AGENDA ITEM #5
January 15, 2013

Worksession

MEMORANDUM

January 11, 2013

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: ZTA 12-11, Accessory Apartments – Amendments
Bill 31-12, Accessory Apartments – Licensing

Zoning Text Amendment (ZTA) 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012. In the opinion of the Planning Board, the process for reviewing accessory apartments was overly complex and time consuming. The ZTA would allow accessory apartments under certain conditions without a special exception. It would still require a special exception approval whenever all those circumstances are not present. The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. After worksessions on October 8, October 22, and November 5, 2012, the Committee recommended Bill 31-12 and amending ZTA 12-11 to simplify and speed the review of most accessory apartments. The Committee also recommended amendments to ZTA 12-11 that anticipated the approval of Bill 31-12, Accessory Apartments – Licensing, sponsored by the Planning, Housing and Economic Development Committee, which was introduced on November 13, 2012.

The ZTA would establish the standards for approval of accessory apartments. It would require the approval of a new licensing procedure for all accessory apartments that would be established by Bill 31-12. This memorandum reviews the 2 recommended actions separately, starting with ZTA 12-11. Background memoranda used for the Committee worksession are attached.

ZTA 12-11

PHED Recommendation: The Committee recommended approval of ZTA 12-11 with amendments. The Committee agreed with the core concept of ZTA 12-11 that makes accessory apartments a permitted use under certain circumstances; however, under the Committee's recommendation, if an applicant wanted a waiver of the minimum distance requirement or the on-site parking requirement, a special exception would be required. Such a special exception would be decided by the Hearing Examiner, with an appeal allowed to the Board of Appeals. In some instances, the Committee also recommended the following zoning standards for all future accessory apartments:

Approval conditions	Committee's recommendation (current standard in parentheses)
Limit one unit per one-family detached dwelling (non-agricultural zone)	Allowed without regard to age of the house (Currently, the house must be at least 5 years old.)
Additions to existing structure	Allowed (No change)
Separate structure	Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1 (Currently 2 acre minimum size)
Occupancy of principal house	Require the address to be the primary residence of the owner (Currently, the owner must occupy one of the units on the lot.)
Registered living units or additional rentals	An accessory apartment is prohibited if an RLU or other rental is occurring (No change)
External attributes	Allow a separate side or rear yard entrance, a separate front entrance if it pre-existed the application, and a common front entrance. (Currently, improvements must be compatible with the existing dwelling and surrounding properties.)
Street Address	Must be the same as the main dwelling (No change)
Development standards	Zoning classification controls; no minimum lot size (Currently, the larger of 6,000 square feet or the minimum lot size of the zone)
Maximum number of people	2 adults; no limit on minors except housing code (Currently not limited)
Unit size	Limit floor area to less than 50% of main dwelling but no larger than 2,500 square feet – Councilmember Elrich recommended retaining the current size limits (Currently, a maximum of 1,200 square feet for attached and 2,500 square feet for detached units)
Excessive concentration	300 feet from another accessory apartment on the same block face in the R-90, R-60 and RNC zones; 500 feet in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, but subject to waiver by special exception; no prohibition on back-to-back apartments (Currently, "excessive concentration" is prohibited but not defined.)
Parking	If there is an existing driveway, 1 on-site space required in addition to any required on-site place required for the main dwelling; if new driveway is required, 2 spaces in addition to main dwelling spaces. (Currently, 2 spaces are required, but the Board of Appeals may waive this requirement.)
Reporting requirement	Require a report by DHCA after the 2,000th license is issued (No current reporting requirement)

Questions addressed by ZTA 12-11 as amended

Why is it appropriate to allow accessory apartments without a special exception?

The attributes of a special exception, such as notice and an opportunity to challenge facts or the adequacy of parking, can be accomplished without a special exception and Planning Staff review. Bill 31-12 will require a separate class of license for accessory apartments. That license will require notice and would allow an aggrieved party to challenge a finding of the DHCA Director or the adequacy of on-street parking. Any such challenge would then be heard and decided by the Hearing Examiner.

ZTA 12-11 would change 2 subjective standards into objective standards.

As a special exception, the Board of Appeals must find that the proposed accessory apartment would not cause an excessive concentration of similar uses. Under ZTA 12-11, a special exception is not required if the applicant is located at least 300 feet from other accessory apartments on the same block face (500 feet in large lot zones).

Currently as a special exception, improvements for an accessory apartment must be found to be compatible with the existing dwelling and surrounding properties. Under ZTA 12-11, an owner may, without a special exception, have a separate side or rear yard entrance, or a separate front entrance if it pre-existed the application. A common front entrance would also be allowed without a special exception.

A special exception would still be required under ZTA 12-11 as amended when an applicant seeks a deviation from the number of on-site parking spaces required or the minimum distance from any other attached or detached accessory apartment. The Hearing Examiner would be authorized to hold a hearing and decide the request, but any party who objects to the Hearing Examiner's decision may appeal to the Board of Appeals.[1]

Should 2 parking spaces be required for every accessory apartment in addition to the requirements for the principal structure?

Currently, 2 spaces are required, but the Board of Appeals may waive this requirement. It is typically waived when there is adequate on-street parking. ZTA 12-11 would require 1 space in addition to the on-site parking required for the principal dwelling.[2] A special exception would be required whenever the applicant wants a waiver of the parking requirement. In order to approve a special exception, the Hearing Examiner must find that adequate on-street parking permits fewer off-street spaces. The definition of adequate is not defined. If the Council wanted the Hearing Examiner to have less discretion in approving a special exception, then it could repeat the standard found in Bill 31-12:

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[1] §59-G-1.12.

[2] ZTA 12-11 as recommended would require 2 parking spaces if a new driveway is required to provide one on-site parking space. Many houses built before 1955 do not have driveways. Adding an off-street parking space would reduce the availability of on-street parking. Driveways are generally 10 feet wide. Parking for the general public is prohibited 5 feet on either side of the driveway, for a total width of 20 feet. The typical on-street parking space is 20 feet long. A new driveway must at least accommodate 2 vehicles if it is to add to total parking availability.

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.

An accessory apartment license would require compliance with the zoning standard; however, under Bill 31-12, an allegation that on-street parking was inadequate would trigger a hearing by the Hearing Examiner. The Hearing Examiner could find that more on-site parking is required for approval.

Under these circumstances, the Committee recommended a requirement of 1 additional on-site parking space.

Would the area that is shared between 2 abutting properties be counted as a parking space?

There are instances where a common driveway (between 2 properties) is too narrow for cars to pass each other. The area of the common driveway would count as a parking space if land records indicated that the property proposed for an accessory apartment had exclusive use of the common driveway. It would be generally expected that cross easements would **not** allow exclusive use and, therefore, a common driveway would **not** be counted as space for parking. The Council could require that no shared driveway space be counted as a parking space.

What limits should be placed on the size of accessory apartments?

Currently, accessory apartments are limited to 1,200 square feet for attached apartments and the lesser of 2,500 square feet or 50 percent of the floor area of the principal dwelling for detached apartments. The Committee recommends using a single standard (the lesser of 2,500 square feet or 50 percent of the floor area of the principal dwelling). The Committee did not want to require the unnecessary partitioning of a basement in a large house. Under the current code, any increase in size would allow more adults (presumably with cars to park). In the opinion of the Committee majority, the absolute limit on the number of adults (2) is a better direct limit on an apartment's impact than the square footage of a unit.[3] Councilmember Elrich recommended retaining the current limits on the size of an accessory apartment. In his opinion, larger units have the potential to disrupt the residential character of the neighborhood by allowing duplexes. In addition, he believes that allowing larger units would increase the potential for the limit on 2 adults to be violated.

When does an additional accessory apartment create an overconcentration of apartments?

Under ZTA 12-11, accessory apartments that do not require a special exception must be at least 300 feet from other accessory apartments on the same block face in small lot zones, and 500 feet apart in large lot zones. The Committee agreed with this recommendation by the Planning Board as a means to prevent an overconcentration of apartments. The ZTA and Bill propose "safety valves" to this standard. A

[3] The Planning Board recommended limiting the total number of people in an accessory apartment to 3. The Committee recommended the limit be 2 adults, without a limit on the number of minors. Other jurisdictions limit the number of people when accessory apartments are allowed, including minors. In Fairfax County, the maximum number of people that may live in an accessory apartment is 2. In Washington, DC, the main dwelling and the accessory apartment may have no more than 6 people total.

neighbor who believes that the apartment would cause on-street parking problems can challenge DHCA's issuance of a license (and get a hearing).

An owner who wanted to vary from the spacing requirement would have to get a special exception approved. As a special exception, the Board of Appeals must find that an additional accessory apartment:

> will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area....[4]

In addition, ZTA 12-11 would require a finding that:

> when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.[5]

ZTA 12-11 would not amend the finding required by the Board of Appeals. This standard can be drafted with more objective standards, but that would give the Hearing Examiner and the Board of Appeals less latitude to consider special circumstances.

Is the minimum lot size required appropriate for accessory apartments?

Currently, the Zoning Ordinance requires an accessory apartment to be on a minimum size lot that is the greater of 6,000 square feet or the minimum lot required by the zone. ZTA 12-11 as recommended by the Committee would remove the 6,000 square foot minimum size. Lots that were created before 1928 may comply with zoning if the lot is 5,000 square feet. The Committee and the Planning Board believe that the protections afforded by the minimum distance between apartments and the maximum number of adults will be sufficient protection against overcrowding.

Bill 31-12

PHED Recommendation: On November 5, 2012, the Committee endorsed the provisions of Bill 31-12 in combination with its recommendation on ZTA 12-11. After the meeting, Committee members agreed with an amendment to use the date of acceptance of a license application by DHCA to determine subsequent deadlines. As introduced, Bill 31-12 uses the date of filing a license application to determine subsequent deadlines.

Bill 31-12 would:

1) Require notice of the application by a sign posted on the property. The sign must be the same size as a sign for a special exception application and give an internet web address to allow interested residents to follow the status of the application and inform residents of their opportunity to object to Department of Housing and Community Affairs (DHCA) findings;

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[4] §59-G-1.21(7).
[5] ZTA 12-11 lines 138 -142.

2) Establish deadlines for review;
3) Require an accessory apartment to be on the site of the property owner's principal residence; proof that the property is the owner's principal residence would be:
   (a) the owner's most recent tax return;
   (b) the owner's current driver's license; or
   (c) the owner's real estate tax bill for the address of the proposed accessory apartment;
4) Allow an applicant to object to DHCA's findings if the application is denied;
5) Allow residents to object to DHCA's findings or to allege that on-street parking is inadequate;
6) Authorize the Hearing Examiner to hear objections;
7) Require DHCA to approve or deny the license based on the decision of the Hearing Examiner;
8) Allow a judicial review of the Hearing Examiner's decision;
9) Require DHCA to maintain a list and a map of licensed apartments; and
10) Provide a simple process to renew a license.

ZTA 12-11 is directly related to Bill 31-12. ZTA 12-11 as recommended by the PHED Committee would allow some accessory apartments to be approved without a special exception. All accessory apartments require a license. The current licensing process does not require any notice, specific standards, or give any opportunity to objection or appeal outside of going to court. Bill 31-12 is intended to complement the Committee's recommendations on ZTA 12-11.

The Council held a public hearing on Bill 31-12 on December 4, 2012. The Executive and the League of Women Voters recommended approval of the Bill. Questions about the Bill were raised by other speakers.

Questions raised by testimony

Is a sign sufficient notice of an accessory apartment license application without mailing to neighbors? (Lines 77 – 92)

The Bill as introduced would require the posting of a sign on the site of an accessory apartment application. One municipality has requested a requirement for mailed notice to the municipalities. Bill 31-12 as introduced would not require mailed notice to anyone. Currently, building permits are required to be posted on a site (without sign requirements). Special Exception applicants are required to post a sign and mail notice. Bill 31-12, by requiring a sign with the same specifications as a sign for a special exception application, would require more notice than a building permit but less notice than a special exception. In the opinion of the Committee majority, sign notice would be sufficient notice. (The DHCA Director indicated that DHCA staff will provide signs, just like the Board of Appeals staff provides signs for special exceptions.) Councilmember Elrich recommended requiring mailed notice to adjoining and confronting property owners, the local civic association, and the municipality of the site, if any.

The heart of the requirement of notification in administrative proceedings is that the notice should clearly identify the character of the action proposed and enough of the basis upon which it rests to enable the reader to intelligently get involved in the proposed action.[6] Parties who have actual knowledge of the subject matter of a hearing are barred from claiming a defect in the notice. There is no law or court decision that requires notice by mail for licenses.

[6] O'Donnell v. Basslers, Inc., 56 Md. App. 507 (1983).

Some testimony wanted to be assured of notice of a filed application before improvements to the property are made. Bill 31-12 would not prohibit a homeowner from making improvements to their property before an application for an accessory apartment is filed; however, the prudent homeowner would apply for license before construction.

What is appropriate proof of primary residence? (Lines 93 – 100)

Bill 31-12 would allow proof that the site of the accessory apartment is the primary residence by 3 alternative methods:

(1) the owner's most recent Maryland income tax return;
(2) the owner's current Maryland driver's license; or
(3) the owner's real estate tax bill for the address of the proposed accessory apartment.

Only a Maryland income tax return requires an owner's presence at the primary residence for more than 6 months in a year.[7] A driver's license allows proof of residence to be established by a variety of methods.[8] A real estate tax bill requires a statement that the address indicated by the owner is the owner's principal residence but does not require the owner's presence on the property.[9] The Committee

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[7] If you were domiciled in Maryland on the last day of the taxable year, or if you maintained a place to live in Maryland and were physically present in Maryland for more than six months of the tax year, then you are a legal resident who must file an income tax return.

[8] To establish residency, an applicant for a license must present at least two of the following source documents that include the applicant's residence address. The documents may not be from the same business, company, or agency. The address on the applicant's Maryland residency sources must match the residence address on the application. A post office box may be used only in conjunction with a resident's address if it is in the same zip code area. The use of a private mail drop or other commercial address is not permitted.

Maryland vehicle registration card or title;
Utility, telephone or cable/satellite TV bill;
Checking or savings account statement;
Life insurance card or policy (over 3 years old);
Property tax bill or receipt;
Mortgage account or proof of home ownership;
Residential rental contract (apartment lease or other rental of real property);
First class mail from a federal, state or local government agency (to include the contents and envelope); MVA mail is not acceptable;
Copy of federal or MD income tax return filing not more than 18 months old, with proof of filing;
Installment contract from a bank or other financial institution;
Sales tax or business license;
Major credit card bill;
Residential service contract (refers to services performed at the address of residence; for example, cable or satellite television, TV repairs, lawn service or exterminator contract);
Canceled check with imprinted name and address;
Voter registration card;
Selective Service Card.

[9] The State Assessment Office maintains the records of legal owner information for property taxes. Changes to the mailing address of a property tax bill must be requested in writing by the legal owner or representative. The letter must include the following items:

- your name as the property owner or his/her legal representative;
- the account number and address of the property;
- the address to which all future correspondence is to be sent;
- the address of the owner's principal residence;
- a daytime telephone number.

A homestead tax credit DOES require a minimum 6 months' presence on the property.

wanted easy methods of proof and wanted to allow absences by the owner from the residence without monitoring the timing of those absences. The Council could limit the method of proof to a Maryland income tax return if it wants to be more restrictive.

How would DHCA license an accessory apartment that was not yet built? Should there be a time limit for needed improvements? (Lines 113 – 114)

An accessory apartment license would not be issued until any required improvements are completed. The Director's report would describe the needed improvements. Any such improvements would be inspected before the license was issued. The Director has indicated that regulations will address the issue of time limits on needed improvements. His current thinking is that all work should be completed within 180 days.

Should objections be allowed for license renewals? Is a new owner required to apply for a new license? (Lines 124 – 137)

Bill 31-12 allows for a renewal of a license under the following circumstances and does not allow for an appeal to the Hearing Examiner:

> The Director may renew a license for an accessory apartment at the request of the applicant if the applicant:
>
> (1) 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;
> (2) attests that one of the dwelling units on the lot or parcel will be the primary residence of the owner; and
> (3) acknowledges that by obtaining a license the applicant gives the Director the right to inspect the lot or parcel, including the accessory apartment.

The Committee recommends making accessory apartment license renewals a routine matter. Complaints would trigger inspections and enforcement actions, but the mere renewal of a license would not. If an inspection indicates that any accessory apartment does not comply with all applicable laws, the Director may revoke the license or take other remedial action under Section 29-25.

How would Bill 31-12 apply to existing accessory apartments? (Lines 137 – 140)

All current accessory apartments were approved as special exceptions and have a Class 1 rental license. The Director of DHCA 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. If the homeowner can satisfy the conditions for a Class 3 license, that homeowner would have an option to abandon the special exception and get a Class 3 license.

How does the provision for temporary rental licenses affect accessory apartments? (Lines 144 – 152)

Section 29-19(c) allows the DHCA Director to issue temporary rental licenses where a rental building has not been completely constructed or renovated. The provision would not be applicable to accessory apartments. Incomplete accessory apartments would not be issued a license. (See the next question.)

Should there be more standards of approval or disapproval by the Hearing Examiner under an objection? (Lines 195 – 203)

Under Bill 31-12, an aggrieved party would force a hearing by the Hearing Examiner if inadequate on-street parking is alleged. The Hearing Examiner may find that on-street parking is inadequate if 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 the proposed accessory apartment is likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.[10] The term "near" is not defined and therefore would be left to the discretion of the Hearing Examiner. As proposed, the definition of "near" might be different under different circumstances (e.g., handicapped neighbors). The Council could use a specific distance (300 feet) instead of allowing discretion by the Hearing Examiner.

Should the Hearing Examiner or the Board of Appeals be the decision maker? (Lines 204 – 207)

Under Bill 31-12, the Hearing Examiner would make a final administrative decision after an adjudicatory hearing. That decision would be appealable to the Circuit Court. Bill 31-12 would not allow the Hearing Examiner's decision to be appealed to the Board of Appeals. The Committee recommended limiting the number of appeals that could be made from an accessory apartment licensing decision.

Currently, the Zoning Ordinance authorizes the Hearing Examiner to decide the following petitions for special exceptions:

(1) Boardinghouses for 3 guests or fewer in the R-30, R-20 and R-10 zones.
(2) Home occupations in the R-30, R-20 or R-10 zones.
(3) Noncommercial riding stable for not more than 2 horses, for personal or family use, in the RE-2 zone.
(4) Temporary structures in residential zones.
(5) Renewals of temporary special exceptions originally granted by the board, director, or hearing examiner for boardinghouses and home occupations.
(6) Farm tenant mobile homes, for more than one but less than 4; provided such farm tenant mobile homes meet the definition established for such uses by this chapter and that such uses are not within 200 feet of a non-farm residence.
(7) Child day care facilities for up to 30 children.

The Hearing Examiner's decisions in these matters ARE appealable to the Board of Appeals by any aggrieved party. The Committee believes that accessory apartments that qualify for a license do not warrant multiple bites of the apple for objecting parties.

[10] Bill 31-12; lines 193-201.

Should annual inspections be required?

DHCA has experience with inspecting current accessory apartments and has not discovered problems that would warrant annual inspections. DHCA intends to establish a regulation for the inspection of accessory apartments once every 3 years. The requirement would parallel a section of Code that Bill 31-12 would not amend:

> Sec. 29-22. Inspection of rental housing.
> (a) The Director must inspect each apartment complex and personal living quarters building licensed as rental housing at least once every three years to determine if it complies with all applicable laws. The Director may inspect an apartment complex or personal living quarters building more often than the triennial inspection.
> (b) The Director may inspect any other rental housing if the Director receives a complaint or a request from a landlord or tenant or believes that the rental housing does not comply with all applicable laws.

What would be the duration of an accessory apartment license?

The duration of a rental license is already established in code as one year.

> Sec. 29-23. License terms and renewal.
> Each license must be issued for a term of one year, renewable for additional one-year terms, subject to payment of the license fee and compliance with all applicable laws. Renewal of licenses must follow procedures established by the Director.

When a property with a licensed accessory apartment is sold, what are the obligations of the new owner?

A new owner of an accessory apartment must notify DHCA of the change in ownership. The current obligations of a new owner of an accessory apartment do not include a requirement to apply for the transfer or pay a fee for the transfer:

> Sec. 29-24. Transferability.
> (a) If an applicant for or the holder of a license transfers ownership or no longer is an agent for the licensed rental housing or changes address, the applicant or licensee must notify the Department within 10 days of the change. The Director may reject an application or suspend or revoke a license if the applicant or licensee does not notify the Department as required by this subsection.
> (b) Any person who takes over the operation of licensed rental housing may transfer the license for the unexpired portion of the term for which it was issued by applying to the Director within 15 days after taking over operation and paying a license transfer fee of at least $5 per dwelling unit, but not exceeding $25. Nothing in this Section affects the validity of any sale, transfer, or disposition of any interest in real estate. ***This subsection does not apply to accessory apartments. [emphases added]***
> (c) Whenever the ownership of any rental housing changes hands, the transferor must notify all tenants of the name, address and office location of the transferee. If the transferee is a corporation, the transferor must list the name and address of the resident agent of the transferee.

