



Zoning Text Amendment 12-11 Revising the Requirements for Permitting Accessory Apartments

ADR

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Description

Currently, an accessory apartment requires approval of a special exception by the County Board of Appeals. Zoning Text Amendment 12-11:

- Modifies the current accessory apartment requirements by distinguishing between an attached and detached accessory apartment, defines these terms and establishes separate requirements and standards for each.
- Allows by right, as long as it meets certain standards and requirements, an attached accessory apartment with a floor area of up to 1,200 square feet under standard development in the larger lot, one-family residential zones (RE-2C, RE-2, RE-1, RMH-200, R-200 and R-150 zones) and in many of the agricultural zones (Rural, RC, LDRC, and RDT zones). Under cluster development, such by right accessory apartments would be permitted only in the RE-2C and RE-1 zones.
- Allows by right, as long as it meets certain standards and requirements, an attached accessory apartment with a floor area up to 800 square feet to be located in the R-60 and R-90 zones and in the RNC zone.
- Requires special exception approval in the R-60 and R-90 zones under standard development and in the RNC zones for an attached accessory apartment with a floor area greater than 800 square feet. Under cluster development, special exception approval is required in the RMH-200, R-200, R-150, R-90 and R-60 zones
- Allows a detached accessory apartment by right only in the RE-2C, RE-2, and RE-1 zones and only if located on a lot one acre or greater in size.
- Does not allow a detached accessory apartment in the RMH-200, R-200, R-150, R-90, R-60 and RNC zones.
- Sets the maximum floor area for an accessory apartment at 1,200 square feet.
- Limits the number of occupants in any accessory apartment to three persons.
- Requires one off-street parking space specifically for the accessory unit.
- Requires that the door to the attached accessory unit be located on the side or rear of the home to preserve its appearance as a single-family dwelling.
- Caps the number of accessory apartments in the County at 2,000.

Summary

Staff recommends approval of ZTA No. 12-11 as introduced. The ZTA as introduced reflects the recommendations transmitted by the Planning Board to the County Council in a letter dated July 9, 2012 (At its meeting dated June 21, 2012, the Planning Board voted 4:1 to transmit the accessory apartment text amendment to the County Council for introduction). Modifications by County Council staff to the Planning Board proposed draft are minor in nature and meant only to simplify, clarify and to ensure consistency.

The Planning Board conducted the first of its public hearings/worksessions on the proposed accessory apartment provisions on May 3, 2012. At that time, the Board determined that additional input from stakeholders would be beneficial. In response, the technical staff:

- Created a webpage on the topic that includes background information on the proposed accessory apartment provisions. The page also provides opportunities for citizen comments.
- Conducted two public forums in the afternoon and evening of May 21, 2012. Each meeting included a brief presentation by staff, a question-and-answer session, and additional time to interact directly with staff. **Attachment 4** depicts the general categories of questions asked during the two community meetings and staff's response to each.

Currently, an accessory apartment can only be granted through approval of a special exception by the Board of Appeals. The approval process is designed to address concerns about maintaining neighborhood character through exterior appearance, providing adequate parking and protecting against the over concentration of accessory units in any one area.

Zoning Text Amendment (ZTA) No. 12-11 proposes to permit accessory apartments by right in certain zones based on the size of the unit and/or whether the unit is attached to or detached from the principal one-family detached house. The ZTA establishes certain standards and requirements drafted from existing, objective standards by which a special exception use is granted for an accessory apartment. In addition, the maximum number of occupants is restricted for both the small and large accessory units. A spacing requirement has been added to the use standards to limit the number of accessory units, regardless of size, that can be constructed within a neighborhood. Last, as recommended by the Planning Board, a maximum of 2,000 accessory apartments would be permitted in the County. ZTA No. 12-11 attempts to reduce the processing time and expense required to provide an accessory apartment in some cases while still ensuring that community impact concerns are being addressed. All by-right situations would require adherence to written, quantifiable standards and requirements and would require registration and yearly rental licensing with the Department of Housing and Community Affairs (DHCA).

ANALYSIS

The Standards and Requirements of Sections I and II below are similar to Sections I and II of the staff reports dated May 3, 2012 and June 21, 2012- restated for the convenience of the reader.

I. Current Special Exception Use Standards for Accessory Apartments (Also See Attachment 2 Table for Quick Comparison)

For all Accessory Apartments:

- Minimum lot size 6,000 square feet; only one per lot; must be subordinate to main dwelling
- Separate entrance must preserve appearance of single-family dwelling; must have same street address
- Must not be located on a lot occupied by a family of unrelated persons
- External modifications must be compatible with the main house and surrounding properties
- Must provide adequate parking (min. 2 off-street spaces for the accessory apartment)

- Owner of lot must occupy one of the units

Attached:

- Must have one party wall in common
- Principal dwelling must be at least 5 yrs old
- Max floor area: 1,200 square feet

Detached:

- Lot of more than 1 acre, through conversion of a separate accessory structure existing on 12/2/1983
- Accessory structure built after 12/2/1983 if lot is at least 2 acres and will house a care-giver
- Max floor area: 2,500 square feet or less than 50% of the floor area of main dwelling, whichever is less and will house either a care-giver or relative.

