

**MEMORANDUM**

March 14, 2019

TO: Planning Housing and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst *JZ*

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

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

**Expected Participants:**

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

**Expected Agenda:** The Committee Chair would like to review the issues surrounding accessory dwelling units before approaching any recommendations that the Committee may wish to make to Council. The Committee may make recommendations at its next worksession on March 28.

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

The **Background** section of this memorandum is unusually long. It is an attempt to give the Council as complete a picture as possible of the status of ADUs and their treatment in the development process. It includes newly compiled information from Planning Staff. It also includes research and information from

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

around the country. Staff recognizes that, for some readers, it might be their first exposure to ADU issues. With that in mind, the **Background** section is as short and as comprehensive as staff could make it.<sup>2</sup>

The **Issue** section reviews all changes proposed in ZTA 19-01, alternatives to those proposed changes, and actions the Council may wish to consider in future Bills.

### **Summary of ZTA 19-01 as Introduced**

ZTA 19-01 would:

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

### **Executive Recommendation**

The County Executive recommends that the Council not proceed with the approval of ZTA 19-01. He recommends retaining the current standards for ADUs while other options are explored and the effects of the recently-enacted (October 2018) changes to the ADU approval process manifest themselves. As proposed, the Executive sees some unintended consequences of ZTA 19-01. He fears that ZTA 19-01 would add sprawling density in areas of the County that are not well served by transit. He views the real housing crisis as affordability—particularly for households at 30% AMI—not the slow rate of housing growth. The Executive notes that ZTA19-01 does not address the cost of building an ADU and the rent the homeowner charges.

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<sup>2</sup> “Let your discourse with men of business be short and comprehensive.” George Washington

## **Planning Board and Planning Staff Recommendation**

The Planning Board and Planning staff agree with the sponsor of ZTA 19-01 in recognizing the importance of increasing the supply of accessory dwelling units in the County while also working to minimize any negative impacts on residential neighborhoods. The Planning Board recommended two modifications; the second recommendation was also recommended by Planning staff:

- 1) Create a simplified process that objectively accounts for the ability to park along a street based on minimum street widths or minimum frontage widths; and
- 2) Limit the provision to allow any structure existing before May 31, 2012 to be used as an accessory apartment without regard to setbacks, to those buildings that were LEGALLY constructed.

## **Council Public Hearing**

The Council conducted a public hearing on February 26, 2019. Those residents advocating absolute support or absolute opposition could all have worn the same t-shirt: "The End is Nigh."

Supporters see reduced standards for permitting ADUs as an essential part of the answer for providing moderate cost housing. A failure to approve ZTA 19-01 would, in their opinion, deprive aging homeowners of the only means of being able to afford to stay in their homes. Families wishing to provide some privacy to their aging relatives would be deprived of the opportunity for proximity to intergenerational relationships. Summary: failure to approve ZTA 19-01 will mean the end is nigh.

The opponents see the destruction of their investment in quiet single-unit neighborhoods with the inability of the County to enforce any regulations. Opponents envisioned so many houses turned into two dwellings that parking would be impossible, emergency vehicles would be unable to navigate local streets, and schools would be overcrowded. The elimination of a limit on the maximum size of an ADU will create uncontrolled water runoff and more buildings than backyards. Summary: failure to disapprove ZTA 19-01 will mean the end is nigh.

Representatives from the Sierra Club, the Coalition for Smarter Growth, Habitat for Humanity Metro Maryland, the Housing Initiative Partnership, and the Affordable Housing Conference believe that accessory units offer a sustainable form of cheaper housing at no cost to the County. In their opinion, these units meet the needs of intergenerational families and homeowners who could use the extra income. The League of Woman Voters sees many benefits of these units to both the homeowner and the ADU resident: the homeowner benefits through extra income and, maybe, if both parties desire, assistance with chores and companionship. A convenient affordable place to live benefits the resident. The Maryland Building Industry Association believes that ZTA 19-01 will allow residents and homeowners to: support housing affordability; enhance opportunities for aging in place; encourage housing variety; and allow diverse and talented employees to live in the County in which they work. The Commission on Aging supports the spirit of ZTA 19-01 without taking a position on all of the technical changes. The Town of Brookville, a jurisdiction that has 31 principal dwellings plus ADUs, thought that the County would benefit from the approval of ZTA 19-01.

There is testimony, especially in the Council's email record, to delay voting on ZTA-19-01 until the Council: 1) gathers more input from residents; 2) assesses the differences between ZTA 19-01 and the practices in other jurisdictions; 3) gives time to see if the changes to the ADU law in ZTA 18-07 affects applications; and 4) evaluates potential unintended consequences of ZTA 19-01 as introduced.

The Village of Chevy Chase Section 3 finds ZTA 19-01 to be a stealth means of ending single-family zoning to the County's detriment. The Cherrywood Homeowners Association recommended rejecting the ZTA. North White Oak Civic Association opposed the approval of ZTA 19-01 until an effective inspection and enforcement regime is instituted. Kensington Heights Civic Association, in the spirit of proceeding cautiously, does not recommend proceeding with ZTA 19-01 at this point.

The Council's record includes requests to not go quite as far in removing restrictions on ADUs as ZTA 19-01 does.<sup>3</sup> Parking was the most-often mentioned concern. The combination of proposals in ZTA 19-01 was a concern expressed in some testimony. Some believe that the removal of the minimum distance between ADUs, the elimination of a minimum lot size, and an allowance for detached units in small lot zones will lead to so many units that the character of the neighborhood will be changed. In the opinion of some of the residents who testified, the removal of both the restriction on new front entrances and the allowance for new construction of the principal unit and the ADU will lead to too many front doors (duplexes) in what was a single-unit zone. The president of the Fallsreach Homeowners Association wanted any change to ADU provisions to recognize HOA covenants.

## **Background**

*What is an accessory dwelling unit?*

An ADU is a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-unit home. The concept of an ADU is to have an additional complete residence—meaning a place for sleeping, bathing, and eating independent of the primary home.

*What are the barriers to ADUs?*

According to a survey of accessory unit owners in Portland, Seattle, and Vancouver, the biggest barriers to having ADUs for homeowners are: (1) zoning and permitting; (2) a lack of capital; and (3) being intimidated by the process. The top three factors that lead homeowners to initiate the applicant process are: (1) the easing of land use rules; (2) obtaining enough money to begin; and (3) learning about accessory units through an educational website or events.

It costs money to create an ADU.<sup>4</sup> Average costs were \$216,000 for a new detached structure and \$136,000 for an attached unit. An ADU must have a separate entrance, a kitchen, and a bathroom. Assuming a 30-year loan at 5% interest, the principal and interest costs for a \$200,000 mortgage would be \$1,073 a month (\$1,319 for a 20-year mortgage at the same interest rate). Market rents would have to exceed any financing cost.

*Why reduce barriers to ADUs?*

Attached and detached ADUs all have the potential to increase housing affordability (both for homeowners and tenants), create a wider range of housing options within the community, enable seniors to stay near their families, and facilitate better use of the existing housing fabric in established neighborhoods.

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<sup>3</sup> The Town of Chevy Chase and the Greater Colesville Citizens Association.

<sup>4</sup> [www.buildinganadu.com](http://www.buildinganadu.com).

Across the United States, communities are experiencing challenges to building the housing they need to maintain affordability and accommodate future growth. A separate dwelling in existing dwellings, or separate detached dwellings embedded within single-unit residential properties, are seen as an effective solution due to their low cost and immediate feasibility. California researchers suggest that such small-scale infill development could account for as much as half of new development capacity in coming decades.

Many cities and counties permit ADUs in one or more single-unit zoning districts by right, subject to use-specific standards. Common provisions include an owner-occupancy requirement (for one of the two dwellings), dimensional and design standards to ensure neighborhood compatibility, and off-street parking requirements. Other relatively common provisions include minimum lot sizes and limits on the number of occupants or bedrooms.

Senior homeowners can supplement their income by constructing and renting out an ADU. Alternatively, ADUs can serve as a more affordable housing option for seniors and potentially a source of intergenerational living. Grandparents can stay on site or be relocated on site. Live-in health or childcare care providers can get privacy in their living arrangements. ADUs can provide a source of affordable housing with a modest impact on the neighborhood.<sup>5</sup>

To meet the needs of older residents, the Planning Department recommended an examination of current County ordinances and policies to remove barriers to ADU development. In its opinion, potential provisions that might be amended include placement, apartment size, building characteristics, parking requirements, owner-occupancy (i.e., allow homeowner to live in primary or accessory unit), and the minimum age of the primary structure.<sup>6</sup>

*What actions has the Council taken to change ADU requirements?*

ZTA 18-07 and Bill 26-18 became effective at the end of October 2018. These Council actions relaxed the standards for approving ADUs by allowing accessory apartments as a limited use (rather than the more restrictive conditional use). The ZTA allowed and the Bill created a waiver process for anyone seeking relief from the on-site parking and distance separation standards.

When accessory dwelling units were first allowed, all such units had to be approved as special exceptions. (The 2014 Zoning Ordinance Rewrite renamed the special exception process; this process is now called “conditional use” approval.) ZTA 12-11, approved by the Council on February 5, 2013, changed that requirement. The ZTA allowed ADUs under certain conditions without requiring conditional use approval. ZTA 12-11 required a conditional use approval only when some attributes were not present. The current requirement for on-site parking spaces and detached and attached size limits, and prohibition on allowing ADUs at the initial construction of the principal dwelling, were discussed and approved at that time. The occupancy of the ADU was changed from three people to not more than two adults; the number of minors is not limited.

Specific amendments made by the Council to ZTA 12-11 were to:

- 1) repeat the standards in Bill 31-12 for the Hearing Examiner and the Board to find inadequate on-street parking in the course of the conditional use process;

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<sup>5</sup> “Meeting the Housing Needs of Older Adults in Montgomery County”, Montgomery Planning M-NCPPC, May 2018.

<sup>6</sup> Ibid.

- 2) limit the amount of a new addition that could be used for an ADU to no more than 800 square feet of floor area;
- 3) limit the total floor area of an ADU to a maximum 1,200 square feet but no more than 50% of the dwelling;
- 4) require the principal dwelling to be at least 5 years old when any application for an ADU is made; and
- 5) make the effective date of the ZTA May 20, 2013, to coincide with the effective date of Bill 31-12.

In 2004, the Council considered a ZTA introduced at the request of the Executive, to remove the minimum distance requirements between ADUs. The proposal would have replaced a distance separation with a limit on the percentage of ADUs that may be approved in any neighborhood (15%). The Council did not approve the Executive's suggestion.

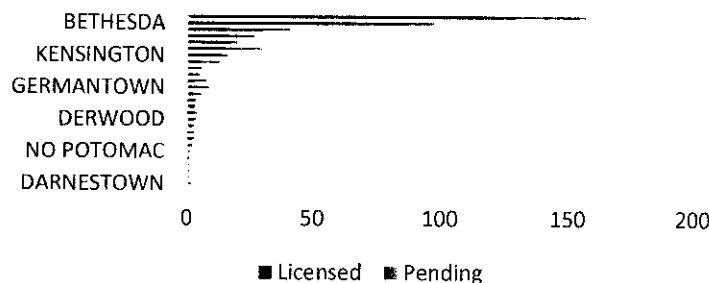
In 2003, the Council considered removing the 1,200 square foot maximum size for an accessory dwelling. It declined to do so for attached units but adopted a different rule for detached units. The maximum floor area for a separate existing accessory structure was limited to less than 50% of the total floor area of the main dwelling, or 2,500 square feet, whichever is less. The minimum lot size for a detached unit at that time was 2 acres.

*What is the status of Accessory Dwelling Unit approvals?*

As of February 25, 2019, there are 207 class 3 accessory dwellings (including 28 pending licenses).