Would an accessory apartment license result in the homeowner losing a homestead tax credit?

The addition of an accessory apartment would not alter the ability of the homeowner to get or retain a homestead tax credit.

A homeowner is entitled to a homeowner tax credit for a house that is used as the principal residence of the homeowner and is actually occupied or expected to be actually occupied by the homeowner for more than 6 months within a one year period.[11] There is nothing in the qualification for the tax credit that prohibits the rental of part of the property as long as the property is the principal residence of the homeowner.

What are the consequences for an accessory apartment license violation?

Rental licenses, including accessory apartment licenses, are within the jurisdiction of the Commission on Landlord Tenant Affairs. The penalties for a failure to license or comply with Commission orders are currently provided in code:

> Sec. 29-18. Penalty for failure to license or to comply with Commission orders or summons.
> (a) Any person has committed a class A violation if the person:
> (1) operates, attempts to operate, or permits the operation of rental housing that the person owns without first having obtained a rental housing license, or
> (2) does not comply with a Commission order or summons.
> If a person stops operating rental housing, no penalty will apply during the sixty-day period that tenants have to vacate the housing as specified in Section 29-25.
> (b) In addition to any criminal or other penalty provided in this Chapter, the County Attorney may initiate an appropriate civil action to correct any violation of this Article under Section 29-8, and any court with jurisdiction may issue restraining orders, temporary or permanent injunctions or other appropriate relief.

How would disputes be resolved between landlords and tenants?

The DHCA Office of Landlord and Tenant Affairs must attempt to resolve complaints. Unreconciled complaints must go to the Commission on Landlord-Tenant Affairs.

What is the effective date of the Bill and the ZTA?

The effective date of a Bill is 91 days after the Executive signs the Bill, unless a specific effective date is noted in an uncodified section of the Bill. The effective date of a ZTA is 20 days after Council approval, unless noted otherwise in the ZTA. If the Council approves the Bill and the ZTA, then the effective day for both actions should be the same. *Staff recommends an effective date of May 15, 2013.*

[11] Section 9-105 Tax-Property Article of the Maryland Annotated Code.

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Bill No. 31-12
Concerning: Accessory Apartments - Licensing
Revised: January 9, 2013 Draft No. 2
Introduced: November 13, 2012
Expires: May 13, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: The Planning Housing, and Economic Development Committee

AN ACT to:

(1) require an accessory apartment rental license issued by the Department of Housing and Community Affairs;
(2) establish the standards for the issuance of an accessory apartment license;
(3) require notice of the proposed accessory apartment;
(4) authorize the Hearing Examiner to hear objections to the Department's findings concerning an accessory apartment rental license; and
(5) generally amend the law governing an accessory apartment and appeals for rental licenses.

By amending
Montgomery County Code
Chapter 2, Administration
Sections 2-112 and 2-140
Chapter 29, Landlord-Tenant Relations
Sections 29-16, 29-19, and 29-26

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 2-140, 29-16, 29-19, and 29-26 are amended as follows:

2-140. Powers, duties and functions.

(a) The Office of Zoning and Administrative Hearings must:

(1) schedule and conduct public hearings on any appeal or other matter assigned by law or by the County Council, County Executive, or other officer or body authorized to assign matters to a hearing examiner;

(2) issue a subpoena, enforceable in any court with jurisdiction, when necessary to compel the attendance of a witness or production of a document at any hearing, and administer an oath to any witness;

(3) allow each party in any hearing a reasonable opportunity to cross examine each witness not called by that party on matters within the scope of that witness' testimony;

(4) forward a written report, with a recommendation for decision, to the body that assigned the matter, including findings of fact and conclusions of law where required or appropriate;

(5) adopt regulations, subject to Council approval under method (2), to govern the conduct of public hearings and other activities of the Office.

(b) The Office may act as an administrative office or agency designated by the District Council, as prescribed in the Regional District Act (Article 28 of the Maryland Code).

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

(1) petition to the County Council to grant, modify, or revoke a special exception, as provided in Chapter 59;

(2) designation by the County Council of a geographic area as a community redevelopment area; **[**or**]**

(3) matter referred by the Board of Appeals under Section 2-112(b); or

(4) objection to a finding made by the Director of the Department of Housing and Community Affairs concerning an application for an accessory apartment rental housing license under Section 29-26.

(d) When the County Executive or a designee must conduct an administrative hearing under any law, the Executive may authorize the Office of Zoning and Administrative Hearings to conduct the hearing or any particular class of hearings.

29-16. Required.

(a) The owner of a dwelling unit must obtain a rental housing license before operating the dwelling unit as rental housing. If the owner is a corporation, the corporation must be qualified to do business in Maryland under state law. Each owner must certify to the Department the name, address and telephone number of an agent who resides in Maryland and is qualified to accept service of process on behalf of the owner.

(b) The Director must issue [two] three classes of rental housing licenses. Class 1 is a multifamily rental housing license. Class 2 is a single-family rental housing license. Class 3 is a single-family accessory apartment license.

(c) A Class 1 rental housing license is required for each apartment complex and personal living quarters building, and for each multifamily dwelling unit operated as rental housing. A Class 2 rental housing license is required for each single-family dwelling unit operated as rental housing. A Class 3 license is required for each single-family residence with an

accessory apartment that does not have a special exception approved before {EFFECTIVE DATE}.

* * *

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 **[**an accessory apartment**]** a lot or parcel in a zone that permits accessory apartments may obtain **[**and keep**]** a license to operate an accessory apartment if [the occupancy of the accessory apartment is limited to**]**:

[(1) One or more individuals who live and cook together as a single housekeeping unit and are related by:

(A) Blood;

(B) Marriage; or

(C) Adoption; or

(2) No more than 2 individuals who live and cook together as a single housekeeping unit.**]**

(A) the owner places a sign on the lot of the proposed accessory apartment within 5 days after [[applying for]] the Director accepts an application license, unless a sign is required as part of an application for a special exception. The sign must:

(i) be constructed of any durable material approved by the Director;

(ii) be at least 30 inches above the ground at its lowest level;

(iii) be at least 24 inches high and 36 inches wide;

(iv) have only letters and numbers that are at least 4 inches high; and

(v) include information that an application for an accessory apartment license was filed, the internet address of a web site to find the status of the application, and any other facts required by the Director.

(B) the principal dwelling on the lot or parcel required for the proposed accessory apartment is the owner's primary residence. Evidence of primary residence includes:

(i) the owner's most recent Maryland income tax return;

(ii) the owner's current Maryland driver's license, or

(iii) the owner's real estate tax bill for the address of the proposed accessory apartment; and

(C) the Director finds that:

(i) the accessory apartment satisfies the standards for an accessory apartment in Section 59-A-6.19; or

(ii) the accessory apartment was approved under Article 59-G as a special exception.

[[(3)]] (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 [[filed]] 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 [[filed]] 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;

(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.

[[(4)]] (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.

[[(5)]] (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,

[[(6)]] (5) The Director must maintain a public list and map showing each Class 3 license and each accessory apartment with a Class 1 license.

(c) Where a rental building has not been completely constructed or renovated, the Director may issue a temporary license for that part of the building that has been completely constructed or renovated if the landlord has:

(1) obtained a temporary certificate of occupancy under Chapter 8; and

(2) complied with all other applicable laws.

However, the temporary license expires when a license to operate the entire building is issued.

(d) The Director must not issue a rental housing license for a personal living quarters building unless the applicant has submitted a satisfactory management plan. The plan must specify who will manage the building and explain what the manager will do to achieve acceptable levels of safety, sanitation, and security in the building's common areas.

(e) Each licensee must give the Department a current address for the receipt of mail. If the Department sends first class or certified mail to the licensee at the designated address and the mail is returned as

undeliverable, the Department may treat the mail as having been received.

* * *

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 [in accordance with] under the Maryland Rules of Procedure for [a review of the action] 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.

(iii) (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.

Approved:

Roger Berliner, President, County Council — Date

Approved:

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill 31-12
Accessory Apartments - Licensing

DESCRIPTION:	This Bill establishes a process for accessory apartment licensing including noticing, standards for issuance and renewal, objections and appeals
PROBLEM:	ZTA 12-11 as introduced, currently pending before the Council, would allow some accessory apartments to be approved without a special exception. All accessory apartments require a license. The current licensing process does not require any notice, specific standards, or an opportunity for objections or appeals.
GOALS AND OBJECTIVES:	This Bill would establish a process for accessory apartment licenses including noticing, standards for issuance and renewal, objections and appeals
COORDINATION:	DHCA, MNCPPC, BOA, OZHA
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Jeffrey Zyontz, (240) 777-7896
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A violation

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

December 12, 2012

TO: Nancy Navarro, President County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 31-12, Accessory Apartments - Licensing

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:a2a

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
Richard Y. Nelson, Director, Department of Housing and Community Affairs
Luann Korona, Department of Housing and Community Affairs
Jay Greene, Department of Housing and Community Affairs
Time Goetzinger, Department of Housing and Community Affairs
Jennifer Bryant, Office of Management and Budget
Ayo Apollon, Office of Management and Budget

Fiscal Impact Statement
Council Bill 31-12, Accessory Apartments - Licensing

1. Legislative Summary.

   Bill 31-12 establishes a process for accessory apartment licensing including: notices, standards for issuance and renewal, objections and appeals.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

   Operating expenses for accessory apartment licensing are not projected to increase. Any additional workload impact resulting from Bill 31-12 is projected to be absorbed by the current staff complement assuming no significant increase in accessory apartment applications.

   Information provided by the Department of Housing and Community Development (DHCA) Licensing and Registration section, states that there are currently 405 licensed accessory apartments for rent in Montgomery County. Approximately half of these units are located in Takoma Park (205) in which Takoma Park collects the licensing fee. In the past twelve months, there were twenty-two new applications, nearly all of which were for non-Takoma Park properties. The current fee for an accessory apartment license is $38. Current revenue assumptions are $7,600 per year (200 x $38).

   Currently the average cost of obtaining a special exception and accessory apartment license is $665. This cost is comprised of the following components:

   - Filing Fee - $295
   - Sign Fee - $220 ($100 + $110 deposit, returned when the sign is returned)
   - DPS Annual Administration Fee - $112 (This amount goes to Board of Appeals)
   - DHCA Annual Rental License - $38

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

   This Bill is not likely to result in the need for additional staffing; therefore, there is no projection in increased expenditures. DHCA revenue is projected to be ($7,600 per year + (20 new apps x 6 years x $38 = $4,560)), $12,160 of revenue is projected over the next six fiscal years.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

   None

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

   Not Applicable

6. An estimate of the staff time needed to implement the bill.

   The greatest impact would be in DHCA's responsibility to review the initial application and make a recommendation to the Director, which is a new business practice. There will be a minor secondary impact on staff time associated with the requirement to maintain a public list and map showing each Class 3 license, which is also a new business practice; however, it is not anticipated to result in a substantial time commitment. There will be some incremental additional staff time required to implement a regular three to five year code enforcement inspection program for accessory apartments.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

   Given the historic trend of approximately twenty new applications per year, there would be minimal affect on DHCA staff's other duties.

8. An estimate of costs when an additional appropriation is needed.

   Not Applicable

9. A description of any variable that could affect revenue and cost estimates.

   Given the publicity and ease of obtaining an accessory apartment license created by Bill 31-12, DHCA anticipates an initial increase in applications after Bill 31-12 is enacted. The potential increase in applications represents a variable that is difficult to project. However, if the amount of new applications increase significantly and continues to increase above the current projections (20 applications per year) by DHCA on an annual basis; 1.0 FTE may be required to fulfill the administrative requirements promulgated under Bill 31-12.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable

11. If a bill is likely to have no fiscal impact, why that is the case.

Not Applicable

12. Other fiscal impacts or comments.

None

13. The following contributed to and concurred with this analysis: (Enter name and department).

Richard Y. Nelson, Director, DHCA
Luann Korona, Chief, Division of Community Development, DHCA
Jay Greene, Division of Housing, DHCA
Cynthia Gaffney, Manager, Licensing and Registration Section, DHCA
Tim Goetzinger, Budget and Finance Manager, DHCA
Jennifer Bryant, Sr. Management and Budget Specialist, OMB

Jennifer A. Hughes, Director
Office of Management and Budget

12/13/12
Date

Economic Impact Statement
Council Bill 31-12, Accessory Apartments - Licensing

Background:

Bill 31-12 establishes a Class 3 single-family accessory apartment license, which is required for every single-family home with an accessory apartment but no special exception. The bill also provides procedures to deal with objections by the homeowner who is not allowed a license, and by other aggrieved parties who believe the license should not be granted.

1. The sources of information, assumptions, and methodologies used.

This bill has no economic impact. (See #4 below)

2. A description of any variable that could affect economic impact statements.

This bill has no economic impact. (See #4 below)

3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

This bill has no economic impact. (See #4 below)

4. If a bill is likely to have no economic impact, why is that the case?

This bill has no economic impact because it applies to the use of property only at a homeowner's principal residence, and has no commercial application.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.

Joseph F. Beach, Director
Department of Finance

12/6/12
Date

Zoning Text Amendment No.: 12-11
Concerning: Accessory Apartments – Amendments
Draft No. & Date: 4 - 11/6/12
Introduced: July 24, 2012
Public Hearing: September 11, 2012
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

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definitions for one-family dwelling and one-family detached dwelling-unit;
- establish definitions for an attached accessory apartment and a detached accessory apartment to replace the definition for an accessory apartment;
- revise the standards and requirements for a registered living unit;
- establish standards for attached and detached accessory apartments as permitted uses;
- amend the land use table in one-family residential zones and agricultural zones to add attached and detached accessory apartments as a permitted use under certain circumstances;
- establish special exception standards for attached and detached accessory apartments; and
- generally amend all provisions concerning accessory apartments

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

DIVISION 59-A-2.	"DEFINITIONS AND INTERPRETATION."
DIVISION 59-A-6.	"USES PERMITTED IN MORE THAN ONE CLASS OF ZONE."
Adding Section 59-A-6.19.	"Attached accessory apartments."
[[Adding Section 59-A-6.20.	"Detached accessory apartments."]]
DIVISION 59-C-1.	"RESIDENTIAL ZONES, ONE-FAMILY."
Section 59-C-1.3.	"Standard development."
Section 59-C-1.5.	"Cluster development."

Section 59-C-1.6.	"Development including moderately priced dwelling units."
DIVISION 59-C-9.	"AGRICULTURAL ZONES."
Sec. 59-C-9.3.	"Land uses."
Sec. 59-C-9.4.	"Development standards."
DIVISION 59-G-1.	"SPECIAL EXCEPTIONS—AUTHORITY AND PROCEDURE."
Sec. 59-G1.12.	"Hearing Examiner."
DIVISION 59-G-2.	"SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS."
Sec. 59-G-2.00.	"Accessory apartment."
Adding Sec. 59-G-2.00.6.	"Attached or detached accessory apartment."
[[Adding Sec. 59-G-2.00.7.	"Detached accessory apartment."]]

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 that text is deleted from existing law by original text amendment.*
Double underlining indicates text that is added to the text amendment by amendment.
[[*Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.*
* * * *indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved.

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions to review the amendment on October 8, October 22, and November 5, 2012. The Committee recommended approval of ZTA 12-11 with amendments. The Committee agreed with the core concept of ZTA 12-11 that makes accessory apartments a permitted use under certain circumstances; however, under the Committee's recommendation, if an applicant wanted a waiver of the minimum distance requirement or the on-site parking requirement, a special exception would be required. Such a special exception would be decided by the Hearing Examiner, with an appeal

allowed to the Board of Appeals. In some instances, the Committee also recommended the following zoning standards for all future accessory apartments:

Approval conditions	Committee's recommendation
Limit one unit per one-family detached dwelling (non-agricultural zone)	Allowed without regard to age of the house
Additions to existing structure	Allowed
Separate structure	Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1
Occupancy of principal house	Require the address to be the primary residence of the owner as a licensing requirement under Bill 31-12
Registered living units or additional rentals	An accessory apartment is prohibited if an RLU or other rental is occurring
External attributes	Allow a separate side or rear yard entrance, a separate front entrance if it pre-existed the application, and a common front entrance
Street Address	Must be the same as the main dwelling
Development standards	Zoning classification controls; no minimum lot size
Maximum number of people	2 adults; no limit on minors except housing code
Unit size	Limit floor area to less than 50% of main dwelling but no larger than 2,500 square feet
Excessive concentration	300 feet from another accessory apartment on the same block face in the R-90, R-60, and RNC zones; 500 feet in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, but subject to waiver by special exception; no prohibition on back-to-back apartments
Parking	If there is an existing driveway, 1 on-site space required in addition to any required on-site place required for the main dwelling; if new driveway is required, 2 spaces in addition to main dwelling spaces.
Reporting requirement	Require a report by DHCA after the 2,000th license is issued

The District Council reviewed Zoning Text Amendment No. 12-11 at a worksession held on Januart 15, 2013 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 12-11 will be approved as amended.

ORDINANCE

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

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

* * *

59-A-2.1. Definitions.

* * *

[Accessory apartment: A second dwelling unit that is part of an existing one-family detached dwelling, or is located in a separate existing accessory structure on the same lot as the main dwelling, with provision within the accessory apartment for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to the main dwelling.**]**

Accessory apartment, attached: A second dwelling unit that is part of a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. An attached accessory apartment **[[**has a separate entrance and**]]** is subordinate to the principal dwelling.

Accessory apartment, detached: A second dwelling unit that is located in a separate accessory structure on the same lot as a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. A detached accessory apartment is subordinate to the principal dwelling.

* * *

Dwelling and dwelling units:

Dwelling: A building or portion thereof arranged or designed to contain one or more dwelling units.

* * *

Dwelling, one-family: A dwelling containing not more than one dwelling unit. An accessory apartment**[**, if approved by special exception,**]** or a registered living unit may also be part of a one-family dwelling. A one-

family dwelling with either of these subordinate uses is not a two-family dwelling[,] as defined in this section.

* * *

Dwelling unit: A building or portion [thereof] of a building providing complete living facilities for not more than one family, including, at a minimum, facilities for cooking, sanitation, and sleeping.

Dwelling unit, one-family detached: A dwelling unit that is separated and detached from any other dwelling unit on all sides, except where the dwelling is modified to include an accessory apartment[, approved by special exception,] or a registered living unit.

* * *

Sec. 2. DIVISION 59-A-6 is amended as follows:

DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

* * *

59-A-6.10. Registered living unit--Standards and requirements.

A registered living unit, permitted in[,] agricultural, one-family residential, and planned unit development zones[,] must:

* * *

(i) be removed whenever it is no longer occupied as a registered living unit, unless the owner applies for and is granted either a special exception or a license for an attached accessory apartment [in accordance with Section 59-G-2.00] under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

* * *

Sec. 59-A-6.19 Attached or detached accessory apartment.

(a) Where an attached or detached accessory apartment is permitted in a zone, only one accessory apartment is permitted for each lot and it is only permitted under the following standards:

(1) the apartment was approved as a special exception before {EFFECTIVE DATE} and satisfies the conditions of the special exception approval; or

(2) the apartment is [[registered with]] licensed by the Department of Housing and Community Affairs [[in the same manner as a registered living unit under Subsection 59-A-6.10(a)(3)]] under Section 29-19; and

(A) [[the owner of the lot occupies a dwelling unit on the lot at least 6 months of every calendar year;]]

[[(B)]] the apartment has the same street address as the principal dwelling;

[[(C)]](B) a separate entrance is located:

(i) on the side yard or rear yard;

(ii) at the front of the principal dwelling, if the entrance existed before {EFFECTIVE DATE}; or

(iii) at the front of the principal dwelling, if it is a single entrance door for use of the principal dwelling and the accessory apartment;

[[(D)]](C) one on-site parking space is provided in addition to any required on-site parking for the principal dwelling; however, if a new driveway must be constructed for the accessory apartment, then two on-site parking spaces must be provided;

[[(E)]](D) an attached accessory apartment:

(i) in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones[[, the attached accessory apartment]] is located at least 500 feet from any other attached or detached accessory apartment, measured in a [[straight]] line from side lot line to side lot line along the same block face;

[[(F)]](ii) in the R-90, R-60, and RNC zones[[, the attached accessory apartment]] is located at least 300 feet from any other attached or detached accessory apartment, measured in a [[straight]] line from side lot line to side lot line along the same block face;

(E) a detached accessory apartment:

(i) in the RE-2, RE-2C, and RE-1 zones is located a minimum distance of 500 feet from any other attached or detached accessory apartment, measured in a line from side lot line to side lot line along the same block face;

(ii) built after {EFFECTIVE DATE} must have the same minimum side yard setback requirement as the principal dwelling and a minimum rear yard setback requirement of 12 feet, unless more restrictive accessory building or structure yard setback standards are required under Section 59-C-1.326;

(iii) must be located on a lot with an area of one acre or larger;

[[(G) the rear lot line of the lot with the accessory apartment does not abut a lot with another accessory apartment;]]

[[(H) if the accessory apartment is limited to a floor area of 800 square feet, it must be no greater than 50% of the principal dwelling or 800 square feet, whichever is less;]]

[[(I) if the accessory apartment is limited to a floor area of 1,200 square feet, it must be no larger than 50% of the principal dwelling or 1,200 square feet, whichever is less; and]]

(F) the maximum gross floor area for an accessory apartment, including the cellar, must be less than 50 percent of the total floor area, including the cellar, of the principal dwelling, or 2,500 square feet, whichever is less;

[[(J)]](G) the maximum number of occupants is limited [[to 3 persons]] by Section 26-5; however, the total number of occupants residing in the accessory apartment who are 18 years or older is limited to 2.