II. ZTA 12-11 (Also See Attachment 2 Table for Quick Comparison)

ZTA 12-11 is summarized as follows:

Two Types of Accessory Units, Two Sizes for Each Unit Type

Attached Accessory Apartment (up to 800 square feet; and from 801 square feet up to 1,200 square feet)

- A second dwelling unit that is part of the principal structure of a detached house
- Has a separate entrance
- Subordinate to principal dwelling

Detached Accessory Apartment (up to 800 square feet; and from 801 square feet up to 1,200 square feet)

- A second dwelling that is located in a separate accessory structure on the same lot as the principal dwelling.
- Allowed only where the principal dwelling is a detached house
- Subordinate to principal dwelling

Use Standards for Attached Accessory and Detached Accessory Apartments

All Attached and Detached Accessory Apartments

- Only one accessory apartment per lot. Cannot be located on a lot with a registered living unit or any other rental residential use
- Must be subordinate to the principal dwelling
- Separate entrance must not be located along the front building line. Must have the same street address
- Owner of the lot must occupy one of the units at least six months each year
- One off-street parking space is required for the accessory apartment
- In the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones an accessory apartment must not be located:

- Within 500 feet of another accessory apartment (attached or detached) measured in a straight line from side property line to side property line along the same block face; and
 - On a lot abutting the rear lot line of any property with an accessory apartment (attached or detached)
- In the R-90, R-60 and RNC zones an accessory apartment must not be located:
 - Within 300 feet of another accessory apartment (attached or detached) measured in a straight line from side property line to side property line along the same block face; and
 - On a lot abutting the rear lot line of any property with an accessory apartment (attached or detached)
 - Through special exception approval, the ZTA allows deviation from any permitted use standard regarding: (1) location of the separate entrance, (2) number of on-site parking spaces, or (3) minimum distance from any other attached or detached accessory apartment if the Board finds, as applicable, that: the separate entrance is located so that the appearance of a single-family dwelling is preserved; adequate on-street parking permits fewer off-street spaces; or 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 special exception uses, in the general neighborhood of the proposed use.

Smaller Accessory Apartment (up to 800 square feet)

- Floor area must not exceed 50% of the principal dwelling or 800 square feet, whichever is less
- Maximum number of occupants is 3

Larger Accessory Apartment (from 801 square feet, up to 1,200 square feet)

- Floor area must not exceed 50% of the principal dwelling or 1,200 square feet, whichever is less
- Maximum number of occupants is 3

Staff continues to believe that any potential impacts from accessory units created as a by-right use will be reduced by the additional restrictions regarding spacing, and potential impacts on surrounding neighbors will be further minimized by the reduction in size for a detached apartment (from 2,500 to 1,200 square feet) and by the limit on the number of occupants. The proposed accessory structure provisions of the text amendment (detached accessory apartment) and the existing accessory structure provisions of the Zoning Ordinance also provide protections for adjacent properties, including the limitation of detached units to larger lot developments.

As generally depicted in Attachment 2 and summarized in the “Discussion” section of this report (page 1), detached accessory apartments with a floor area up to 1,200 square feet would only be allowed by right in the RE-2, RE-2C and RE-1 zones where the minimum lot size ranges from 1 to 2 acres. Under the cluster development and Moderately-Priced Dwelling Unit (MPDU) options of these zones where the lot sizes may be less than one acre, a detached accessory apartment would be allowed by right only if located on a lot at least one acre in size.

The proposed use standards also provide an opportunity to deviate from certain permitted use standards regarding: (1) location of the separate entrance, (2) number of on-site parking spaces, or (3) the minimum distance from any other attached or detached accessory apartment if an applicant is

granted special exception approval where the Board of Appeals must make certain compatibility and impact findings.

III. Existing RLUs and Accessory Apartments (Attachment 3)

Attachment 3 provides three maps prepared by DHCA depicting existing registered living units (RLUs) and accessory apartments located in the County. Generally, they indicate that there are a total of 540 licensed RLUs and 380 active special exception accessory apartments in the County. The combined total of 920 RLUs and accessory apartments equates to only 0.5 % of the 180,356 one-family detached residential units in the County (Source: U.S. Census Bureau, 2010 American Community Survey). Table 1 also indicates that 18% of the RLUs are located within 300 feet of another RLU while 26% of the active accessory apartments in the County are located within 300 feet of another accessory apartment.

IV. Citizen Comments (Attachment 5)

Prior to introduction of ZTA No. 12-11 (during the Planning Board's public input process for the proposed accessory apartment ZTA), staff received a number of letters concerning the proposed text amendment; a majority (approximately 44 letters) either in opposition to the proposal or in opposition to removing the accessory apartment discussion from the Zoning Ordinance Rewrite Project (including letters from a number of civic and homeowners associations and the Towns of Chevy Chase and Somerset). Specific comments in opposition to the ZTA included: concerns about effects on neighborhood character caused by an over concentration of accessory units or by relaxing requirements for: the exterior appearance of the house and parking in neighborhoods consisting of homes on small lots. Comments also included concerns about enforcement related to existing legal and illegal accessory units, reduced safety of streets due to greater traffic congestion, and the potential overcrowding of schools. Some felt the accessory apartment discussions should not have been separated from the context of other changes being made through the Zoning Ordinance Rewrite project.