There are an additional 203 from the conditional use/special exception process that was in place prior to the 2012 update (201 licensed, 2 pending). Also, there are 58 "pending" registered living units. There are 468 total accessory dwellings and registered living units (408 excluding registered living units). This includes licensed and pending.<sup>7</sup>

*Licensed and Pending\* Accessory Apartments by Community (as of 2/19)*



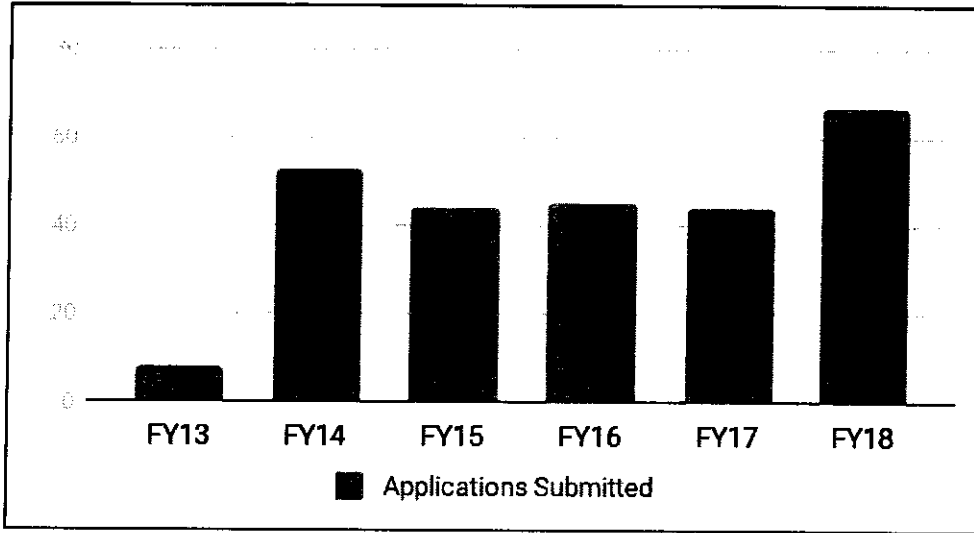
\*Pending includes conditionally approved. Pending status means that the owner has not paid renewal license fees or has failed to update license requirements (lead paint, signed affidavits, etc.). These units were in compliance when they were licensed but have not kept current.

<sup>7</sup> <http://mcgov-gis.maps.arcgis.com/apps/webappviewer/index.html?id=8c36d802eae4f2193e524031d089cac>.

Submitted Applications

Since May 2013, there have been 258 applications submitted to DHCA. Of those, 158 or 61 percent were approved.

*Total Accessory Dwelling Applications Submitted*



Number of ADUs located within ½ mile of Metro/Purple Line station: 47 – 10%  
Number of ADUs located within 1 mile of Metro/Purple Line station: 141 – 30%  
Number of ADUs located within the beltway: 149 – 32%

*Do ADUs address racial equity?*

The sponsor notes that ADUs were viewed through a racial equity toolkit perspective in Seattle (almost 3,000 units):

When considering actions that the City [of Seattle] could take to make it easier for people to build accessory dwelling units (ADUs), we want to understand how the policy might increase or decrease racial disparities. What we learned through both the environmental review and [Racial Equity Toolkit] RET process is that removing regulatory barriers in the Land Use Code will help us achieve the objective of increasing the number and variety of housing choices in single-family zones. This change would have a positive impact on affordability and decrease potential economic displacement because the additional housing supply could marginally reduce upward pressure on rents and housing prices. In addition, we learned that proposed Land Use Code Changes could result in fewer teardowns of existing single-family homes, which could reduce the potential for physical displacement in these neighborhoods.<sup>8</sup>

<sup>8</sup> [http://seattle.legistar.com/View.ashx?M=F&ID=6669924&GUID=CC73E51B-84BB-478F-B325-93BA05E03F2B&fbclid=IwAR39tiWg8PIGCNpiwP52q4WNft1P561T0I5RNj9qIB3\\_m5nt4Tkje9HDz14](http://seattle.legistar.com/View.ashx?M=F&ID=6669924&GUID=CC73E51B-84BB-478F-B325-93BA05E03F2B&fbclid=IwAR39tiWg8PIGCNpiwP52q4WNft1P561T0I5RNj9qIB3_m5nt4Tkje9HDz14).

Seattle’s RET and a related environmental review were developed after the city faced a challenge to a Hearing Examiner by a civic association. The association claimed that the virtual elimination of all ADU requirements was an attempt by the city to eliminate single-family neighborhoods without an environmental impact analysis. The city was ordered to conduct an

Planning staff reviewed the demographic data in the Seattle Racial Equity Tool Kit and produce an attachment to this memorandum titled, “Selected Demographic Characteristics on Housing, Race, and Income in Montgomery County.” The following paragraphs summarize that information to identify statistical racial differences in aspects of rental housing. The racial and rent attribute of the ADUs in the County are not known. The statistics are for the entire County.

The non-white population accounts for 56% of the total population. That same population accounts for 25% of the owner-occupied population. Minority populations are disproportionately found in rental housing. Statistically, County minority residents find more opportunities in rental housing than in owner-occupied housing.

White non-Hispanic households live mostly in single-unit dwellings (59%). Most populations of color live in structures with more than one unit in the structure (65%). Statistically, minority households are not living in single-unit housing in proportion their percentage of total households.

The median income of homeowners (\$131,723) is significantly higher than the income of households that are renting (\$62,290). White non-Hispanic income for all households is \$125,078; Black, Indian, and Hispanic household income is between \$71,847 and \$76,076. Asian household median income is \$109,147. Statistically, lower-income populations live in rental housing.

	<b>Average Monthly Rent Charged (All Housing types)<sup>9</sup></b>
Efficiency	\$1,367
One-Bedroom	\$1,479
Two-Bedroom	\$1,714
Three-Bedroom	\$1,993
Four or more Bedrooms	\$1,878

Overall, about 8.6% of the Montgomery County older adult population (about 21,400 individuals) lives in a multigenerational household, with African American, Asian and particularly Hispanic seniors more likely to reside in multigenerational homes. About one in five Hispanic residents age 55 and older lives in a multigenerational home.<sup>10</sup>

ZTA 19-01’s effect on the number of future single-unit dwellings demolished is unknown. The ZTA promotes retaining structures by more liberally allowing attached ADU in existing dwellings. This could provide economic support for aging homeowners to stay in place. It removes some incentive to sell to a new owner who may want to tear the unit down. On the other hand, the ZTA would also remove the prohibition of including an ADU in a new structure.

Even though rental housing is disproportionately used by minority households, the racial equity attributes of ADUs will depend on two factors: 1) the availability of ADUs for rent on the open markets—units not

environmental impact study on the proposal, including a study of racial equity impacts. <https://www.theurbanist.org/2016/12/13/adu-law-needs-eis/>.

<sup>9</sup> CountyStat, April 2018. DHCA does not have reliable, current rent data for ADUs. The License and Registration Section only collects the amount charged for rent at time of initial license application (except Multifamily rental properties). Rent information is not collected annually.

<sup>10</sup> “Meeting the Housing Needs of Older Adults in Montgomery County”, Montgomery Planning M-NCPPC, May 2018.



reserved for extended family members of the principal dwelling's owner; and 2) the rent charged for the ADUs. The property owner will benefit to the extent that ADUs increase the improved value of the property. Property owners are disproportionately non-minority households. This attribute was noted by the Executive:

Viewed through an equity lens, the benefits associated with relying heavily on ADUs to increase the rental housing stock can disproportionately accrue to wealthier households who can afford to build them, while failing to serve those already cost-burdened by rents.

*Does the County have a shortage of rental housing as indicated by rental cost increases over time?*

Rent increases in the County for the past nine years or so average 2.4% per year. This is higher than the average annual CPI-U, which has an average of less than 2%.

Year	Low Rise	Garden	Mid-Rise	High-Rise	Montgomery County
2010	\$1,051	\$1,275	\$1,473	\$1,761	\$1,418
2011	\$1,060	\$1,292	\$1,500	\$1,777	\$1,441
2012	\$1,088	\$1,308	\$1,552	\$1,881	\$1,493
2013	\$1,105	\$1,336	\$1,608	\$1,914	\$1,537
2014	\$1,142	\$1,371	\$1,686	\$1,971	\$1,595
2015	\$1,163	\$1,385	\$1,695	\$1,971	\$1,607
2016	\$1,199	\$1,401	\$1,722	\$1,958	\$1,626
2017	\$1,215	\$1,409	\$1,722	\$1,955	\$1,631
2018	\$1,228	\$1,474	\$1,802	\$2,005	\$1,698
2019 YTD	\$1,230	\$1,485	\$1,804	\$2,042	\$1,709

In places with acknowledged rental housing shortages, the rate of rental price increases was more than 2-3 times the County's rate of increase. For the past 8 years, Seattle rents increased by 9.5%;<sup>11</sup> Portland, Oregon 8.0%;<sup>12</sup> Palo Alto 6.4%;<sup>13</sup> and Denver 6.0%.<sup>14</sup>

In his comments on ZTA 19-01, the Executive submitted the following information to the Council:

...the ZTA can't address two other major problems: the high cost of building an ADU (widely recognized as the biggest impediment) and the amount of rent the homeowner charges for the unit. Because of the high cost of construction, ADU rents - while lower than those for a single-family home - are not low enough to be affordable to households with lower incomes.

*Do changes to zoning for ADUs affect municipalities?*

Clearly, municipalities with their own zoning authority (Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove) are not affected by any changes to County zoning. Under Section 20-209 of the State Land Use Article, other municipalities may:

<sup>11</sup> <https://www.rentjungle.com/average-rent-in-seattle-rent-trends/>.

<sup>12</sup> <https://www.rentjungle.com/average-rent-in-portland-or-rent-trends/>. A bill for statewide rent control in Oregon is on the Governor's desk for signature. The bill would limit rent increases to 7 percent each year, in addition to inflation. Subsidized rent would be exempted, as would new construction for 15 years. If tenants leave their residences of their own volition, landlords would be able to increase the rent without a cap.

<sup>13</sup> <https://www.rentjungle.com/average-rent-in-palo-alto-rent-trends/>.

<sup>14</sup> <https://www.westword.com/news/denver-rent-up-48-percent-since-2010-only-the-bay-area-is-worse-10187175>.

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

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

A municipality may have more restrictive conditions under any of these topics.

### *How are ADUs treated regarding fire codes?*

The Department of Permitting Services (DPS) considers an attached ADU as an alteration. Sprinklers are not required in an alteration project if the principal dwelling does not have sprinklers. Under the International Residential Code Section 313.2:

...an automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential sprinkler system.

DPS staff applies the code as written and consistently. Within the same residential building, DPS staff uses the same approach for the principal dwelling unit and the accessory unit.

A detached garage is an accessory structure. It is not a residential building. If a garage is converted to an ADU, it would be a residential building. Garages converted to ADUs are required to have an automatic residential sprinkler system. Any new detached ADU would be required to have an automatic residential sprinkler system. Sprinklers are required in these buildings even if the principal unit does not have sprinklers.

Second floor accessory apartments must have a safe, unobstructed means of escape leading to open space at ground level—a unit door with exterior stairs leading to the ground with no obstructions.

Every basement or cellar ADU must have a door leading to ground level open space and an escapable window in any sleeping area.<sup>15</sup>

<sup>15</sup> Montgomery County, Code of County Regulations, Chapter 26. Housing and Building Maintenance Standards - Regulation 26.00.02. Standards for Accessory Apartments.

Safe, unobstructed means of escape leading to safe and open space at ground level requires:

- (1) Every sleeping room must have at least one openable outside window or exterior door for emergency egress or rescue. The window must:
  - Be at least 5 square feet in net clear opening;
  - Be openable without the use of a tool;
  - Have a minimum net clear opening height of 22 inches and a minimum net clear opening width of 20 inches; and
  - Have the bottom of the opening not more than 44 inches above the floor.
- (2) A second exit path, by door or stairway, must provide a clear path of access to the outside. The minimum width for a hallway or escape access, and for a basement stairwell used as an exit path is 22 inches.
- (3) Bars, grilles or screens over escape windows must be releasable or removable from the inside without the use of a key, tool or excessive force.
- (4) Window well dimensions for an escape window must be:
  - At least 36 inches from the wall of the house along all points of the back wall of the well;
  - At least the greater of 36 inches or the width of the opening in the foundation wall;
  - No deeper than 44 inches unless at least one wall is a graduated and climbable slope or steps for escape and access; and

*When an occupancy permit is obtained for the ADU, is the property owner being charged for impact taxes or Sewer Development Charges (SDC)?*

DPS has not charged impact taxes for ADUs.<sup>16</sup> Sewer Development Charges (SDC) would only be assessed if the connection or meter size needed to be increased and the property was not previously subject to SDC. It is highly likely that a house with a water connection pipe of ¾ inch or less would require an increased connection. (A submeter could be installed at the homeowner's option.) Houses built after 1975 were required to have at least a 1-inch connection.

A detached structure is always subject to SDC. On a residential property, a main house and a guest house could be served by one single connection; however, the detached structure would still be subject to SDC.

*What does DHCA do to enforce code provisions for ADU licensing and Registered Living Units (RLUs)?*

DHCA initially inspects accessory apartments and then re-inspects units during change of ownership or if complaints are filed. DHCA does not have the staffing capacity to inspect these units more frequently.

