

Ordinance No: 16- 20  
Zoning Text Amendment No: 07-12  
Concerning: Accessory building standards  
Draft No. & Date: 5 – 05/02/08  
Introduced: July 31, 2007  
Public Hearing: 9/11/07; 1:30 p.m.  
Adopted: June 17, 2008  
Effective: July 7, 2008

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

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By: Councilmember Ervin and Council President Praisner

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

- [[authorize the Board of Appeals to decide petitions to increase the size of accessory structures in one-family residential zones]] allow the footprint of an accessory structure to be the greater of 50 percent of the footprint of the main structure or 600 square feet; and
- generally amend the standards for accessory structures in one-family residential zones.

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

Division 59-A-4.       “County Board of Appeals.”  
Sec. 59-A-4.1.       “Authority and powers.”  
Division 59-C-1.       “Residential Zones, One-Family.”  
Sec. 59-C-1.3.       “Standard development.”

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

## OPINION

Zoning Text Amendment (ZTA) 07-12, sponsored by Councilmember Ervin and then-Council President Praisner, was introduced on July 31, 2007. The Zoning Ordinance limits accessory buildings to 50 percent of the footprint of the main building. Accessory buildings are severely limited when the main building is small. At present, the owner of a modest house is prevented from building a detached two-car garage. ZTA 07-12 would allow an accessory building up to 75 percent of the floor area of the main building if the Board of Appeals makes a finding that the building would not be harmful to the neighborhood.

The Council held a public hearing on ZTA 07-12 on September 11, 2007. Testimony was generally in favor of ZTA 07-12. Issues were raised about the maximum size of accessory buildings, the criteria for approval, and the process for approval. Written testimony from the Board of Appeals expressed concern about the nature of the decision that the Board would be required to make under ZTA 07-12. In the Board's view, the required petition has the characteristics of a variance (a deviation from a numeric development standard), but the petition has the required findings of a special exception (the compatibility of a use). Even without this confusion, the Board believes that ZTA 07-12 would be difficult to apply "given the breadth of opinion about what a desirable or harmonious structure might be."<sup>1</sup>

The Planning Staff recommended approval of ZTA 07-12 with an amendment to clarify that an accessory structure would be limited by the footprint of the main building, not the floor area of the main building. The Planning Board's testimony agreed with Planning Staff.

The Committee held a worksession on ZTA 07-12 on September 24, 2007. The Committee requested additional information on the situation that gave rise to the ZTA. The Committee also asked the Board of Appeals to help define case-by-case standards. A second worksession was scheduled for November 19, 2007; however, that meeting was canceled.

The Planning, Housing, and Economic Development Committee held a worksession on May 2, 2008 to review the text amendment. After careful review of the materials of record, the Committee recommended approval of ZTA 07-12 (3-0) with an amendment to allow an accessory structure with a footprint of 600 square feet even if it would exceed 50 percent of the footprint of the main structure. The Committee was convinced that requiring a petition to the Board of Appeals would be overly burdensome. To that end, the Committee recommended deleting the provisions of ZTA 07-12 concerning the Board of Appeals. The Committee recognized that the combination of limits on total building coverage, rear yard coverage, and the height of an accessory building were sufficient to ensure compatibility.

On June 10, 2008 the District Council agreed with the Committee's recommendation.

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. 07-12 will be approved as amended.

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<sup>1</sup> Letter from Chair of the Board of Appeals to the Council President, September 13, 2007.

*ORDINANCE*

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

1           **Sec. 1. Division 59-A-4 is amended as follows:**

2   **DIVISION 59-A-4. COUNTY BOARD OF APPEALS.**

3   **59-A-4.1. Authority and powers.**

4           **59-A-4.11. Authority.**

5           The County Board of Appeals may hear and decide the following matters as  
6           provided in Section 2-112:

- 7           (a)    Petitions for special exceptions, subject to articles 59-G-1 and 59-G-2.  
8           (b)    Petitions for variances from the strict application of this chapter, as  
9                 provided in article 59-G-3.  
10          (c)    Appeals from any refusal to issue a building or use-and-occupancy  
11                 permit, or from any order or decision of the Department or the  
12                 Commission, [when passing upon] regarding an application for a  
13                 building or other permit, or by any other officer or body, under this  
14                 chapter.  
15          (d)    Appeals in regard to property affected by the master plan of highways.  
16          (e)    Petitions concerning public nuisances as specified in section 59-A-5.7.  
17          (f)    Petitions for an increase in the proportion of guest rooms to more than  
18                 20 percent, but not more than 45 percent of the total units in apartment  
19                 hotels, under the hotel-motel special exception.