Staff also received letters in favor of the ZTA (including letters from The City of Takoma Park, the Coalition for Smarter Growth and the League of Women Voters). The letters in favor of the ZTA (totaling approximately 10) state that accessory apartments permitted by right under certain circumstances could: provide affordable housing options for students or for young professionals wanting to move back to the area; enhance the economic sustainability of the area by increasing the types of housing available and housing options for home ownership; facilitate aging in place of seniors who could benefit from receiving rental income; and make more efficient use of existing housing stock. Since the introduction of ZTA No. 12-11, staff has received two additional letters; one in favor and one in opposition to ZTA No. 12-11. Staff has attached these two letters to the report (Attachment 5).

Conclusion:

The current number of accessory apartments is surprisingly low. This may well be attributed to the fact that the process to obtain approval of an accessory apartment is relatively onerous. Since it is exceptionally rare for a request for an accessory apartment to be denied, there does not appear to be much benefit to the current process, particularly if steps are taken to insure that by right accessory units have to meet certain requirements and standards before they can be permitted. The legislation that is proposed goes further than the current law to ensure that there will not be an over concentration of accessory apartments in any neighborhood and limits the total number of accessory units in the county

to 2000. Staff is confident that these additional precautions ensure that allowing by right accessory units will not result in any significant impact to the character of the county's residential neighborhoods.

ATTACHMENTS

1. Zoning Text Amendment No. 12-11 as introduced
2. Accessory Apartment Comparison Table-Existing vs. ZTA No. 12-11 Provisions
3. Maps of Existing Registered Living Units and Accessory Apartments in Montgomery County
4. General Categories of Questions Discussed at May 21 Community Meetings
5. Letters from Citizens regarding ZTA No. 12-11

GR/RK/am

ATTACHMENT 1

Zoning Text Amendment No.: 12-11
Concerning: Accessory Apartments –
Amendments
Draft No. & Date: 1-7\17\12
Introduced:
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**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definitions for one-family dwelling and one-family detached dwelling-unit;
- establish definitions for an attached accessory apartment and a detached accessory apartment to replace the definition for an accessory apartment;
- revise the standards and requirements for a registered living unit;
- establish standards for attached and detached accessory apartments as permitted uses;
- amend the land use table in one-family residential zones and agricultural zones to add attached and detached accessory apartments as a permitted use under certain circumstances; and
- establish special exception standards for attached and detached accessory apartments

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

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION.”
DIVISION 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.”
Adding Section 59-A-6.19	“Attached accessory apartments.”
Adding Section 59-A-6.20	“Detached accessory apartments.”
DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY.”
Section 59-C-1.3	“Standard development.”
Section 59-C-1.5	“Cluster development.”
Section 59-C-1.6	“Development including moderately priced dwelling units.”

DIVISION 59-C-9	“AGRICULTURAL ZONES.”
Sec. 59-C-9.3	“Land uses.”
Sec. 59-C-9.4	“Development standards.”
DIVISION 59-G-2.	“SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.”
Sec. 59-G-2.00.	“Accessory apartment.”
Adding Sec. 59-G-2.00.6	“Attached accessory apartment.”
Adding Sec. 59-G-2.00.7	“Detached accessory apartment.”

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 that text 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:

1 **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2 DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

3 * * *

4 **59-A-2.1. Definitions.**

5 * * *

6 **[Accessory apartment:** A second dwelling unit that is part of an existing one-
7 family detached dwelling, or is located in a separate existing accessory structure on
8 the same lot as the main dwelling, with provision within the accessory apartment
9 for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to
10 the main dwelling.]

11 **Accessory apartment, attached:** A second dwelling unit that is part of a one-
12 family detached dwelling and provides for cooking, eating, sanitation, and
13 sleeping. An attached accessory apartment has a separate entrance and is
14 subordinate to the principal dwelling.

15 **Accessory apartment, detached:** A second dwelling unit that is located in a
16 separate accessory structure on the same lot as a one-family detached dwelling and
17 provides for cooking, eating, sanitation, and sleeping. A detached accessory
18 apartment is subordinate to the principal dwelling.

19 * * *

20 **Dwelling and dwelling units:**

21 **Dwelling:** A building or portion thereof arranged or designed to contain one or
22 more dwelling units.

23 * * *

24 **Dwelling, one-family:** A dwelling containing not more than one dwelling
25 unit. An accessory apartment[, if approved by special exception,] or a
26 registered living unit may also be part of a one-family dwelling. A one-

27 family dwelling with either of these subordinate uses is not a two-family
28 dwelling[,] as defined in this section.

29 * * *

30 **Dwelling unit:** A building or portion [thereof] of a building providing complete
31 living facilities for not more than one family, including, at a minimum, facilities
32 for cooking, sanitation, and sleeping.