The Registered Living Units were a part of the old zoning designation that was removed during the new Zoning Ordinance Rewrite. RLUs do not require a rental license (or rental fee). DHCA recently reviewed all RLUs (nanny suite or family occupancy, where no rent is being charged) for ownership changes. When ownership changes, the owner must either eliminate the unit or the new owner must apply for an ADU license. DHCA reviewed about 100 changes in ownership in the past year.

If DHCA finds that an accessory unit is unlicensed, it requires the owner to apply for a license or to eliminate the unit. To "eliminate" the unit, the owner would remove one of the components that makes it a dwelling unit. For instance, the owner could remove the cooking appliances and cap the power source. If DHCA receives a complaint for an illegal rental after the Department ordered the unit to be "eliminated", DHCA would issue a citation.

*What is the relationship between ADUs and short-term rentals?*

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

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- The top of the walls of the window well must not be higher than the dwelling unit ceiling.
  - (5) Sleeping rooms must not be used as the only means of access to other sleeping rooms or habitable space.
  - (6) No stove or combustion heater may be located so as to block escape in case of fire arising from a malfunction of the stove or heater. Exit stairs must not be located over a furnace.

<sup>16</sup> Planning Staff matched all ADUs (468 units; licensed, grandfathered, and pending) and found that the number of school age children from ADUs and their principal dwellings was **slightly less** than the average number of children coming from single-unit dwellings that do not have an ADU. The exclusion provision for impact taxes reads as follows:

Under section 51-41(h) Imposition and applicability of development impact taxes, the development impact tax does not apply to:

- (1) any reconstruction or alteration of an existing building or part of a building that does not increase the gross floor area of the building;
- (2) any ancillary building in a residential development that:
  - (A) does not increase the number of dwelling units in that development; and
  - (B) is used only by residents of that development and their guests, and is not open to the public...

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

## Issues

### 1) *What impact will ZTA 19-01 have on the number of ADUs in the County?*

The only thing clear about ZTA 19-01 is that it would allow for ADUs on more lots. Under ZTA 19-01, approximately 132,200 lots would become eligible for detached ADUs. Of those, 121,100 could fit a detached ADU on the property (given setbacks, lot coverage standards, and the area required for a small building).<sup>17</sup>

Aside from zoning, the costs of creating ADUs is the biggest barrier to their creation. The cost of establishing such a unit would require significant new construction, even if the unit is in a detached garage (electrical and plumbing extensions; HVAC connections or new equipment). The average cost for a detached structure was \$294 per square foot in one study of ADUs; the average cost to build over a garage was \$190 per square foot.<sup>18</sup> ZTA 19-01 would not in and of itself significantly lower the costs to create an ADU.

ZTA 19-01 would also not ease the transition from being a homeowner into being a homeowner **and** a landlord. The financial incentives to build an ADU will remain about the same with or without the approval of ZTA 19-01.<sup>19</sup>

By increasing the number of possible places an ADU may be licensed, ZTA 19-01 will likely cause an increase in the number of applications from the current 60 per year. There is no evidence that it will reach the 600 per year levels of Portland, Oregon. (In Portland, ADUs represent 1.3% of housing stock.)

There is no evidence in the legislative record to give an estimate between 60 and 600 per year. The effects of the Council's approval of ZTA 18-07 to relax the standards for approving ADUs by allowing ADUs as a limited use (rather than the more restrictive conditional use) are unknown.

**The Council has been asked to consider postponing action on ZTA 19-01 until the effects of ZTA 18-07 (allowing all ADUs as a limited use) are known.** That would be consistent with a "go slow" approach.

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<sup>17</sup> The following splits the 121,100 total eligible units by zone.

R-200 37,900 lots;

R-90 28,200 lots, of which 10,400 are larger than 12,000 square feet; and

R-60 55,000, of which 12,900 are larger than 9,000 square feet.

<sup>18</sup> [www.buildinganadu.com/cost-of-building-an-adu](http://www.buildinganadu.com/cost-of-building-an-adu).

<sup>19</sup> The reduced parking requirement and the possibility of a front entrance may marginally reduce costs.

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

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

All accessory structures in R-200, R-90, and R-60 zones are limited in their footprint size to 50% of the footprint of the principle dwelling or 600 square feet, whichever is greater. This provision, in addition to the maximum floor area provisions for ADUs, will assist in minimizing any visual impacts of detached ADUs in the smaller lot Residential zones.

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

The minimum side setbacks are 12 feet in the R-200 zone and 8 feet in the R-90 and R-60 zones. The minimum rear setback is 30 feet in the R-200 zone, 25 feet in the R-90 zone, and 20 feet in the R-60 zone. Setbacks may be increased by two feet for every one foot in the building height of the accessory structure over 15 feet.<sup>20</sup>

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

In the opinion of the Executive:

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

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

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

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

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<sup>20</sup> Under ZTA 19-01, a pre-existing detached garage may be converted into an ADU, but the structure may not be increased in height above 15 feet if it lacks the code-required setback.

**If the Council desires to expand the possibilities for detached ADUs in small lot zones, the Council may wish to consider:**

- 1) allowing detached ADUs as a conditional use in small lot zones;**
- 2) having a minimum lot size for ADUs larger than that is than the minimum for lots in the zone;**
- 3) limiting the building heights of detached ADUs; and**
- 4) retaining the maximum size limit for a detached ADU.**

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

Zoning regulates minimum lot size. In the zones where ADUs are allowed as a limited use, all of the minimum lot sizes are at least 1 acre. ZTA 19-01 would allow detached units in the R-200, R-90, and R-60 zones. The current minimum lot size for a detached ADU is 1 acre.<sup>21</sup> The minimum size matches the minimum lot size in the zones where detached accessory units are allowed (RE-1 RE-2, Rural and Agricultural zones). The minimum lot size currently applies to all zones. ZTA 19-01 would allow detached ADUs in small lot zones. There are very few R-90 and R-60 lots that are 1 acre or larger.

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

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

**Assuming the Council agrees with deleting the requirement for a minimum distance between ADUs and does not establish a maximum percentage of ADUs in a neighborhood, Staff recommends a minimum lot size of 20,000 square feet in the R-200 zone (37,900 lots added to the potential for detached ADUs), 12,000 square feet in the R-90 zone (10,400 lots out of a possible 28,200) and 9,000 square feet in the R-60 zone (12,800 lots out of a possible 55,000) for detached ADUs.**

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

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

Rents generally increase with unit size. The converse is also true. Given the same location and all required independent living elements (bathroom, cooking area, and sleeping area), the smaller the unit, the lower the rent.

Under California law, the size of an ADU attached to the main house is limited to a maximum of 1,200 square feet or half the size of the existing residence, whichever is smaller.<sup>22</sup> Detached units can't be larger than 1,200 square feet. Local jurisdictions may not increase the maximum size of these units.

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<sup>21</sup> Since 2003, the Council replaced a 2-acre minimum lot size with the current 1-acre minimum.

<sup>22</sup> In 2005, the average single-family house in the US was just above 2,400 square feet. <https://www.census.gov/const/C25Ann/sfttotalmedavgsqft.pdf>.

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

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

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

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

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

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

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

The distance separation provision prevents an over-concentration of ADUs. It provides space for on-street parking.<sup>23</sup> The Council received testimony reporting that over-concentration of ADUs was a concern and a real problem.

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

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

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<sup>23</sup> Distances between ADUs also means how much street frontage between ADUs. A separation of 500 feet in large lot zones, if also equal to the street front, is sufficient space for parking for approximately 20 cars (assuming 5 driveways and 20 linear feet for each car). A separation of 300 feet, if also equal to the street front, is sufficient space for parking for approximately 10 cars (assuming 5 driveways and 20 linear feet for each car).

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

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

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

The current code has the following requirement for ADU parking:

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

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

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

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

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

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

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



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

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

The Planning Board recommended creation of a simplified process that objectively accounts for the ability to park along a street, based on minimum street widths and minimum frontage widths. *The Council could reduce the parking standards as proposed as long as the confronting road is sufficiently wide for two lanes of travel and two lanes of parking (44 feet of paving width) or the house has at least 100 feet of road frontage.*

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

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

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

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

the maximum [gross] habitable floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar or basement, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling...

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

Habitable space is defined as “any room meeting the requirements in the Building Officials Conference of America Code as approved by the Montgomery County Council for sleeping, living, cooking or dining purposes, excluding such places as closets, pantries, bath or toilet rooms, hallways, laundries, storage spaces, utility rooms and similar spaces, and excluding rooms which are not heated.”<sup>24</sup>

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<sup>24</sup> The DHCA checklist for accessory apartment licenses says in part, “Every room must have at least one window which can be easily opened or such device as will adequately ventilate the room”; and “Every room occupied for sleeping purposes by one occupant must contain at least 70 square feet of floor area and must be at least 7 feet in width. Every room occupied for sleeping purposes by more than one person must contain at least 50 square feet of floor area for each occupant.”

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

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

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

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

**Staff recommends retaining the expression of the size limit as “gross floor area”.** (This recommendation is put in context at the end of issue 7.)

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

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

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

A basement is defined as follows:

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

In the opinion of Planning staff, the inclusion of the “basement” is unnecessary because a basement is already within the definition of gross floor area.<sup>25</sup> The problem is that, as introduced, the phrase “gross floor area” does not refer to the total area of the dwelling. It only refers to the size of the ADU.

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<sup>25</sup> Gross Floor Area (GFA): The sum of the gross horizontal areas of all floors of all buildings on a tract, measured from exterior faces of exterior walls and from the center line of walls separating buildings. Gross floor area includes:

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

Gross floor area does not include:

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

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

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

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

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

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

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

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

The existing provision was enacted to prevent a form of duplex housing at initial construction.<sup>26</sup> The intent statement for residential zones is to provide designated areas of the County for residential use at specific densities. The predominant use in Residential zones is a single-unit detached house. The Council vision in approving the older-than-5-year requirement was in line with an opinion written Justice William O. Douglas:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.<sup>27</sup>

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

There is a substantial amount of existing older single family homes in the County which are modest in size, such as one story ramblers, small two story homes, located in many areas of the County, e.g. Wheaton, Kensington, Silver Spring, Bethesda, etc. This existing housing stock sells or rents for much lower /more affordable prices than larger homes. Under ZTA 19-01, each of the lots on which these existing homes is located will be permitted to have two dwelling units. The market price of these properties will be driven upward as two dwelling units normally return more profit than one dwelling unit. The most likely scenario is that developers will buy the current lower priced housing, tear it down, construct a new principal dwelling and a new accessory dwelling,

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8. any floor space exclusively used for mechanical equipment for any Medical/Scientific Manufacturing and Production use.

<sup>26</sup> ADUs with two front doors leading to separate units is a form of duplex where one dwelling is twice the size of the other dwelling. Most duplexes are of equal size and are on their own unique lot.

<sup>27</sup> Village of Belle Terre v. Boraas , 416 U.S. 1 (1974).

with the principal dwelling unit selling for substantially more than the original property and the new accessory dwelling unit having rent well above the affordable level. Thus, the goal of ZTA 19-01 will not be achieved but it will do the opposite, decrease the amount of lower priced housing.

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

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

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

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

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

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

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

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

**Staff agrees with the Planning Board that the proposed exception to setback requirements should only apply to legally-built buildings.**

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

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

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

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

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

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

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

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

Both the Accessory Apartment licensing requirements under Section 29-19(b)<sup>28</sup> and the Zoning Ordinance require the principal dwelling or ADU to be the primary residence of the owner. **Staff recommends deleting the ownership resident requirement in the Zoning Ordinance and, if the Council wants changes to the requirement, making those changes in a Bill amending Section 29-19.**

A literature review found considerable support for an association between resident homeownership and improved property maintenance and longer lengths of tenure. The analysis of census data indicated less residential mobility and greater property value appreciation in areas with greater resident homeownership.<sup>29</sup> Owners tended to be higher in life satisfaction and self-esteem and more likely to be members of community improvement groups.<sup>30</sup> Schools benefit by the longer tenure of the owner's children and their higher school attainment.<sup>31</sup>

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

Portland (237,000 dwelling units, compared to 390,000 dwelling units in Montgomery County) repealed its owner-occupancy provision in 1998. Most communities with ADU programs have a provision requiring an owner to live on the property.<sup>32</sup> Portland has nearly 3,000 ADUs; the County has 458.

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<sup>28</sup> Attached.

<sup>29</sup> "Homeownership and Neighborhood Stability," Rohe and Stewart Housing Policy Debate, Volume 7, Issue 1 (1996).

<sup>30</sup> "The social benefits of homeownership: Empirical evidence from national surveys", Peter H. Rossi & Eleanor Weber. Published online, 31 Mar 2010.

<sup>31</sup> "A Note on the Benefits of Homeownership," Daniel Aaronson, Journal of Urban Economics, Volume 47, Issue 3, May 2000, Pages 356-369.