(3) [[The]] an accessory apartment must not be located on a lot where any of the following otherwise allowed residential uses exist: guest room for rent; boardinghouse; registered living unit; or any other rental residential use[[, other than an accessory dwelling in an agricultural zone]]; however, an accessory apartment may be located on a lot in an agricultural zone that includes a tenant dwelling, a farm tenant mobile home, or a guest house.

(b) (1) An attached or detached accessory apartment special exception petition may be filed with the [[Board of Appeals]] Hearing Examiner to deviate from any permitted use standard regarding:

(A) [[location of the separate entrance;

(B)]] number of on-site parking spaces; or

[[(C)]](B) minimum distance from any other attached or detached accessory apartment.

(2) To approve a special exception filed under Subsection (b)(1), the [[Board of Appeals]] Hearing Examiner must find, as applicable, that:

(A) [[the separate entrance is located so that the appearance of a single-family dwelling is preserved;

(B)]] adequate on-street parking permits fewer off-street spaces; or

[[(C)]](B) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

[[Sec. 59-A-6.20 Detached accessory apartment.

(a) Where a detached accessory apartment is permitted in a zone: it must be located on a lot one acre or greater in size; only one accessory apartment is permitted for each lot; and it is only permitted under the following standards:

(1) the accessory apartment was approved as a special exception before {EFFECTIVE DATE} and satisfies the conditions of the special exception approval; or

(2) the accessory apartment is registered with the Department of Housing and Community Affairs in the same manner as a registered living unit under Subsection 59-A-6.10(a)(3); and

(A) the owner of the lot occupies a dwelling unit on the lot at least 6 months of every calendar year;

(B) the apartment has the same street address as the principal dwelling;

(C) a separate entrance is located on the side yard or rear yard;

(D) one on-site parking space is provided in addition to any required on-site parking for the principal dwelling;

(E) in the RE-2, RE-2C, and RE-1 zones, the detached accessory apartment is located a minimum distance of 500 feet from any other attached or detached accessory apartment, measured in a straight line from side property line to side property along the same block face;

(F) the rear lot line of the lot with the accessory apartment does not abut a lot with another accessory apartment;

(G) if the accessory apartment is limited to a floor area of 800 square feet, it must be no greater than 50% of the principal dwelling or 800 square feet, whichever is less;

(H) if the accessory apartment is limited to a floor area of 1,200 square feet, it must be no greater than 50% of the principal dwelling or 1,200 square feet, whichever is less;

(I) the maximum number of occupants is limited to 3 persons; and

(J) any structure built after {EFFECTIVE DATE} to be occupied as an accessory apartment must have the same minimum side yard setback requirement as the principal dwelling and a minimum rear yard setback requirement of 12 feet, unless more restrictive accessory building or structure yard setback standards are required under Section 59-C-1.326.

(3) The accessory apartment must not be located on a lot where any of the following otherwise allowed residential uses exist: guest room for rent; boardinghouse; registered living unit; or any other rental

residential use, other than an accessory dwelling in an agricultural zone.

(b) (1) A detached accessory apartment special exception petition may be filed with the Board of Appeals to deviate from any permitted use standard regarding:

(A) location of the separate entrance;

(B) number of on-site parking spaces; or

(C) minimum distance from any other attached or detached accessory apartment.

(2) To approve a special exception filed under Subsection (b)(1), the Board of Appeals must find, as applicable, that:

(A) the separate entrance is located so that the appearance of a single-family dwelling is preserved;

(B) adequate on-street parking permits fewer off-street spaces; or

(C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.]]

* * *

Sec. 3. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

Sec. 59-C-1.3. Standard development.

The procedure for approval is specified in Chapter 50.

59-C-1.31. Land uses.

No use is allowed except as indicated in the following table:

211 **-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the
212 zones indicated, subject to all applicable regulations.
213 **-Special Exception Uses.** Uses designated by the letters "SE" may be authorized
214 as special exceptions under Article 59-G.
215

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
(a) Residential										
[Accessory apartment.[4]]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]			[SE]
Accessory apartment, attached [[(up to 800 square feet)]].[4]	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***			P*/ SE***
[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).[4]]]	[[P*/ SE***]]	[[P*/ SE***]]	[[P*/ SE***]]	[[P*/ SE***]]	[[P*/ SE***]]	[[SE** -]]	[[SE** -]]			[[P*/ SE***]]
Accessory apartment, detached [[(up to 800 square feet)]].[4]	[[P**/ SE****]] P*/ SE***	[[P**/ SE****]] P*/ SE***	[[P**/ SE****]] P*/ SE***							
[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).[4]]]	[[P**/ SE****]]	[[P**/ SE****]]	[[P**/ SE****]]							

216 * * *

217 [4] Not permitted in a mobile home.

218 * See Sec. 59-A-6.19. Attached accessory apartment.

219 [[** See Sec. 59-A-6.20. Detached accessory apartment.]]

220 *** See Sec. 59-G-2.00.6. Attached or detached accessory apartment.

221 [[**** See Sec. 59-G-2.00.7. Detached accessory apartment.]]

222 * * *

223 **Sec. 59-C-1.5. Cluster development.**

224 * * *

225 **59-C-1.53. Development standards.**

226 All requirements of the standard method of development in the respective zones, as
227 specified in Section 59-C-1.3, apply, except as expressly modified in this section.

228

	RE-2C	**RE-1**	**R-200**	**R-150**	**R-90**	**R-60**	**RMH 200**
59-C-1.531. Uses Permitted. No uses shall be permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] Section 59-C-1.31.							
* * *							
[Accessory apartment.[2]]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]
Accessory apartment, attached [[(up to 800 square feet)]].[2]	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**
[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).[2]]]	[[P*/ SE**]]	[[P*/ SE**]]	[[SE**]]	[[SE**]]	[[SE**]]	[[SE**]]	[[SE**]]

	RE-2C	RE-1	R-200	R-150	R-90	R-60	RMH 200
Accessory apartment, detached [[(up to 800 square feet)]].[2]	[[P***/ SE****]] P*/ SE**	[[P***/ SE****]] P*/ SE**					
[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).[2]]]	[[P***/ SE****]]	[[P***/ SE****]]					

* * *

[2] Not permitted in a townhouse, one-family attached dwelling unit, or mobile home.

* See Sec. 59-A-6.19. Attached or detached accessory apartment.

** See Sec. 59-G-2.00.6. Attached or detached accessory apartment.

[[*** See Sec. 59-A-6.20. Detached accessory apartment.

**** See Sec. 59-G-2.00.7. Detached accessory apartment.]]

* * *

Sec. 59-C-1.6. Development including moderately priced dwelling units.

* * *

59-C-1.62. Development standards.

	RE-2C[8]	RE-1[8]	R-200	R-150	R-90	R-60	R-40
59-C-1.621. Uses Permitted. No uses are permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] Section 59-C-1.31, [title "Land Uses,"] subject to [the provisions of article] Article 59-G.							
* * *							
Registered living unit.[3,5]	P	P	P	P	P	P	
[Accessory apartment.[3]]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	
Accessory apartment, attached [[(up to 800 square feet)]].[3]	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	
[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).[3]]]	[[P*/ SE**]]	[[SE**]]	[[SE**]]	[[SE**]]	[[SE**]]	[[SE**]]	
Accessory apartment, detached [[(up to 800 square feet)]].[3]	[[P***/ SE****]] P*/ SE**	[[P***/ SE****]] P*/ SE**					
[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).[3]]]	[[P***/ SE****]]	[[P***/ SE****]]					

241 * * *

242 [3] Not permitted in a townhouse, one-family attached dwelling unit, or mobile
243 home.

244 * See Sec. 59-A-6.19. Attached accessory apartment.

245 ** See Sec. 59-G-2.00.6. Attached or detached accessory apartment.

[[*** See Sec. 59-A-6.20. Detached accessory apartment.]]

[[**** See Sec. 59-G-2.00.7. Detached accessory apartment.]]

* * *

Sec. 4. DIVISION 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

Sec. 59-C-9.3. Land uses.

No use is allowed except as indicated in the following table:

— **Permitted uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

— **Special exception uses.** Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
* * *							
(e) Residential:[2]							
[Accessory apartment.[6,7]]	[SE]	[SE]	[SE]	[SE[48]]		[SE]	[SE]
Accessory dwelling.[7]	SE	SE	SE	SE[48]	SE	SE	SE
Accessory dwelling for agricultural workers.[42]				P			
Accessory apartment, attached [[(up to 800 square feet)]].[6,7]	P*/ SE**	P*/ SE**	P*/ SE**	P48,*/ SE48,**		P*/ SE**	
[[Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet.[6,7]]]	[[P*/ SE**]]	[[P*/ SE**]]	[[P*/ SE**]]	[[P48,*/ SE48,**]]		[[SE**]]	
Accessory apartment, detached [[(up to 800 square feet)]].[6,7]	[[SE***]] SE**	[[SE***]] SE**	[[SE***]] SE**	[[SE48,* **]] SE48,**			
[[Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet.[6,7]]]	[[SE***]]	[[SE***]]	[[SE***]]	[[SE48,* **]]			

259 * * *

260 [6] Not permitted in a mobile home.

261 [7] [As a special exception regulated by divisions 59-G-1 and 59-G-2, such a] An

262 accessory dwelling unit, including an attached or detached accessory apartment, is

263 excluded from the density calculations [set forth] in [sections] Sections 59-C-9.41[,

264 title "Density in RDT Zone,"] and 59-C-9.6[, title "Transfer of Density-Option in

265 RDT Zone."]. Once the property is subdivided, such a dwelling would no longer

comply with [the special exception regulations or with] this exclusion. A special exception is not required for a dwelling that was a farm tenant dwelling in existence [prior to] before June 1, 1958[, provided, that] if the dwelling meets all applicable health and safety regulations.

* * *

[48] If property is encumbered by a recorded transfer of developments rights easement, this use is prohibited. However, any building existing on October 2, 2007 may be repaired or reconstructed if the floor area of the building is not increased and the use is not changed.

* * *

[*] See Sec. 59-A-6.19. Attached accessory apartment.

[**] See Sec. 59-G-2.00.6. Attached or detached accessory apartment.

[[[***] See Sec. 59-G-2.00.7. Detached accessory apartment.]]

* * *

Sec. 59-C-9.4. Development standards.

* * *

59-C-9.41. Density in RDT zone.

Only one one-family dwelling unit per 25 acres is permitted. (See [section] Section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined in [section] Section 59-A-2.1[, title "Definitions."].

(b) An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2 and [[Sections]] Section 59-A-6.19 [[and 59-A-6.20]].

* * *

Sec. 5. DIVISION 59-G-1 is amended as follows:

DIVISION 59-G-1. SPECIAL EXCEPTIONS – AUTHORITY AND PROCEDURE.

* * *

59-G-1.12. Hearing examiner.

(a) In addition to the authorization given to the Board of Appeals to hear and decide petitions for special exceptions under Section 59-A-4.11, the Hearing Examiner may hear and decide petitions for special exceptions for the following uses:

(1) Boardinghouses for 3 guests or fewer**[[**,**]]** in the R-30, R-20, and R-10 zones.

(2) Home occupations in the R-30, R-20, or R-10 zones.

(3) Noncommercial riding stable for not more than 2 horses, for personal or family use, in the RE-2 zone.

(4) Temporary structures**[[**,**]]** in residential zones.

(5) Renewals of temporary special exceptions originally granted by the board, director, or hearing examiner for boardinghouses**[[**,**]]** and home occupations.

(6) Farm Tenant mobile homes, for more than one but less than 4; provided such farm tenant mobile homes meet the definition established for such uses by this chapter and that such uses are not within 200 feet of a non-farm residence.

(7) Child day care facilities for up to 30 children.

(8) Accessory apartments.

* * *

Sec. 6. DIVISION 59-G-2 is amended as follows:

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

USE	**SECTION**
* * *	
Accessory apartment	G-2.00
Accessory apartment, attached or detached	G-2.00.6
[[Accessory apartment, detached	G-2.00.7]]
* * *	

Sec. 59-G-2.00. Accessory apartment. (The standards below reflect the conditions required only for an accessory apartment approved before {EFFECTIVE DATE}.)

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

* * *

Sec. 59-G-2.00.6. Attached or detached accessory apartment.

A special exception may be granted for an attached or detached accessory apartment on the same lot as an existing one-family detached dwelling, subject to the special exception provisions of Division 59-G-1 and the standards and requirements of Section 59-A-6.19.

[[Sec. 59-G-2.00.7. Detached accessory apartment.
Where a detached accessory apartment is permitted in a zone, only one detached accessory unit is permitted for each lot and it is only permitted under the special exception provisions of Division 59-G-1 and the standards and requirements of Section 59-A-6.20.]]

Sec. 7. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

Sec. 8. Reporting. The Director of the Department of Housing and Community Affairs must issue a report concerning any administrative problems or resident complaints after the 2,000th accessory apartment license is issued by the Department of Housing and Community Affairs. The Director must recommend any changes in legislation that the Department deems warranted.

This is a correct copy of Council action.

_____

Linda M. Lauer, Clerk of the Council

PHED Committee #2
October 8, 2012

MEMORANDUM

October 4, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney
Linda McMillan, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 12-11, Accessory Apartments – Amendments

Zoning Text Amendment (ZTA) 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012. The ZTA would allow accessory apartments under certain conditions without a special exception.[1]

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. There were requests for specific information.

This packet concerns background information on current law, facts on current accessory apartments, information on current enforcement by DHCA, and the purpose of ZTA 12-11. The Director of DHCA will attend the October 8 PHED meeting.

This memorandum has 6 major sections:

I	Current Law
II	Accessory Apartment Facts
IIII	Public Notice and Participation
IV	Special Exception Procedure
V	Parking
VI	DHCA Enforcement
VII	The Purpose of ZTA 12-11

[1] Testimony indicated that, under ZTA 12-11, accessory apartments would be allowed "as of right". To the extent that a special exception would not be required, that is correct; however, a landowner must satisfy numerous conditions in order to have an accessory apartment.

I Current Law

Zoning requirements vary by zone within every jurisdiction. In any one County, accessory apartments may be permitted with conditions without a special exception, permitted with a special exception, or prohibited. The following table characterizes jurisdictions by their least restrictive zone with regard to accessory apartments. Thereafter, a more detailed description follows.

	Allowed without a special exception	**Allowed with a special exception**	**Prohibited**
Arlington County	X		
Baltimore County	X only for family member		
Fairfax County		X	
Howard County	X for large lots	X for small lots	
Washington DC	X for small lots	X for large lots	
Prince George's County			X
Calvert County	X		
City of Rockville		X	
City of Gaithersburg	X on a large lot in a pre-existing structure		

A) Other Counties (this section uses some material provided by Planning Staff)

1) Arlington County

The county just completed the process of making "accessory dwellings" a by-right use over strong community opposition (a petition was signed by over 400 people and over 50 public meetings were held). The county will allow only 28 accessory dwellings per year. Main highlights of the code are:

- only interior accessory dwellings and only in single-family detached houses;
- owner must reside in building;
- there will be annual inspections by Code Enforcement staff & in response to complaints;
- maximum occupancy of two people;
- a parking survey is initiated by the application. If the block is more than 65% parked, there must be at least one off-street parking space (of standard size);
- the public is notified through updating the county's real estate database;
- home occupations are permitted in the accessory dwelling, but no employees on the premises except in the case of assisting a person with disabilities who resides in the accessory dwelling.

2) Baltimore County

An accessory apartment is permitted as a temporary use within a principal single-family detached dwelling or within an accessory building situated on the same owner-occupied lot as the principal dwelling in any zone that permits single-family dwellings. The approval of an application requires the accessory apartment to only be utilized by immediate family and may not be used by any person other than an immediate family member for any other reason. If located within an existing single-family detached dwelling:

- the size of the accessory apartment may not exceed 1/3 of the overall floor area of the dwelling or 2,000 square feet, whichever is less;

- any and all improvements to be dedicated as an accessory apartment must be used solely as a single-family residence; and
- the accessory apartment may not have separate utility meters.

If located within an accessory building on the same owner-occupied property as the principal single-family detached dwelling:

- an applicant shall file a request for a special hearing and a use permit with the Planning Department, and a public hearing before the Office of Administrative Hearings is required;
- the size of the accessory apartment may not exceed 1,200 square feet;
- following a public hearing, the Office of Administrative Hearings may grant a request upon a finding that the size, location, and purpose of the accessory apartment conform with the special exception standards; and
- the accessory apartment may not have separate utility meters or water and sewerage services unless approved by the Office of Administrative hearings, based on specific findings of necessity for the accessory building.

3) Fairfax County

The Board of Zoning Appeals (BZA) may approve a special permit for the establishment of an accessory dwelling unit (for a single-family detached unit). The BZA determines that the proposed accessory apartment, together with any other accessory apartments within the neighborhood, won't constitute sufficient change to modify/disrupt the predominant character of the neighborhood. Permits are only good for five years.

- Parking: BZA reviews the parking situation to determine if parking is sufficient. If not, the Board will require some off-street parking for the accessory dwelling unit.
- The unit cannot have more than two bedrooms or two persons.
- The unit is limited to 35 percent of gross floor area of the principal dwelling unit.

4) Howard County

Accessory apartments are a conditional use in single-family detached zones on lots less than 12,000 square feet.

- Except for an exterior entrance and necessary parking area, there shall be no external evidence of the accessory apartment.
- The accessory apartment shall have no more than two bedrooms.

Accessory apartments are a permitted use in single-family detached zones on lots of 12,000 square feet or larger.

In dwellings with a net floor area of 2,000 square feet or less, the accessory apartment is limited to 40 percent of the net floor area of the building. For larger dwellings, the apartment is limited to one-third of the net floor area, up to a maximum of 1,500 square feet.

The minimum off-street parking requirement for an accessory apartment is one (1) space per apartment.

5) Washington, DC

Accessory apartments may be added within an existing one-family detached dwelling in some zones. It is allowed as of right in a semidetached zone. In single-family detached zones, there is a requirement to appear before the Board of Zoning Adjustment to seek permission through the special exception process. The current zoning regulations allow for a homeowner to provide a small apartment in an accessory building (garage or carriage house), but only if it is sleeping or living quarters of domestic employees and only if it is located in an R-1 zone.

- No more than 25% of the gross floor area of the house may be used.
- The house must have at least 2,000 square feet of GFA, exclusive of the garage.
- Floor area to the house must not be added and use of the garage for the accessory apartment is prohibited.
- A home occupation is prohibited if an accessory apartment is allowed.
- If an additional entrance to the house is created, it must not be located on a wall of the house that faces a street.
- Either the principal dwelling or the accessory apartment unit must be owner-occupied.
- The maximum number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, is 6.
- The lots must have a minimum lot area for the following zones:
  - 7,500 SF for R-1-A;
  - 5,000 SF for R-1-B; and
  - 4,000 SF for R-2 and R-3.

6) Prince George's County

Prince George's County does not allow accessory apartments. Only one dwelling unit is allowed in residential zones.

7) Calvert County

Accessory Apartments, sometimes referred to as "In-Law Apartments" or "Granny Flats", are permitted in most zones, subject to the following conditions:

- Only one accessory apartment shall be created on each single-family lot.
- The accessory apartment must be clearly subordinate to the single-family dwelling.
- If the apartment is not a part of the dwelling, it must be within 100 feet of the dwelling. In no case shall it contain more than 900 square feet gross floor area of enclosed space, including enclosed porches.
- If the apartment is contained within the dwelling (i.e., as an addition or wing), then it must be less than 40 percent of the total square footage of the building.
- If the apartment is located in the basement of the dwelling, then it can consist of the entire basement.
- An owner of the lot shall occupy at least one of the dwelling units on the premises.
- At least two off-street parking spaces must be available for each unit.

B) Montgomery County

1) Current Montgomery County law – Residential uses

Accessory apartments	Allowed by special exception
Number of people per dwelling unit	No maximum for families other than housing code limits[2] Unrelated individuals limited to 5 (but may rent 1 or 2 rooms to 2 additional individuals) Group home, licensed – maximum 8 (more by special exception)
Rental	May rent the entire house to one household May rent 1 or 2 bedrooms in a house to individuals; or May rent the accessory apartment to a household
Guest house	Allowed as a permitted use for transient guests but may not be rented (a DPS interpretation would allow the principal house to be rented and a guest house may be built for the transient owner; this is the subject of ZTA 12-15)
Registered living unit	Allowed by registration – up to 3 related individuals except that one may be an unrelated caregiver; or, up to two people when one is an employee of the household owner.