20          [[(g) Petitions for an increase in the size of an accessory building under  
21                 Section 59-C-1.31(g) and Section 59-C-9.3(j).]]

22          [[(g) ~~[[(h)]] (g) Appeals from an action or decision of the Sign Review  
23                 Board under Section 59-F-10.2.~~

24          [[(h) ~~[[(i)]] (h) Appeals from the issuance, revocation, suspension, or refusal  
25                 to renew a sign installer license under Section 59-F-9.2.~~

26          \*    \*    \*

27 **Sec. 2. Division 59-C-1 is amended as follows:**

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

29 \* \* \*

30 **59-C-1.3. Standard development.**

31 The procedure for approval is [as set forth] specified in Chapter 50[, title  
32 "Subdivision of Land," of the Montgomery County Code, as amended].

33 **59-C-1.31. Land uses.**

34 \* \* \*

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
<b>(g) Miscellaneous.</b>										
Accessory buildings or structures for housing animals or fowl.	P	P	P	P	P	P	P			
Accessory buildings and uses. <sup>52</sup>	P	P	P	P	P	P	P	P	P	P

35 \* \* \*

36 <sup>52</sup> Except for a building accessory to an agricultural use, the footprint of an  
37 accessory building on a lot where the main building is a one-family  
38 detached residential dwelling must not exceed the greater of 50 percent of  
39 the footprint of the main building or 600 square feet. [[However, the Board  
40 of Appeals may approve by resolution, after a public hearing, an increase in  
41 the area of an accessory building which does not exceed 75 percent of the  
42 floor area of the main building if the Board finds: (1) the floor area and  
43 footprint of the accessory building is in harmony with the character of the  
44 neighborhood; (2) the floor area and footprint of the accessory building  
45 complements the character of the main building; and (3) the accessory  
46 building is not detrimental to the use and enjoyment of surrounding  
47 properties.]] Any accessory building for which a building permit was  
48 issued before July 11, 2006 may continue as a conforming building under  
49 the standards in effect [at the time] when the building permit was issued;

50 however, [in the event] if a building permit that was issued before July 11,  
 51 2006 is revoked, but [subsequently] later approved, the accessory building  
 52 must [be in compliance] comply with the standards in effect at the time of  
 53 the [subsequent] later approval. Any replacement or reconstruction of an  
 54 accessory building constructed under a building permit issued before July  
 55 11, 2006 must comply with the standards in effect [at the time] when the  
 56 building is replaced or reconstructed.

57 **Sec. 3. Division 59-C-9 is amended as follows:**

58 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

59 \* \* \*

60 **59-C-9.3. Land uses.**

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TDR
<b>(j) Miscellaneous:</b>							
Accessory buildings and uses. <sup>47</sup>	P	P	P	P	P	P	P

61 \* \* \*

62 <sup>47</sup> Except for a building accessory to an agricultural use, the footprint of an  
 63 accessory building on a lot where the main building is a one-family detached  
 64 residential dwelling must not exceed 50 percent of the footprint of the main  
 65 building. [[ However, the Board of Appeals may approve by resolution, after a  
 66 public hearing, an increase in the area of an accessory building which does not  
 67 exceed 75 percent of the floor area of the main building if the Board finds: (1)  
 68 the floor area and footprint of the accessory building is in harmony with the  
 69 character of the neighborhood; (2) the floor area and footprint of the accessory  
 70 building complements the character of the main building; and (3) the  
 71 accessory building is not detrimental to the use and enjoyment of surrounding  
 72 properties.]] Any accessory building for which a building permit was issued  
 73 before July 11, 2006 may continue as a conforming building under the  
 74 standards in effect [at the time] [[when]] at the time the building permit was

75 issued; however, [in the event] ~~[[if]]~~ in the event a building permit that was  
76 issued before July 11, 2006 is revoked, but [subsequently] ~~[[later]]~~  
77 subsequently approved, the accessory building must [be in compliance]  
78 ~~[[comply]]~~ be in compliance with the standards in effect at the time of the  
79 [subsequent] ~~[[later]]~~ subsequent approval. Any replacement or reconstruction  
80 of an accessory building constructed under a building permit issued before July  
81 11, 2006 must comply with the standards in effect [at the time] ~~[[when]]~~ at the  
82 time the building is replaced or reconstructed.

83 \* \* \*

84 **Sec. 4. Effective date.** This ordinance takes effect 20 days after the date of  
85 Council adoption.

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87 This is a correct copy of Council action.

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Linda M. Lauer

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Linda M. Lauer, Clerk of the Council