<sup>32</sup> Portland has about 2,900 ADUs and is getting 600 ADU applications a year. <https://accessorydwellings.org/2019/01/14/adu-permit-trends-in-portland-in-2017-and-2018/>.

A resident owner requirement does restrict who can have an ADU. According to the US Census Bureau, some 65% of dwelling units are owner-occupied.<sup>33</sup> Resident ownership provides neighborhood stability. It retains the accessory nature of an ADU. When a resident owner is absent, the ADU is not accessory to the owner's home; it is part of a commercial rental use.

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

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

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

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

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

The treatment of HOA restrictions was raised to the Council when it was dealing with provisions for short-term rental licenses. The Code requires an applicant for a short-term rental license to certify that the ADU is not prohibited by any homeowners association.<sup>34</sup>

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

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

- (1) a resident or owner of real property located within 300 feet of a licensed or proposed license;
- (2) the municipality in which the residence is located;
- (3) any applicable homeowners association, condominium, housing cooperative; or
- (4) the owner of the unit or the owner's rental agent, if the applicant is not the owner.<sup>35</sup>

<sup>33</sup> 65% percentage of owner-occupation is higher than the national average of 63.1%.

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

<sup>34</sup> Section 54-43.

<sup>35</sup> Section 54-46.

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

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

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

The building code definition for habitable space requires at least 50% of a habitable room to be 7 feet between the ceiling and the floor.<sup>36</sup> Height allows for air circulation, light, less confining space, and a measure of fire safety.

Some 15% of males are 6 feet or taller. Anyone taller than 6 feet who puts their arm straight up over their head would have their fingers at around 7 ½ feet. For tall people, a 7-foot ceiling is unusually confining. Most buildings have ceiling heights of at least 8 feet.<sup>37</sup>

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

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

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

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

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

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

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

- 2 Full Time Equivalent (FTE) (1 Program Manager I (\$100,000) and 1 Principal Administrative Aide (\$75,000)) dedicated solely to ADUs.

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<sup>36</sup> Section 26-5(d).

<sup>37</sup> Standard lumber and drywall are manufactured in 8-foot lengths.

- If a 50% per year increase in applications is assumed (the average of 57 applications increases to 165 in FY21) and the 50% per year increase continues past FY21, DHCA would need an additional FTE Program Specialist in FY22.

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

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

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

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

This packet contains

	<u>© number</u>
ZTA 19-01 revised with editorial changes	1 – 8
Planning Board recommendation	9 – 11
Planning staff recommendation	12 – 18
Executive recommendation	19 – 25
Selected demographic characteristics on Housing, Race, and Income in Montgomery County (Department of Planning)	26 – 29
A Racial Equity Toolkit on Policies for Accessory Dwelling Units – Seattle	30 – 41
Sec. 29-19. Licensing procedures.	42 – 43
Sec. 29-26. Appeals and Objections.	44
Sec. 54-43. Certification for a (Bed and Breakfast Short-Term Rental) License	45



Zoning Text Amendment No.: 19-01  
Concerning: Accessory Residential  
Uses – Accessory  
Apartments  
Draft No. & Date: 1 – 1/10/19  
Introduced: January 15, 2019  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

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

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Lead Sponsor: Councilmember Riemer

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

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

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

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

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

*ORDINANCE*

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

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										
		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	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		
* * *													

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

8    \* \* \*

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

10   **Division 3.3. Residential Uses**

11   \* \* \*

12   **Section 3.3.3. Accessory Residential Uses**

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

14       **1. Defined, In General**

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

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

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

- 22 a. Only one Accessory Apartment is permitted for each lot.
- 23 b. The Accessory Apartment was approved as a [conditional use]  
24 special exception before May 20, 2013 and satisfies the  
25 conditions of the conditional use approval[;] or [[the Accessory  
26 Apartment]] satisfies Subsection c.
- 27 c. [The] If the Accessory Apartment does not satisfy  
28 [[subsection]] Subsection b, the Accessory Apartment [is] must  
29 be licensed by the Department of Housing and Community  
30 Affairs under Chapter 29 (Section 29-19); and
- 31 i. the apartment [has] must have the same street address as  
32 the principal dwelling;
- 33 ii. 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 on  
65 a lot in an Agricultural or Rural Residential zone that includes a  
66 Farm Labor Housing Unit or a Guest House].
- 67 e. In the Agricultural and Rural Residential zones, an Accessory  
68 Apartment is excluded from any density calculations. If the  
69 property associated with an Accessory Apartment is  
70 subsequently subdivided, the Accessory Apartment is included  
71 in the density calculations.
- 72 f. Screening under Division 6.5 is not required.

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

75 **B. Attached Accessory Apartment**

76 **1. Defined**

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

81 **2. Use Standards**

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

86 [a. A separate entrance is located:

87 i. on the side or rear of the dwelling;

88 ii. at the front of the principal dwelling, if the entrance  
89 existed before May 20, 2013; or

90 iii. at the front of the principal dwelling, if it is a single  
91 entrance door for use of the principal dwelling and the  
92 Attached Accessory Apartment.]

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

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

- 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.

141

142

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





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

OFFICE OF THE CHAIR

February 21, 2019

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 19-01

**BOARD RECOMMENDATION**

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

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

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

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

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

9

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

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

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

**CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, February 14, 2019.





Casey Anderson  
Chair

CA:GR:aj

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

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 Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174

 Jason Sartori, Acting Chief, FP&P, [jason.sartori@montgomeryplanning.org](mailto:jason.sartori@montgomeryplanning.org), 301-495-2172

Completed: 02/7/19

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**Description**

ZTA 19-01 would remove the requirement for conditional use approval for all accessory apartments; revise the limited use provisions for attached and detached accessory apartments; and, generally amend the provisions for accessory apartments by deleting many of the current restrictions on having an accessory apartment.

**Summary**

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

**Background/Analysis**

Recent Zoning Changes

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

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

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

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

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

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

#### Permitting Data

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

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

### Current Accessory Apartment Provisions

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

- The property must be the owner's primary residence.
- *Attached* Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, RE-1, R-200, R-90 and R-60 zones following all limited use standards.
- *Detached* Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, and RE-1 zones if the property is a minimum of one acre in size, and all limited use standards are met.
- The house must be at least 5 years old.
- The accessory apartment must have the same street address as the main house.
- The accessory apartment must be internal to the main dwelling on a property smaller than one acre. Complete internal separation of the units is required.
- Only one accessory apartment may be created on the same lot as an existing one family detached dwelling. Accessory apartments are prohibited in Townhomes.
- The maximum floor area for an accessory apartment, including any floor area used for an accessory apartment in a cellar, must be less than 50 percent of the total gross floor area in the principal dwelling, including any floor area used for an accessory apartment in the cellar of the principal dwelling, or 1,200 square feet, whichever is less. Maximum floor area is measured from the exterior of the house.
- The maximum floor area used for an accessory apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the floor plate of the principal dwelling. Maximum floor area is measured from the exterior of the house.
- In the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, there must be no approved or pending **attached** accessory apartments within 500 feet. In the R-90 (including Plan Development zones), R-60, and RNC zones, there must be no approved or pending **attached** accessory apartments within 300 feet. In the RE-2, RE-2C, and RE-1 zones, there must be no approved or pending **detached** accessory apartments within 500 feet.
  - If a property does not meet this requirement, the property owner can apply for a waiver with the Hearing Examiner.
- If there is an existing driveway, one on-site parking space is required in addition to any required on-site parking space required for principal dwelling; however, if a new driveway must be constructed for the accessory apartment, then two on-site parking spaces must be provided. If your property does not meet this requirement, you can apply for a waiver with the Hearing Examiner.

ZTA 19-01 Provisions

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

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

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

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

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

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

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

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

Gross floor area does not include:

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



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

#### Other Jurisdictions

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

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

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

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

#### **Conclusions**

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

#### Attachments

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

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

*From the Introduction:*

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

*Page 12:*

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

*Page 20:*

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

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

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

Page 27:

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

Page 32:

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

Page 37:

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

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

[http://seattle.legistar.com/View.ashx?M=F&ID=6669924&GUID=CC73E51B-84BB-478F-B325-93BA05E03F2B&fbclid=IwAR39tiWg8PIGCNPiWP52q4WNft1P561TOI5RNj9qIB3\\_m5nt4Tkje9HDzI4](http://seattle.legistar.com/View.ashx?M=F&ID=6669924&GUID=CC73E51B-84BB-478F-B325-93BA05E03F2B&fbclid=IwAR39tiWg8PIGCNPiWP52q4WNft1P561TOI5RNj9qIB3_m5nt4Tkje9HDzI4)

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

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

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

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

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

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

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

Synopsis of West Denver Single Family Plus Initiative:

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

Synopsis of Portland-Dweller Initiative:

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

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

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

\*\*\*\*\*

# MONTGOMERY COUNTY RENTAL HOUSING STUDY

## ABOUT THE STUDY

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

## KEY FINDINGS AT-A-GLANCE

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



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



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



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



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



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



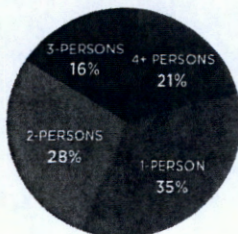
HOUSEHOLDS EARNING BELOW 50% AMI ACCOUNT FOR **38% OF THE DEMAND** FOR RENTAL HOUSING, BUT ONLY **19% OF UNITS ARE AFFORDABLE** AT THAT INCOME.



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

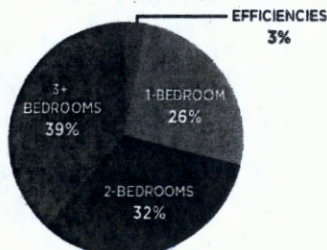


RENTER OCCUPIED UNITS, BY HOUSEHOLD SIZE, 2014



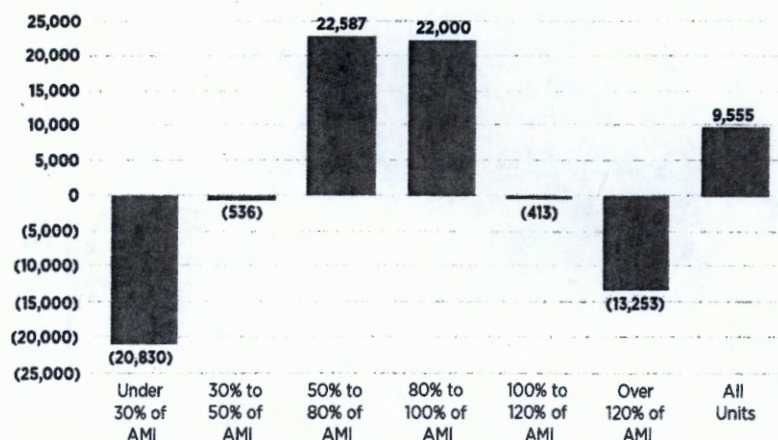
SOURCE: ACS 2014

RENTAL HOUSING UNITS, BY BEDROOM COUNT, 2014



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

SUPPLY/DEMAND EQUILIBRIUM ALL RENTAL UNITS, 2014



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



# RENTAL HOUSING POLICY RECOMMENDATIONS

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

## **MPDU PROGRAM\***

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

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

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

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

## **LAND USE/ZONING TOOLS**

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

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

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

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

## **PRESERVATION TOOLS**

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

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

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

## **FINANCIAL TOOLS**

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

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

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

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

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

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

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

\*Revisions to current County policies.



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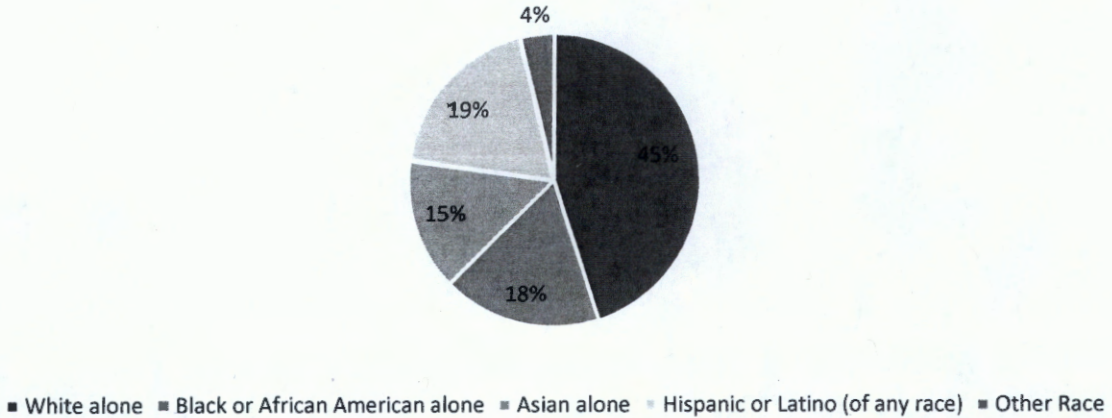
FOR MORE INFORMATION AND ANALYSIS, VISIT

MONTGOMERYPLANNING.ORG/RENTALHOUSINGSTUDY

## Selected Demographic Characteristics on Housing, Race, and Income in Montgomery County, MD

Chart 1.)

