

Subject: ZTA 19-01, Accessory Residential Uses – Accessory Apartments	
Purpose: Final action – vote expected	
Analyst: Jeffrey L. Zyontz, Senior Legislative Analyst Pamela Dunn, Senior Legislative Analyst	Committee: PHED
Keywords: #ADU, Accessory Dwelling Unit, Accessory Apartment, Zoning Text Amendment	

EXPECTED ATTENDEES

It is not expected that Al Roshdieh, Director, Department of Transportation (MCDOT) or Christopher Conklin, Deputy Director, Department of Transportation (MCDOT) will attend the Council's July 23 session on ZTA 19-01.

SUMMARY OF KEY DISCUSSION POINTS

The cover memorandum for ZTA 19-01 included a summary of 2 changes accepted in straw votes by the Council. Staff neglected to state the Council's intent to make a third change. That change was to standards for detached accessory units longer than 24 feet. The Council wanted to require a one foot for one foot increased setback for units longer than 24 feet (starting with a setback of 12 feet for the rear property line). That standard is correctly stated in the ZTA on lines 200 to 205, but should be changed in the summary of Council action.

ADDITIONAL EDITORIAL CHANGE

In line 56 of the ZTA attached for Council approval, line 56 should be changed to delete the word "apartment".

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EXPECTED ATTENDEES

Timothy Goetzinger, Acting Director, Department of Housing and Community Affairs (DHCA)
Ehsan Motazedi, Chief, Zoning and Site Plan Enforcement, Department of Permitting Services (DPS)
Al Roshdieh, Director, Department of Transportation (MCDOT)
Christopher Conklin, Deputy Director, Department of Transportation (MCDOT)
Casey Anderson, Chair, Planning Board
Gwen Wright, Director, Planning Department
Jason Sartori, Division Chief, Planning Department
Lisa Govoni, Housing Specialist, Planning Department

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS

The PHED Committee recommended approval of ZTA 19-01 with the following amendments:

- 1) Revise the maximum gross floor area for an Accessory Apartment (hereafter referred to as an ADU (Accessory Dwelling Unit)):
 - a) For attached ADUs, 1,200 square feet of gross floor area; however, if the footprint of the principal structure is greater than 1,200 square feet, an ADU may occupy the basement or cellar of that structure without a square footage limit.
 - b) For detached ADUs, the maximum gross floor area must be the least of:
 - i) 50% of the gross floor area in the principal dwelling;
 - ii) 10% of the lot area; or
 - iii) 1,200 square feet of gross floor area.
- 2) Retain the current code on-site parking requirement for ADUs located more than 1 mile away from any Metrorail or Purple Line Station. Within 1 mile of such stations or within the boundaries of the City of Takoma Park, delete the additional on-site parking requirement for an ADU.
- 3) Retain the current code prohibition for a newly-constructed ADU entrance on the front (street) side of a dwelling.
- 4) Allow an ADU up to 32 feet long without additional setbacks.
- 5) Allow an accessory structure built before May 31, 2012 to be used as an ADU without regard to setbacks, if it was legally constructed and there is no increase to the footprint or height of the structure. If it is a structure that does not meet current setbacks, a new window on any wall on the side of any setback violation may not be constructed.
- 6) Clarify the prohibition on any other rentals on a property where an ADU is licensed.
- 7) Delete the ownership requirement in ZTA 19-01. (Revise the ownership requirement in the licensing requirements under a Bill to allow the required on-site owner to live either in the ADU or the principal dwelling unit.)

DESCRIPTION/ISSUE

Approve, disapprove, or amend and approve the recommendations of the PHED Committee with the straw vote changes accepted by the Council on July 9.

SUMMARY OF KEY DISCUSSION POINTS

After review issues presented by Staff on June 18 and July 9, the Council took straw votes to accept the Committee's recommendation with the following changes:

- 1) Limit the size of a new detached unit to the least of "50% of the footprint of the principle dwelling; 10% of the lot area; or 1,200 square feet of gross floor area" instead of 50% of the gross floor area of the principle dwelling; and
- 2) In addition to changing the parking standards within 1 mile and outside 1 mile of Metrorail and Purple Line stations and within the City of Takoma Park, change the parking in an identical manner for MARC rail stations.

This report contains:

Staff Memorandum for June 18 Worksession
ZTA 19-01 revised with editorial changes

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Worksession

MEMORANDUM

June 14, 2019

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst *JZ*
Pamela Dunn, Senior Legislative Analyst *PD*

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

PURPOSE: Worksession on ZTA 19-01, Accessory Residential Uses – Accessory Apartments

Expected Participants:

Claire Iseli, Special Assistant to the County Executive
Timothy Goetzinger, Acting Director, Department of Housing and Community Affairs (DHCA)
Hadi Mansouri, Acting Director, Department of Permitting Services (DPS)
Ehsan Motazedi, Division Chief, Zoning and Site Plan Enforcement, DPS
Casey Anderson, Chair, Planning Board
Gwen Wright, Director, Planning Department
Jason Sartori, Division Chief, Planning Department
Lisa Govoni, Housing Specialist, Planning Department

Planning, Housing, and Economic Development Committee Recommendations:

- 1) Revise the maximum gross floor area for an Accessory Apartment (hereafter referred to as ADU (Accessory Dwelling Unit)):
 - a) For attached ADUs, 1,200 square feet of gross floor area; however, if the footprint of the principal structure is greater than 1,200 square feet, an ADU may occupy the basement or cellar of that structure without a square footage limit.
 - b) For detached ADUs, the maximum gross floor area (which, under the current Code definition, includes basements and for this purpose would include cellars) must be the least of:
 - i) 50% of the gross floor area in the principal dwelling¹;
 - ii) 10% of the lot area; or

¹ Individual members of the PHED Committee have advised Staff that they recommend limiting this standard to 50% of the footprint of the principal building.