33 **Dwelling unit, one-family detached:** A dwelling unit that is separated and
34 detached from any other dwelling unit on all sides, except where the
35 dwelling is modified to include an accessory apartment[, approved by
36 special exception,] or a registered living unit.

37 * * *

38 **Sec. 2. DIVISION 59-A-6 is amended as follows:**

39 DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF
40 ZONE.

41 * * *

42 **59-A-6.10. Registered living unit--Standards and requirements.**

43 A registered living unit, permitted in[,] agricultural, one-family residential, and
44 planned unit development zones[,] must:

45 * * *

- 46 (i) be removed whenever it is no longer occupied as a registered living unit,
- 47 unless the owner applies for and is granted either a special exception or a
- 48 license for an attached accessory apartment [in accordance with Section 59-
- 49 G-2.00] under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the
- 50 one-family detached dwelling unit in which it is located is no longer
- 51 occupied by the owner.

52 * * *

53 **Sec. 59-A-6.19 Attached accessory apartment.**

54 (a) Where an attached accessory apartment is permitted in a zone, only one
55 accessory apartment is permitted for each lot and it is only permitted under
56 the following standards:

- 57 (1) the apartment was approved as a special exception before
58 {EFFECTIVE DATE} and satisfies the conditions of the special
59 exception approval; or
- 60 (2) the apartment is registered with the Department of Housing and
61 Community Affairs in the same manner as a registered living unit
62 under Subsection 59-A-6.10(a)(3); and
- 63 (A) the owner of the lot occupies a dwelling unit on the lot at least 6
64 months of every calendar year;
- 65 (B) the apartment has the same street address as the principal
66 dwelling;
- 67 (C) a separate entrance is located on the side yard or rear yard;
- 68 (D) one on-site parking space is provided in addition to any
69 required on-site parking for the principal dwelling;
- 70 (E) in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones,
71 the attached accessory apartment is located at least 500 feet
72 from any other attached or detached accessory apartment,
73 measured in a straight line from side lot line to side lot line
74 along the same block face;
- 75 (F) in the R-90, R-60, and RNC zones, the attached accessory
76 apartment is located at least 300 feet from any other attached
77 accessory apartment, measured in a straight line from side lot
78 line to side lot line along the same block face;

- 79 (G) the rear lot line of the lot with the accessory apartment does not
80 abut a lot with another accessory apartment;
- 81 (H) if the accessory apartment is limited to a floor area of 800
82 square feet, it must be no greater than 50% of the principal
83 dwelling or 800 square feet, whichever is less;
- 84 (I) if the accessory apartment is limited to a floor area of 1,200
85 square feet, it must be no larger than 50% of the principal
86 dwelling or 1,200 square feet, whichever is less; and
- 87 (J) the maximum number of occupants is limited to 3 persons.
- 88 (3) The accessory apartment must not be located on a lot where any of the
89 following otherwise allowed residential uses exist: guest room for
90 rent; boardinghouse; registered living unit; or any other rental
91 residential use, other than an accessory dwelling in an agricultural
92 zone.
- 93 (b) (1) An attached accessory apartment special exception petition may be
94 filed with the Board of Appeals to deviate from any permitted use
95 standard regarding:
- 96 (A) location of the separate entrance;
97 (B) number of on-site parking spaces; or
98 (C) minimum distance from any other attached or detached
99 accessory apartment.
- 100 (2) To approve a special exception filed under Subsection (b)(1), the
101 Board of Appeals must find, as applicable, that:
- 102 (A) the separate entrance is located so that the appearance of a
103 single-family dwelling is preserved;
- 104 (B) adequate on-street parking permits fewer off-street spaces; or

105 (C) when considered in combination with other existing or
106 approved accessory apartments, the deviation in distance
107 separation does not result in an excessive concentration of
108 similar uses, including other special exception uses, in the
109 general neighborhood of the proposed use.

110 **Sec. 59-A-6.20 Detached accessory apartment.**

111 (a) Where a detached accessory apartment is permitted in a zone: it must be
112 located on a lot one acre or greater in size; only one accessory apartment is
113 permitted for each lot; and it is only permitted under the following
114 standards:

115 (1) the accessory apartment was approved as a special exception before
116 {EFFECTIVE DATE} and satisfies the conditions of the special
117 exception approval; or

118 (2) the accessory apartment is registered with the Department of Housing
119 and Community Affairs in the same manner as a registered living unit
120 under Subsection 59-A-6.10(a)(3); and

121 (A) the owner of the lot occupies a dwelling unit on the lot at least 6
122 months of every calendar year;

123 (B) the apartment has the same street address as the principal
124 dwelling;

125 (C) a separate entrance is located on the side yard or rear yard;

126 (D) one on-site parking space is provided in addition to any
127 required on-site parking for the principal dwelling;

128 (E) in the RE-2, RE-2C, and RE-1 zones, the detached accessory
129 apartment is located a minimum distance of 500 feet from any
130 other attached or detached accessory apartment, measured in a