### Population by Race and Hispanic Origin Montgomery County, MD

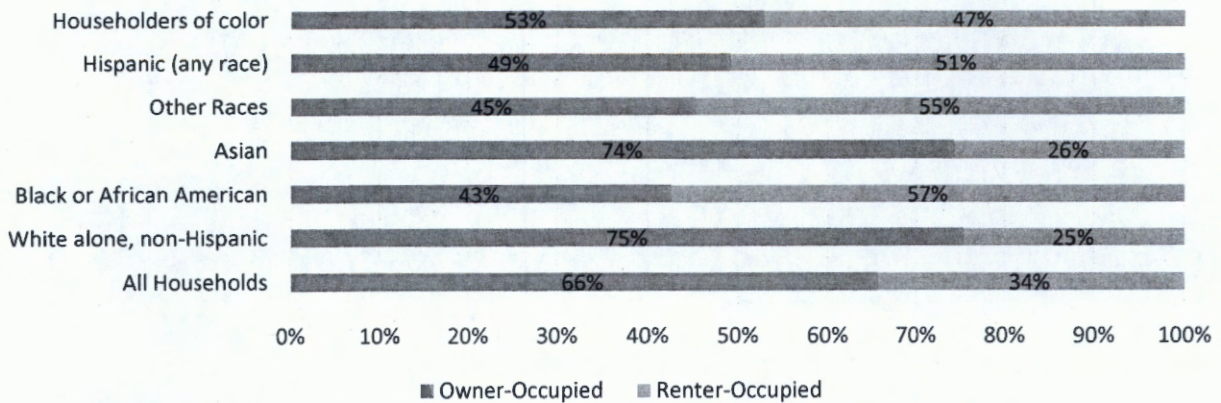


Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

In 2017, people of color comprised 55 percent of the total population, making Montgomery County more diverse than the nation (38.9 percent) and Maryland (48.6 percent).

Chart 2.)

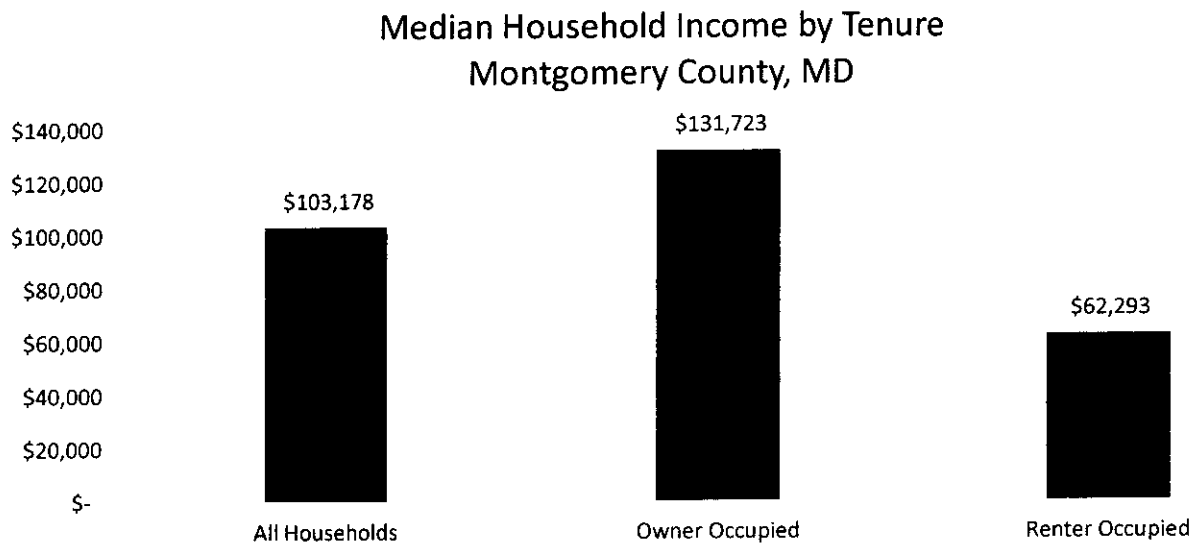
### Housing Tenure by Racial or Ethnic Group Montgomery County, MD



Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Chart 2 shows housing tenure (owner-occupied versus renter-occupied) by racial or ethnic group. In Montgomery County, while 66 percent of all householders live in owner-occupied housing, this percentage varies by race and ethnicity. Comparatively, 75 percent of white alone householders live in owner-occupied housing, compared to only 53 percent for all householders of color<sup>1</sup>, and as low as 43 percent for Black or African American households.

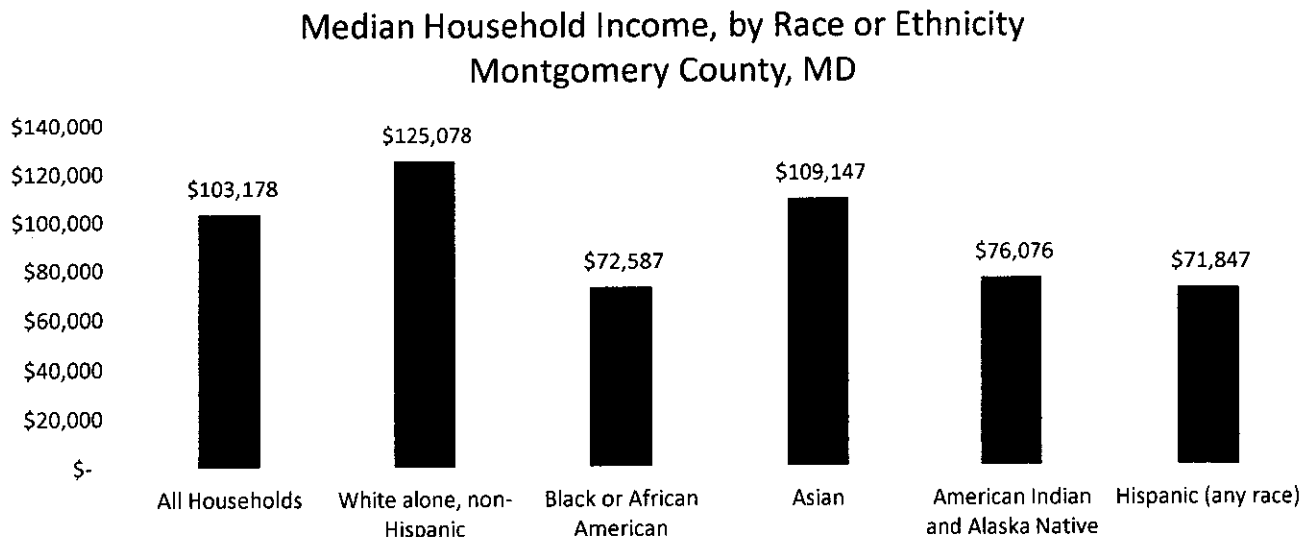
Chart 3.)



Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Montgomery County’s median income is \$103,178 – but varies by tenure status. Householders in owner-occupied housing have a median household income of \$131,723, 28 percent higher than the county’s median household income. Householders in renter occupied housing have a median income of \$62,293, 40 percent below the county’s median household income.

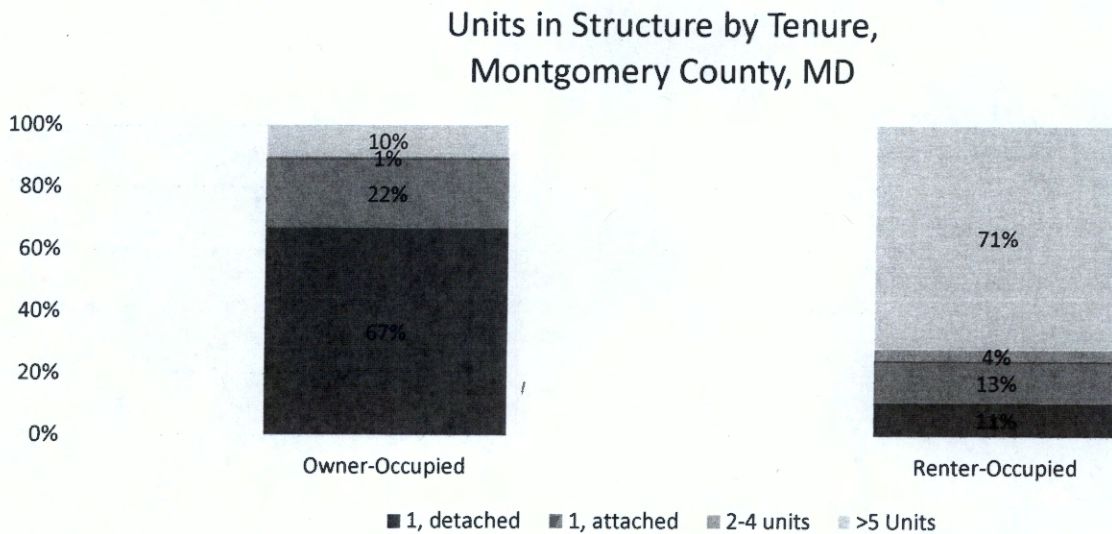
Chart 4.)



Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Montgomery County's median household income also varies by race or ethnicity, with white alone (non-Hispanic) households having a high of \$125,078 as their median income to Hispanic householders having the low median income of \$71,847.

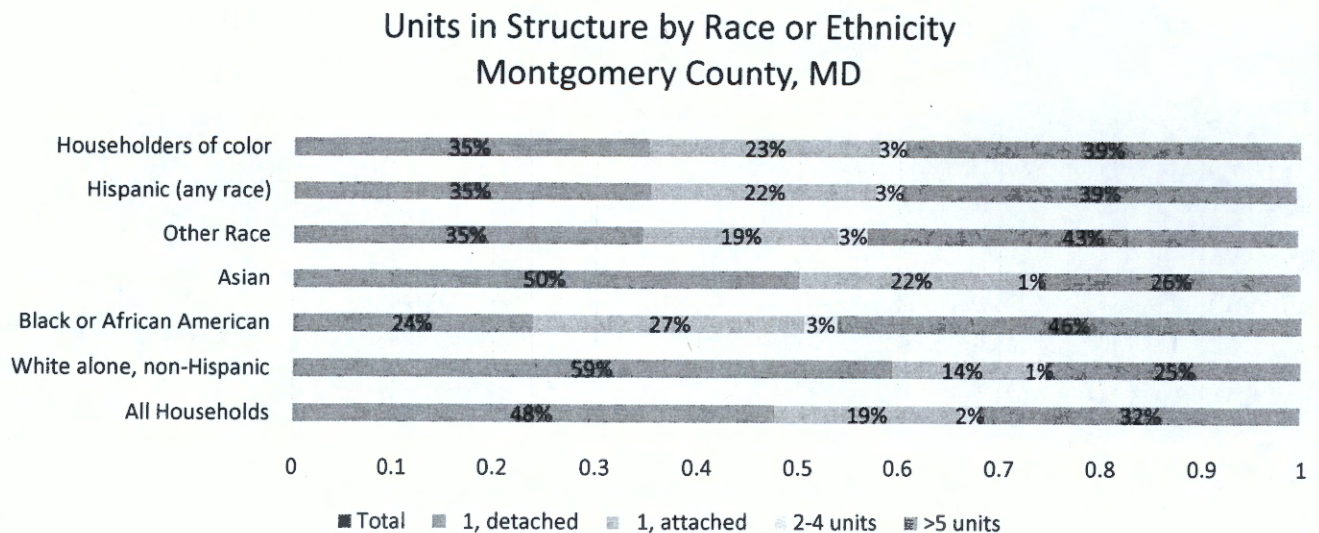
Chart 5.)



Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

67 percent of owner-occupied housing is single-unit detached housing (89 percent is single-unit detached or attached), comparatively 71 percent of renters live in multi-unit housing with 5 units or more.

Chart 6.)