2) ZTA 04-10 – proposed by Executive and allowed to lapse

The proposed ZTA in 2004 would have allowed small accessory apartments (800 square feet or less) as of right but required the Department of Housing and Community Development to issue a license. A license could not be issued if the new license would cause the number of accessory apartments in a neighborhood to exceed 15 percent.

3) March 2008 Affordable Housing Task Force

Recommendation: Permit accessory apartments without requiring a special exception permit.

Accessory apartments provide for a secondary, more affordable housing unit in a single-family home. Applications for accessory apartments, however, must be approved as a special exception to the zoning ordinance, an expensive and time consuming process. The County should adopt legislation and zoning text amendments that:

- Create standards which are not overly restrictive, for approving accessory apartments that relate to proximity to transit, occupancy, parking, accessory unit access, and other appropriate factors.
- Make accessory apartment a by-right use in appropriate single-family zones.

[2] The average single-family detached house in the County is 2,600 square feet. Under the housing code (§26-5), the average single-family house could legally be the home for approximately 15 people who are related by blood or marriage. (The 15 person estimate assuming 1,550 square feet of the house is "habitable space"; habitable space excludes any bathroom, laundry, pantry, foyer or communicating corridor, closet, recreation room, private workshop or hobby room, storage space, fallout or emergency shelter and any area with less than 5 feet of headroom. The bedrooms must contain at least 120 square feet for the first 2 people and 50 square feet for each person above 2. In addition, every dwelling unit must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant.)

Desired Results

- An increase in the number of approved accessory apartments and the increase of affordable housing opportunities in the County.
- A less costly and time consuming approval process.

Implementation

Adopt Zoning Text Amendments allowing accessory apartments by right in locations in proximity to transit and in conformance with certain adopted standards. Encourage more aggressive enforcement of housing codes related to accessory apartments.

4) Limits of Zoning Authority

a) Municipalities

County zoning law does not apply to Brookeville, Gaithersburg, Garrett Park, Laytonsville, Poolesville, Rockville, or Washington Grove. County zoning does apply to Chevy Chase Village, Chevy Chase View, the Town of Chevy Chase, Chevy Chase Section 5, Kensington, Martin's Addition, Somerset, and Takoma Park. All municipalities covered by the County Zoning Ordinance may regulate parking in one-family residential zones more strictly than the County.[3]

Although Kensington and Takoma Park use the County's zoning, a resolution by either of those jurisdictions can require a supermajority of the Council to approve a zoning action contrary to their recommendation.[4] The Council has not received a resolution from either municipality.[5]

b) Covenants

Zoning is not the only land use control. Many areas of the County have private covenants that may restrict the use of land more strictly than zoning. These include covenants for homeowners associations. If covenants prohibit accessory apartments, the apartments are prohibited without regard to what zoning allows. Many areas of the County are governed by homeowners associations. The largest single association in the County is Montgomery Village. There is no provision prohibiting accessory apartments in Montgomery Village.

---

[3] Article 28 §8-115.1(b)(2). Municipalities covered by County zoning may regulate fences, walls, signs, parking, storage, and the location of structures.

[4] Article 28 §8-112.2. City of Takoma Park and Town of Kensington
(a) Concurrent jurisdiction to enforce zoning ordinances. -- The City of Takoma Park and the Town of Kensington shall each have concurrent jurisdiction to enforce the Montgomery County zoning ordinances within their respective corporate limits.
(b) Two-thirds vote to overturn zoning resolution. -- A two-thirds majority vote of both the planning board and the district council of Montgomery County are required to take any action relating to zoning within the City of Takoma Park or the Town of Kensington that is contrary to a resolution of the Mayor and City or Town Council.

[5] The City of Takoma Park submitted a survey of accessory apartment owners, who expressed satisfaction with the program principally due to the additional income provided by rented apartments.

5) Current accessory apartment requirements

Limit per one-family dwelling lot	a dwelling that must be at least 5 years old
Part of the pre-existing principal dwelling	allowed if the lot is less than 1 acre
Additions to existing structure	allowed if the lot is more than 1 acre
Separate structure	allowed if the lot is 2 acres or more
Occupancy of principal house	resident owner and family required – no room rentals
Registered living units	prohibited when an accessory apartment is approved
External attributes	must have a separate entrance but must maintain a single-family appearance
Development standards	zoning classification control
Excessive concentration	prohibited but determined on a case-by-case basis
Parking	2 off-street spaces are required, but the requirement may be waived or increased depending upon the availability of on-street parking

II Accessory Apartment Facts

Most recent history

There are 413 licensed accessory apartments for rent in Montgomery County. In the past 12 months, there were 22 applications. The typical length of time to get an accessory apartment in the past 5 years was 7 months. The longest time has been about 1 year.

Average cost of getting an accessory apartment:

Filing fee	$295
Sign fee	$220 ($110 returned when the sign is returned)
DPS Annual Administration Fee	$112
DHCD Annual renters' license	$ 38
Total first year out of pocket	**$645**

Attorneys rarely appear for special exception accessory apartment applications. Of the 22 applications last year, only one applicant used an attorney. That applicant also needed a variance.

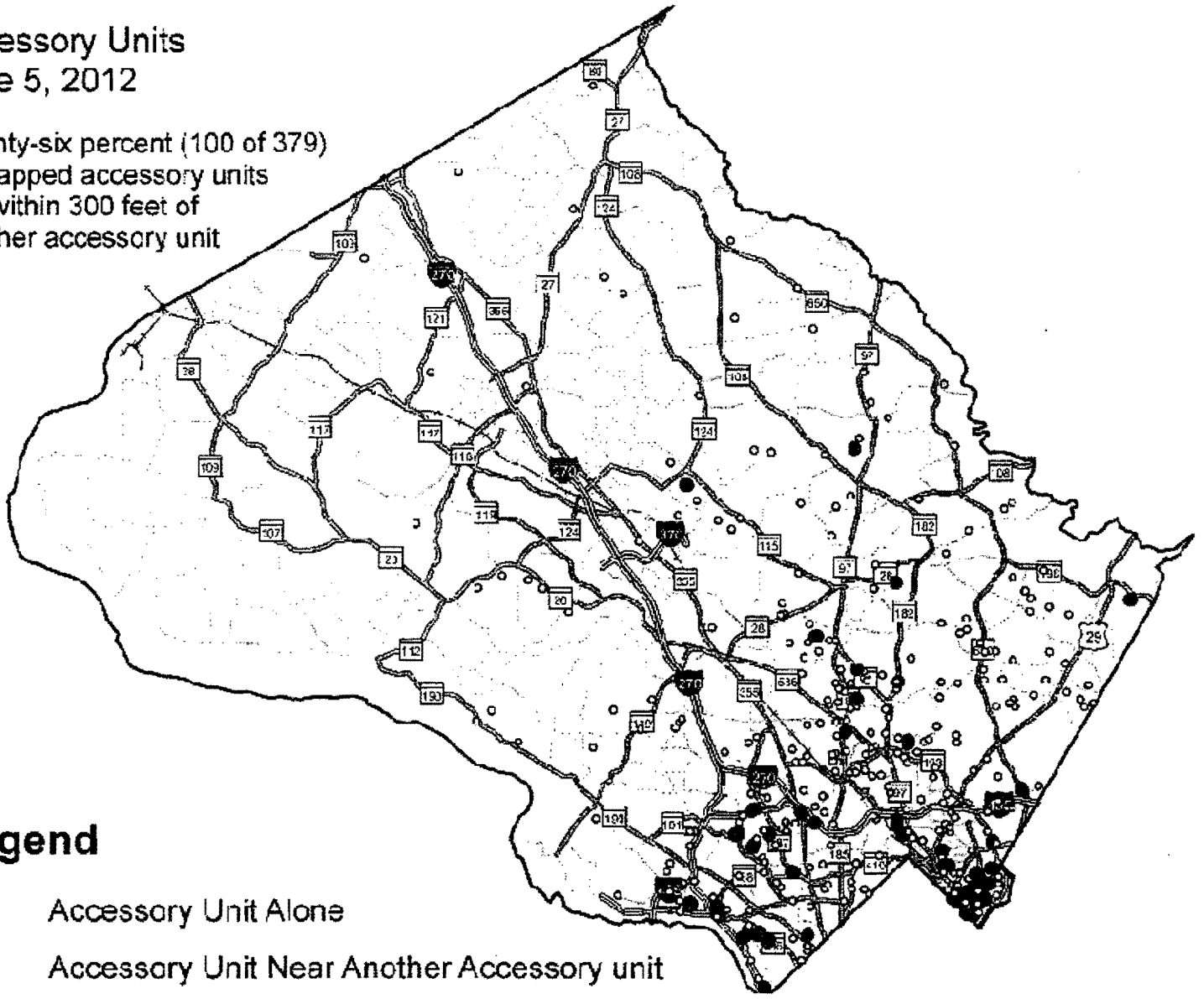
Past five years

Eight-five applications were filed between January 1, 2007 and September 20, 2012. Fifty-one applications were granted; four were denied; eleven were dismissed or withdrawn; two continued mid-process; seventeen were filed recently enough that there has not yet been a decision—the last decision was August 3, 2012.

	Cases filed since January 1, 2007
# of filed accessory apartments	85
# decided by BOA	55
# approved by BOA	51
# denied by BOA	4 (7% of decided cases)
# withdrawn or continued	13
# still pending BOA decision	17

Accessory Units
June 5, 2012

Twenty-six percent (100 of 379) of mapped accessory units are within 300 feet of another accessory unit



Legend

- ◦ Accessory Unit Alone
- ● Accessory Unit Near Another Accessory unit

III Public Notice and Participation

Special exception applications require 2 types of notice to the public. A sign on the property is required to be erected within 3 days of filing the application.[6] Notice of the filing must be sent to adjoining neighbors, confronting neighbors, any municipality or special taxing district, and local citizens associations that include the subject property.[7] Each notice must contain the type of special exception being sought, the name of the applicant, contact information for the applicant and the Board of Appeals and business hours of the Board, and, if known, the date, time and place fixed for the hearing. Each notice must inform the recipient that the Board will mail the recipient upon request a copy of the Board's rules of procedure. Each notice must also:

(1) state that a copy of the applicant's complete submission is available for inspection at the Board's office and may be borrowed for copying;
(2) inform the recipient of the requirements for prehearing statements for groups or organizations desiring to appear in opposition;
(3) inform the recipient how to get a complete copy of the Zoning Ordinance.[8]

Of the 55 accessory apartment cases decided (actually granted or denied) since January 1, 2007, 24 had public participation (either by mail or appearance at the public hearing). In 17 of those cases (30 percent of the cases decided by the Board), the Hearing Examiner proposed and the Board adopted conditions of approval to address the concerns raised by testimony. In 5 of the cases, the public's concerns did not affect the outcome. In 2 cases, one of which was denied, the effect of the public's participation on the outcome could not be determined.

IV Special Exception Application Procedure

The process for a special exception generally starts with a trip to the office of the Board of Appeals for the necessary application forms. The staff will advise the applicant how to complete the application, what fees apply, and what documents are needed to file.

The Board requires one original and 7 copies of all documents. For a small fee, the applicant may make copies on the Board's copying machine. The applicant must submit the following documents and information:

- An accurate site plan, showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of such structures from the nearest property lines.
- Plans, architectural drawings, photographs, elevations, specifications or other detailed information depicting fully the exterior appearance of existing and proposed construction, including signs, involved in the petition; include a floor plan of the accessory apartment, drawn to scale.
- Statement explaining in detail how the special exception is proposed to be operated and any special conditions or limitations which the applicant proposes for adoption by the Board.
- Complete information concerning the size, type and location of any existing and proposed trees, landscaping and screening and any exterior illumination proposed.
- An original, certified copy of the official zoning vicinity map including 1,000 foot radius surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties.

[6] §59-A-4.43(a).
[7] §59-A-4.46(a).
[8] §59-A-4.46(b).

- If petitioner is not the owner of the property involved, lease, rental agreement, or contract to purchase by which petitioner's legal right to prosecute the petition is established.
- Applicable master plan maps reflecting proposed land use, zoning, and transportation, together with any other portions of the applicable master plan deemed pertinent by the petitioner.
- A preliminary forest conservation plan and an approved natural resources inventory that satisfies the technical manual adopted by the Planning Board or a statement signed by M-NCPPC Environmental Planning Staff and attesting that the property is less than 40,000 square feet in area, no forest or individual trees will be disturbed, the property is not subject to a previously approved Forest Conservation Plan, and the special exception proposal will not impact any Champion tree.
- Other natural features, such as rock outcroppings and scenic views.
- Historic buildings and structures.
- A preliminary and/or final water quality plan if the property lies in a special protection area subject to the provisions of Chapter 19 of the Code.
- All additional exhibits which the petitioner intends to introduce.
- Summary of what the petitioner intends to prove, including the names of petitioner's witnesses, summaries of the testimonies of expert witnesses, and the estimated time required for presentation of the petitioner's case.
- A listing of the names and mailing addresses of the adjoining and confronting property owners who are entitled to notice of the filing. Also, a listing is required of any local citizens associations and any municipality or special taxing district within which the property is located.

Once filed, the application is sent to Planning Staff and notice is sent as required. A special exception for an accessory apartment is not reviewed by the Planning Board. A public hearing date is established with the Hearing Examiner. Currently, that date is at least 4 and one-half months from the date of the application. (That will change to 3 and one-half months under the streamlining process.) The Planning Staff report is submitted to the Hearing Examiner and the applicant at least 5 days before the public hearing. Generally, public hearings on accessory apartments take a few hours.

Within 30 days of the close of record, the Hearing Examiner must issue a report and recommendation to the Board of Appeals. (The Hearing Examiner makes the final decision on special exceptions for boardinghouses, home occupations, non-commercial riding stables, temporary structures, farm tenant mobile homes, and day-care centers for up to 30 children. Special exceptions for accessory apartments are decided by the Board of Appeals.) Within 10 days from the issuance of the report, an aggrieved party may request oral argument before the Board of Appeals. The decision of the Board of Appeals must be made 30 days within 30 days of the Hearing Examiner's report. The opinion of the Board is written after their decision.

V Parking

Two off-street parking spaces are currently required for any accessory apartment, unless the Board of Appeals finds that there is adequate on-street parking. ZTA 12-11 would require one parking space in addition to the parking required for the principal dwelling. The number of off-street spaces required varies with the date the house was constructed. Houses built before 1955 are not required to have any off-street parking. A house built between 1955 and 1958 was required to have one off-street space. Houses built after 1958 were required to have 2 off-street parking spaces. Most of the public participation in accessory apartment applications was due to an alleged lack of parking in the neighborhood.

Many houses built before 1955 do not have driveways. Adding an off-street parking space would reduce the availability of on-street parking. Driveways are generally 10 feet wide. Parking for the general public is prohibited 5 feet on either side of the driveway for a total width of 20 feet.[9] The typical on-street parking space is 20 feet long. In order to add to total parking availability, a new driveway must at least accommodate 2 vehicles.

Two provisions in ZTA 12-11 might reduce parking problems: 1) the maximum number of people living in the accessory apartment would be three; 2) more than one accessory apartment every 300 feet in smaller lot zones on the same street frontage would be prohibited.

Takoma Park conducted a survey of accessory apartment property owners. Twenty of the 33 accessory apartment owners responded to that survey. Of those who responded, the average occupancy in an accessory apartment was 1.3 people.

Alexandria and Fairfax County do not require any off-street parking for accessory apartments unless on-street parking is found to be inadequate. Parking is determined to be inadequate by conducting a parking survey on the immediate street. In Alexandria, if more than 65 percent of street parking is in use, an accessory apartment in Alexandria must provide 1 off-street space.

VI DHCA Enforcement

Several of those testifying at the public hearing raised concerns about illegal accessory apartments and overcrowding of single-family homes. While the proposed ZTA changes the requirements for a legal accessory apartment, it does not change the enforcement process or reduce the number of illegal accessory apartments unless one assumes that a homeowner who does not have a special exception for an existing accessory apartment would meet all the new requirements and seek a license for that same apartment.

Complaints regarding illegal accessory apartments generally come to the County as either a complaint about overcrowding or a complaint that there is an illegal accessory apartment. If the complaint is specific to zoning requirements, then the Department of Permitting Services (DPS) is the enforcing agency. If the complaint is specific to housing and building maintenance standards, then the Department of Housing and Community Affairs (DHCA) is the enforcing agency. The responding department will notify the other if they see potential violations. For example, if DHCA responds to a complaint about overcrowding and does not find evidence of insufficient space but suspects that there are more than 5 unrelated people living together, they will report this to DPS for enforcement. DPS and DHCA are in on-going discussions on how to enhance coordination and cross-training of inspectors.

DHCA has enforcement in the following areas included in Chapter 26 that could come into question in a complaint about an illegal accessory apartment or overcrowding:

- Floor area for the dwelling unit
- Floor area for sleeping quarters
- Ceiling height
- Use of cellar or basement for living space
- Basic equipment and facilities (electric, water, kitchen, bathroom, etc.)

[9] Montgomery Code §31-19. Obstructing entrances to public or private driveways.
The parking of vehicles at any time on the public ways of the county in such a manner that any part of the vehicle so parked is within five (5) feet of either curb edge of any existing opening or hereafter established entrance to any public or private driveways or shall overlap or obstruct any existing opening or hereafter established entrance to any public or private driveways is prohibited; except, that an owner may obstruct his own private residence driveway.

- Light, ventilation, and heat
- Fire safety and security
- Maintenance (interior and exterior) of a dwelling unit

Chapter 26-11 provides that DHCA may inspect the condition of any dwelling to safeguard the health and safety of the occupants and the public. If the owner denies DHCA entry for an inspection, DHCA may seek an administrative warrant from the District or Circuit Court. The judge may issue a warrant if the judge finds that:

- DHCA is authorized or required by law to make the inspection;
- DHCA has demonstrated that the inspection is needed because there is evidence of an existing violation or there is a general and neutral plan to conduct fire inspections or an inspection is a condition of a rental property license;
- DHCA has been denied access after making a reasonable effort to gain access;
- The inspection is sought for health, safety, and general welfare related purposes.

DHCA will discuss with the PHED Committee the circumstances under which they would seek a warrant for an inspection as follow-up to an overcrowding complaint.

Number of Complaints

The table below provides data on complaints received by both DHCA and DPS from FY04 through FY11 (a table showing details for DHCA and DPS is attached at © 1). Complaints about overcrowding are a small percentage of all the complaints received. The number of overcrowding complaints received by DHCA and DPS grew from FY04 through FY08 but has leveled off since then. In most cases, the overcrowding complaints were determined to be unfounded. In most years, six or fewer citations were issued. However, in FY08, DHCA issued 27 citations. Citations are issued if the violation is not corrected.

Overcrowding Complaints – DHCA and DPS Combined

	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Received	236	268	347	582	718	588	594	595
Unfounded	213	244	339	546	663	528	481	552
Citations	3	4	3	7	29	6	6	2

How often are Inspections Required?

Registered Living Unit – A registered living unit is inspected by the Department of Permitting Services for compliance with building standards (for new construction) and the Department of Housing and Community Affairs for compliance with housing standards when it is first completed. The homeowner files an affidavit of compliance with the Department of Housing and Community Affairs. Because no rent can be charged to the person or people living in the RLU, no rental license is required. COMCOR 59.00.02 provides that (1) each RLU will be inspected annually and at other times as may be appropriate; (2) the owner must permit DHCA inspector(s) to enter and inspect the RLU at reasonable times during business hours or by appointment; (3) the inspector(s) are permitted to interview all occupants of the dwelling units present at an inspection. When an RLU is discontinued, DHCA may inspect for compliance (including the removal of the cooking facility). DHCA may inspect when occupancy of an RLU changes.

Accessory Apartment – After receiving approval for a special exception, an accessory apartment is inspected by the Department of Permitting Services for compliance with building standards (for new

construction) and the Department of Housing and Community Affairs for compliance with housing standards when it is first completed. The homeowner must apply for and receive a rental license for an accessory apartment from DHCA. An annual license is required. A rental license does not require an annual inspection; however, currently an annual inspection is required as a part of the special exception. The law does allow the Board and the Department to agree on more or less frequent inspections.[10]

Some testifying at the public hearing questioned whether DPS and DHCA have sufficient staff to carry out inspections required in law and regulation, with one person saying that it took DHCA one month to respond to an overcrowding complaint. DHCA can discuss with the Committee its ability to comply with current requirements, as well as the potential impact if additional inspections are established.

VII The Purpose of ZTA 12-11

Accessory apartments allow owners with a house too large for their own use or their own income to satisfy a housing need. Accessory apartments tend to be far more affordable than new housing stock. It is a response to larger houses, smaller household size, smaller incomes, and aging owners. These factors led the County to allow accessory apartments by special exception since 1984.