- iii) 1,200 square feet of gross floor area.
- 2) Retain the current Code on-site parking requirement for ADUs located more than 1 mile away from any Metrorail or Purple Line Station. Within 1 mile of such stations or within the boundaries of the City of Takoma Park, delete the additional on-site parking requirement for an ADU.
- 3) Retain the current Code prohibition for a newly-constructed ADU entrance on the front (street) side of a dwelling.
- 4) Allow an ADU up to 32 feet long without additional setbacks.
- 5) Allow an accessory structure built before May 31, 2012 to be used as an ADU without regard to setbacks, if it was legally constructed and there is no increase to the footprint or height of the structure. If it is a structure that violates setbacks, a new window on any wall on the side of any setback violation may not be constructed.
- 6) Clarify the prohibition on any other rentals on a property where an ADU is licensed.
- 7) Delete the ownership requirement in ZTA 19-01. (Revise the ownership requirement in the licensing requirements under a Bill to allow the required on-site owner to live either in the ADU or the principal dwelling unit.)

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 Women 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 Brookeville, 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-unit 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.² 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.

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 ZTA 19-01 does not address the cost of building an ADU and the rent the homeowner charges.

² The Town of Chevy Chase and the Greater Colesville Citizens Association.

Summary of ZTA 19-01 as Introduced

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 “ADU” to refer to what the Zoning Ordinance calls Accessory Apartment Unit.³

ZTA 19-01 as introduced 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.

Issues

- 1) *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 ADUs or basement units. Excluding lots in the municipalities with zoning authority (and only including the number of single-unit dwelling units in R-60, R-90 and R-200) there are 121,000 lots:

37,900 lots in the R-200;
28,200 lots in the R-90; and
55,000 lots in the R-60.

³ Key words: #MoCoTinyHouse, plus search terms in-law suite, cottage, basement apartment, accessory apartments, accessory apartments.

Generally, the minimum side setbacks for accessory structures are 12 feet in the R-200 zone and 5 feet in the R-90 and R-60 zones. Generally, the minimum rear setback is 12 feet in the R-200 zone, 5 feet in the R-90 and R-60 zones. Setbacks may be increased by two feet for every one foot of building height of the accessory structure, for structures over 15 feet.⁴ Currently, side and rear setbacks may be increase for structures longer than 24 feet.

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.⁵ In the view of some civic associations, ZTA 19-01 is **likely** to cause substantial negative impacts on existing single-unit 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 Brookeville, 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 neighboring homes.

The PHED Committee recommended addressing this problem by limiting the size of detached ADUs to 10% of the lot area.

If the Council desires to expand the possibilities for detached ADUs in small lot zones to a lesser degree than recommended by the PHED Committee, 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 is more than the minimum for lots in the zone (see issue #4);**
- 3) limiting the building heights of detached ADUs (see issue #3); and**
- 4) retaining the maximum size limit for a detached ADU (see issue #1).**

⁴ 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.

⁵ Planning Staff found that the school yield for a principle dwelling with an ADU was just fractionally less than the school yield of a dwelling without an ADU.

2) *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.

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.⁶ Detached units can't be larger than 1,200 square feet. Local jurisdictions may not increase the maximum size of these units.

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 in 2013. 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.

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 35% in the R-60 zone.

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.

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. The Committee recognized that the lack of ADU size limitations could lead to less affordable ADUs and increased compatibility issues with neighboring property. Councilmember Friedson raised the idea of limiting the size of detached ADUs to 1,200 square feet of gross floor area and establishing a maximum building footprint for the detached ADU of 10% of the lot area (instead of 50% of the floor area of the main house). On lots that are 6,000 square feet in size, 10% of the site would limit the maximum footprint size to 600 square feet for a detached ADU. Using 10% of the lot area as a limit would allow a 1,200 square foot footprint on any lot that is at least 12,000 square feet. The footprint size would increase regardless of the footprint of the principal dwelling. The Committee recommends:

For detached ADUs, the maximum gross floor area (which, under the current Code definition, includes basements and for this purpose would include cellars) must be the least of:

⁶ In 2005, the average single-unit house in the US was just above 2,400 square feet. <https://www.census.gov/construction/C25Ann/sfttotalmedavgsgft.pdf>.

- i) 50% of the gross floor area in the principal dwelling⁷;
- ii) 10% of the lot area; or
- iii) 1,200 square feet of gross floor area.

For attached ADUs, the Committee recommended retaining the current size restrictions of 1,200 gross square feet but allowing larger units in the basement or cellar if the basement or cellar is larger than 1,200 square feet and is used for the ADU.