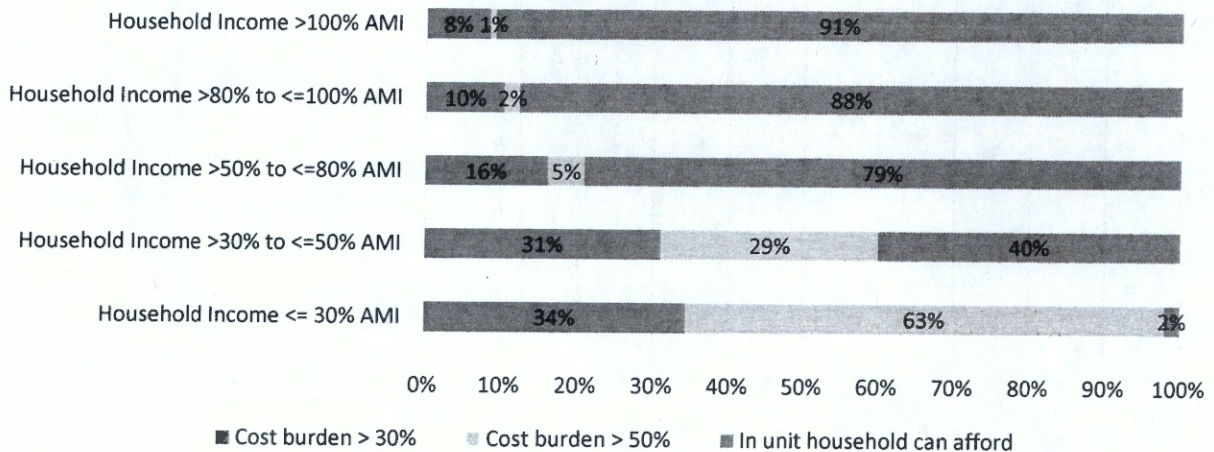


Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Chart 6 shows that the units in structures (owner-occupied and renter-occupied) by race or ethnicity. In Montgomery County, 48 percent of all households live in single-unit detached housing (67 percent when single-unit attached housing is included). 35 percent of householders of color live in single-unit (58 percent when single-unit attached is included), compared to 59 percent of single-unit (73 percent when single-unit attached is included) for white alone (non-Hispanic) householders.

Chart 7.)

### Income by Cost Burden (Renters Only)



#### 2011-2015 CHAS/ACS Data

In Montgomery County, almost 50 percent of renters are cost-burdened (spending more than 30 percent of their household income on rent), and 23 percent of renters are severely cost-burdened (spending more than 50 percent of their household income on rent). The likelihood of being cost-burdened varies on household income – with only 2 percent of households at or under 30 percent of Area Median Income (AMI)<sup>ii</sup> living in a unit they can afford. For households that earn 100 percent AMI or higher, this likelihood they are in a unit they can afford is 91 percent.

<sup>i</sup> Householders of color includes Black or African American households, Asian households, American Indian and Alaska Native households, other race alone households, Native Hawaiian and Other Pacific Islander households, and two or more races households.

<sup>ii</sup> In 2015, the Median Income for a household of 4 in the Washington-Arlington-Alexandria, DC-VA-MD HUD Metro Fair Market Rent Area was \$109,200. The extremely low limits (30 percent), was \$32,750 for a family of four.



## A Racial Equity Toolkit on Policies for Accessory Dwelling Units

*A letter from Councilmember O'Brien:*

As we make policies, in addition to determining if we think a policy is good for meeting our objectives overall, we need to understand if the policy will impact some communities differently, and specifically understand how or if the policy will impact race-based disparities in our community. The Racial Equity Toolkit (RET) is a tool designed to help us answer these questions.

When considering actions the City could take to make it easier for people to build accessory dwelling units (ADUs), we want to understand how the policy might increase or decrease racial disparities. What we learned through both the environmental review and RET process is that removing regulatory barriers in the Land Use Code will help us achieve the objective of increasing the number and variety of housing choices in single-family zones. This change would have a positive impact on affordability and decrease potential economic displacement because the additional housing supply could marginally reduce upward pressure on rents and housing prices. In addition, we learned that proposed Land Use Code Changes could result in fewer teardowns of existing single-family homes, which could reduce the potential for physical displacement in these neighborhoods.

However, the analysis also highlighted that the Land Use Code changes alone are insufficient to address racial disparities that have resulted from a history of race- and class-based planning and housing policies. This is due, at least in part, because absent other policy interventions, wealthy, primarily White homeowners are most likely to have access to the capitol needed to construct an ADU. Further, because of the high cost of construction, while ADUs may rent at lower price points than a traditional single family home due to the smaller size, they are still typically priced above what households with lower-incomes and households of color can afford. As a result, the benefits associated with increasing the rental housing stock through the creation of ADUs will disproportionately be accrued by wealthy, primarily White, households.

As is often the case with a RET, the answers on how to address racial inequities are complex. This doesn't mean that we shouldn't pursue a policy that broadly addresses city objectives by increasing housing supply, but rather, that we must consider actions beyond regulatory changes if we want to ensure that the policy more equitably benefits households with lower-incomes and households of color. The analysis that follows describes in more detail the potential for increased ADU production to contribute to disproportionate impacts, and how additional City actions could ensure homeowners with lower-incomes and homeowners of color benefit from the City's efforts to increase ADU production.

Sincerely,

Mike O'Brien

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### **Racial Equity Toolkit**

A Racial Equity Toolkit (RET) is a process and set of questions to guide the development, implementation, and evaluation of policies, initiatives, programs, and budget issues to address their impacts on racial equity.

## Introduction

The vision of the [Seattle Race and Social Justice Initiative](#) is to eliminate racial inequity in the community. To do this requires ending individual racism, institutional racism and structural racism. The Racial Equity Toolkit (RET) lays out a process and a set of questions to guide the development, implementation and evaluation of policies, initiatives, programs and budget issues to address the impacts on racial equity. The most effective RETs are done early in a process, to help gain insight as we develop a program or policy change.

The [Housing Affordability and Livability Agenda \(HALA\)](#) from 2015 included recommendations to lower the barriers to building Accessory Dwelling Units (ADUs) as a strategy to help create more housing opportunities in single family neighborhoods. The work over the last few years has focused on amending our Land Use Code to lower regulatory barriers to development. As this work has progressed, lowering these barriers raised concerns about the potential unintended consequences to communities of color.

ADUs support affordability in an informal sense because renting an ADU tends to be affordable to more households than renting a single-family house. This is likely due to the smaller size and lack of additional land costs to create an ADU. That said, high construction costs mean that most households able to create an ADU are disproportionately wealthy or have access to substantial equity in their home. Further, though ADU rents may be lower than renting a single-family home, they are not low enough to provide housing that is affordable to households with lower-incomes. This phenomenon will likely persist absent other actions beyond Land Use Code changes to reduce costs and support households with lower-incomes.

In addition to questions around who benefits economically from expanding ADU production, we also heard concern that ADUs could increase the risk of displacement. This question was considered in the Environmental Impact Statement (EIS) on the proposed Land Use Code changes. Further, we recognize that for homeowners with lower-incomes and homeowners of color, ADUs could be an anti-displacement strategy through the creation of additional housing units that can provide housing for family members or community members, or can provide rental income that can help a family afford to stay in their home.

We are exploring ideas for programs and investments that could help ensure homeowners with lower-incomes and homeowners of color can benefit from the City's efforts to increase ADU production. The focus of this RET is to identify opportunities to expand access to ADUs across the city and address racial disparities in who benefits from ADU production. As the City

### **Accessory Dwelling Units (ADUs)**

A detached accessory dwelling unit (DADU) is a secondary unit located in a separate structure from the principal dwelling unit (i.e., the main house). DADUs are often called backyard cottages and carriage houses.

An attached accessory dwelling unit (AADU) is a secondary unit located within or connected to the main house. AADUs are often called in-law apartments, basement apartments, garden apartments, units and granny flats.

### **Affordable Housing**

Housing affordability is typically expressed as a measure of housing costs in relation to household income. The standard for housing affordability is housing costs, including basic utilities, that amount to 30 percent or less of a household's gross income.

To be considered affordable to a two-person household making 60% of area median income (AMI) (60% AMI = \$48,150) rent could not exceed \$1,353 for a two-bedroom unit. According to 2016 Dupre + Scott survey data, average rent for a two-bedroom single-family house was \$2,237. An 800-square foot ADU would, on average, rent for approximately \$1,850 per month.

evaluates policy changes to remove barriers to constructing ADUs, we want to ensure that communities of color across the city benefit from these new opportunities.

As a key step in the RET, we established three key racially equitable community outcomes:

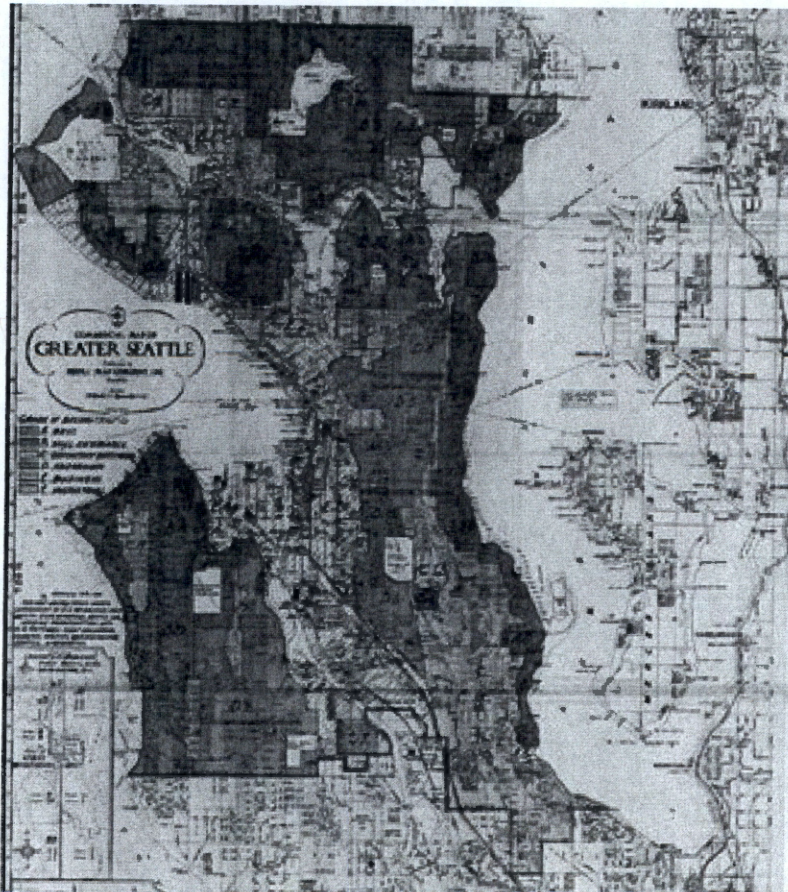
- Increase housing choice for people of color (POC) renters across the city in single-family zoned areas
- Avoid increasing displacement risk of POC homeowners and renters
- Decrease disparity of who is benefiting economically from ADU policy

## Background

### *Seattle ADUs in Context*

We recognize that those most able to benefit economically from the proposed Land Use Code changes are likely to be wealthy, primarily White, homeowners due to Seattle's history of racial segregation and redlining. Through practices of denying mortgages based on race and ethnicity, the federal government played a significant role in the legalization and institutionalization of racism and segregation. Exhibit 1 is an example of a Seattle 1936 redlining map with areas deemed "hazardous" for mortgage investments shown in red. For years, these restrictions prevented people of color from buying, improving, and developing property and building wealth. Until the 1960s, racial restrictive covenants kept people of color from moving to residential neighborhoods throughout the city, where they still compose a small

Exhibit 1: 1936 City of Seattle Redlining Map



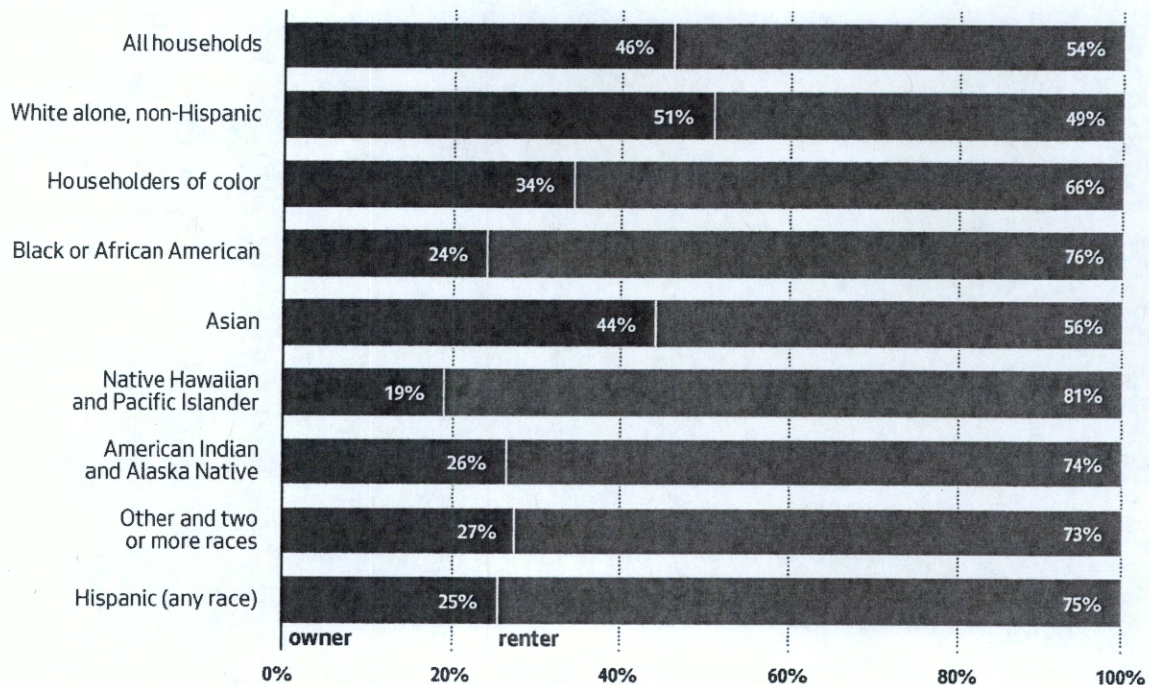


## A Racial Equity Toolkit on Policies for Accessory Dwelling Units

share of the population. Further, by limiting access to homeownership, these policies have contributed to the growing wealth disparities by race and ethnicity. For more information about the history and context of ADUs in Seattle please see [Chapter 3 of the ADU Final Environmental Impact Statement](#).