Civic Associations asked why was ZTA 12-11 was being proposed to allow accessory apartments if they satisfy a number of conditions. Planning Staff described its purpose as follows:

> Currently, an accessory apartment can only be granted through approval of a special exception by the Board of Appeals. The approval process is designed to address concerns pertaining to maintaining neighborhood quality through exterior appearance, providing adequate parking and protecting against the overconcentration of accessory units in any one area.
>
> Current regulations that require a special exception for approval can be expensive and/or time consuming. As such, only an average of ten accessory apartments is approved annually. According to staff from the Board of Appeals, the Planning Department, and the Department of Housing and Community Affairs, almost all applications are approved. The few that are not approved are turned down because the existing house on the property already does not meet a zoning setback requirement (which is unrelated to the accessory apartment application) or the proposed accessory apartment does not have an adequate exit location from the unit in case of an emergency.
>
> The Zoning Text Amendment proposes to provide opportunities to permit accessory apartments by right in certain zones based on the size of the unit and/or whether the unit is attached or detached from the principal one-family detached house. The ZTA establishes certain standards and requirements drafted from existing, objective standards by which a special exception use is granted for an accessory apartment. In addition, the maximum number of occupants is restricted for both the small and large accessory units. Last, a spacing requirement has been added to the use standards to limit the number of accessory units, regardless of size, that can be constructed within a neighborhood. The proposed text amendment attempts to address community impact concerns while in some cases reducing

[10] Sec. 59-G-1.3. Compliance with special exception grant.
(a) Inspection of operations. The Department, in conjunction with the Board, must establish a regular inspection program for special exception uses. All special exception uses must be inspected annually; except that the Board and the Department may specifically agree that a particular special exception use or category of uses requires a more frequent or less frequent schedule of inspections. The Department must inspect all special exceptions as scheduled in the inspection program.

the process time and expense required to provide one particular type of affordable dwelling unit in the County.[11]

In its most recent memorandum to the Planning Board, Planning Staff added the following:

> The current number of accessory apartments is surprisingly low. This may well be attributed to the fact that the process to obtain approval of an accessory apartment is relatively onerous. Since it is exceptionally rare for a request for an accessory apartment to be denied, there does not appear to be much benefit to the current process, particularly if steps are taken to insure that by right accessory units have to meet certain requirements and standards before they can be permitted. The legislation that is proposed goes further than the current law to ensure that there will not be an over concentration of accessory apartments in any neighborhood and limits the total number of accessory units in the county to 2000. Staff is confident that these additional precautions ensure that allowing by right accessory units will not result in any significant impact to the character of the county's residential neighborhoods.[12]

ZTA 12-11 can be viewed by clicking on the following link:

http://www6.montgomerycountymd.gov/content/council/pdf/zta/2012/zta_12-11.pdf.

[11] Planning Staff memorandum to the Planning Board, April 26, 2012.
[12] Planning Staff memorandum to the Planning Board, August 30, 2012.

PHED Committee #1
October 22, 2012

MEMORANDUM

October 18, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney
Linda McMillan, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 12-11, Accessory Apartments – Amendments

Zoning Text Amendment (ZTA) 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012. The ZTA would allow accessory apartments under certain conditions without a special exception.[1] It would still require a special exception approval whenever all those circumstances are not present. The Council treatment of ZTA 12-11 will guide the Planning Board in its deliberations on the Zoning Ordinance Rewrite.

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. There were requests for specific information; Staff hopes the October 8 packet for the Committee satisfied these requests.

On October 8, the Committee reviewed background information on current law, facts on current accessory apartments, information on current enforcement by DHCA, and the purpose of ZTA 12-11. The Committee had the benefit of hearing from the Planning Board Chair, the Acting Planning Director, the Director of DHCA, the Director of DPS, and the Executive Director of the Board of Appeals at that meeting.[2]

This packet is written to help the Committee make decisions on ZTA 12-11. It will do so without repeating all of the information in the October 8 packet. There are 4 major sections to this packet:

I ***Fundamental Decisions***
II ***Provisions for Approval without a Special Exception***
III ***Provisions for Approval with a Special Exception***
IV ***Provision for a Registered Living Unit***

[1] Testimony indicated that, under ZTA 12-11, accessory apartments would be allowed "as of right". To the extent that a special exception would not be required, that is correct; however, a landowner must satisfy numerous conditions in order to have an accessory apartment. The Planning Board Chair would call this a use allowed by administrative review.

[2] When President Kennedy gave a dinner for all living American Nobel Prize winners, he is quoted as saying, "I think this is the most extraordinary collection of talent, of human knowledge, that has ever been gathered at the White House - with the possible exception of when Thomas Jefferson dined alone." The Committee had all the talent that it could ask for; Thomas Jefferson was unavailable when the Committee met.

I Fundamental Decisions

1) As with any ZTA, the Council may recommend disapproval of ZTA 12-11. This would reaffirm the current special exception process without change.

If the Committee decides that ZTA 12-11 should be disapproved, the Committee meeting on October 22 will not take long. *Staff recommends approval of ZTA 12-11 in some form and therefore does not recommend this course of action.* Whether or not the Council believes that accessory apartments should by allowed under certain circumstances without a special exception, the approval process is unreasonably long. (The Citizens' Coalition recommended a task force to advise the Council before taking action. There is concern that the enforcement of current regulations is lax and that DHCA would be overextended by any expansion. In their opinion, current penalties for illegal units are not sufficient to change behavior and the Council should have complete information on illegal units before acting. A task force is also recommended for properly assessing accessory apartments for property tax purposes.)

2) The Council may accept the concept of allowing accessory apartments under certain conditions without a special exception.

Staff recommends allowing accessory apartments under certain circumstances without a special exception, even if the Council wants to make the requirements more stringent than in ZTA 12-11 as introduced. As noted at the October 8 Committee meeting, approval of ZTA 12-11 will not result in significantly more apartments given the required conditions and having those required conditions in place at a house where the owner wants to become a landlord.

Despite the 2,000 unit "sunset" provision in ZTA 12-11 and the limiting licensing criteria, critics of ZTA 12-11 would argue that accessory apartments would significantly increase the number of such apartments. In addition, the lack of any notice to nearby residents of impending apartments is given as a reason to only allow new accessory apartments by special exception. Whatever the Council decides to do with regard to allowing accessory apartments without a special exception, the Council may still want to change the special exception process or requirements.

Testimony expressed the view that noticing of an impending accessory apartment was important so that neighbors could challenge any fact in application or the opinion of staff. Notice for the purpose of information is only half their request; they want notice for the purpose of challenging material in the application. DHCA, the Department that issues licenses[3], lacks the capacity to conduct hearings. The actions of DHCA are not appealable to the Board of Appeals, which has the capacity to conduct hearings.[4] If the Council believes noticing and the ability to challenge facts are critical to the success of the communities surrounding accessory apartments, then it might amend the sections of code concerning notice of licenses and the jurisdiction of the Board of Appeals. That would require separate legislation.[5]

3) The Council may amend or simplify the current special exception requirements, even if it rejects allowing accessory apartments without a special exception.

As introduced, ZTA 12-11 would still require special exception approval under certain circumstances. The Council may wish to accept this concept, or it may wish to continue the current process (only allow

[3] §29-16.
[4] §2-112(a).
[5] ZTA 12-11 is an action under the Regional District Act (now Article II in the Maryland Land Use Article). ZTAs are effective without the County Executive's approval. Changing Chapter 2 and Chapter 29 would require a bill to do so. These actions are beyond the Council's authority to act as the District Council.

accessory apartments by special exception approval). In either case, there may be amendments to the special exception process or requirements that may be in order. *Staff recommends reviewing the existing special exception provision in addition to allowing some units to be approved by administrative approval.*

This packet assumes that the Committee does not recommend disapproval of ZTA 12-11 and wishes to proceed with both allowing accessory apartments without a special exception and allowing an accessory apartment by special exception. It summarizes the recommendations of the Citizens' Coalition on ZTA 12-11 as applicable.[6]

II Provisions for Approval without a Special Exception

The following table indicates the differences between the current standard for an accessory apartment special exception and standards proposed by ZTA 12-11 for approval without a special exception. The most controversial elements of ZTA 12-11 concern the number of parking spaces required, excessive concentration, number of residents, entrances, and ownership requirements. Only these issues are discussed more fully after the table. The special exception standards could be changed to mirror these changes as well.

[6] See © page 28 for the full text of their recommendations.

Approval conditions	Current requirement as a special exception	Proposed condition for a license but no special exception
Limit one unit per one-family dwelling lot (non-agricultural zone)	A dwelling that must be at least 5 years old	Allowed without regard to age of the house
Part of the pre-existing principal dwelling	Allowed if the lot is less than 1 acre	No acreage distinction
Additions to existing structure	Allowed if the lot is more than 1 acre and the building existed in 1983	Allowed
Separate structure	Allowed if the lot is 2 acres or more and existing house in 1983 and for a caregiver	Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1, up to 1,200 square feet
Occupancy of principal house	Resident owner and family required at least 6 months per year – no room rentals except in agricultural zones	Same
Registered living units	Prohibited when an accessory apartment is approved	Same
External attributes	If there is a separate entrance, it must maintain a single-family appearance and improvements must be compatible with surrounding properties.	Entrance must be on the side or rear yard
Street Address	Must be the same as the main dwelling	Same
Development standards	Zoning classification control; minimum 6,000 square foot lot required	Same but no minimum lot size
Maximum number of people	No limit in zoning but limited by habitable space under the housing code	3
Unit size	1,200 square feet but 2,500 square feet or 50 percent of the main dwelling for an existing accessory structure	800 square feet in R-90 and R-60; 1,200 square feet in larger lot residential zones
Excessive concentration	Prohibited but determined on a case-by-case basis	300 feet from another accessory apartment on the same block face in the R-90, R-60 and RNC zones, 500 feet in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones
Parking	2 on-site spaces are required, but the requirement may be waived or increased depending upon the availability of on-street parking	1 on-site space required in addition to any required on-site place required for the main dwelling
Sunset provision	None	After the 2,000 licenses issued by DHCA, reverts back to the current special exception process.

Parking

Two off-street parking spaces are currently required for any accessory apartment, unless the Board of Appeals finds that there is adequate on-street parking. ZTA 12-11 would require one parking space in addition to the parking required for the principal dwelling. The number of off-street spaces required varies with the date the house was constructed. Houses built before 1955 are not required to have any off-street parking. A house built between 1955 and 1958 was required to have one off-street space. Houses built after 1958 were required to have 2 off-street parking spaces. Most of the public participation in accessory apartment applications was due to an alleged lack of parking in the neighborhood.

Many houses built before 1955 do not have driveways. Adding an off-street parking space would reduce the availability of on-street parking. Driveways are generally 10 feet wide. Parking for the general public is prohibited 5 feet on either side of the driveway for a total width of 20 feet.[7] The typical on-street parking space is 20 feet long. A new driveway must at least accommodate 2 vehicles if it is to add to total parking availability.

As proposed, ZTA 12-12 would not require an on-street parking survey. Such a study would determine the peak use of on-street parking and when additional on-site parking would be warranted. Alexandria and Fairfax County do not require any off-street parking for accessory apartments unless on-street parking is found to be inadequate. The adequacy of parking is determined by conducting a parking survey on the immediate street. In Alexandria, if more than 65 percent of street parking is in use, an accessory apartment must provide 1 off-street space.

The required distance between accessory apartments and parking problems are related. The greater the distance between apartments, the less any parking problem would be exacerbated by accessory apartments.

Staff recommends requiring at least 2 on-site parking spaces if no parking was required for the main dwelling. If parking was required for the main dwelling, then 1 additional parking space should be required. Staff does not agree with requiring a parking survey because on-site parking spaces would be required. (The Citizens' Coalition would recommend 4 on-site spaces in addition to prohibiting accessory apartments on streets with parking only on one side of the street and where parking is allowed on 2 sides of the street but where there is a single travel lane; they recommend a minimum 32 foot wide paving width, and a parking survey.)

Excessive concentration

Currently, the Board of Appeals must find that an accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.[8] There are no distances between special exceptions that determine when an excessive concentration would occur; it is left to the case-by-case judgment of the Board. ZTA 12-11 would remove the Board from the decision-making process and have a numeric standard to avoid an excessive concentration. Accessory apartments would have to be at least 300 feet apart in small lot zones (measured along one block face of the subject property) and 500 feet in large lot zones. It would also prohibit back-to-back apartments in all zones.

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[7] Montgomery Code §31-19. Obstructing entrances to public or private driveways.
The parking of vehicles at any time on the public ways of the county in such a manner that any part of the vehicle so parked is within five (5) feet of either curb edge of any existing opening or hereafter established entrance to any public or private driveways or shall overlap or obstruct any existing opening or hereafter established entrance to any public or private driveways is prohibited; except, that an owner may obstruct his own private residence driveway.

[8] §59-G-2.00(c)(2).

An overconcentration of special exceptions has the potential to change the character of single-family neighborhoods. Too many accessory apartments on one block can lead to parking problems for everyone. In some parts of the County parking is in short supply, particular in pre-1958 neighborhoods with narrow streets and no off-street parking requirement. When on-street parking is in short supply, residents on both sides of the street are affected.

In addition to or instead of amending the parking requirements, the distance standards could be amended to avoid apartments on the same block, even if the other apartment is on the other side of the street. Staff recommends deleting the prohibition against back-to-back accessory apartments. (The Citizens' Coalition would recommend a 500 foot distance between apartments, including apartments on the opposite side of the street, in any zone and asked consideration of keeping accessory apartments 1,000 feet apart in R-90, R-60, and RNC zones. The Coalition also recommended a publicly searchable list of all accessory apartments.)

Maximum number of accessory apartment residents and unit size limit

ZTA 12-11 would limit the number of residents per accessory apartment to 3 people. Other jurisdictions limit the number of people when accessory apartments are allowed. In Fairfax County, accessory apartments may only have 2 people or fewer. In Washington DC, the main dwelling and the accessory apartment may have no more than 6 people total. Limiting the number of people would be an enforcement issue for DHCA, but it could be accomplished through annual self-certification. (The Citizens' Coalition recommended self-certification, particularly with regard to the owner's own occupancy, reaffirming the agreement to allow inspections, and requiring all leases have a minimum term of one year.)

Would a landlord have to displace a 3 person household if a baby joins that household? No. The Housing Code defines an occupant as "any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit, rooming unit, or individual living unit."[9] A baby does not become an occupant until the day after the baby's first birthday. This would give the occupants time to find new accommodations.

ZTA 12-11 would limit an accessory apartment to a floor area of 800 square feet in small lot zones and 1,200 square feet in larger lot zones. (It would be anticipated that some portion of the space would not be habitable space.[10]) *If the number of people is limited, staff does not understand why the floor area of the accessory apartment should be limited as long as it is less than 50 percent of the floor area of the house.* If a basement has a floor area larger than 800 square feet, what public interest is served by having the owner partition their basement? If the Council wants to limit floor area independently in addition to a limit of 50 percent of the main building, it may wish to keep the current limit of 1,200 square feet for all property.

Side or rear entrance

Currently, if an accessory apartment has a separate entrance, it must give the appearance of a one-family house. Exactly how this would be accomplished is not specified. ZTA 12-11 is more specific by requiring an entrance either that fronts the side or the rear yard. *Staff recommends allowing an accessory apartment to use the main entrance to the house.* A separate entrance in the front of the house would still be prohibited.

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[9] Montgomery Code §26-2.

[10] Habitable space excludes any bathroom, laundry, pantry, foyer or communicating corridor, closet, recreation room, private workshop or hobby room, storage space, fallout or emergency shelter and any area with less than 5 feet of headroom. The term floor area is used instead of gross floor area. Gross floor area is a defined term that does not include cellars, but a cellar may be used for an accessory apartment if it meets fire/safety code requirements for a bedroom.

Ownership requirements

At the October 8 Committee meeting, Councilmember Leventhal asked about the requirement for a resident owner in order to have a legal accessory apartment. Currently, the owner of the property must live in the main building for at least 6 months per year in order to get approval for a special exception for an accessory apartment.[11] It is rare for the Ordinance to distinguish between owners and renters in any way. The Ordinance is indifferent to whether multi-family housing is rental apartments or a condominiums. In this instance, the Council balanced the need for more housing with the goal of maintaining the character of the neighborhood. Owners are thought to be more responsive to any nuisance that might be caused by their renter than would other renters.[12] The Council's Opinion on ZTA 83023, that first allowed accessory apartments in 1983, said:

> The (PHED) Committee felt it was essential to retain the owner-occupancy requirement in order to ensure ownership responsibility and involvement in the fulfillment of all conditions of the special exception.

Owners are not prevented from renting their homes; they would be prevented from renting both their home and an accessory apartment. In this manner, it is regulating land use, not ownership.[13] The Maryland Courts may agree or disagree. A safer way to retain the same concept would be to put the requirement in licensing standards, where the Council would be acting under its broader authority to act to protect the welfare of the community.

Staff recommends removing the ownership requirement from the Zoning Ordinance and adding the requirement to the County's licensing law, if the Council believes that resident ownership retains neighborhood character. The Council may also wish to consider removing the 6 month occupancy requirement. (The Citizens' Coalition recommended strengthening the requirement for an owner in residence by reference to IRS principle residence requirements and crosschecking administrative records such as voter registration and driver license lists. They recommend a minimum 1 year tenancy before an owner should be able to apply for an accessory apartment. In addition, they recommend homeowner education concerning the legal requirements of landlords.)

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[11] This requirement assures that the owner is not a transient visitor. A transient visitor is defined as, "A person residing in the county for any one period of time not exceeding 6 months, except that, in a bed-and-breakfast lodging, a transient visitor is a person who resides in the lodging for no longer than 2 weeks in any one visit."

[12] According to research conducted by College Park, rented single-family homes are not maintained as well as owner-occupied homes, and the stock of such homes had begun to deteriorate; Tyler v. City of College Park, 415 Md. 475 (2010). This case upheld the City's rent control ordinance, which only regulated rents in single family dwellings.

[13] A similar provision for ownership was upheld as a valid exercise of zoning in Anderson v. Provo City Corp., Supreme Court of Utah, 108 P.3d 701 (2005) and in Kasper v. Town of Brookhaven et al., Supreme Court of New York, Appellate Division, 142 A.D.2d 213 (1988) but was overturned as being beyond the scope of zoning powers in City of Wilmington v. Broadus E. Hill, III, Court of Appeals of North Carolina, 657 S.E.2d 670(2008). Maryland Courts have not ruled on accessory apartment ownership provisions. The Court of Special Appeals in Queen Anne's County v. Days Cove Reclamation Company, 713 A.2d 351 (1998) found a zoning provision that prohibited publicly zoned reclamation facilities but allowed publicly owned facilities to be beyond the scope of zoning powers under Article 66B, because it was regulating ownership rather than land use, density, and structures.

On September 3, 2003, the County Attorney wrote an opinion on the requirement that an accessory apartment could not be occupied by a family of unrelated persons. The County Attorney said in part:

> Because §59-G-2.00(a)(5)(i) violates no statute and does not impinge upon a fundamental right or burden a suspect classification, it would be subject to rational basis review, meaning that if the provision is rationally related to some legitimate public purpose, it must be upheld as applied.

The Opinion did not address ownership, but the constitutional test remains the same.

III Provisions for Approval with a Special Exception

ZTA 12-11 requires a special exception for an accessory apartment under certain circumstances:

> An attached accessory apartment special exception petition may be filed with the Board of Appeals to deviate from any permitted use standard regarding:
> (A) location of the separate entrance;
> (B) number of on-site parking spaces; or
> (C) minimum distance from any other attached or detached accessory apartment.[14]

In addition, ZTA 12-11 would require a special exception for a large accessory apartment in a small lot zones.

Testimony did not reveal any satisfaction for a 7 month process to review an accessory apartment special exception application. Proponents stressed the numerous hurdles. Opponents wanted a thorough process (notice and a hearing opportunity), but not necessarily a long process. ZTA 12-11 does not change the process and only has standards for those attributes (entrance characteristics, number of on-site parking spaces, and excessive concentration) that trigger a special exception. *Staff would recommend amending ZTA 12-11 so that all standards should match how an accessory apartment would be allowed without a special exception, other than the attribute that triggered the need for the special exception.* Staff assumes for the purpose of avoiding repetition that the Council has reviewed the standards in Section II of this memorandum.

For those attributes that would trigger a special exception, the standards are similar to current standards:

> To approve a special exception filed under Subsection (b)(1), the Board of Appeals must find, as applicable, that:
> (A) the separate entrance is located so that the appearance of a single-family dwelling is reserved;
> (B) adequate on-street parking permits fewer off-street spaces; or
> (C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

These standards would replace the numeric provisions for apartments without a special exception. If the Council retains the concept that special exceptions should still be required for all accessory apartments, then the numeric requirement for on-site parking and spacing between units should be deleted. ZTA 12-11 does not require compliance with any of the other standards for approval without a special exception. *Staff recommends requiring that special exceptions comply with the standards for non-special exceptions, except for the numeric limits just noted.*

Process changes

Forest conservation

Chapter 22A requires a forest conservation plan for all property 40,000 square feet in land area or larger. This is in conformance with State law. Proof of a preliminary forest conservation plan or a waiver from Planning Staff is required with the submission of all special exception applications, including accessory apartments, without regard to the size of the property. *Staff recommends eliminating the application requirement for a natural resource inventory for accessory apartments on lots smaller than 40,000 square feet (an amendment to §59-A-4.22(a)(9)). In addition, a water quality plan should not be required whenever*

[14] §59-A-6.19(b)(1), lines 93-99.

a special exception for an accessory apartment does not require any additional impervious surface (an amendment to §59-A-4.22(a)(10)) and the property is smaller than 40,000 square feet.