- 131 straight line from side property line to side property along the
132 same block face;
- 133 (F) the rear lot line of the lot with the accessory apartment does not
134 abut a lot with another accessory apartment;
- 135 (G) if the accessory apartment is limited to a floor area of 800
136 square feet, it must be no greater than 50% of the principal
137 dwelling or 800 square feet, whichever is less;
- 138 (H) if the accessory apartment is limited to a floor area of 1,200
139 square feet, it must be no greater than 50% of the principal
140 dwelling or 1,200 square feet, whichever is less;
- 141 (I) the maximum number of occupants is limited to 3 persons; and
- 142 (J) any structure built after {EFFECTIVE DATE} to be occupied
143 as an accessory apartment must have the same minimum side
144 yard setback requirement as the principal dwelling and a
145 minimum rear yard setback requirement of 12 feet, unless more
146 restrictive accessory building or structure yard setback
147 standards are required under Section 59-C-1.326.
- 148 (3) The accessory apartment must not be located on a lot where any of the
149 following otherwise allowed residential uses exist: guest room for
150 rent; boardinghouse; registered living unit; or any other rental
151 residential use, other than an accessory dwelling in an agricultural
152 zone.
- 153 (b) (1) A detached accessory apartment special exception petition may be
154 filed with the Board of Appeals to deviate from any permitted use
155 standard regarding:
- 156 (A) location of the separate entrance;
- 157 (B) number of on-site parking spaces; or

158 (C) minimum distance from any other attached or detached
159 accessory apartment.

160 (2) To approve a special exception filed under subsection (b)(1), the
161 Board of Appeals must find, as applicable, that:

162 (A) the separate entrance is located so that the appearance of a
163 single-family dwelling is preserved;

164 (B) adequate on-street parking permits fewer off-street spaces; or

165 (C) when considered in combination with other existing or
166 approved accessory apartments, the deviation in distance
167 separation does not result in an excessive concentration of
168 similar uses, including other special exception uses, in the
169 general neighborhood of the proposed use.

170 * * *

171 **Sec. 3. DIVISION 59-C-1 is amended as follows:**

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

173 * * *

174 **Sec. 59-C-1.3. Standard development.**

175 The procedure for approval is specified in Chapter 50.

176 **59-C-1.31. Land uses.**

177 No use is allowed except as indicated in the following table:

178 **-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the
179 zones indicated, subject to all applicable regulations.

180 **-Special Exception Uses.** Uses designated by the letters "SE" may be authorized
181 as special exceptions under Article 59-G.

182

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
(a) Residential										
[Accessory apartment. ⁴]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]			[SE]
<u>Accessory apartment, attached (up to 800 square feet).</u> ⁴	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>			<u>P*/SE***</u>
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ⁴	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>SE***</u>	<u>SE***</u>			<u>P*/SE***</u>
<u>Accessory apartment, detached (up to 800 square feet).</u> ⁴	<u>P**/SE****</u>	<u>P**/SE****</u>	<u>P**/SE****</u>							
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ⁴	<u>P**/SE****</u>	<u>P**/SE****</u>	<u>P**/SE****</u>							

183 * * *

184 ⁴ Not permitted in a mobile home.

185 * See Sec. 59-A-6.19. Attached accessory apartment.

186 ** See Sec. 59-A-6.20. Detached accessory apartment.

187 *** See Sec. 59-G-2.00.6. Attached accessory apartment.

188 **** See Sec. 59-G-2.00.7. Detached accessory apartment.

189 * * *

190 **Sec. 59-C-1.5. Cluster development.**

191 * * *

192 **59-C-1.53. Development standards.**

193 All requirements of the standard method of development in the respective zones, as
 194 specified in Section 59-C-1.3, apply, except as expressly modified in this section.

195

	RE-2C	RE-1	R-200	R-150	R-90	R-60	RMH 200
59-C-1.531. Uses Permitted. No uses shall be permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31.</u>							
* * *							
[Accessory apartment. ²]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]
<u>Accessory apartment, attached (up to 800 square feet).</u> ²	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ²	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>
<u>Accessory apartment, detached (up to 800 square feet).</u> ²	<u>P***/SE****</u>	<u>P***/SE****</u>					
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ²	<u>P***/SE****</u>	<u>P***/SE****</u>					
* * *							

196 ² Not permitted in a townhouse, one-family attached dwelling unit, or mobile
 197 home.

198 * See Sec. 59-A-6.19. Attached accessory apartment.

199 ** See Sec. 59-G-2.00.6. Attached accessory apartment.

200 *** See Sec. 59-A-6.20. Detached accessory apartment.

201 **** See Sec. 59-G-2.00.7. Detached accessory apartment.

