Staff recommends approval, as modified by staff, of ZTA No. 18-07 to remove the requirement for conditional use approval for all accessory apartments; and to revise the limited use provisions for attached and detached accessory apartments.

Summary

Staff recommends approval, as modified by staff, of ZTA No. 18-07 to remove the requirement for conditional use approval for all accessory apartments, and to revise the limited use provisions for attached and detached accessory apartments. The modifications provide clarification of the intent to allow a waiver of the distance separation between both attached and detached accessory apartments (lines 132-133 and 150-152).

Background/Analysis

Members of the Planning, Housing, and Economic Development Committee recommend reducing barriers to a low-cost means of adding to the housing supply. In the Committee's opinion, the license and appeal process for accessory apartment applications has successfully avoided problems, while giving neighbors the opportunity for a hearing of specific issues. To build on that success, the Committee recommended the introduction of ZTA 18-07 and a companion Bill 26-18 to amend licensing requirements.

ZTA 18-07, in conjunction with Bill 26-18, would streamline accessory apartment procedures without changing the nature of the issues reviewed by the Office of Zoning and Administrative Hearings (OZAH) under the current conditional use process for accessory apartments.

Conditional Use Process for Accessory Apartments

Currently, a conditional use application for accessory apartments may be filed to challenge the rejection of an accessory apartment license application by the Department of Housing and Community Affairs.
(DHCA) based only on a failure of the application to meet statutory minimums for onsite parking and/or separation from an existing accessory apartment in the neighborhood (Section 59.3.3.3.A.2.b.). The usual findings the Hearing Examiner must make for other kinds of conditional uses under Section 7.3.1.E “are not applicable to this type of conditional use (Section 59.3.3.3.A.2.c).”

Proposed Waiver Process for Accessory Apartments under ZTA 18-07

The aforementioned standard of review would not change under ZTA 18-07. Instead, a waiver process would be added to the existing objection process for accessory apartment cases, as a substitute for the existing abbreviated conditional use process. Just like the existing Zoning Ordinance provisions, the waiver process would allow the Hearing Examiner to consider challenges to the rejection of an accessory apartment license application by DHCA based on failure of the application to meet statutory minimums for on-site parking and/or separation from an existing accessory apartment in the neighborhood.

The advantage to the new process would be a reduction in the processing time for consideration of these issues, since under the new process, the Planning Department would not have to review the matter; instead, the Hearing Examiner would rely on testimony from the DHCA inspector, the Applicant and neighbors. While the conditional use process takes 4 to 5 months to complete, the new process would take half that time, in that hearings would be set within 30 days of the filing of the application for a waiver, and the Hearing Examiner’s report would be filed within 30 days thereafter.

As such, the new process will not diminish anyone’s rights to be heard on these issues, as both the home owner and the neighbors will remain able to testify at the hearing.

Applications for Accessory Apartment Conditional Uses

According to the Office of Zoning and Administrative Hearings (Hearing Examiners Office), applications for accessory apartment conditional uses have been rather rare since the new accessory apartment process began in FY 2014, and opposition to them has been even more rare, as demonstrated in the tables below:

| ACCESSORY APARTMENT SEs AND CUs FILED SINCE THE INCEPTION OF THE NEW SYSTEM (i.e., FY 2014 THROUGH FY 2018): |
|---|---|---|---|---|---|---|
| Accessory Apartment SEs and CUs filed in the last 5 fiscal years | FILED IN FY 2014 | FILED IN FY 2015 | FILED IN FY 2016 | FILED IN FY 2017 | FILED IN FY 2018 | TOTALS |
| 1 SE | 2 CUs | 5 CUs | 3 CUs | 2 CUs | 13 |

| ACCESSORY APARTMENT – SPECIAL EXCEPTION & CONDITIONAL USE CASES (FY 2014- FY 2018) |
|---|---|---|---|---|
| CASE NO: | CASE NAME | ATTACHED OR DETACHED | OPPOSITION | ACTION TAKEN | DATE GRANTED |
| CU 18-02 | Newell | Attached | No |Granted, with Conditions | 02/21/18 |
| CU 18-01 | Kennelly | Attached | No |Granted, with Conditions | 01/19/18 |
| CU 17-13 | Tenenholtz | Attached | No |Granted, with Conditions | 07/18/17 |
As shown above, a total of 13 accessory apartment conditional use applications were filed in the last five fiscal years; only two were opposed by neighbors; and all were granted, with conditions.