Decisions by Hearing Examiner, appealable to the Board of Appeals

Currently, the Hearing Examiner must submit all accessory apartment applications to the Board of Appeals. The Board of Appeals has the authority to make the final decision. After a report and recommendation are available from the Hearing Examiner, any party has 10 days in which to schedule oral argument. The application is thereafter scheduled on the Board's Agenda. Once the Board has made its decision (about 3 weeks after the Hearing Examiner's report and recommendation are published), the Executive Director for the Board of Appeals must draft an opinion for the Board.

Staff recommends that this process be shortened by allowing the Hearing Examiner to make a final determination. The Hearing Examiner's decision may then be appealed to the Board of Appeals if a party objects to the decision.[15] In this manner, only controversial cases would be delayed.

Staff is aware that the Board of Appeal objects to this process because it reduces their authority and thus reduces the opportunities for the decision making process to reflect the wisdom of a lay body.

Reduced time between an application submittal and scheduling a hearing

Until recently, the Hearing Examiner did not schedule a hearing for about 4 months after the application was submitted. This delay was imposed to allow Planning Staff time to review the application and write its report. Through the development streamlining process, Planning Staff has accommodated the request to handle accessory apartments more quickly. Current hearings will be scheduled 3 months from the date of the application's submission.

Councilmember Elrich favors retaining the current requirement for special exceptions, with changes to make the process much more efficient. The following reflects the substance of his recommended process changes.

Timeline from the submission of an application

- Require the scheduling of all hearings for accessory apartment special exception applications within 60 days of the date the application is deemed to be complete.
- Require DHCA to inspect and report on the conditions of approval within 30 days from when the application is submitted to the Department. (Planning Staff would not be asked to review the application.)
- Require posted signage and mailed notice at least 45 days before the hearing.
- Prohibit occupancy until any required work is completed and the Department issues a license.

Post-approval requirements

- Require inspection by DHCA as complaints or code history requires, but in no event less than once every 5 years.
- Annual certification by the owner that the owner resides in the main house (and penalties for false certifications).
- In the event the license is not renewed or the licensed is not reissued for any other reason, then require the removal of appliances and gas or electric supply lines (Councilmember Elrich would have requirement for continued occupancy of the apartment; as long as the license is renewed, it would

[15] §2-112(c).

remain legal. In this regard, the Citizens' Coalition would want new buyers to deactivate the license or to immediately apply for a new license.)

IV Provisions for a Registered Living Unit

In addition to the 413 legal accessory apartments, there are 698 registered living units. A registered living unit is defined as follows:

> Registered living unit: A second dwelling unit that is part of an owner-occupied one-family detached dwelling and is:
> (a) Suitable for use as a complete living facility with provision within the facility for cooking, eating, sanitation and sleeping;
> (b) Occupied by:
> (1) No more than 2 persons related to each other by blood, marriage or adoption, at least one of whom must be a household employee of the owner-occupant of the main dwelling; or
> (2) No more than 3 persons related by blood, marriage or adopted to the owner-occupant of the main dwelling; except that one may instead be an unrelated care-giver needed to assist a senior adult, ill or disabled relative of the owner- occupant; and
> (c) Subordinate to the main dwelling.[16]

ZTA 12-11 would make the provisions for an accessory apartment closer to a registered living unit by limiting the number of occupants to 3 people and allowing the unit without a special exception under some circumstances. The major difference is that an accessory apartment may be rented, and a registered living unit may not be rented. (The Citizens' Coalition recommended annual inspection of these units, an annual

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[16] §59-A-2; see also §59-A-6.10. Registered living unit--Standards and requirements.
A registered living unit, permitted in, agricultural, one-family residential and planned unit development zones, must:
(a) be registered with and inspected by the Director, in which process:
(1) The owner must affirm, in an affidavit of compliance provided by the Director, that the registered living unit will be maintained, occupied and removed or converted to accessory apartment use, as provided by the requirements of this section.
(2) The Director may designate another County agency or department to administer and enforce the registration and inspection requirements.
(3) The Director is authorized to adopt Executive Regulations by Method 2 which may:
(i) provide for periodic inspections, including access by inspectors at reasonable times, and compliance with applicable codes;
(ii) establish procedures for initial and continuing registration of a registered living unit including provisions for removal when it is no longer being used for purposes set forth in the definition;
(iii) include such other regulations as may be necessary to carry out the intent of this Section; and
(iv) establish fees as necessary to cover the cost of administration.
(b) comply with the Housing and Building Maintenance Standards of Chapter 26 of this Code as amended;
(c) have at least one party wall in common with the main dwelling;
(d) be subordinate to the main dwelling;
(e) use the same street address as the main dwelling;
(f) have any separate entrance located so that the appearance of a one-family dwelling is preserved;
(g) not be rented for financial remuneration, except that the services of household employees or expenses shared by family members are not deemed to be rent;
(h) not be operated on the same lot or parcel as another registered living unit, an accessory apartment, a family of unrelated persons, or any other residential use for which rent is charged, except an accessory dwelling in an agricultural zone; and
(i) be removed whenever it is no longer occupied as a registered living unit unless the owner applies for and is granted a special exception for an accessory apartment in accordance with Section 59-G-2.00, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

affidavit from the unit residents to affirm that they are not paying rent, a publicly searchable database of registered living units, and a one year waiting period – during which the unit would be vacant – before a registered living unit could be converted to an accessory apartment.)

ZTA 12-11 would specifically amend the provisions for registered living units as follows:

59-A-6.10. Registered living unit--Standards and requirements.

A registered living unit, permitted in[,] agricultural, one-family residential, and planned unit development zones[,] must:

(i) be removed whenever it is no longer occupied as a registered living unit, unless the owner applies for and is granted either a special exception or a license for an attached accessory apartment [in accordance with Section 59-G-2.00] under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

The Council might consider having a single standard for both registered living units and accessory apartments. (The Citizens' Coalition is concerned that converting a registered living unit to an accessory apartment is far too easy. They recommended requiring the unit be vacant during the period of conversion, with at least a one-year waiting period.)

Zyontz, Jeffrey

From:	Naomi Spinrad [nspinrad68@verizon.net]
Sent:	Friday, January 04, 2013 9:56 AM
To:	Floreen's Office, Councilmember; Elrich's Office, Councilmember; Leventhal's Office, Councilmember
Cc:	Zyontz, Jeffrey; Jean Cavanaugh; Marilyn Piety; Ellen Mentzer
Subject:	Citizens' Coalition on ZTA 12-11, bill 31-12, with flow chart
Importance:	High
Attachments:	Accessory Apartment Approval Process Rev 4b 010413.pdf; ATT533513.htm

Dear Councilmember Floreen, Councilmember Elrich, and Councilmember Leventhal:

On behalf of the Citizens' Coalition on ZTA 12-11 (and Bill 31-12), we are writing with grave concerns about the clarity, specificity, and coordination between these two pieces of legislation.

Attached to this letter you will find a flow chart (please double click on it to see all 15 pages) prepared for the Coalition, the Council, and any other interested parties. The chart follows the process of applying for and obtaining, or failing to obtain, a license for an accessory unit. It also notes very clearly where gaps in the process make the bill unsatisfactory for both applicants and neighbors. We understand that some of the things that concern us may be dealt with in regulations, but the parameters for those regulations need to be clear in the legislation.

We ask that you study the flow chart and the accompanying notes carefully, but include in this letter some highlights. These are <u>not</u> in order of priority:

- **There is no requirement for a public list of the standards for and limits on accessory units on the proposed DHCA website.** The flow chart notes a number of items that must be part of accessory unit application.

- **There is no requirement that DCHA provide publicly and to applicants guidelines for what must be submitted with their applications.** Again, the flow chart lists a number of such items.

- **There is no definition in either piece of legislation of "similar uses."** We believe strongly that **"similar uses" must include any uses that impact local parking, including but not necessarily limited to registered and major home occupations, boarding houses, group homes, home health practitioner offices, RLUs, and any *illegal* similar uses, including accessory units.**

- **There is no definition in either piece of legislation of "adequate parking."** Short of deciding that no residence can park more than an arbitrary number of cars on the street,

(64)

there is no simple way to determine whether there is adequate parking. The lone proposal considered in work sessions to determine "adequate parking" so far has been several visits in the evening, with no other parameters offered. Some resident vehicles may be moved during the day, but daytime is also when contractors, delivery vehicles, and household workers are likely to be in the neighborhood. As many of you may know, one or two additional vehicles can disrupt a whole block, regardless of the hour.

- **Applicants and those with objections may in some circumstances be forced to appeal to the Circuit Court while in circumstances involving the same type of disagreement both parties have access to the less costly and less formal Board of Appeals process.** If the Director of DHCA determines, on some unknown basis, that parking is inadequate, the applicant must apply for a special exception. But if neighbors object when the Director determines parking is adequate, the application goes to a hearing examiner, and if there is further objection, to the Circuit Court. **This is unfair and expensive for both applicants and those who object.**

- **There are no enforcement elements included in either piece of legislation.** For example, if a licensee refuses to allow an inspector to enter, is the only recourse seeking a court order to gain entry? Specific penalties for failing to comply with the legal requirements, whether embodied in the legislation or in regulations, should be included.

- **The current legislation would allow accessory apartments to be 50% of the total floor area of the house.** This change would effectively create duplex homes in areas zoned for single family homes, and was never voted on in open committee session. The ZTA must be changed to the original limit of 800 square feet in attached accessory apartments in R60 and R90 zones, and 1200 square feet in detached units, with anything larger requiring a special exception.

- **Notification in the legislation is limited to a sign to be provided by the homeowner.** For purposes of uniformity, clarity, and weather resistance, DHCA should provide the required sign. In addition, as assurance against unpredictable human behavior and lack of staff to check on notification signs, adjacent and confronting homeowners as well as the local citizens or neighborhood association must be notified by USPS-delivered letter.

We would be happy to meet with any Council member or staff who wishes further insight into our analysis prior to the Council work session. We have offered repeatedly to participate in a task force or working group or some similar gathering of stakeholders, to help develop standards and a process for accessory units that will garner broad support. There are other important issues, ranging from whether accessory apartment landlords are subject to landlord-tenant regulations (including fair housing, rent increases, etc.) and what

protections are deemed necessary, if any, for elderly homeowners and those who wish to shut down an accessory unit in their homes, that still need to be addressed.

ZTA 12-11 and Bill 31-12 fall sadly short of the reform the Council seeks. We hope you will take this opportunity to either return this issue to be considered with the zoning rewrite, or to make major, serious changes in the pending legislation. It would be far worse to approve a deficient bill than to reject it, if it comes to that.

Sincerely,

Jean Cavanaugh

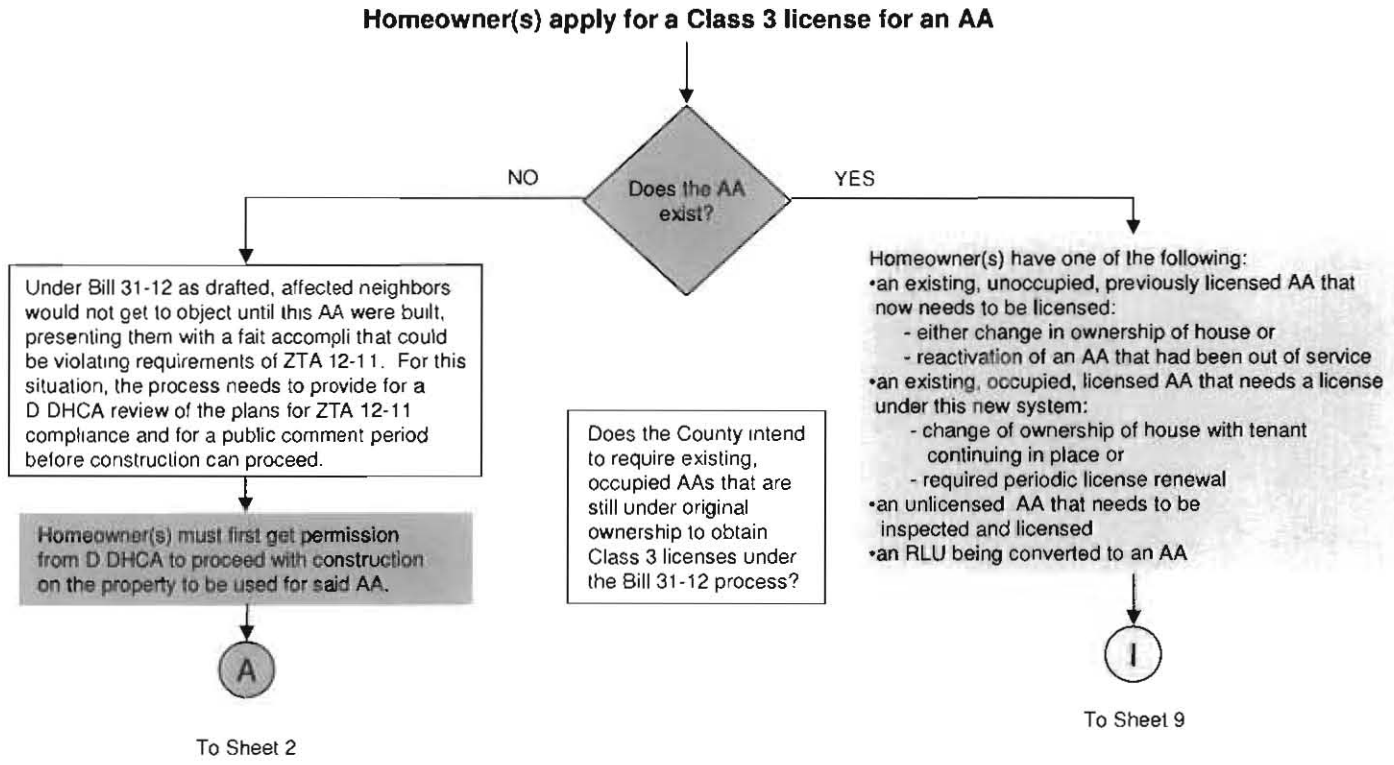
Marilyn Piety

Naomi Spinrad

Citizens' Coalition on ZTA 12-11

Accessory Apartment License Approval Process

Sheet 1



Acronyms:

AA	Accessory Apartment
BOA	Board of Appeals
D DHCA	Director, Dept. of Housing and Community Affairs
DPS	Department of Permitting Services
HE	Hearing Examiner
OZAH	Office of Zoning and Administrative Hearings
RLU	Registered Living Unit
TBD	To Be Determined
ZTA	Zoning Text Amendment

Process steps in Bill 31-12

Proposed new steps to be added to Bill 31-12

Text or concept in Bill 31-12 or ZTA 12-11

Text needed to be added to Bill 31-12 or ZTA 12-11

3 Jan 2013 WRM

Accessory Apartment License Approval Process

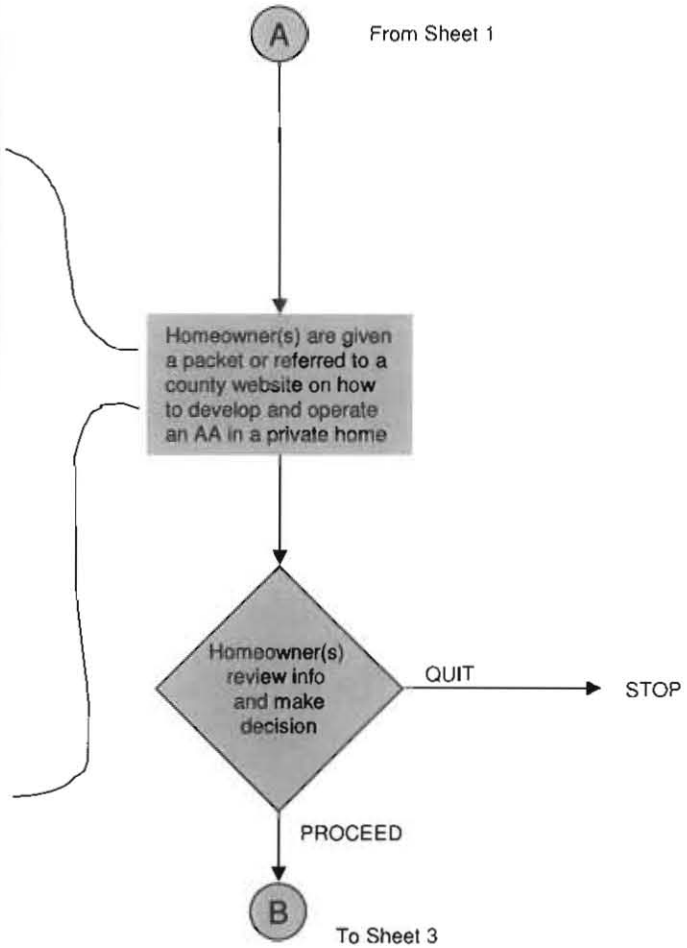
Sheet 2

Proposed Packet/Website Contents

Requirements for developing and operating an AA in a private home, Including, but not limited to the following:

- Home with the AA must be primary residence of the homeowner(s)
- Limitations on location of AA entrance
- Limitations on number of residents
- Limitations on size of AA
- Distance limitations between proposed AA and any other home with an AA, along the same block face, (varies with type of residential zone, 300 ft or 500 ft limits)
- Amount of off-street parking to be provided
- Inspection of finished AA for DCHA Class 3 license
- Time deadlines for DHCA and other government agencies to consider neighbor's' complaints

- Building permits and associated construction inspections
- Building code standards for AAs that might pose problems for homeowner(s) attempting to build an AA, such as minimum height of ceilings or doors, window sizes and placement
- Statement of penalties for submitting incorrect information
- Statement, to be signed by homeowner(s), that the homeowner(s) agree to permit inspection of the AA after it is placed in operation
- Fees for various stages of the application processing
  - Initial application
  - Regular in-use inspections
  - Periodic license reissue applications
- Need for notification of neighbors before AA construction starts
- Time deadlines for homeowner(s) to accomplish certain steps in the AA development and licensing process (if any)
- Program of AA inspections, including regular ones to ensure proper operation, when application is made for license renewal, and in cases of complaints by neighbors
- Statement to be signed by homeowner(s) that they agree to permit access to the AA for routine inspections, in cases of complaints, and for other reasons. Statement should include a clause that applicant(s) acknowledge that refusal to admit an inspector can result in loss of license for that AA



Accessory Apartment License Approval Process

Sheet 3

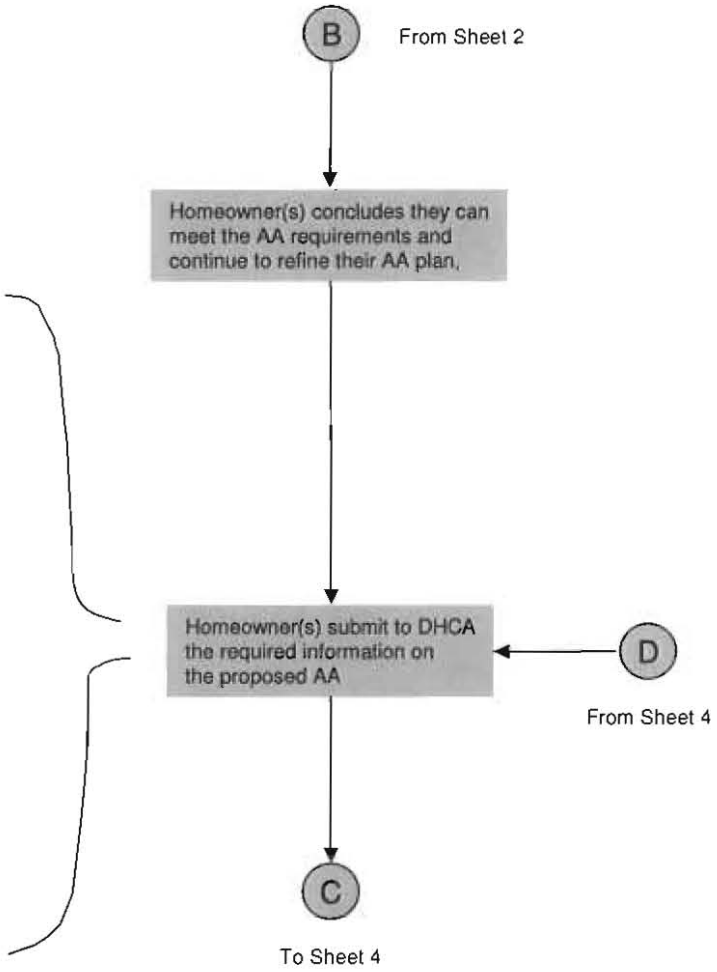
Proposed Set of Information to be Provided in AA Application

Plot and building diagrams submitted in this process may be hand drawn but dimensions provided must be accurate

- Specific size and location of lot
- Current zoning of lot
- Dimensions of house before AA is to be built
- Proposed location and size of AA on lot, whether attached or detached AA
- For attached AA, must indicate location of proposed door, location and size of windows including sill height above floor, ceiling and door heights, and any other necessary locations/ measurements
- Homeowner(s) should have signed affidavits from all neighbors within the designated distances for the applicable residential zoning that they do not have any specific uses on their properties that adversely affect parking in that neighborhood
  - unlicensed AAs
  - RLUs
  - Boarding houses
  - Group homes
  - Home health practitioners' offices
  - Registered home occupations
  - Major home occupations