3) *What are the height limits for detached accessory apartments?*

Each zone has a separate maximum height for the principal structure and accessory structures in the zone:

Zone	Maximum Principle Building Height (measured to the highest point)	Maximum Accessory Structure Height
R-200	50' to 35' depending on lot size	35'
R-90	35'	20'
R-60	35'	20'

A 20' height limit can accommodate a 2-story structure. On a small lot or lots with small houses, the combination of a maximum 600 square foot footprint and a 1,200 square foot maximum floor area, will result in a 2-story house. ZTA 19-01 as recommended would clarify that the height standard for accessory structures applies to ADUs.

The ZTA as recommended by the PHED Committee includes the following standard for ADUs:

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

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

Zoning regulates minimum lot size. ZTA 19-01 would allow detached units in the R-200, R-90, and R-60 zones. Each has a minimum area of less than one acre for a dwelling, ranging from 20,000 square feet to 6,000 square feet. The current minimum lot size for a detached ADU is 1 acre.⁸ 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. In the view of the sponsor, retaining a minimum one-acre lot size would be inconsistent with his goals for ZTA 19-01.

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.

⁷ Individual members of the PHED Committee have advised Staff that they recommend limiting this standard to 50% of the footprint of the principal building.

⁸ Since 2003, the Council replaced a 2-acre minimum lot size with the current 1-acre minimum.

Minimum lot size, if larger than the minimum for a single-unit 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.

The R-200 zone, which has a 20,000 square foot minimum lot size, includes 37,900 lots. All of those lots would be potential lots available for detached ADUs.

A 12,000 square foot minimum lot size in the R-90 zone would add 10,400 lots with ADU potential out of a possible 28,200 R-90 zoned lots.

A 9,000 square foot minimum lot size in the R-60 zone would add 12,800 lots out of a possible 55,000 for detached ADUs.

The Committee recommendation to limit the size of ADUs would not reduce the number of allowed ADUs in any neighborhood. If the Council agrees with:

- 1) deleting the requirement for a minimum distance between ADUs,
- 2) not establishing a maximum percentage of ADUs in a neighborhood, and
- 3) if the Council wants to expand the opportunities for ADUs to a lesser extent than ZTA 19-01 as introduced,

then Staff recommends the consideration of minimum lot sizes in zones where the minimum lot size is less than 20,000 square feet.

- 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 overconcentration of ADUs. It provides space for on-street parking.⁹ The Council received testimony reporting that overconcentration of ADUs was a concern and a real problem.

Prohibiting new licenses within a specific distance is a simple way to accomplish that goal. It is an inflexible standard and would lead to unfair results if applied inflexibly.

The Council achieved flexibility through the current waiver/objection process in DHCA's licensing provision.¹⁰

⁹ 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).

¹⁰ Sec. 29-26. Appeals, Waivers, 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) Waivers and objections concerning any new accessory apartment license.
 - (1) The applicant for a new license for an accessory apartment may request a waiver of a standard to the extent allowed by Section 59.3.3.3 or object to an adverse finding of fact by the Director by filing a waiver or an objection and a request for a hearing with the Office of Zoning and Administrative Hearings.

Councilmember Friedson would recommend a requirement in a Bill to study ADU activity to determine if overconcentration is a problem. In his view, such a study could be repeated every 2 years.

If the Council is concerned about an overconcentration 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.

-
- (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.
 - (3) A request for a waiver or an objection 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 waiver or objection.
 - (4) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within 10 days after the waiver or objection is received and conduct any such hearing within 30 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 waiver or objection.
 - (6) The Hearing Examiner may waive on-street parking standards if:
 - (A) the available on-street parking for residents within 300 feet of the proposed accessory apartment would permit a resident to park on-street near his or her residence on a regular basis; and
 - (B) the proposed accessory apartment is not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.
 - (7) The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license and may impose other conditions to assure adequate parking on granting the waiver.
 - (8) The Hearing Examiner may waive the distance separation standards between Accessory Apartments when the separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed Accessory Apartment.
 - (9) The Hearing Examiner may consolidate public hearings on any requested waivers and any objections to the Director's findings that involve the same license application.
 - (10) The Hearing Examiner must issue a final decision within 30 days after the close of the record of the adjudicatory hearing. If both a waiver request and an objection relating to the same accessory apartment license application are filed, the Hearing Examiner must issue a final decision within 30 days after the close of the record in both cases.
 - (11) The Director must issue or deny the license based on the final decision of the Hearing Examiner.
 - (12) Any party aggrieved by the Hearing Examiner's decision on an objection or a waiver 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.

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 (see footnote 8).

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

	2007	2017
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.*

At the request of the Committee, Planning staff looked at vehicle registration in small lot single-unit zones and found the following:

MONTGOMERY COUNTY MVA REGISTRATIONS (Analysis conducted only includes single-unit detached homes within the R-60, R-90, R-200 zones.)