**Conclusion**

In sum, the new process will likely apply to two or three cases a year and will have no substantive impact on residential neighborhoods. The time required to process cases will decrease, but the issues considered and the right of neighbors to participate (public hearing) will be unchanged. Staff recommends approval of ZTA 18-07 as modified. The modifications provide clarification of the intent to allow a waiver of the distance separation between both attached and detached accessory apartments (lines 132-133 and 150-152). Staff has provided Bill 26-18 as an attachment for the convenience of the reader of this staff report.

**Attachments**

1. ZTA No. 18-07 as modified by staff
2. Bill 26-18
ATTACHMENT 1

Zoning Text Amendment No.: 18-07
Concerning: Accessory Residential Uses – Accessory Apartments
Draft No. & Date: 2 – 2/8/18
Introduced: July 17, 2018
Public Hearing: 
Adopted: 
Effective: 
Ordinance No.: 

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

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

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"
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 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.6. Use Table

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

<table>
<thead>
<tr>
<th>USE OR USE GROUP</th>
<th>Definitions and Standards</th>
<th>Ag</th>
<th>Rural Residential</th>
<th>Residential Detached</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>AR</td>
<td>R</td>
<td>RC</td>
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<td>* * *</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessory Residential Uses</td>
<td>3.3.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attached Accessory Apartment</td>
<td>3.3.3.B</td>
<td>L/C</td>
<td>L/C</td>
<td>L/C</td>
</tr>
<tr>
<td>Detached Accessory Apartment</td>
<td>3.3.3.C</td>
<td>L/C</td>
<td>L/C</td>
<td>L/C</td>
</tr>
</tbody>
</table>

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

* * *

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

Division 3.3. Residential Uses

* * *

Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

1. Defined, In General

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

2. Use Standards for all Accessory Apartments
Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:

[i]a. Only one Accessory Apartment is permitted for each lot.

[ii]b. The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or

[iii]c. The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and

[(a)]i. the apartment has the same street address as the principal dwelling;

[(b)]ii. either:

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

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

[(c)]iii. the maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the
principal dwelling, or 1,200 square feet, whichever is less;

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

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

[vii]g. In the AR zone, any accessory apartment may be prohibited under Section 3.1.5, Transferable Development Rights.
[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
Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

d. In the RNC, R-90, and R-60 zones, the Attached Accessory Apartment is located at least 300 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.

e. Under Section 29-26(b), the Hearing Examiner may grant a waiver from the [[parking and]] distance separation standards.

C. Detached Accessory Apartment

1. Defined

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

2. Use Standards

[a.] Where a Detached 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:

[i]a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory Apartment [is] must be 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, unless the Hearing Examiner grants a waiver under Section 29-26(b).
[ii]b. A Detached Accessory Apartment built after May 30, 2012 must have the same minimum side setback as the principal dwelling and a minimum rear setback of 12 feet, unless more restrictive accessory building or structure setback standards are required under Article 59-4.

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

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

* * *

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

This is a correct copy of Council action.

________________________________
Megan Davey Limarzi, Esq.
Clerk of the Council
MEMORANDUM

July 13, 2018

TO: County Council
FROM: Jeffry L. Zyontz, Senior Legislative Analyst
SUBJECT: Introduction: Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing

Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing, sponsored by Lead Sponsors Councilmembers Floreen, Leventhal and Council President Riener, is scheduled to be introduced on July 17, 2018. A public hearing is tentatively scheduled for September 11 at 1:30 p.m.

Bill 26-18 would amend the licensing procedures for an accessory apartment rental license and amend the process for appeals, objections and waivers. This Bill is associated with ZTA 18-07. ZTA 18-07, also scheduled for introduction on July 17, 2018, would remove the requirement for conditional use approval for all accessory apartments and revise the limited use provisions for accessory apartments. Approval of this Bill in some form would be necessary to implement the core concepts in ZTA 18-07.