(Note that rules for displacement between AAs only applies along the same side of the street as the proposed AA. There could be another AA directly across the street from the proposed AA, further complicating the parking adequacy determination)

- Location and size of existing driveways, fire hydrants, and other constraints (such as cross streets) that limit the amount of street parking within 300 ft from the AA
- Any fees required with the formal application



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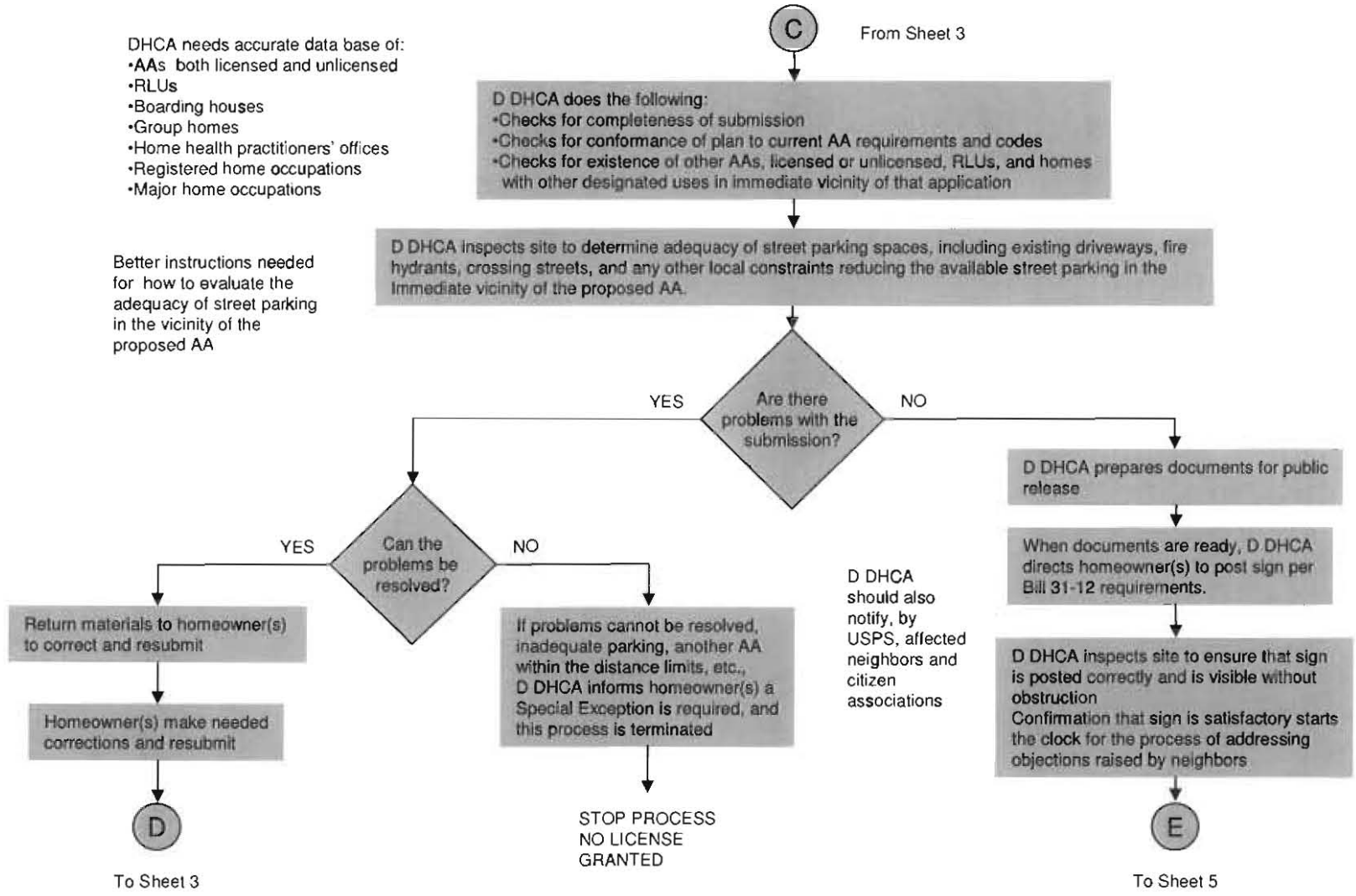
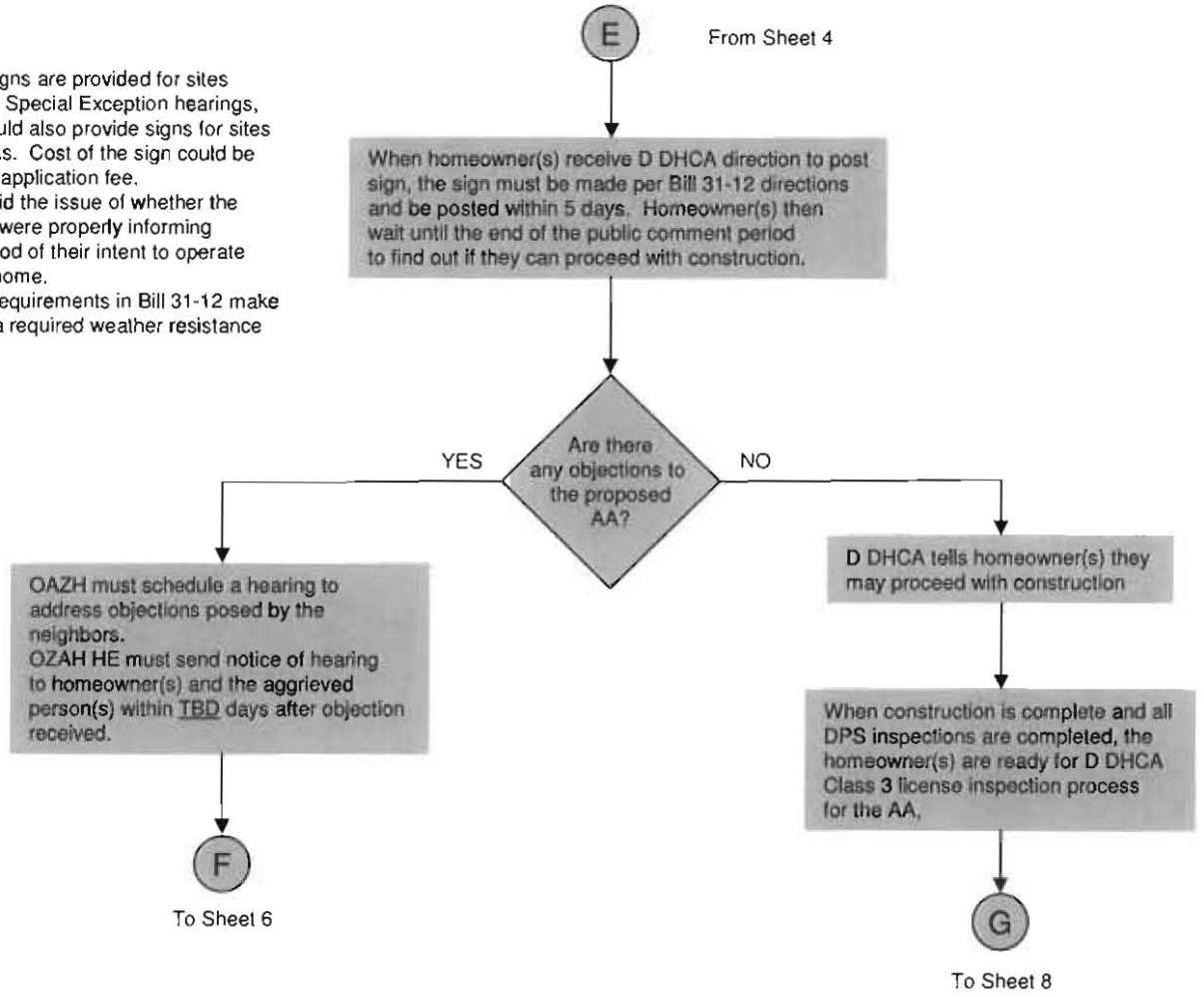


Accessory Apartment License Approval Process

Sheet 5

Since official signs are provided for sites subject to BOA Special Exception hearings, the county should also provide signs for sites applying for AAs. Cost of the sign could be included in the application fee.
This would avoid the issue of whether the homeowner(s) were properly informing the neighborhood of their intent to operate an AA in their home.
Also, the sign requirements in Bill 31-12 make no mention of a required weather resistance of said sign.



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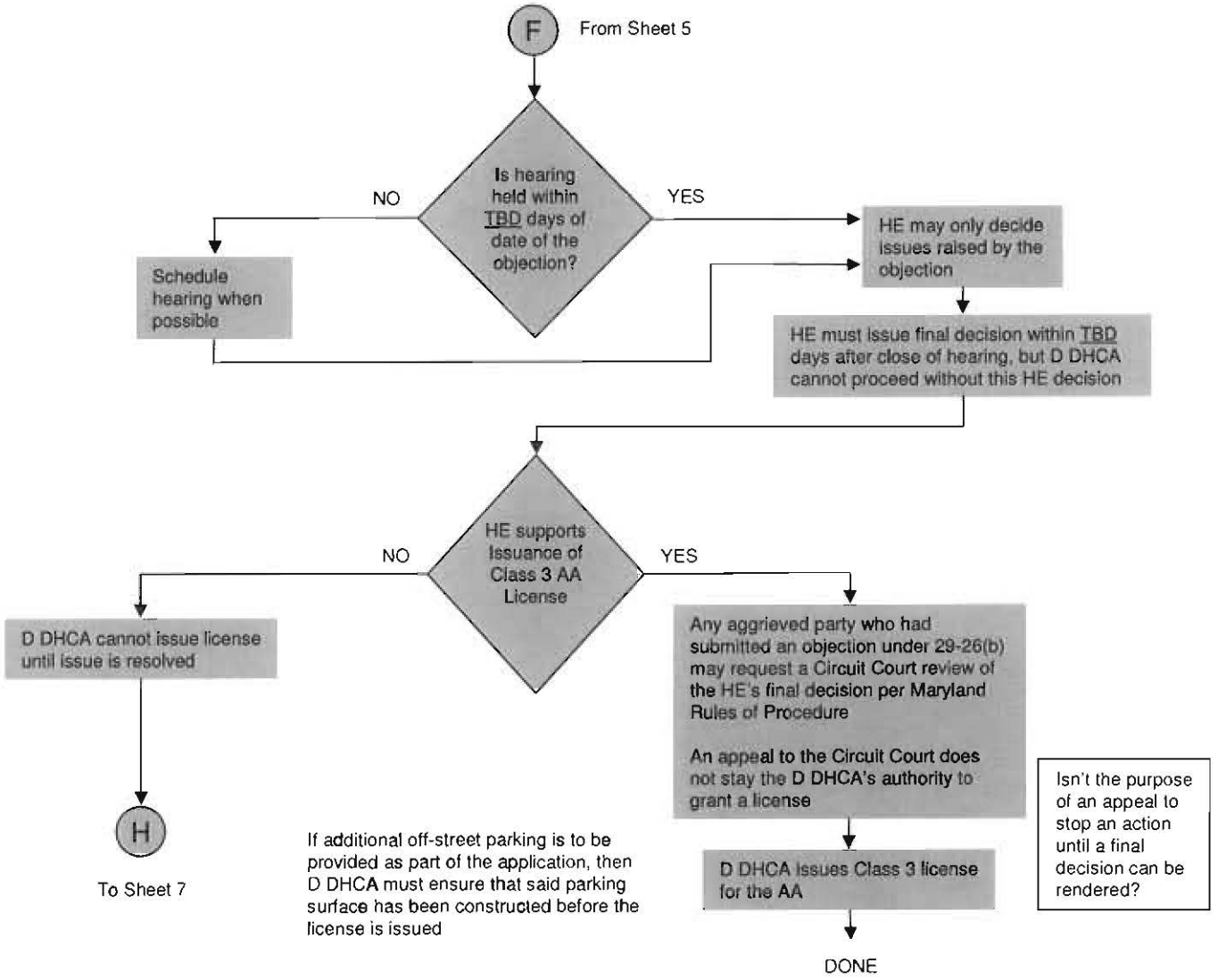
Sheet 6



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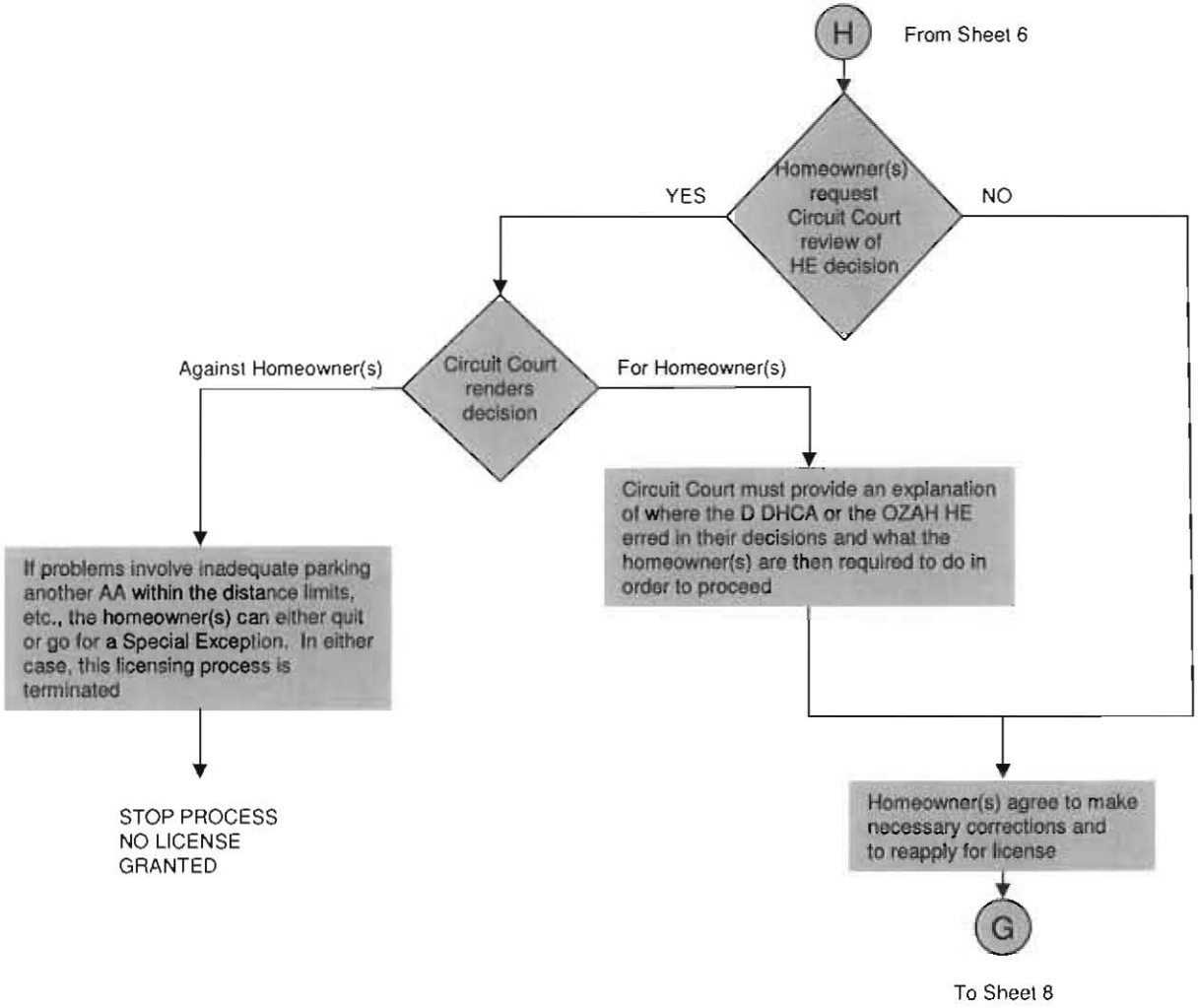
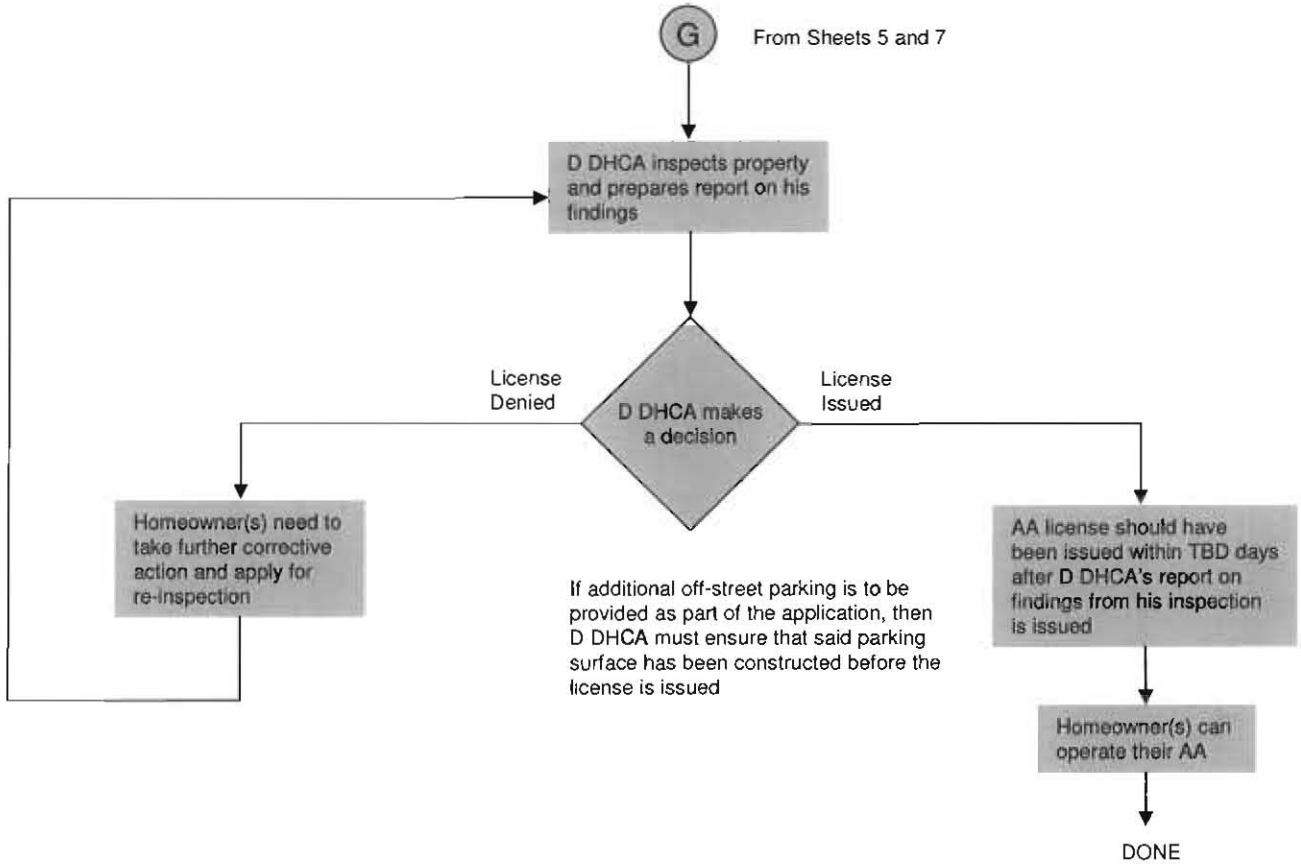