Exhibit 2 shows housing tenure (owner- versus renter-occupied housing units) by the racial or ethnic group of its householder. In Seattle, 51 percent of non-Hispanic White households own their homes, while only 34 percent of households of color and 24 percent of Black households own their homes. For the purposes of considering racial equity outcomes, understanding the racial makeup of homeowners, renters, and cost-burdened households across the city is important.

Exhibit 2: Housing Tenure by the Householder's Racial or Ethnic Group, Seattle

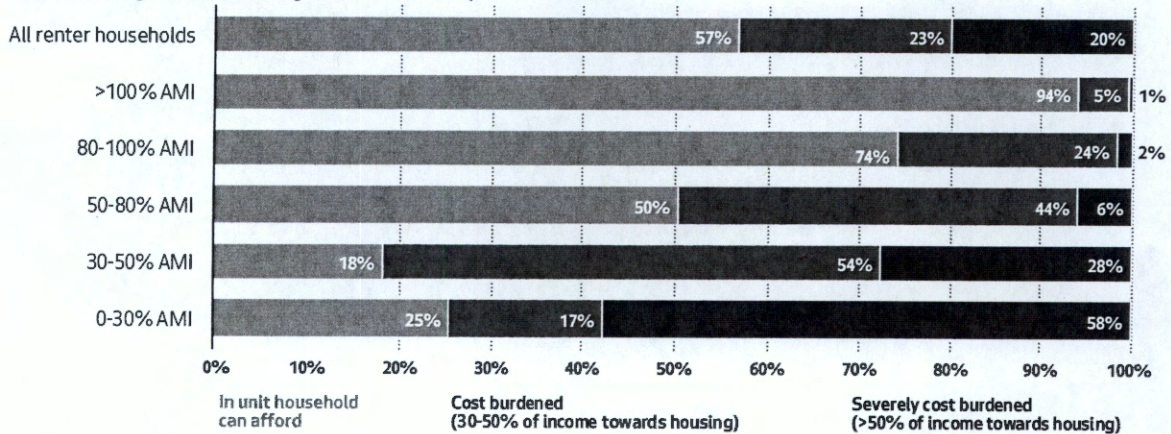


Generally, housing found in single-family zones has a pattern of high housing cost and disparities in household income according to race. Median income for households in detached one-unit structures is \$98,000. Only 22 percent of these households earn \$50,000 or less, which is where the median income for Black or African American households falls in the Seattle metropolitan region. These disparities are slightly sharper if we look specifically at households living in detached one-unit structures that own their home: 42 percent of these households earn more than \$120,000.

Housing affordability is typically expressed as a measure of housing costs in relation to household income. The standard for housing that is affordable is housing costs, including basic utilities, that amount to 30 percent or less of a household's gross income. The U.S. Department of Housing and Urban Development (HUD) considers households paying more than 30 percent of their income for housing as "cost-burdened" with respect to housing. Households that pay more than 50 percent of their income for housing costs are considered "severely cost-burdened." Housing cost-burden is a key measure of housing need. HUD estimates that 37 percent of all Seattle households are either cost-burdened or

severely cost-burdened. While overall, households that own their homes are less likely to be housing cost-burdened than renters (72% vs 57%) individuals and families of color, both renters and owners are more likely to be cost-burdened. For White residents, 66% are in housing they can afford, while 20% are cost-burdened and 14% are severely cost-burdened. Only 53% of households of color are in housing they can afford, and for Black or African American and American Indian or Alaska Native Households, less than half (45% and 44% respectively) are in units they can afford. Exhibit 3 illustrates how cost-burden varies among renter households at various income levels.

Exhibit 3: Housing Cost-burden among Renter Households by Household Income



**Does ADU development cause displacement?**

The ADU EIS explored questions around the impacts of potential Land Use Code changes to increase ADU production in single family areas. We used the Seattle 2035 displacement risk index, which came out of the Seattle 2035 Growth and Equity Analysis to contextualize the results of the analysis conducted for the ADU EIS to evaluate how the potential changes to the Land Use Code may affect physical, economic, and cultural displacement. This index combines data about vulnerability, development potential, and market conditions to illustrate variation in displacement risk across the city. Physical displacement could occur if policy changes to promote ADU development increase the feasibility of demolishing an existing house relative to other development outcomes, especially in areas at higher risk of displacement. The highest and best use analysis conducted in the ADU EIS for all of the action alternatives shows that fewer teardowns would occur in all single-family neighborhoods throughout the city compared to the no action alternative (see <http://www.seattle.gov/council/adu-eis> for more information).

As we continue to see displacement occurring in neighborhoods around the City, there remains concerns that an overall increase in development feasibility for ADUs could have an adverse impact on economic or cultural displacement by accelerating redevelopment generally (i.e. increase speculation), even if the resulting increase in rental housing supply may have a positive impact on housing affordability. Our analysis shows that in lower priced neighborhoods, the changes to the rate of development would be smaller when compared to high- and medium-priced neighborhoods, and that overall, the potential code changes would reduce the number of teardowns of existing single-family homes, reducing the potential for physical displacement.

**Learning from other cities—models to consider**

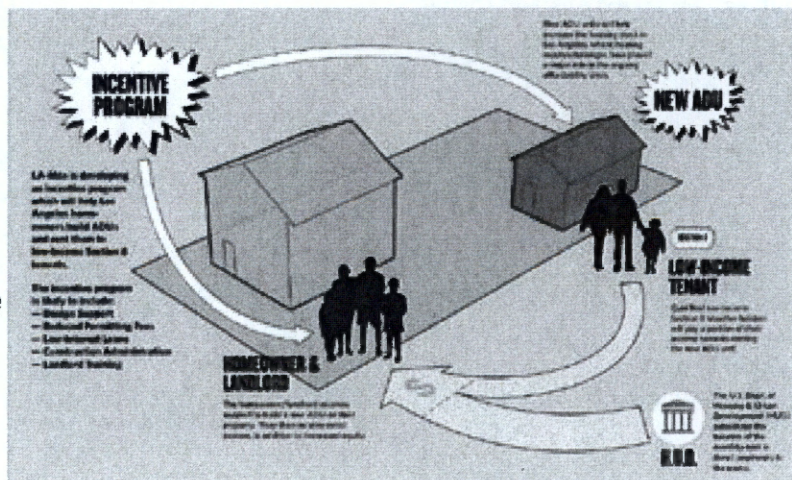
Given the finding that Land Use Code changes alone are insufficient to address racial disparities that have resulted from a history of race- and class-based planning and housing policies, we began to explore additional ways to lower the costs and barriers to building ADUs (both backyard cottages and basement units) so that more people could benefit from the ADU work. As part of this work, we looked to other jurisdictions across the region and country who envision ADUs not only as a housing option, but as an anti-displacement strategy. While many ideas are being explored and tested across the country, the cities we reviewed are in the early stages of program development or implementation with only a few ADUs in the ground. Some program examples we have learned about include:

**Austin—The Alley Flats Initiative:**

The goal of the Alley Flats Initiative is to reduce barriers to Detached Accessory Dwelling Units (DADU) construction, make DADUs accessible to lower-income renters, and provide technical assistance and support to homeowners that want to construct DADUs. They provide homeowners with a design catalogue that includes a step-by-step guide to development and City-approved building plans for various models. To participate in the Initiative and receive reduced fee services, clients must commit to the City of Austin's S.M.A.R.T. Housing program for the first five years after their Alley Flat is completed. The acronym stands for Safe, Mixed-income, Accessible, Reasonably-priced, Transit-oriented. Benefits to S.M.A.R.T. housing participants include fee waivers for permitting and some Capital Recovery fees, expedited review through the permitting process, and advocacy in resolving issues that may arise with other City departments. Per the program, tenants are limited to households with income at or below 80% MFI (Median Family Income) and rent may not be more than 28% of a tenant's household monthly income for the unit size.

**Los Angeles— LA-Más:**

LA-Más, is working to create The Backyard Home Project: An Affordable Housing Initiative - which aims to support the creation of more affordable housing units in the City of LA for Section 8 voucher holders. Their goal is to create a program that enables low-moderate income homeowners to finance, design, and build affordable ADUs and in turn rent them affordably to Section 8 housing voucher holders. If a homeowner agrees to



construct an ADU and rent it out to a Section 8 voucher holder for a minimum of five years they may be able to access: program oversight by the Housing Authority of the City of Los Angeles, tenant support provided by low-income/homeless housing service providers, potential permit fee deferrals, access to a new low-barrier financial mortgage product, and discounted architectural and project management services.

Denver- The West Denver Single Family Plus (WDSF+):

WDSF+ is a homeowner-focused initiative addressing the threat of involuntary displacement in west Denver. The WDSF+ initiative will offer homeowner forums that connect homeowners to essential resources and to existing housing service providers. The WDSF+ will also include a new ADU Pilot Program to help qualified homeowners design-finance-build an ADU. The WDSF+ services and resources, including the ADU pilot program, will be rolled out as funding becomes available.

Portland—Dweller:

Dweller is a Portland-based company that specializes in producing ADUs in a low cost, efficient manner to allow as many homeowners and renters to benefit from this affordable housing option as possible. Their model is unique because instead of requiring the homeowner to manage a lengthy design, permitting and construction process, Dweller builds and installs an ADU at an affordable cost to the homeowner. For homeowners unable to obtain the financing to purchase the ADU, Dweller has an innovative lease option to allow the homeowner to realize additional income from their property.

***Some specific ideas we have explored include:***

***Financing:*** Access to financing is often described as a key barrier for homeowners interested in adding an ADU to their property. Strategies the City could pursue include a programmatic or financial partnership with a nonprofit, lender, or other organization working to facilitate the financing and development process for homeowners building ADUs. Alternatively, a City loan program similar to the City's existing Home Repair Loan Program, could support the development of ADUs to provide housing for low-income households.

***Reducing construction costs:*** Construction cost is a primary factor in a homeowner's ability to create an ADU, especially since obtaining financing is more difficult for larger loans. Efforts to lower construction costs therefore support the City's goals of increasing access to ADUs and could make developing an ADU more feasible for lower-income homeowners. While the City could directly pursue strategies to lower costs, we also recognize that ongoing private-sector innovation in design, construction, and ownership of ADUs could result in new, lower-cost models of ADU delivery in the future.

***Pre-approved DADU plans:*** Independent of the Land Use Code changes, the City is exploring options for developing pre-approved DADU designs. Under this program, Seattle Department of Construction and Inspection (SDCI) permitting staff would review and pre-approve standard plans that conform to applicable building and energy codes. Homeowners interested in creating a DADU would save time and money by using a pre-approved plan, which would expedite the plan review process and reduce permit fees.

## Community Outreach: Who and What

To explore these issues, the RET work focused on engaging community members and stakeholders to identify additional actions the City can take to ensure homeowners and renters of color could benefit from ADU policies. We focused our community and stakeholder engagement on a few key strategies: 1) connecting with community organizations and coalitions that work on housing affordability and anti-displacement issues; 2) reaching out to low-income homeowners who have accessed Office of Housing resources; and 3) having conversations with individual stakeholders.

