of the principal dwelling[, or  
49 1,200 square feet, whichever is less];

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

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

59 v. the principal dwelling or accessory apartment must be the  
60 primary residence of the applicant for an accessory  
61 apartment rental license.

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

67 e. In the Agricultural and Rural Residential zones, an Accessory  
68 Apartment is excluded from any density calculations. If the  
69 property associated with an Accessory Apartment is  
70 subsequently subdivided, the Accessory Apartment is included  
71 in the density calculations.

72 f. Screening under Division 6.5 is not required.

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

75 **B. Attached Accessory Apartment**

76 **1. Defined**

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

81 **2. Use Standards**

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

86 [a. A separate entrance is located:

- 87 i. on the side or rear of the dwelling;  
88 ii. at the front of the principal dwelling, if the entrance  
89 existed before May 20, 2013; or  
90 iii. at the front of the principal dwelling, if it is a single  
91 entrance door for use of the principal dwelling and the  
92 Attached Accessory Apartment.]

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

96 [c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached  
97 Accessory Apartment is located at least 500 feet from any other  
98 Attached or Detached Accessory Apartment, measured in a line  
99 from side lot line to side lot line along the same block face.]



- 100 [d. In the RNC, R-90, and R-60 zones, the Attached Accessory  
101 Apartment is located at least 300 feet from any other Attached  
102 or Detached Accessory Apartment, measured in a line from side  
103 lot line to side lot line along the same block face.]  
104 [e. Under Section 29-26(b), the Hearing Examiner may grant a  
105 waiver from the parking and distance separation standards.]

106 **C. Detached Accessory Apartment**

107 **1. Defined**

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

113 **2. Use Standards**

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

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

123 [b. A Detached Accessory Apartment built after May 30, 2012  
124 must have the same minimum side setback as the principal  
125 dwelling and a minimum rear setback of 12 feet, unless more

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

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

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

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

136 \* \* \*

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

139

140 This is a correct copy of Council action.

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