ALL R-60, R-90 and R-200 UNITS

Average MVA vehicle registrations: 2.1
Number of households with 0 cars registered: 9%
Number of households with 1 car registered: 20%
Average MVA registration for an address with an ADU: 2.5

INSIDE 1 MILE OF RAILTRANSIT STATIONS:

Average MVA vehicle registrations: 1.9
Number of households with 0 cars registered: 11%
Number of households with 1 car registered: 26%
Average MVA registration for an address with an ADU: 2.2

OUTSIDE 1 MILE OF RAIL TRANSIT STATIONS:

Average MVA vehicle registrations: 2.2
Number of households with 0 cars registered: 8%
Number of households with 1 car registered: 18%
Average MVA registration for an address with an ADU: 2.6

Councilmember Friedson recommended retaining the current parking requirements for dwellings located more than ½ mile from Metrorail and Purple Line stations. He did not recommend any required parking for units closer to those stations. He was also interested in accommodating the City of Takoma Park's request to allow a municipality to reduce the number of required on-site parking spaces from the number required by Montgomery County or establish an alternative parking objection process.¹¹

¹¹ 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. 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.

The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license.

The Committee recommended retaining the current parking requirements for dwellings located more than one mile from Metrorail and Purple Line stations and having no additional on-site parking requirement for ADUs within a one-mile radius of rail stations. Of the 71,628 acres zoned R-60, R-90, or R-200, 12,390 acres would have a reduced parking requirement.¹²

This standard would have created 2 different parking requirements within the City of Takoma Park. To simplify enforcement in Takoma Park and comply with the City's request, the Committee recommended having no additional parking requirement for any ADU within the City.

Staff recommends retaining the existing on-site parking requirement. The procedures for a parking waiver make the current requirement sufficiently flexible (see footnote 8).

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

Section 3.3.3.A.2 currently states that where an accessory apartment is allowed as a limited use, the maximum floor area used for an accessory apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the footprint of the principal dwelling.

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 floor area addition 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.

- 8) *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.¹³ 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.¹⁴

¹²

<u>Zone</u>	<u>Total County Acres</u>	<u>Area Within 1 Mile of Rail Stations (Acres)</u>
R-200	37,759	590
R-60	17,428	8,753
R-90	16,441	3,047
Total	71,628	12,390

¹³ 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.

¹⁴ Village of Belle Terre v. Boraas , 416 U.S. 1 (1974).

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 houses. 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.

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, 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.

If the Council's goal is to increase housing opportunity and 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 and retain a single-unit character of a neighborhood, Staff recommends retaining the current provision to prohibit attached ADUs in newly constructed houses.

9) *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 grandfathered structure with its existing setbacks when the structure being used was **legally** constructed. Under ZTA 19-01, these structures may be converted to habitable detached ADUs.

Under the current Code, 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.

The City of Takoma Park recommends a larger exception to ADUs in existing structures. They recommend (at least for the City of Takoma Park) that applications for ADUs within existing single-unit homes not be required to be reviewed for setbacks or other external zoning issues¹⁵ beyond zoning. The City further recommends that existing single-unit homes be exempt from the County permitting process, if the dwellings are inspected and approved for licensing through a comparable municipal licensing program.

The PHED Committee agreed with the Planning Board that the proposed exception to setback requirements should only apply to legally-built buildings. This “standard” would apply to existing unmodified structures used for detached ADUs (no increase in building footprint or height and no new windows on the side closest to an abutting property).

10) *Should the setback increase 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 Committee recommends exempting ADUs up to 32 feet in length from the additional setback.

11) *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.

The Committee recommends retaining the existing requirement that prohibit a new front door for a new ADU.¹⁶

¹⁵ Exempting existing single-unit dwellings from setback or building height review for existing dwellings would expand the universe of places where ADUs may be built.

¹⁶ Section 3.3.3.B.2.A:

A separate entrance must be 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.

12) *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)¹⁷ and the Zoning Ordinance require the principal dwelling or ADU to be the primary residence of the owner.

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 home ownership.¹⁸ Owners tended to be higher in life satisfaction and self-esteem and more likely to be members of community improvement groups.¹⁹ Schools benefit by the longer tenure of the owner's children and their higher school attainment.²⁰

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.²¹ Portland has nearly 3,000 ADUs; the County has 458.

A resident owner requirement does restrict who can have an ADU. According to the US Census Bureau, some 65% of dwelling units are owner-occupied.²² 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 to rent the house but not the ADU for the duration of their deployment. Staff could not find any ADU provisions in other jurisdictions that provided relief for a deployed owner with an ADU. Veterans Affairs (VA) mortgages require an owner-occupied house. 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

¹⁷ Attached.

¹⁸ "Homeownership and Neighborhood Stability," Rohe and Stewart Housing Policy Debate, Volume 7, Issue 1 (1996).

¹⁹ "The social benefits of homeownership: Empirical evidence from national surveys", Peter H. Rossi & Eleanor Weber. Published online, 31 Mar 2010.

²⁰ "A Note on the Benefits of Homeownership," Daniel Aaronson, Journal of Urban Economics, Volume 47, Issue 3, May 2000, Pages 356-369.

²¹ 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/>.

²² 65% percentage of owner-occupation is higher than the national average of 63.1%: <https://www.census.gov/quickfacts/fact/table/montgomerycountymaryland/PST045217>.

intent to occupy certification. This requirement is met regardless of whether or not your spouse will be occupying the property while you're deployed.

The Committee agrees that it is important to have a resident owner with an ADU and is satisfied that the licensing requirements should retain that requirement. Ownership is not a zoning issue. The Committee recommends deleting the on-site ownership requirement in ZTA 19-01 because the requirement is implemented through the licensing regulations.