We held three focus group conversations with organizations/coalitions that included renters and owners. We shared a thirty-minute presentation that included background on the proposed Land Use Code changes to support ADU production, findings from our environmental review and displacement analysis, and examples of programmatic options from other cities that a Seattle program could be modeled after. We then had open-ended conversations with the groups, focused on two key questions:

- 1) How do you see ADUs benefitting or harming your communities?
- 2) What opportunities do you see? What challenges?

The following groups participated in the focus group discussions:

- Duwamish Valley Affordable Housing Coalition (Southpark)- Six members of the coalition attended this meeting and provided feedback on the proposal.
- Seattle Renters' Commission- the housing supply subcommittee
- SouthCORE -a coalition of south-end community organizations hosted by Puget Sound Sage including: African Diaspora of Washington State, Asian Counseling & Referral Services, El Centro de la Raza, Eritrean Association of Seattle, Ethiopian Community Services, Filipino Community of Seattle, Got Green, HomeSight, Horn of Africa, InterIm CDA, One America, Puget Sound Sage, Fair Work Center, LGBTQ ALLYSHIP, Tenants Union, Rainier Beach Action Coalition, Urban Impact, UNITE-HERE Local 8, GABRIELA, SCIDPDA, Somali Health Board, UFCW 21, Vietnamese Friendship Association

In addition to the focus groups, we conducted phone interviews with 16 low-income homeowners. In May 2018, we sent out 124 postcards to households that used the Office of Housing's Home Repair program in the past three years and whose incomes are 50-80% AMI. The postcard invited recipients to sign up for a phone interview to discuss their interest in and barriers they face building a basement unit or backyard cottage. Our office conducted 16 half-hour interviews to collect information about the primary motivations for building an additional rental unit on one's property, as well as people's knowledge of and experience with the processes involved including: financing, permitting and construction.

It is important to note that the method used for recruiting interviewees did not limit the conversation specifically to people of color. Of the 16 interviews conducted, five were with people of color (POC). This is lower than the percent POC served by our Office of Housing's home loan and weatherization programs during the same time period (38% compared to 51% households with people of color including those with incomes below 50% AMI).

Finally, we met with an individual City staff member who provided feedback based on their experience as a community member and African American homeowner in the Central District with interest in building an ADU.

## Resulting feedback

### **Key takeaways from focus groups:**

The focus groups provided valuable feedback, not only on ideas for ADU affordability, but more broadly, on the City's need to urgently act to counter displacement of communities of color. Through our conversations, some of our key assumptions were challenged, and the groups, particularly the SouthCORE and Duwamish Valley Affordable Housing Coalition, highlighted some key issues for us to consider. First and foremost, while there was interest in hearing and learning about possibilities to expand ADUs, the focus groups stressed the urgency of acting more broadly to address displacement. Many highlighted that the tools we were discussing still required significant capital and homeownership, which few in the communities they represented had.

Initially we considered the creation of rental income as a primary motivator for building an ADU. While we have been considering programmatic goals from this perspective, we heard quite clearly from our focus groups that for people to consider taking on any financial risk, the motivator would be housing family members and community members as a strategy to prevent displacement.

### **Focus Groups**

Key Takeaways	Potential Strategies
<p>Displacement is a key concern and there is need for urgent actions to address the crisis in communities most at risk.</p> <p>The Duwamish Valley Affordable Housing Coalition specifically highlighted the need to consider neighborhood-specific anti-displacement strategies and investments in affordable housing.</p>	<ul style="list-style-type: none"> <li>• The City should create a comprehensive anti-displacement strategy that weaves together existing and future efforts and works collaboratively with community-based organizations. Consider neighborhood-based strategies and investments in areas with high risk of displacement.</li> <li>• As SouthCore and others highlighted in their letter to the Executive and Council in regard to MHA, the City should create strategies that create opportunities and educate homeowners on options to stay in place, despite pressure to sell. ADUs may be one of these strategies.</li> <li>• Continue and expand investments in existing anti-displacement strategies such as the Equitable Development Initiative and community ownership models such as limited equity housing cooperatives and community land trusts.</li> </ul>
<p>Interest in building ADUs focused on housing family and community members to help keep people in place—rental income to supplement their household income was not a key motivator.</p>	<ul style="list-style-type: none"> <li>• Ensure program design allows for owners to prioritize housing a family member or community member as a potential tenant if that is the owners preference.</li> <li>• Consider the expansion of existing Office of Housing (OH) homeowner stabilization programs, which offer low-interest loans/grants and supports homeowners on essential repairs. This could be expanded to create additional habitable space in the existing housing envelope, at a lower cost. While many prefer DADUs for their flexibility, for family members, AADUs or creating additional bedrooms, etc., may be a more cost-effective strategy.</li> </ul>

Key Takeaways	Potential Strategies
<p>Concern that even with financial support like low-interest loans, etc., the cost of an ADU seems out of reach for the lowest income community members who are barely getting by. Many people are making less than \$50K per year and taking on any additional risk feels impossible.</p>	<ul style="list-style-type: none"> <li>As discussed previously, expanding our existing OH programs to create lower-cost options that leverage the value of existing property such as basement units, legalizing existing units, and creating additional habitable space under one's current envelope are a fraction of the cost of building a backyard cottage.</li> <li>Continue to look at lower-cost options or options that don't require the same level of financial risk on the homeowner such as a land-lease option like the Dweller model.</li> </ul>
<p>There is an information gap in terms of existing homeowner stabilization programs—people were really interested but had not necessarily heard about the existing OH home repair and weatherization opportunities that support low-income homeowners.</p>	<ul style="list-style-type: none"> <li>OH recently brought on an outreach staff member for the weatherization program.</li> <li>Council can consider directing additional resources for OH to work with community-based organizations to get the word out about existing and future homeowner stabilization programs.</li> </ul>
<p>Many voiced continued concern that proposed Land Use Code changes would lead to an increase in speculation and displacement.</p>	<ul style="list-style-type: none"> <li>Although the analysis in the ADU EIS suggests that removing barriers to ADUs would not increase speculation, to address this concern, the preferred alternative in the EIS would only allow two ADUs on the same lot if a lot has been in the same ownership for at least one year.</li> </ul>

**Key takeaways from interviews:**

When sending out the 124 postcards, we had hoped to have three to five conversations with homeowners, which would have represented a 2.5-4% response rate. We were overwhelmed by the level of response and interest in building ADUs. Twenty-four people responded to our brief survey expressing interest, a 19% response rate, and we were able to hold 16 phone interviews. We learned a lot about the reasons why people are interested in creating additional living space on their property and what their experience has been researching the process. Half the group have owned their home for over fifteen years. Of the 16 homeowners we spoke to, five were people of color. There were not significant differences in responses between the White homeowners and the homeowners of color.

A key theme that emerged across the homeowners we spoke to was a desire for more flexibility through the creation of an additional unit. Many talked about wanting to adapt the use of their home as needs change over their lifetime, such as housing a family member or caregiver, earning supplemental income, and helping house community members. Most homeowners were interested in building a backyard cottage over a basement unit. Some do not have basements to convert into living space. At the same time, many respondents did not have a clear idea about the cost of building a DADU and were surprised that a DADU often cost \$200,000 or more. Some had not previously considered less expensive options such as creating an additional bedroom or apartment and may be open to converting existing space as a lower-cost option.

The challenges to building ADUs identified by low-income and low-income POC households are in line with general feedback we have received from homeowners across income levels about building ADUs. Respondents reported that they needed help: navigating the permitting process; learning about what building options would work for their property; understanding the costs; financing the project; understanding the zoning regulations and inspection process; and navigating the laws once becoming

a landlord. One non-English speaker also highlighted the need for language access in city information and support around ADUs. Multiple homeowners envisioned a government-supported program to help them navigate the permit, financing, and construction process, even if it only helped them understand if a project is possible and financially feasible.

**Interviews**

Key Takeaways	Potential Strategies
There is interest from low-income homeowners, including POC homeowners, in building ADUs.	<ul style="list-style-type: none"> <li>Continue exploring programmatic ideas for affordable ADUs alongside strategies to address outcomes suggested in focus groups.</li> <li>While most interviewees were more interested in a detached unit, given the cost-burden to lower-income households, the City should continue to consider how people can re-purpose their existing structure (garage or basement) to create additional habitable space while still maintaining flexibility and privacy.</li> </ul>
Homeowners we spoke to are seeking flexibility in using their home as needs arise over their lifetime such as housing a family member or caregiver, earning supplemental income, and helping house community members.	<ul style="list-style-type: none"> <li>Ensure that as we explore programmatic approaches and investments, there would be flexibility for the homeowner to meet their housing needs while complying with any program requirements. This should not include options for short-term rentals as they do not meet our goals of creating long-term housing units.</li> </ul>
Multiple homeowners envisioned a government supported program to help them navigate the permit, financing, and construction process, even if it was just to help them understand if it is possible and financially feasible.	<ul style="list-style-type: none"> <li>Over the next 12 months, the Office of Planning and Community Development is leading an interdepartmental team with representatives from the Seattle Department of Construction and Inspections, Office of Housing, Planning Commission, and Council Staff, to participate in the Urban Sustainability Accelerator program, a year-long cohort of city and county teams from across the country working to promote ADUs. The teams work will focus on programmatic ideas that align with addressing the challenges we hear from homeowners and will prioritize programs that further racial equity.</li> </ul>
While interviewees were open to a pre-fab ADUs, most people reacted with overall skepticism about the land-lease model. Specifically, giving control of some portion of their property to a property and tenant management was a concern.	<ul style="list-style-type: none"> <li>Work on better understanding the land-lease model and how the City could ensure protections for homeowners.</li> <li>Explore how such a model could still allow for flexibility for family members while still complying with any rent-and-income restriction qualifications.</li> </ul>

**Next steps and remaining questions:**

As we move forward, the RET process highlighted the following key questions that must be explored:

1. What is the City's overall comprehensive anti-displacement strategy? How might homeowner-stabilization fit into that?
2. Should the City consider an ADU focused program as an anti-displacement strategy? Is this the right place to invest our limited resources?
3. As we explore ADU affordability strategies, how can we ensure we center communities of color in our planning?
4. How will we measure and ensure we meet our racial equity goals?



Moving forward, we want to ensure we consider racial equity as we continue exploration of program design to address ADU affordability. The key motivations and needs of communities of color should be prioritized as the City looks at programmatic options and investments. In the short term, there are some ideas we propose moving forward:

1. Expanding our existing home repair program to create more habitable space: currently, OH runs a home repair program that provides low interest loans or grant (depending on qualification) to low-income homeowners to address critical health and safety concerns. We propose expanding the program and use of existing resource to allow for property improvements that create additional habitable space within the existing envelope of the property. This could include finishing a basement, creating an AADU, upgrading a garage, or bringing an existing unregistered rental unit up to code. These improvements could allow a homeowner to house additional family members or generate additional rental income. In its initial year, we would hope to serve 5-10 low-income homeowners and build a better understanding of the needs, project costs, and challenges, of helping people stay in their homes. This strategy allows people at risk of displacement to leverage the value of their property without having to sell, and without taking on the level of risk or debt required at this stage in our exploration of DADUs.
2. Community outreach resources: from our focus groups, it was made clear that while we have multiple existing OH programs that support low-income homeowners to stay in their homes, many people who are eligible for them do not know about them. Providing resources for OH to contract with community-based organizations to share about existing, and possible future programs, will help ensure we meet our racial equity goals.
3. Land Use Code Changes: with the finalizing of the EIS and the defining of a preferred alternative, we hope to move swiftly with Land Use Code changes to address some of the barriers to expanding ADUs in Seattle. In terms of RET outcomes, we will include a new provision that does not require owner occupancy but does require that the property has been in the same ownership for at least one year before a second ADU could be built on the property.
4. Urban Sustainability Accelerator: As the interdepartmental team participates in the program, they should prioritize strategies that further racial equity.

### Acknowledgments:

This RET process was led by Susie Levy of Councilmember Mike O'Brien's office with support from several individuals and groups. First and foremost, we want to acknowledge and thank the community groups and homeowners who took the time to meet with us, talk on the phone, share their insights and experiences and provide feedback to inform our thinking.

Additionally, Jen LaBrecque from the Office of Housing, Nick Welch from the Office of Planning and Community Development, Jackie Mena and Virginia Weihs from the Department of Neighborhoods, Aly Pennucci from the Council Central Staff, Joseph Peha from the Legislative Department, and Alisha Dall'Osto from Councilmember O'Brien's office, contributed to this Racial Equity Toolkit process.

Sec. 29-19. Licensing procedures.

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

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

Sec. 29-26. Appeals and Objections.

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

Sec. 54-43. Certification for a License.

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

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