

Ordinance No.: 18-53  
Zoning Text Amendment No.: 18-07  
Concerning: Accessory Residential  
Uses – Accessory  
Apartments  
Draft No. & Date: 3 – 9/24/18  
Introduced: July 17, 2018  
Public Hearing: September 11, 2018  
Adopted: October 9, 2018  
Effective: October 29, 2018

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

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Lead Sponsors: Councilmembers Floreen and Leventhal, Council President Riemer, and  
Councilmember Berliner

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

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

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

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

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

## OPINION

Zoning Text Amendment No. 18-07 was introduced on July 17, 2018. ZTA 18-07 would remove the requirement for conditional use approval for all accessory apartments, revise the limited use provisions for attached and detached accessory apartments, and generally amend the provisions for accessory apartments.

In its report to the Council, the Planning Board supported the overall intent of ZTA 18-07, but recommended that parking should be presumed to be adequate unless an objection is raised by an adjacent property owner. Planning staff recommended approval with a revision to clarify that the intent of the waiver process is to affect both attached and detached accessory apartments.

The Council's public hearing was conducted on September 11, 2018. The speakers who favor increased bonus density for MPDUs in ZTA 18-06 also spoke in favor of ZTA 18-07, for its contribution to affordable housing. Supporters cited increased housing opportunities in areas with existing infrastructure. The Village of Chevy Chase Section 3 opposed eliminating the conditional use requirement. In the Village's opinion, narrow streets and shared driveways make a hearing valuable for identifying particular problems. The Village notes that Section 3 is among the most densely populated municipalities in the County.

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

The Planning, Housing, and Economic Development Committee held a worksession on September 24, 2018. The Committee recommended approval of ZTA 18-07 with an amendment to allow the Hearing Examiner to waive the separation requirements for detached accessory apartments.

The Council agreed with the recommendation of the 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. 18-07 will be approved as amended.

*ORDINANCE*

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

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

2   **Division 3.1. Use Table**

3   \*   \*   \*

4   **Section 3.1.6. Use Table**

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

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

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

8   \*   \*   \*

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

10   **Division 3.3. Residential Uses**

11   \*   \*   \*

12   **Section 3.3.3. Accessory Residential Uses**

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

14       **1.   Defined, In General**

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

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

- 20 [a.] Where an Accessory Apartment is allowed as a limited use, it  
21 must satisfy the following standards:
- 22 [i]a. Only one Accessory Apartment is permitted for each lot.  
23 [ii]b. The Accessory Apartment was approved as a conditional  
24 use before May 20, 2013 and satisfies the conditions of  
25 the conditional use approval; or  
26 [iii]c. The Accessory Apartment is licensed by the Department  
27 of Housing and Community Affairs under Chapter 29  
28 (Section 29-19); and  
29 [(a)]i. the apartment has the same street address as the  
30 principal dwelling;  
31 [(b)]ii. either:  
32 (a) one on-site parking space is provided in  
33 addition to any required on-site parking  
34 space for the principal dwelling; however, if  
35 a new driveway must be constructed for the  
36 Accessory Apartment, then 2 on-site parking  
37 spaces must be provided; or  
38 (b) the Hearing Examiner finds under the  
39 waiver in Section 29-26(b) that there is  
40 adequate on-street parking;  
41 [(c)]iii. the maximum gross floor area for an  
42 Accessory Apartment, including any floor area  
43 used for an Accessory Apartment in a cellar, must  
44 be less than 50% of the total floor area in the  
45 principal dwelling, including any floor area used  
46 for an Accessory Apartment in the cellar of the

47 principal dwelling, or 1,200 square feet, whichever  
48 is less;

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

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

59 [iv]d. An Accessory Apartment must not be located on a lot  
60 where any other allowed rental Residential use exists;  
61 however, an Accessory Apartment may be located on a  
62 lot in an Agricultural or Rural Residential zone that  
63 includes a Farm Labor Housing Unit or a Guest House.