13) Should changes to zoning for ADUs affect municipalities?

Clearly, municipalities with their own zoning authority (Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove) are not affected by any changes to County zoning. Under Section 20-509 of the State Land Use Article, other municipalities may:

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

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

Within the scope of this provision, a municipality may have more restrictive conditions under any of these topics. The City of Takoma Park wanted a consistent approach within the City and wanted more liberal parking standards. The Committee recommends the more liberal parking standard in all of Takoma Park.

Possible Future County Actions

A) Should the term "Accessory Apartment Unit" be changed in County Code to "Accessory Dwelling Unit?"

In almost every other jurisdiction except Montgomery County, "accessory apartment units" are called "accessory dwelling units" (ADUs). This memorandum uses "ADU" to refer to what the Zoning Ordinance calls Accessory Apartment Units. **Staff recommends making this change in County Code.**

B) 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.²³

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.²⁴

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.

Councilmember Friedson would recommend a Bill to address this issue.

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.

C) 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 at least 7 feet between the ceiling and the floor.²⁵ 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.²⁶

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 basement 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.

²³ Section 54-43.

²⁴ Section 54-46.

²⁵ Section 26-5(d).

²⁶ Standard lumber and drywall are manufactured in 8-foot lengths.

Many houses were constructed with a basement or cellar that has a ceiling height of 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.

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

Under Section 19-02, a sediment control permit is not required for any minor land-disturbing activity. Minor land disturbing activity is activity that:

- (1) is not associated with construction of a new residential or commercial building;
- (2) involves less than 100 cubic yards of earth movement;
- (3) disturbs less than 5,000 square feet of surface area;
- (4) is not associated with a change of use from residential to any other use; and
- (5) is promptly stabilized to prevent erosion and sedimentation.

DPS treats a new detached accessory dwelling/apartment like an accessory building; a sediment control permit is **not** required.²⁷ The average cost for a sediment control permit, including permit fees and engineered plans by a private design consultant, is \$10,000.

Any change to this requirement would require a Bill to amend Chapter 19 (Section 19-2) of the County Code.

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

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

- 2 Full-Time Equivalents (FTE) (1 Program Manager I (\$100,000) and 1 Principal Administrative Aide (\$75,000)) dedicated solely to ADUs.
- If a 50% per year increase in applications is assumed (the average of 57 applications increases to 165 in FY21) and the 50% per year increase continues past FY21, DHCA would need an additional FTE Program Specialist in FY22.

²⁷ The zoning ordinance speaks to Accessory Apartments which are defined as "a second dwelling unit that is subordinate to the principal dwelling. An Accessory Apartment includes an Attached Accessory Apartment and a Detached Accessory Apartment." A "Detached Accessory Apartment" is further defined as "a second dwelling unit that is located in a separate accessory structure on the same lot as a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. A Detached Accessory Apartment is subordinate to the principal dwelling."

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).

Councilmember Friedson would recommend a Bill to reserve all ADU licensing fees to fund ADU inspectors.

The FY20 approved budget for the Department of Housing and Community Affairs includes five additional code enforcement inspectors—two that come from funding long-vacant positions and three additional positions added by the Council. The PHED Committee recommended and supported additional code enforcement personnel, in part to support a discussion of how best to license and inspect single-unit home rental properties. This would include single-unit homes that have ADUs but also the broader inventory of single-unit home rentals.

F) Should an ADU be allowed to convert to a short-term rental license?

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

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

If the Council wants further restrictions on ADUs converting to short-term rentals, those limitations on the issuance of a short-term rental license should be addressed in an amendment to Chapter 54 (Section 54-43) of the County Code.

Planning Department staff was asked to provide a "heat" map of where ADUs are currently located and illustrations of how detached ADUs could fit on various size lots, given the setback and building coverage restrictions in the R-200, R-90, and R-60 zones. The map and illustrations are attached to this memorandum starting on ©31.

Most ADUs are located in small lot zones (R-60, R-90, and R-200), even though none of them are detached units. The distribution of ADUs by zone and ADU category is as follows:

ZONE	ADU (SE/CU)	ADU (Class 3)	RLU	Total
AR	7	2	3	12
PD-3	1	1		2
PNZ	1			1
R-10	1			1
R-200	31	45	14	90
R-40			1	1
R-60	97	84	11	192
R-90	51	48	9	108
RC	5	3	6	14
RE-1	5	9	3	17
RE-2	4	12	9	25
RE-2C		5	1	6
RNC		1		1
T-S		1	1	2
Total	203	211	58	472

This packet contains

ZTA 19-01 revised with editorial changes

Planning Board recommendation

Planning staff recommendation

Executive recommendation

Sec. 29-19. Licensing Procedures.

