



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #8
09/20/07

DATE: September 7, 2007
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RK*
Ralph Wilson, Acting Zoning Supervisor *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To authorize the Board of Appeals to decide petitions to increase the size of accessory structures in one-family residential zones

TEXT AMENDMENT: No. 07-12
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Ervin and Council President Praisner
INTRODUCED DATE: July 31, 2007

PLANNING BOARD REVIEW: September 20, 2007
PUBLIC HEARING: September 11, 2007; 1:30 p.m., PHED worksession on September 24, 2007

STAFF RECOMMENDATION: APPROVAL with modifications. The modifications would clarify that the Board of Appeals' approval process is needed when the footprint, not the gross floor area, of a proposed accessory building is greater than 50 percent of the footprint of the main building.

PURPOSE OF THE TEXT AMENDMENT

To authorize the Board of Appeals to decide petitions to increase the footprint of accessory structures in one-family residential zones

BACKGROUND/ANALYSIS

Council President Praisner and Councilmember Ervin introduced the subject text amendment to address a limitation on the size of accessory buildings as it relates to the size of the main building. The Zoning Ordinance limits the footprint of an accessory building to 50 percent of the footprint of the main building. The subject text amendment would allow an accessory building up to 75 percent of the footprint of the main building

if the Board of Appeals makes a finding that the building is not out of character with the surrounding neighborhood.

It should be noted that a slightly modified version of the subject proposal was originally included as part of ZTA 06-10, adopted by the County Council on July 11, 2006¹. At that time the County Council's PHED Committee (and subsequently the County Council) voted to eliminate the subject portion of the amendment because the language would allow the Board of Appeals to approve an accessory building footprint equal in size to the footprint of the main building. In ZTA 06-10, the recommended definition of accessory building clarified that the footprint of an accessory building located in the one-family residential zones must be subordinate and smaller than the footprint of the main building. The segment of the text amendment pertaining to the Board of Appeals exception was removed because of its inconsistency with the definition of "accessory building". ZTA 07-12 places a cap on the footprint of an accessory building (75% of the footprint of the main building) to ensure that it would be smaller than the main building and therefore consistent with the definition of "accessory building".

Accessory buildings and uses currently are permitted in all one-family residential zones and in all agricultural zones. As stated above, currently accessory building footprints are limited to no more than 50 percent of the footprint of the main building. The exception to this provision includes buildings that are accessory to agricultural uses (which can typically be larger than the main building -barns, stables, etc.). The intent of the subject text amendment is to permit accessory buildings greater than 50 percent of the footprint of the main building (up to 75 percent of the footprint of the main building) if approved by the Board of Appeals by resolution after holding a public hearing. The Board of Appeals would be required to assess certain criteria for approving these requests which includes whether:

(1) the floor area and footprint of the accessory building is in harmony with the character of the neighborhood; (2) the floor area and footprint of the accessory building complements the character of the main building; and (3) the accessory building is not detrimental to the use and enjoyment of surrounding properties.

The current threshold of 50 percent of the footprint of the main building is consistent with the special exception provisions for accessory apartments located in structures separate from the main building. Staff recognizes that there could be situations where allowing accessory structures greater than 50 percent of the footprint of the main building would be acceptable and would not negatively impact the character of the surrounding area as long as the footprint remains smaller than that of the main building. In these cases, it would be appropriate to require a public hearing by the Board of Appeals to ensure compatibility with surrounding uses. Staff

¹ ZTA 06-10 was adopted to revise the definition of accessory building to clarify the meaning of the word "subordinate"; and to limit the size of an accessory building to not exceed 50% of the footprint of the main building.

recommends several modifications to lines 42 and 68 of the proposed text amendment to clarify that the subject proposal pertains to the building footprint and not the building floor area.

RECOMMENDATION

The staff supports the proposed text amendment to require accessory buildings of a certain size to be approved by the Board of Appeals and to establish standards for Board of Appeals review of accessory buildings when the proposed footprint is greater than 50 percent of the main structure. Staff further recommends modifications of the language to clarify that the Board of Appeals approval process would allow an accessory building **footprint** up to 75% of the **footprint** of the main building. The proposed text amendment language as modified by staff is included as Attachment 1.

GR

Attachments

1. Proposed Text Amendment 07-12 (as modified by staff)

ATTACHMENT 1

Zoning Text Amendment No: 07-12
Concerning: Accessory building standards
Draft No. & Date: 2 – 7/16/07
Introduced: July 31, 2007
Public Hearing: 9/11/07; 1:30 p.m.
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: Councilmember Ervin and Council President Praisner

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; 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.*

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-4 is amended as follows:

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

59-A-4.1. Authority and powers.

59-A-4.11. Authority.

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

- (a) Petitions for special exceptions, subject to articles 59-G-1 and 59-G-2.
- (b) Petitions for variances from the strict application of this chapter, as provided in article 59-G-3.
- (c) Appeals from any refusal to issue a building or use-and-occupancy permit, or from any order or decision of the Department or the Commission, [when passing upon] regarding an application for a building or other permit, or by any other officer or body, under this chapter.
- (d) Appeals in regard to property affected by the master plan of highways.
- (e) Petitions concerning public nuisances as specified in section 59-A-5.7.
- (f) Petitions for an increase in the proportion of guest rooms to more than 20 percent, but not more than 45 percent of the total units in apartment hotels, under the hotel-motel special exception.
- (g) Petitions for an increase in the size of an accessory building under Section 59-C-1.31(g) and Section 59-C-9.3(j).
- (h)[(g)] Appeals from an action or decision of the Sign Review Board under Section 59-F-10.2.
- (i)[(h)] Appeals from the issuance, revocation, suspension, or refusal to renew a sign installer license under Section 59-F-9.2.

* * *

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

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

* * *

59-C-1.3. Standard development.

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

59-C-1.31. Land uses.

* * *

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

* * *

⁵² Except for a building accessory to an agricultural use, the footprint of an accessory building on a lot where the main building is a one-family detached residential dwelling must not exceed 50 percent of the footprint of the main building. However, the Board of Appeals may approve by resolution, after a public hearing, an increase in the [[area]] footprint of an accessory building which does not exceed 75 percent of the [[floor area]] footprint of the main building if the Board finds: (1) the floor area and footprint of the accessory building is in harmony with the character of the neighborhood; (2) the floor area and footprint of the accessory building complements the character of the main building; and (3) the accessory building is not detrimental to the use and enjoyment of surrounding properties. Any accessory building for which a building permit was issued before July 11, 2006 may continue as a conforming building under the standards in effect [at the time] when the building permit was issued;

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

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

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.3. Land uses.

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

* * *

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

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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