



Zoning Text Amendment (ZTA) No. 18-07, Accessory Residential Uses – Accessory Apartments

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Completed: 08/30/18

Description

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 amends the provisions for 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.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.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	FILE 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	<i>Newell</i>	Attached	No	Granted, with Conditions	02/21/18
CU 18-01	<i>Kennelly</i>	Attached	No	Granted, with Conditions	01/19/18
CU 17-13	<i>Tenenholtz</i>	Attached	No	Granted, with Conditions	07/18/17

CU 17-07	<i>Mitchell-Gilkey</i>	Attached	No	Granted, with Conditions	07/05/17
CU 17-01	<i>Pepe</i>	Attached	Yes	Granted, with Conditions	12/23/16
CU 16-12	<i>Boschma</i>	Attached	No	Granted, with Conditions	08/01/16
CU 16-08	<i>Ferguson</i>	Attached	No	Granted, with Conditions	04/18/16
CU 16-06	<i>Maresha</i>	Attached	No	Granted, with Conditions	04/11/16
CU 16-02	<i>Cohen</i>	Attached	No	Granted, with Conditions	12/23/15
CU 16-05	<i>Leotta</i>	Attached	No	Granted, with Conditions	03/03/16
CU 15-09	<i>Brablec</i>	Attached	No	Granted, with Conditions	10/21/15
CU 15-01	<i>Troxler</i>	Attached	Yes	Granted, with Conditions	08/05/15
AA 14-05	<i>Trippe</i>	Attached	No	Granted, with Conditions	06/05/15

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”

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.

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 59-3.1 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.

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

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

- 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.

- 73 [b. An Accessory Apartment conditional use waiver application
74 may be filed with the Hearing Examiner to deviate from the
75 following limited use standards:
76 i. the number of on-site parking spaces; or
77 ii. the minimum distance from any other Attached or
78 Detached Accessory Apartment].
- 79 [c. Where an Accessory Apartment conditional use application is
80 filed under Section 3.3.3.A.2.b, the Hearing Examiner may
81 approve a conditional use for the Accessory Apartment under
82 Section 7.3.1, except that the findings under Section 7.3.1.E are
83 not applicable to this type of conditional use. The limited use
84 standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply
85 to all accessory apartment conditional use applications. In
86 addition, the limited use standards of Section 3.3.3.B.2 apply to
87 Attached Accessory Apartment applications, and the limited
88 use standards of Section 3.3.3.C.2.a apply to Detached
89 Accessory Apartment applications.
- 90 i. Fewer off-street spaces are allowed if there is adequate
91 on-street parking. On-street parking is inadequate if:
92 (a) the available on-street parking for residents within
93 300 feet of the proposed Accessory Apartment
94 would not permit a resident to park on-street near
95 his or her residence on a regular basis; and
96 (b) the proposed Accessory Apartment is likely to
97 reduce the available on-street parking within 300
98 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 Section 29-
152 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.

166

167 This is a correct copy of Council action.

168


169

170 _____
171 Megan Davey Limarzi, Esq.
Clerk of the Council

Agenda Item 9A
July 17, 2018
Introduction

MEMORANDUM

July 13, 2018

TO: County Council
FROM: Jeffrey 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 Riemer, 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:	<u>Circle #</u>
Bill 26-18	1
Legislative Request Report	6

Bill No. 26-18
Concerning: Landlord-Tenant Relations –
Accessory Apartment Licensing
Revised: 6/8/2018 Draft No. 3
Introduced: July 17, 2018
Expires: January 17, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

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

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

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.

* * *

29-26. Appeals, Waivers, and Objections.

* * *

(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 59.3.3.3 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

- 55 (B) alleging that on-street parking is inadequate [when a special
56 exception is not required].
- 57 (3) A request for a [review by the Hearing Examiner] waiver or an
58 objection must be submitted to the Office of Zoning and
59 Administrative Hearings within 30 days after the date of the
60 Director's report and must state the basis for the waiver or
61 objection.
- 62 (4) The Hearing Examiner must send notice of an adjudicatory hearing
63 to the applicant and any aggrieved person who filed an objection
64 within [5] 10 days after the waiver or objection is received and
65 conduct any such hearing within [20] 30 days of the date the
66 objection is received unless the Hearing Examiner determines that
67 necessary parties are unable to meet that schedule.
- 68 (5) The Hearing Examiner may only decide the issues raised by the
69 waiver or objection.
- 70 (6) The Hearing Examiner may [find that] waive on-street parking [is
71 inadequate] standards if:
- 72 (A) the available on-street parking for residents within 300 feet
73 of the proposed accessory apartment would [not] permit a
74 resident to park on-street near his or her residence on a
75 regular basis; and
- 76 (B) the proposed accessory apartment is not likely to reduce the
77 available on-street parking within 300 feet of the proposed
78 accessory apartment.
- 79 (7) The Hearing Examiner may find that more than the minimum on-
80 site parking must be required as a condition of the license and may

81 impose other conditions to assure adequate parking on granting the
 82 waiver.

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

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

91 [(8)](10) The Hearing Examiner must issue a final decision within 30
 92 days after the close of the record of the adjudicatory hearing. If
 93 both a waiver request and an objection relating to the same
 94 accessory apartment license application are filed, the Hearing
 95 Examiner must issue a final decision within 30 days after the close
 96 of the record in both cases.

97 [(9)] (11) The Director must issue or deny the license based on the final
 98 decision of the Hearing Examiner.

99 [(10)] (12) Any [aggrieved party who objected under subsection 29-
 100 26(b)] party aggrieved by the Hearing Examiner's decision on an
 101 objection or a waiver may request the Circuit Court to review the
 102 Hearing Examiner's final decision under the Maryland Rules of
 103 Procedure. An appeal to the Circuit Court does not automatically
 104 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: <ul style="list-style-type: none">• 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