Sec. 54-43. Certification for a (Bed and Breakfast Short-Term Rental) License

Existing ADU heat map

Location of existing ADUs

Planning staff information and illustrations

© number

1 – 10

11 – 13

14 – 20

21 – 27

28 – 29

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31

32

33 – 41

Zoning Text Amendment No.: 19-01
Concerning: Accessory Residential
Uses – Accessory
Apartments
Draft No. & Date: 6 – 7/16/19
Introduced: January 15, 2019
Public Hearing: February 26, 2019
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmember Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

Division 1.4. "Defined Terms"
Section 1.4.2. "Specific Terms and Phrases Defined"
Division 3.1. "Use Table"
Section 3.1.5. "Transferable Development Rights"
Section 3.1.6. "Use Table"
Division 3.3. "Residential Uses"
Section 3.3.3. "Accessory Residential Uses"
Division 3.5. "Commercial Uses"
Section 3.5.6. "Lodging"
Division 4.1. "Rules for All Zones"
Section 4.1.2. "Compliance Required"
Division 4.2. "Agricultural Zone"
Section 4.2.1. "Agricultural Reserve Zone (AR)"

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

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

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

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

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

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

OPINION

Zoning Text Amendment (ZTA) 19-01, lead sponsor Councilmember Reimer, was introduced on January 15, 2019. ZTA 19-01 would liberalize the standards for allowing an accessory apartment.

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.

In its report to the Council, the Montgomery County Planning Board and Planning staff agreed 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.

The Council conducted a public hearing on February 26, 2019. Supporters saw 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.

The opponents saw 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.

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

The PHED Committee held worksessions on March 18, March 25, and April 4, 2019. The Committee recommended approving ZTA 19-01 with amendments:

- 1) Revise the maximum gross floor area for an Accessory Apartment (hereafter referred to as an ADU (Accessory Dwelling Unit)):
 - a) For attached ADUs, 1,200 square feet of gross floor area; however, if the footprint of the principal structure is greater than 1,200 square feet, an ADU may occupy the basement or cellar of that structure without a square footage limit.
 - b) For detached ADUs, the maximum gross floor area must be the least of:
 - i) 50% of the gross floor area in the principal dwelling;
 - ii) 10% of the lot area; or
 - iii) 1,200 square feet of gross floor area.
- 2) Retain the current code on-site parking requirement for ADUs located more than 1 mile away from any Metrorail or Purple Line Station. Within 1 mile of such stations or within the boundaries of the City of Takoma Park, delete the additional on-site parking requirement for an ADU.
- 3) Retain the current code prohibition for a newly-constructed ADU entrance on the front (street) side of a dwelling.
- 4) Allow an ADU up to 32 feet long without additional setbacks.

- 5) Allow an accessory structure built before May 31, 2012 to be used as an ADU without regard to setbacks, if it was legally constructed and there is no increase to the footprint or height of the structure. If it is a structure that does not meet current setbacks, a new window on any wall on the side of any setback violation may not be constructed.
- 6) Clarify the prohibition on any other rentals on a property where an ADU is licensed.
- 7) Delete the ownership requirement in ZTA 19-01. (Revise the ownership requirement in the licensing requirements under a Bill to allow the required on-site owner to live either in the ADU or the principal dwelling unit.)

After worksessions on June 18 and July 9, 2019 and a final meeting on July 23, 2019, the Council, for the most part, agreed with the recommendation of the Committee, with the following changes:

- 1) Limit the size of a new detached unit to the least of “50% of the footprint of the principle dwelling; 10% of the lot area; or 1,200 square feet of gross floor area” instead of 50% of the gross floor area of the principle dwelling; and
- 2) In addition to changing the parking standards within 1 mile and outside 1 mile of Metrorail and Purple Line stations and within the City of Takoma Park, change the parking in an identical manner for MARC rail stations.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 19-01 will be approved as amended.

ORDINANCE

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

1 **Sec. 1. DIVISION 1.4 is amended as follows:**

2 **Division 1.4. Defined Terms**

3 * * *

4 **Section 1.4.2. Specific Terms and Phrases Defined**

5 * * *

6 **Accessory [[Apartment]] Dwelling Unit:** See Section 3.3.3.A.1

7 * * *

8 **Attached Accessory [[Apartment]] Dwelling Unit:** See Section 3.3.3.B.1

9 * * *

10 **Detached Accessory [[Apartment]] Dwelling Unit:** See Section 3.3.3.C.1

11 * * *

12 **Sec 2. DIVISION 59-3.1 is amended as follows:**

13 **Division 3.1. Use Table**

14 * * *

15 **Section 3.1.5. Transferable Development Rights**

16 A. The following uses are prohibited if the lot or parcel on which the use is
17 located is in the AR zone and is encumbered by a recorded Transfer of
18 Development Rights easement:

19 1. Agricultural

20 Agricultural Auction Facility

21 2. Residential

22 a. Attached Accessory [[Apartment]] Dwelling Unit

23 b. Detached Accessory [[Apartment]] Dwelling Unit

24 * * *

25 **Section 3.1.6. Use Table**

26 The following Use Table identifies uses allowed in each zone. Uses may be
27 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]] Dwelling Unit	3.3.3.B	L	L	L	L	L	L	L	L	L	L		* * *
Detached Accessory [[Apartment]] Dwelling Unit	3.3.3.C	L	L	L	L	L	L	L	L	L	L		
* * *													

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

29 * * *

30 **Sec. 3. DIVISION 59-3.3 is amended as follows:**

31 **Division 3.3. Residential Uses**

32 * * *

33 **Section 3.3.3. Accessory Residential Uses**

34 **A. Accessory [[Apartment]] Dwelling Unit, In General**

35 **1. Defined, In General**

36 Accessory Dwelling Unit or Accessory Apartment means a second
 37 dwelling unit that is subordinate to the principal dwelling. An
 38 Accessory [[Apartment]] Dwelling Unit includes an Attached
 39 Accessory [[Apartment]] Dwelling Unit and a Detached Accessory
 40 [[Apartment]] Dwelling Unit.