This packet contains:

Bill 26-18
Legislative Request Report

Circle #

1
6
COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmembers Floreen, Leventhal and Council President Riemer

AN ACT to:
(1) amend the licensing procedures for an accessory apartment rental license;
(2) amend the process for appeals, objections, and waivers, and
(3) generally amend County law relating to accessory apartment licensing.

By amending
Montgomery County Code
Chapter 2, Administration
Section 2-140

Chapter 29, Landlord Tenant Relations
Sections 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, 29-19, and 29-26 are amended as follows:

2-140. Powers, duties and functions.

* * *

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

(1) [petition to the County Council to] application to initiate, modify or revoke a special exception or conditional use, as provided in Chapter 59;

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

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

or

(4) waiver or 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.

* * *


(b) Accessory apartment rental license.

(1) An owner of a lot or parcel in a zone that permits accessory apartments may obtain a license to operate an accessory apartment if:

(A) the owner places a sign provided by the Director on the lot of the proposed accessory apartment within 5 days after the Director accepts an application license[, unless a sign is required as part of an application for a special exception].
The sign must identify any requested waivers under Section 29-26(b). The sign provided by the Director must remain in place on the lot for a period of time and in a location determined by the Director.

* * *

(C) the Director finds that:

(i) the accessory apartment satisfies the standards for an accessory apartment in Section 59-3.3.3. and if needed, a Hearing Examiner granted a waiver under Section 29-26; or

(ii) the accessory apartment was approved under Article 59-G as a special exception under the Zoning Ordinance applicable before October 30, 2014.

* * *


* * *

(b) Waivers and [Objections] objections concerning any new accessory apartment license.

(1) The applicant for a new license for an accessory apartment may request a waiver of a standard to the extent allowed by Section 59.3.3 or object to an adverse finding of fact by the Director by filing a waiver or an objection and a request for a hearing with the Office of Zoning and Administrative Hearings.

(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] waiver or an objection must be submitted to the Office of Zoning and Administrative Hearings within 30 days after the date of the Director's report and must state the basis for the waiver or objection.

(4) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within [5] 10 days after the waiver or objection is received and conduct any such hearing within [20] 30 days of the date the objection is received unless the Hearing Examiner determines that necessary parties are unable to meet that schedule.

(5) The Hearing Examiner may only decide the issues raised by the waiver or objection.

(6) The Hearing Examiner may [find that] waive on-street parking [is inadequate] standards 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 not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.

(7) The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license and may
impose other conditions to assure adequate parking on granting the waiver.

(8) The Hearing Examiner may waive the distance separation standards between Accessory Apartments when the separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed Accessory Apartment.

(9) The Hearing Examiner may consolidate public hearings on any requested waivers and any objections to the Director’s findings that involve the same license application.

[(8)](10) The Hearing Examiner must issue a final decision within 30 days after the close of the record of the adjudicatory hearing. If both a waiver request and an objection relating to the same accessory apartment license application are filed, the Hearing Examiner must issue a final decision within 30 days after the close of the record in both cases.

[(9)](11) The Director must issue or deny the license based on the final decision of the Hearing Examiner.

[(10)](12) Any aggrieved party who objected under subsection 29-26(b) party aggrieved by the Hearing Examiner’s decision on an objection or a waiver may request the Circuit Court to review the Hearing Examiner’s final decision under the Maryland Rules of Procedure. An appeal to the Circuit Court does not automatically stay the Director’s authority to grant a license.
LEGISLATIVE REQUEST REPORT

Bill 26-18
Landlord-Tenant Relations – Accessory Apartment Licensing

DESCRIPTION: Bill 26-18 would:

• amend the licensing procedures for an accessory apartment rental license;
• amend the process for appeals, objections, and waivers; and
• generally amend County law relating to accessory apartment licensing.

PROBLEM: ZTA 18-07 would remove the conditional use approval process for any accessory apartment. Current law of accessory apartment licensing would be inconsistent if ZTA 18-07 is approved.

GOALS AND OBJECTIVES: The goal of Bill 26-18 is to be consistent with the approval process of accessory apartments required by Chapter 59.

COORDINATION: Housing and Community Affairs

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Jeffry L. Zyontz, Senior Legislative Analyst

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: N/A