Accessory Apartment License Approval Process

Sheet 8



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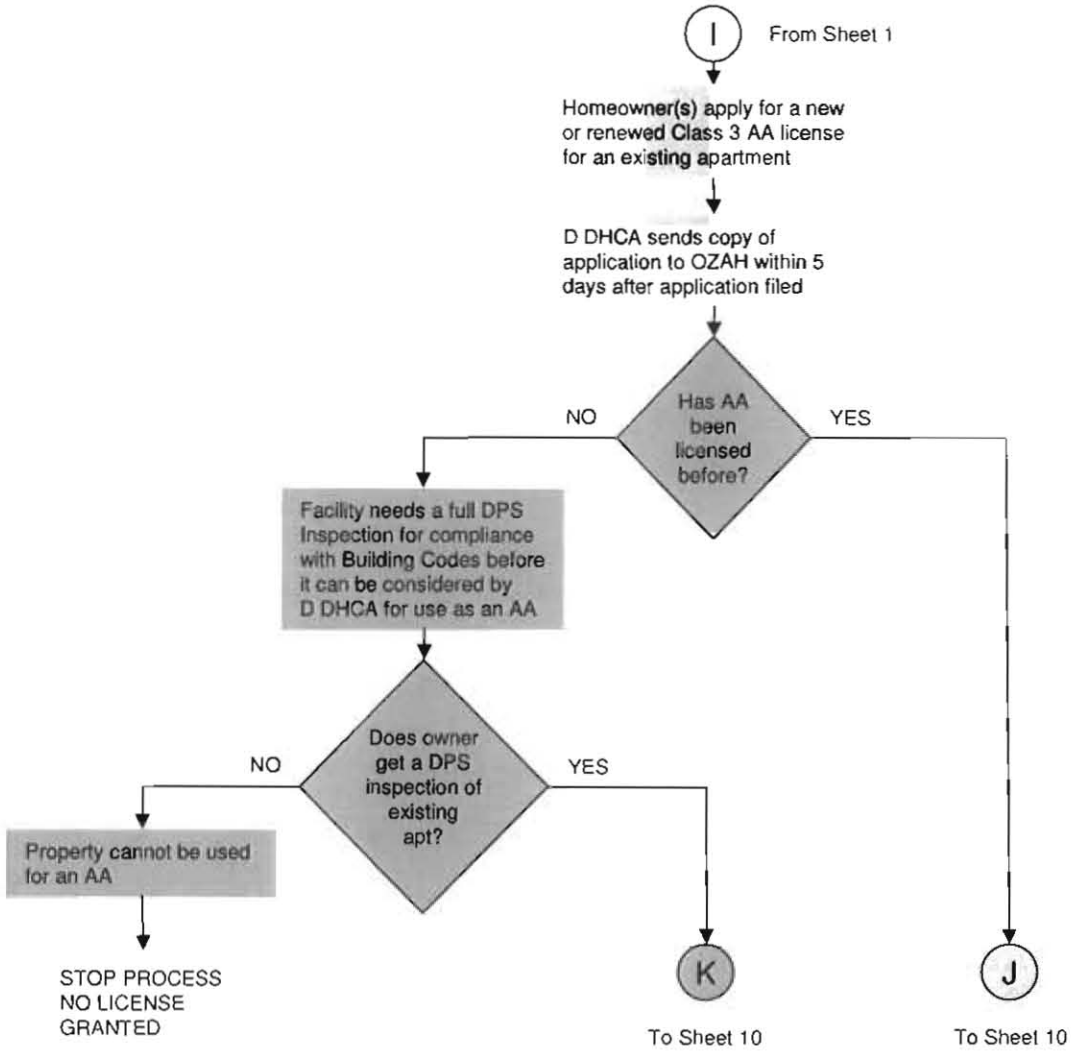
Sheet 9



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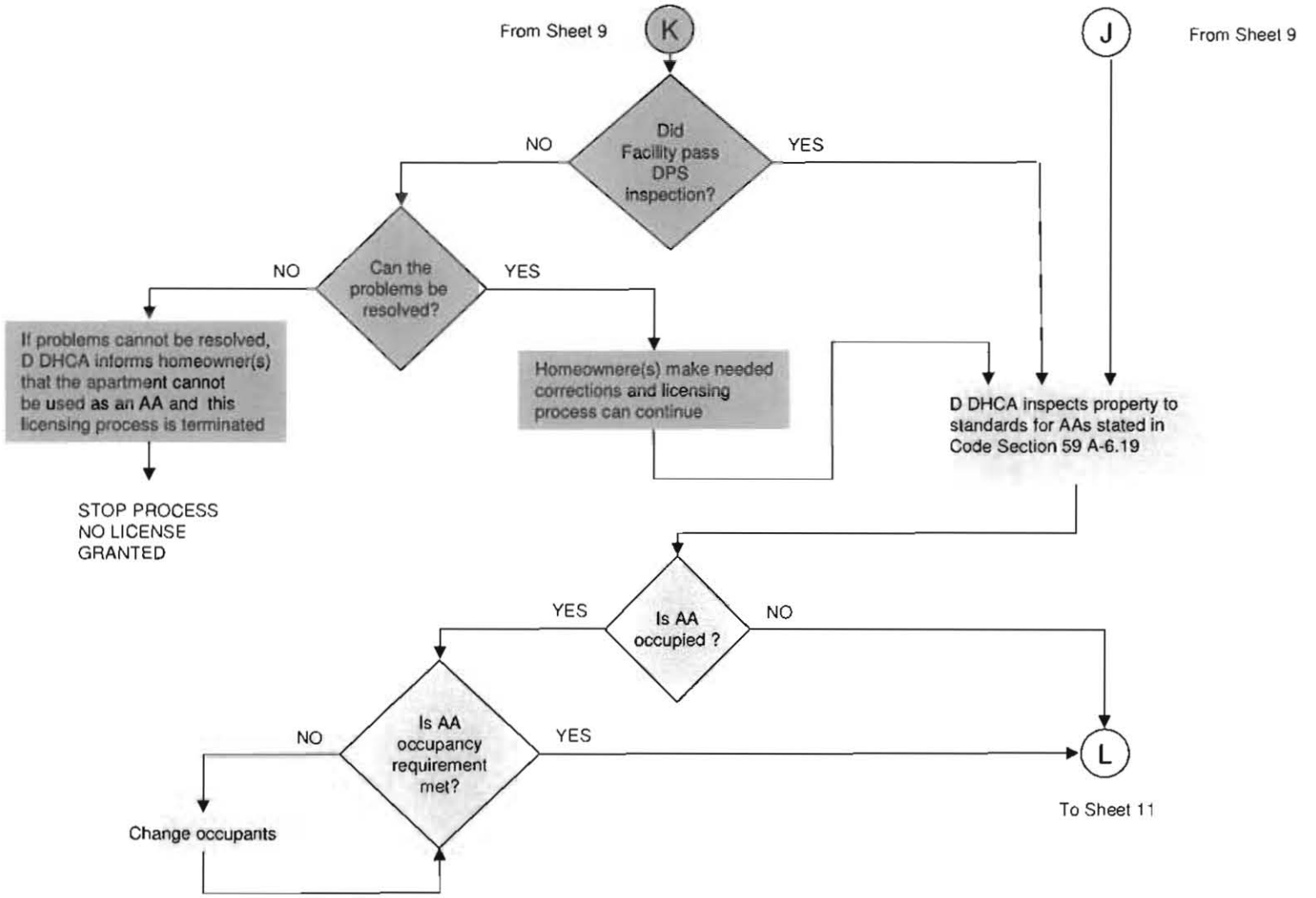
Sheet 10



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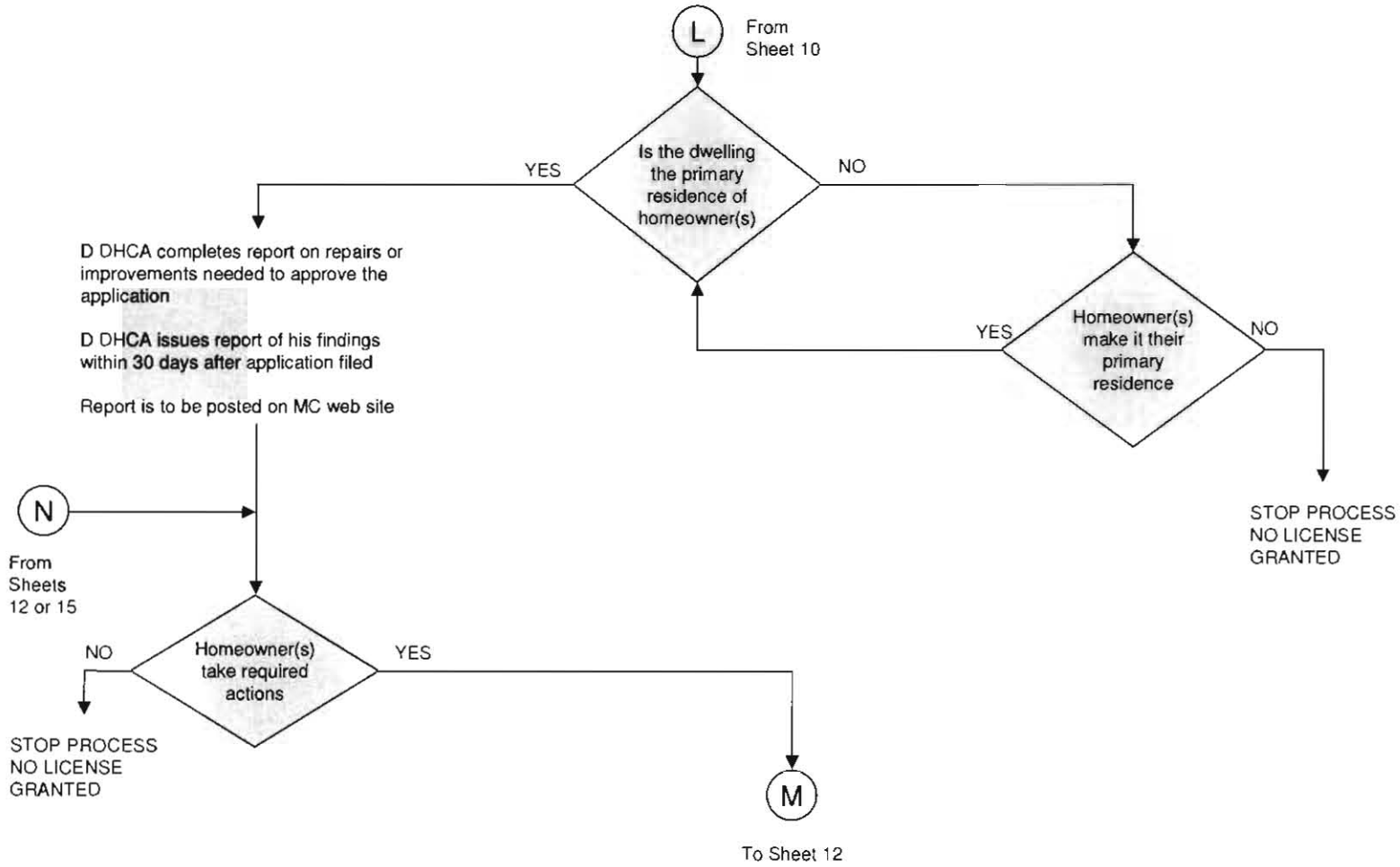
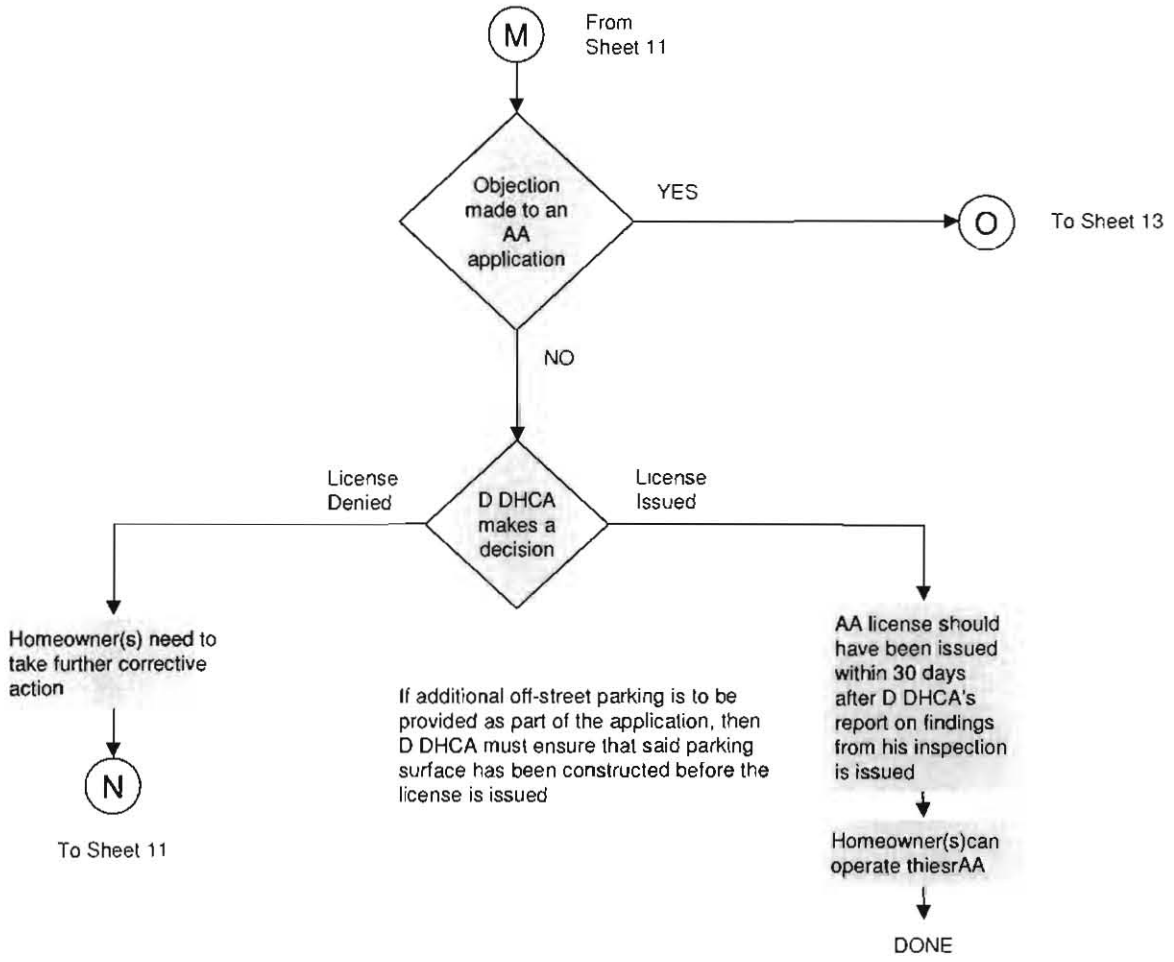
Sheet 11



Accessory Apartment License Approval Process

Sheet 12



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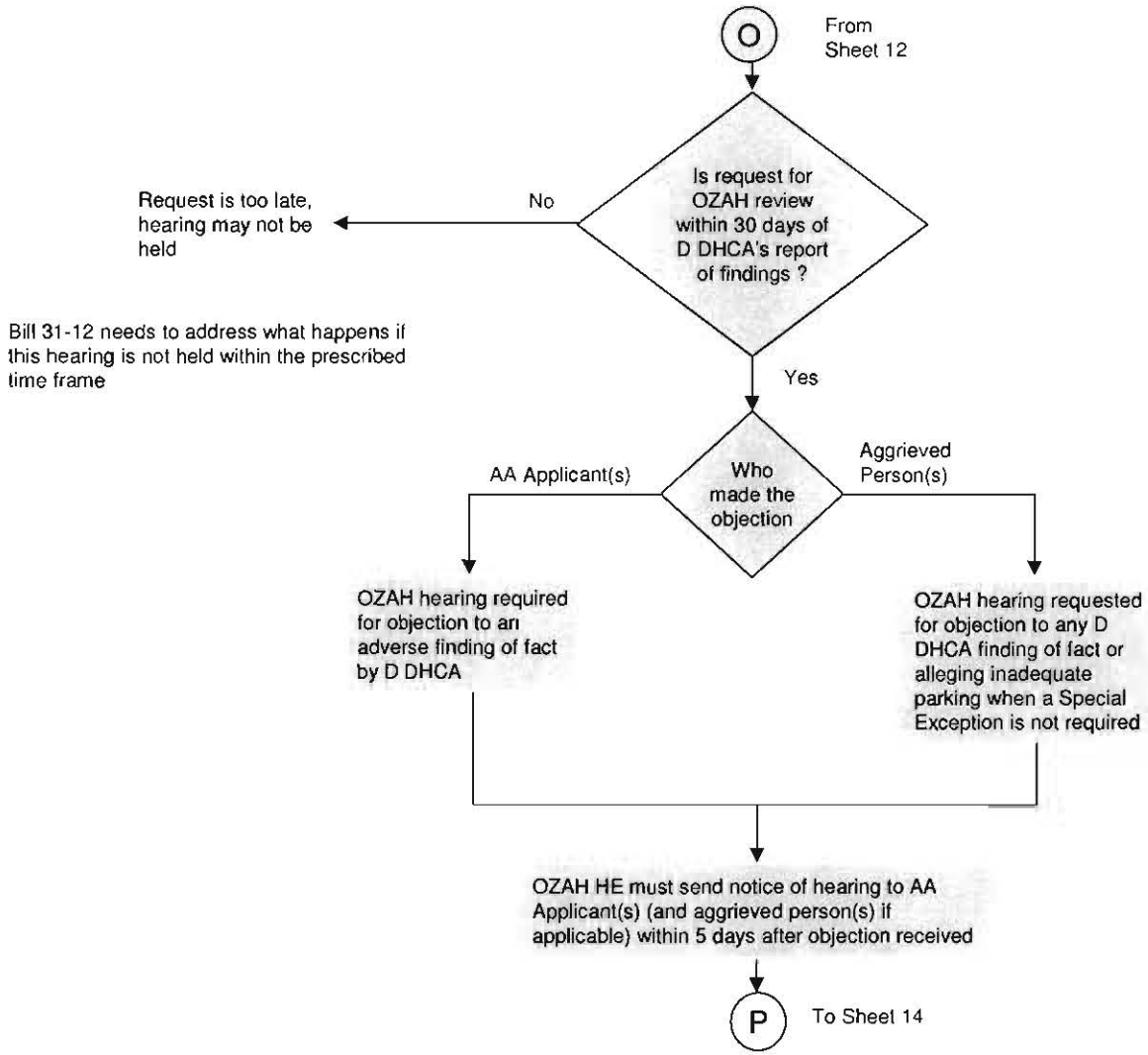
Sheet 13



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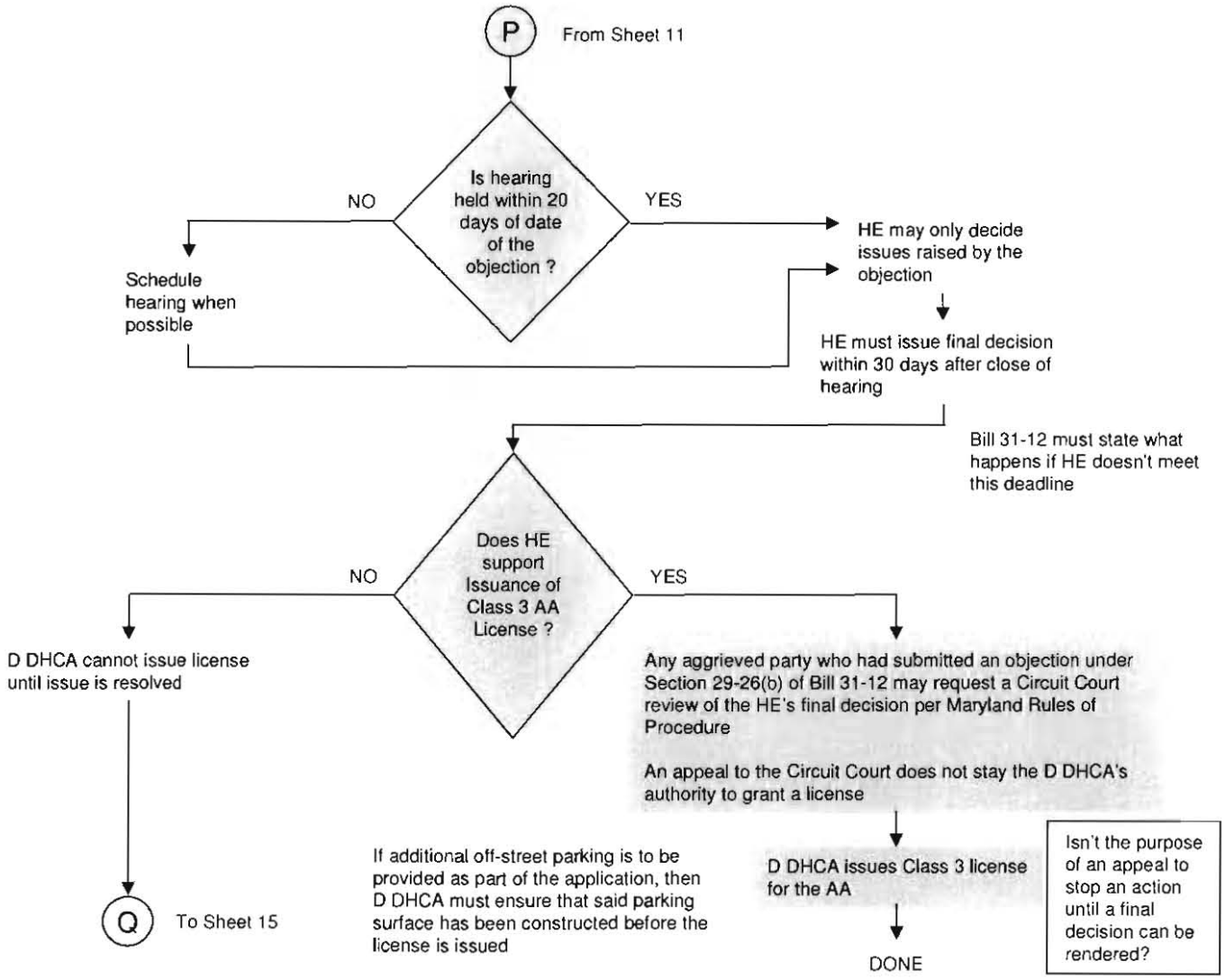
Sheet 14



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Sheet 15