41 **2. Use Standards for all Accessory [[Apartments]] Dwelling Units**

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

44 a. Only one Accessory [[Apartment]] Dwelling Unit is permitted
 45 for each lot.

- b. The Accessory Apartment was approved as a [conditional use] special exception before May 20, 2013 and satisfies the conditions of the [[conditional use]] special exception approval[;] or [[the Accessory Apartment]] satisfies Subsection c.
- c. [The] If the Accessory [[Apartment]] Dwelling Unit does not satisfy [[subsection]] Subsection b, the Accessory [[Apartment]] Dwelling Unit [is] must be licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and
- i. the apartment Accessory Dwelling Unit [has] must have the same street address as the principal dwelling;
- ii. except for lots located within 1 mile of any Metrorail, Purple Line, or MARC Rail Station, either:
- (a) [one on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2] one on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Dwelling Unit, then a total of at least two on-site parking spaces must be provided; or
- (b) the Hearing Examiner finds under the waiver in Section 29-26(b) that there is adequate on-street parking;

- iii. ~~[[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[, or~~
~~1,200 square feet, whichever is less];]]~~
- [iv. the maximum floor area used for an Accessory
 Apartment in a proposed addition to the principal
 dwelling must not be more than 800 square feet if the
 proposed addition increases the footprint of the principal
 dwelling; and]
- [v][~~[[iv.]]~~ the maximum number of occupants is limited by
 Chapter 26 (Section 26-5); however, the total number of
 occupants residing in the Accessory ~~[[Apartment]]~~
Dwelling Unit who are 18 years or older is limited to
 2[.]; ~~[[and]]~~
- ~~[[v. the principal dwelling or accessory apartment must be the~~
~~primary residence of the applicant for an accessory~~
~~apartment rental license.]]~~
- iv. the maximum footprint of an Accessory Dwelling Unit,
in combination with other structures on the site, is limited
by the total lot coverage limit in the underlying zone and
the maximum gross floor area of the unit; and
- v. unless modified by the use standards for an Accessory
Dwelling Unit, an Accessory Dwelling Unit must comply
with the setback, height, and building lot coverage

standards of an accessory structure in the underlying
zone.

- d. An Accessory ~~[[Apartment]]~~ Dwelling Unit must not be located on a lot where any [other allowed] short-term rental Residential use exists or is licensed]; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Labor Housing Unit or a Guest House].
- e. In the Agricultural and Rural Residential zones, an Accessory ~~[[Apartment]]~~ Dwelling Unit is excluded from any density calculations. If the property associated with an Accessory ~~[[Apartment]]~~ Dwelling Unit is subsequently subdivided, the Accessory ~~[[Apartment]]~~ Dwelling Unit is included in the density calculations.
- f. Screening under Division 6.5 is not required.
- g. In the AR zone, any ~~[[accessory apartment]]~~ Accessory Dwelling Unit may be prohibited under Section 3.1.5, Transferable Development Rights.

B. Attached Accessory ~~[[Apartment]]~~ Dwelling Unit

1. Defined

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

2. Use Standards

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

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 Dwelling Unit.

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

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

- 152 [d. In the RNC, R-90, and R-60 zones, the Attached Accessory
153 Apartment is located at least 300 feet from any other Attached
154 or Detached Accessory Apartment, measured in a line from side
155 lot line to side lot line along the same block face.]
- 156 [e. Under Section 29-26(b), the Hearing Examiner may grant a
157 waiver from the parking and distance separation standards.]
- 158 b. The maximum gross floor area for an Attached Accessory
159 Dwelling Unit, including any floor area used for an Accessory
160 Dwelling Unit in a cellar, must be:
- 161 i. 1,200 square feet of gross floor area; or
162 ii. if the basement or cellar is used for the Attached
163 Accessory Dwelling Unit, the gross floor area for the
164 Attached Accessory Dwelling Unit may equal the square
165 footage area of the basement or cellar.

166 **C. Detached Accessory [[Apartment]] Dwelling Unit**

167 **1. Defined**

168 Detached Accessory Apartment or Accessory Dwelling Unit means a
169 second dwelling unit that is located in a separate accessory structure
170 on the same lot as a detached house building type and includes
171 facilities for cooking, eating, sanitation, and sleeping. A Detached
172 Accessory [[Apartment]] Dwelling Unit is subordinate to the principal
173 dwelling.