64 [v]e. In the Agricultural and Rural Residential zones, an  
65 Accessory Apartment is excluded from any density  
66 calculations. If the property associated with an Accessory  
67 Apartment is subsequently subdivided, the Accessory  
68 Apartment is included in the density calculations.

69 [vi]f. Screening under Division 6.5 is not required.

70 [vii]g. In the AR zone, [this use] any accessory apartment may  
71 be prohibited under Section 3.1.5, Transferable  
72 Development Rights.

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- [b. An Accessory Apartment conditional use waiver application may be filed with the Hearing Examiner to deviate from the following limited use standards:
  - i. the number of on-site parking spaces; or
  - ii. the minimum distance from any other Attached or Detached Accessory Apartment].
- [c. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.
  - i. Fewer off-street spaces are allowed if there is adequate on-street parking. 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.

- ii. 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 conditional uses, in the general neighborhood of the proposed use.]

**B. Attached Accessory Apartment**

**1. Defined**

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

**2. Use Standards**

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

- a. A separate entrance is located:
  - i. on the side or rear of the dwelling;
  - ii. at the front of the principal dwelling, if the entrance existed before May 20, 2013; or
  - iii. at the front of the principal dwelling, if it is a single entrance door for use of the principal dwelling and the Attached Accessory Apartment.
- b. The detached house in which the Accessory Apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for a license [or a conditional use].
- c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached Accessory Apartment is located at least 500 feet from any other



- 126 Attached or Detached Accessory Apartment, measured in a line  
127 from side lot line to side lot line along the same block face.
- 128 d. In the RNC, R-90, and R-60 zones, the Attached Accessory  
129 Apartment is located at least 300 feet from any other Attached  
130 or Detached Accessory Apartment, measured in a line from side  
131 lot line to side lot line along the same block face.
- 132 e. Under Section 29-26(b), the Hearing Examiner may grant a  
133 waiver from the parking and distance separation standards.

## 134 C. Detached Accessory Apartment

### 135 1. Defined

136 Detached Accessory Apartment means a second dwelling unit that is  
137 located in a separate accessory structure on the same lot as a detached  
138 house building type and includes facilities for cooking, eating,  
139 sanitation, and sleeping. A Detached Accessory Apartment is  
140 subordinate to the principal dwelling.

### 141 2. Use Standards

142 [a.] Where a Detached Accessory Apartment is allowed as a limited  
143 use, it must satisfy the use standards for all Accessory  
144 Apartments under Section 3.3.3.A.2 and the following  
145 standards:

- 146 [i]a. In the RE-2, RE-2C, and RE-1 zones, the Detached  
147 Accessory Apartment [is] must be located a minimum  
148 distance of 500 feet from any other Attached or Detached  
149 Accessory Apartment, measured in a line from side lot  
150 line to side lot line along the same block face, unless the  
151 Hearing Examiner grants a waiver under Chapter 29,  
152 Section 26(b).

153 [ii]b. A Detached Accessory Apartment built after May 30,  
154 2012 must have the same minimum side setback as the  
155 principal dwelling and a minimum rear setback of 12  
156 feet, unless more restrictive accessory building or  
157 structure setback standards are required under Article 59-  
158 4.

159 [iii]c. The minimum lot area is one acre.

160 [b. Where a Detached Accessory Apartment is allowed only as a  
161 conditional use, it may be permitted by the Hearing Examiner under  
162 all limited use standards and Section 7.3.1, Conditional Use].

163 \* \* \*

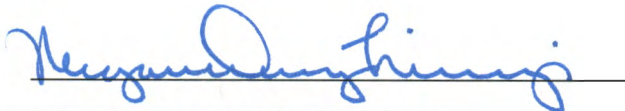
164 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
165 date of Council adoption.

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167 This is a correct copy of Council action.

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170 Megan Davey Limarzi, Esq.

171 Clerk of the Council