202 * * *

203 **Sec. 59-C-1.6. Development including moderately priced dwelling units.**

204 * * *

205 **59-C-1.62. Development standards.**

206

	RE-2C ⁸	RE-1 ⁸	R-200	R-150	R-90	R-60	R-40
59-C-1.621. Uses Permitted. No uses are permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] Section 59-C-1.31, [title "Land Uses,"] subject to [the provisions of article] Article 59-G.							
* * *							
Registered living unit. ^{3,5}	P	P	P	P	P	P	
[Accessory apartment. ³]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	
<u>Accessory apartment, attached (up to 800 square feet).</u> ³	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ³	<u>P*/SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	
<u>Accessory apartment, detached (up to 800 square feet).</u> ³	<u>P***/SE****</u>	<u>P***/SE****</u>					
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ³	<u>P***/SE****</u>	<u>P***/SE****</u>					

207 * * *

208 ³ Not permitted in a townhouse, one-family attached dwelling unit, or mobile
 209 home.

210 * See Sec. 59-A-6.19. Attached accessory apartment.

211 ** See Sec. 59-G-2.00.6. Attached accessory apartment.

212 *** See Sec. 59-A-6.20. Detached accessory apartment.

213 ^{***}See Sec. 59-G-2.00.7. Detached accessory apartment.

214 * * *

215 **Sec. 4. DIVISION 59-C-9 is amended as follows:**

216 DIVISION 59-C-9. AGRICULTURAL ZONES.

217 * * *

218 **Sec. 59-C-9.3. Land uses.**

219 No use is allowed except as indicated in the following table:

220 — **Permitted uses.** Uses designated by the letter “P” are permitted on any lot in
221 the zones indicated, subject to all applicable regulations.

222 — **Special exception uses.** Uses designated by the letters “SE” may be authorized
223 as special exceptions under [Article 59-G](#).

224

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
* * *							
(e) Residential:²							
[Accessory apartment. ^{6,7}]	[SE]	[SE]	[SE]	[SE ⁴⁸]		[SE]	[SE]
Accessory dwelling. ⁷	SE	SE	SE	SE ⁴⁸	SE	SE	SE
Accessory dwelling for agricultural workers. ⁴²				P			
<u>Accessory apartment, attached (up to 800 square feet).</u> ^{6,7}	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P^{48,*}/SE^{48,**}</u>		<u>P*/SE**</u>	
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ^{6,7}	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P^{48,*}/SE^{48,**}</u>		<u>SE**</u>	
<u>Accessory apartment, detached (up to 800 square feet).</u> ^{6,7}	<u>SE***</u>	<u>SE***</u>	<u>SE***</u>	<u>SE^{48,***}</u>			
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ^{6,7}	<u>SE***</u>	<u>SE***</u>	<u>SE***</u>	<u>SE^{48,***}</u>			

225

* * *

226

⁶ Not permitted in a mobile home.

227

⁷ [As a special exception regulated by divisions 59-G-1 and 59-G-2, such a] An

228

accessory dwelling unit, including an attached or detached accessory apartment, is

229

excluded from the density calculations [set forth] in [sections] Sections 59-C-9.41[,

230

title "Density in RDT Zone,"] and 59-C-9.6[, title "Transfer of Density-Option in

231

RDT Zone."]. Once the property is subdivided, such a dwelling would no longer

232

comply with [the special exception regulations or with] this exclusion. A special

233 exception is not required for a dwelling that was a farm tenant dwelling in
234 existence [prior to] before June 1, 1958[, provided, that] if the dwelling meets all
235 applicable health and safety regulations.

236 * * *

237 ⁴⁸If property is encumbered by a recorded transfer of developments rights
238 easement, this use is prohibited. However, any building existing on October 2,
239 2007 may be repaired or reconstructed if the floor area of the building is not
240 increased and the use is not changed.

241 * * *

242 ^{*}See Sec. 59-A-6.19. Attached accessory apartment.

243 ^{**}See Sec. 59-G-2.00.6. Attached accessory apartment.

244 ^{***}See Sec. 59-G-2.00.7. Detached accessory apartment.

245 * * *

246 **Sec. 59-C-9.4. Development standards.**

247 * * *

248 **59-C-9.41. Density in RDT zone.**

249 Only one one-family dwelling unit per 25 acres is permitted. (See [section] Section
250 59-C-9.6 for permitted transferable density.) The following dwelling units on land
251 in the RDT zone are excluded from this calculation, provided that the use remains
252 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

253 (a) A farm tenant dwelling, farm tenant mobile home₂ or guest house₂ as defined
254 in [section] Section 59-A-2.1[, title "Definitions."].

255 (b) An accessory apartment or accessory dwelling regulated by the special
256 exception provisions of Division 59-G-1 and 59-G-2 and Sections 59-A-6.19
257 and 59-A-6.20.

258 * * *

259 **Sec. 5. DIVISION 59-G-2 is amended as follows:**

260 DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND
261 REQUIREMENTS.

262 The uses listed in this Division, as shown on the index table below, may be
263 allowed as special exceptions in any zone where they are so indicated, as provided
264 in this Article, subject to the standards and requirements in this Division and the
265 general conditions specified in Section 59-G-1.21.