174 **2. Use Standards**

- 175 a. Where a Detached Accessory [[Apartment]] Dwelling Unit is
176 allowed as a limited use, it must satisfy the use standards for all
177 Accessory [[Apartments]] Dwelling Units under Section
178 3.3.3.A.2. [and the following standards:]

- 179 [a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory
 180 Apartment must be located a minimum distance of 500 feet
 181 from any other Attached or Detached Accessory Apartment,
 182 measured in a line from side lot line to side lot line along the
 183 same block face.]
- 184 [b. A Detached Accessory Apartment built after May 30, 2012
 185 must have the same minimum side setback as the principal
 186 dwelling and a minimum rear setback of 12 feet, unless more
 187 restrictive accessory building or structure setback standards are
 188 required under Article 59-4.]
- 189 [c. The minimum lot area is one acre.]
- 190 b. Any structure constructed legally before May 31, 2012 that is
 191 not increased in size or building height and does not have new
 192 windows on a wall nearest an abutting property may be used for
 193 a ~~[[detached]] Detached Accessory [[Apartment]] Dwelling~~
 194 Unit without regard to setbacks or floor area.
- 195 c. A Detached Accessory ~~[[Apartment]] Dwelling Unit~~ built after
 196 May 30, 2012 must have the same minimum side setback as the
 197 principal dwelling and a minimum rear setback of 12 feet],
 198 unless more restrictive accessory building or structure setback
 199 standards are required under Article 59-4]].
- 200 d. For any Detached Accessory Dwelling Unit with a length along
 201 a rear or side lot line that is longer than 24 feet, the minimum
 202 side or rear setback must be increased at a ratio of 1 foot for
 203 every 1 foot that the dimension exceeds 24 linear feet. The
 204 additional rear setback is from a 12-foot setback as its starting
 205 point.

- 206 e. The maximum gross floor area for a Detached Accessory
 207 Dwelling Unit must be the least of:
 208 i. 50% of the footprint of the principal dwelling;
 209 ii. 10% of the lot area; or
 210 iii. 1,200 square feet of gross floor area.

211 * * *

212 **F. Guest House**

213 1. Defined

214 Guest House means a detached dwelling that is intended, arranged, or
 215 designed for occupancy by transient, nonpaying visitors of the
 216 resident owner of the principal dwelling.

217 2. Use Standards

218 Where a Guest House is allowed as a limited use, it must satisfy the
 219 following standards:

220 a. A Guest House must not be located on a lot:

- 221 i. that is occupied by a renter;
 222 ii. that has an [[accessory apartment]] Accessory Dwelling
 223 Unit; or
 224 iii. where the owner of the lot resides off-site for more than 6
 225 months in any calendar year.

226 * * *

227 **I. Short-Term Residential Rental**

228 1. Defined

229 Short-Term Residential Rental means the residential occupancy of a
 230 dwelling unit for a fee for less than 30 consecutive days. Short-Term
 231 Residential Rental is not a Bed and Breakfast.

232 2. Use Standards

233 Where Short-Term Residential Rental is allowed as a limited use, it
234 must satisfy the following standards:

- 235 a. Short-Term Residential Rental is prohibited in a Farm Tenant
236 Dwelling or on a site that includes an Accessory [[Apartment]]
237 Dwelling Unit.

238 * * *

239 **Sec. 4. DIVISION 3.5 is amended as follows:**

240 **Division 3.5 Commercial Uses**

241 * * *

242 **Section 3.5.6. Lodging**

243 * * *

244 **B. Bed and Breakfast**

245 * * *

246 **2. Use Standards**

247 a. Where a Bed and Breakfast is allowed as a limited use, it must
248 satisfy the following standards:

- 249 i. A Bed and Breakfast is prohibited in a dwelling unit that
250 also provides guest rooms for roomers, or in a Farm
251 Labor Housing Unit, or on a site that includes an
252 Accessory [[Apartment]] Dwelling Unit.

253 * * *

254 **Sec. 5. DIVISION 4.1 is amended as follows:**

255 **Division 4.1. Rules for All Zones**

256 * * *

257 **Section 4.1.2. Compliance Required**

258 * * *

259 C. In the Agricultural, Rural Residential, and Residential Detached
260 zones, only one detached house is allowed per lot, except as allowed

under Section 3.1.6 for a Detached Accessory ~~[[Apartment]]~~ Dwelling Unit, Farm Labor Housing Unit, or Guest House, or under Section 7.7.1.A.1 for an Existing Structure on October 30, 2014.

* * *

Sec. 6. DIVISION 4.2 is amended as follows:

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)

* * *

D. Special Requirements for the Transfer of Density

1. In General

- a. Under Section 4.9.15.B and in conformance with a general plan, master plan, or functional master plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the AR zone to a TDR Overlay zone. A development right is not required for the following dwelling units on land in the AR zone as long as the dwelling unit remains accessory to Farming and the principal dwelling:
 - i. Farm Labor Housing Unit; and
 - ii. Detached Accessory ~~[[Apartment]]~~ Dwelling Unit.
- b. If a property is subdivided so that any Farm Labor Housing Units or Detached Accessory ~~[[Apartments]]~~ Dwelling Units are no longer accessory to the farm as defined in Section 59.3.7.4.B, any Farm Labor Housing Units or Detached Accessory ~~[[Apartments]]~~ Dwelling Units are not excluded from the calculation of density and must have retained a development right in addition to the retained development right

288 for any newly created lot; however, these dwellings are
289 excluded from the density calculation and need not have a
290 retained development right if:

291 * * *

292

293 **Sec. 7. Effective date.** This ordinance becomes effective [[90 days after the
294 date of Council adoption]] on December 31, 2019.

295

296 This is a correct copy of Council action.

297

298

299 _____
300 Megan Davey Limarzi, Esq.
Clerk of the Council