266	USE	SECTION
267	* * *	
268	Accessory apartment	G-2.00
269	<u>Accessory apartment, attached</u>	<u>G-2.00.6</u>
270	<u>Accessory apartment, detached</u>	<u>G-2.00.7</u>
271	* * *	

272 **Sec. 59-G-2.00. Accessory apartment. (The standards below reflect the**
273 **conditions required only for an accessory apartment approved before**
274 **{EFFECTIVE DATE}.**)

275 A special exception may be granted for an accessory apartment on the same lot as
276 an existing one-family detached dwelling, subject to the following standards and
277 requirements:

278 * * *

279 **Sec. 59-G-2.00.6 Attached accessory apartment.**

280 A special exception may be granted for an attached accessory apartment on the
281 same lot as an existing one-family detached dwelling, subject to the special
282 exception provisions of Division 59-G-1 and the standards and requirements of
283 Section 59-A-6.19.

284 **Sec. 59-G-2.00.7. Detached accessory apartment.**
285 Where a detached accessory apartment is permitted in a zone, only one detached
286 accessory unit is permitted for each lot and it is only permitted under the special
287 exception provisions of Division 59-G-1 and the standards and requirements of
288 Section 59-A-6.20.

289

290 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the
291 date of Council adoption.

292

293 **Sec. 7. Sunset.** Sections 1-5 of ZTA 12-11 shall cease to be effective after
294 the 2,000th accessory apartment is registered with the Department of Housing and
295 Community Affairs.

296

297 This is a correct copy of Council action.

298

299 _____

300 Linda M. Lauer, Clerk of the Council

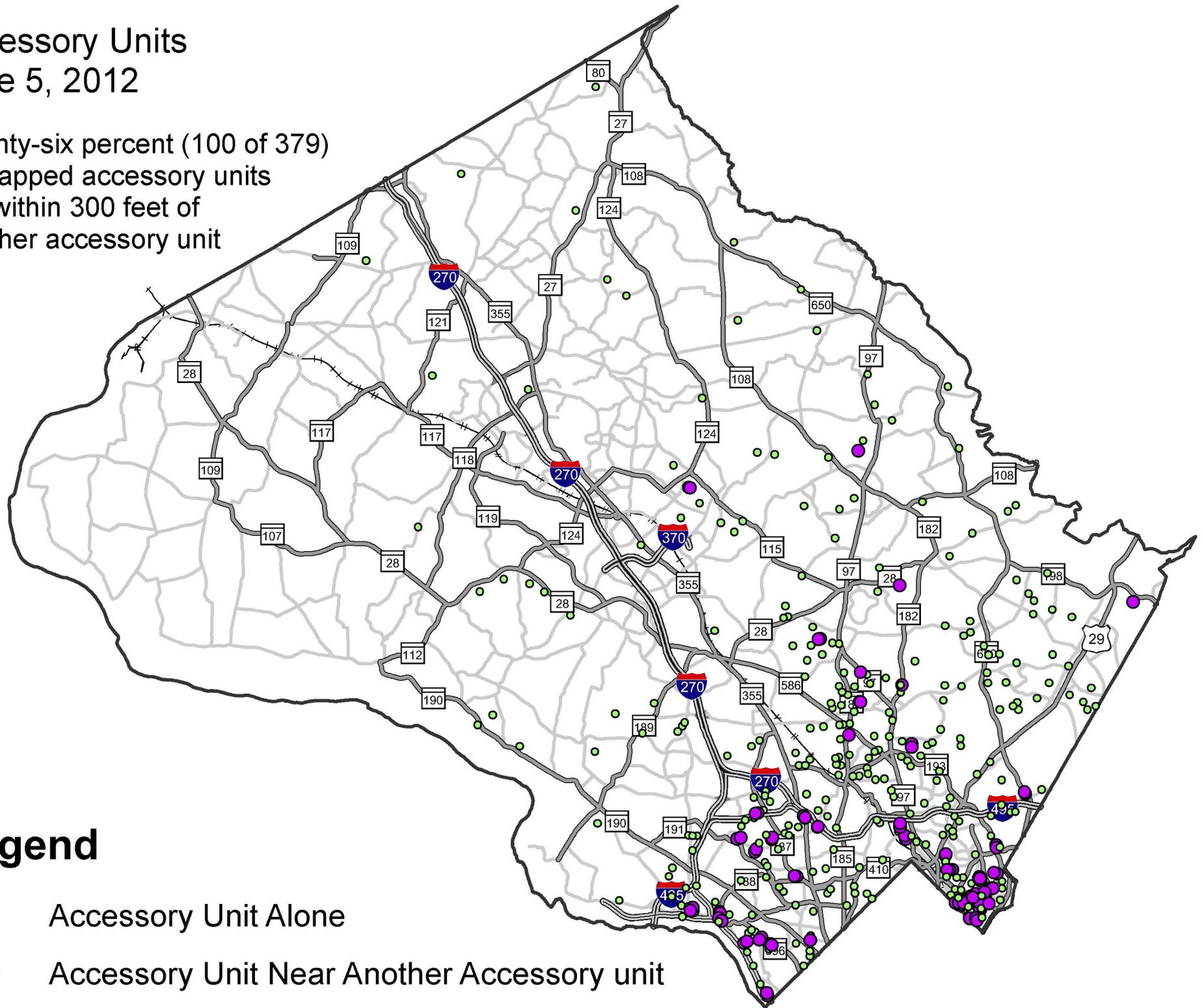
Accessory Apartments	
Existing Zoning	ZTA No. 12-11 (denotes change from existing code)
<p>Definition of Accessory Apartment: A second dwelling unit that is part of an existing one-family detached dwelling, or is located in a separate existing accessory structure on the same lot as the main dwelling, with provision within the accessory apartment for cooking, eating, sanitation, and sleeping. Such a dwelling unit is subordinate to the main dwelling.</p>	<p>Definition of Accessory Apartment: A second dwelling unit in a detached house building type (or in a detached accessory structure) and provides for cooking, eating, sanitation and sleeping, must be subordinate to the principal dwelling and requires a separate entrance.</p>
<p>Size restriction: Attached ≤ 1,200sf Detached ≤ 2,500sf</p>	<p>Size restriction: Attached: (≤ 800sf), (801 - 1,200sf) Detached: (≤ 800sf), (801 - 1,200sf)</p>
<p>Lot size requirements: Attached accessory apt - on a lot of one acre or less apartment must have one party wall in common. Detached accessory apt - on a lot of more than 1 acre created through conversion of separate accessory structure existing on lot prior to 12/2/1983. Or, detached accessory apartment in an accessory structure built after 12/2/1983 requires 2 acres and will house either a care-giver or relative.</p>	<p>Lot size requirements: Attached accessory apt -Minimum lot size required in the zone Detached accessory apt - Minimum lot size required in the zone but no less than one acre in cluster development</p>
<p>No by right uses</p>	<p>By right use in the following zones: Attached, (≤ 800sf): RE-2C, RE-2, RE-1, RMH-200, R-200, R-150, R-90, R-60, Rural, RC, LDRC, RDT and RNC Attached, (801 - 1,200sf): RE-2C, RE-2, RE-1, RMH-200, R-200, R-150 Rural, RC, LDRC, and RDT Detached (up to 1,200sf): RE-2C, RE-2, and RE-1</p>
<p>Special Exception use in the following zones: Attached and Detached: Rural, RC, LRDC, RDT, RNC, RNC/TDR, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, RMH200</p>	<p>Special Exception Use in the following zones: Attached, (801 - 1,200sf): R-60, R-90 and RNC Detached, (≤ 800sf): Rural, RC, LDRC, and RDT Detached, (801 - 1,200sf): Rural, RC, LDRC, and RDT</p>

Standards for Special Exception approval:	Standards for By-right use approval:
1. Principal dwelling unit must be detached house	1. Principal dwelling unit must be detached house
2. Only one accessory apartment per lot; must be subordinate to principal dwelling	2. Only one accessory apartment per lot; must be subordinate to principal dwelling
3. Owner of lot must occupy either principal dwelling or apartment	3. Owner of lot must occupy either principal dwelling or apartment
4. Must not be located on a lot occupied by a family of unrelated persons	4. Occupancy limited to maximum of 3
5. Must have separate entrance to preserve appearance of the building type	5. Separate entrance must not be located along the front building line
6. Apartment must have same address as principal dwelling	6. Apartment must have same address as principal dwelling
7. 2 parking spaces required unless Board finds that there is adequate on-street parking	7. 1 parking space required in addition to any required parking for the principal dwelling
8. Principal dwelling must be at least 5 years old	8. N/A
9. No excessive concentration	<p>9. Spacing requirement:</p> <p>In the R-90, R-60 and RNC zones an accessory apartment must not be located:</p> <p>1) within 300 feet of another accessory apartment measured in a straight line from side property line to side property line along the same block face; and</p> <p>2) on a lot abutting the rear lot line of any property with an accessory apartment</p> <p>In the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones an accessory apartment must not be located:</p> <p>1) within 500 feet of another accessory apartment measured in a straight line from side property line to side property line along the same block face; and</p> <p>2) on a lot abutting the rear lot line of any property with an accessory apartment</p> <p>Cap of 2,000 accessory apartments in County</p>
10. External modifications must be compatible with main house and surrounding property	10. N/A, However for a detached accessory apartment any structure built after (THE EFFECTIVE DATE OF THE ZTA) to be occupied as an accessory apartment must have the same minimum side yard setback requirement as the principal dwelling and a minimum rear yard setback requirement of 12 feet unless more restrictive accessory building or structure yard setback standards are required under Section 59-C-1.326.
11. General Special Exceptions standards	11. Same as current General Special Exception standards

Accessory Units

June 5, 2012

Twenty-six percent (100 of 379) of mapped accessory units are within 300 feet of another accessory unit



Legend

- Accessory Unit Alone
- Accessory Unit Near Another Accessory unit

General Categories of Questions Discussed at May 21 Community Meetings

Below are 13 general categories of questions (and staff responses **in red**) that were discussed at the May 21, 2012 community meetings. In addition to these questions, the clear overwhelming concern in both meetings was how enforcement of existing and new accessory apartments could and would be addressed by DHCA. As staff stated at the meeting, DHCA will become more involved should a ZTA be introduced by the County Council.

- Why is an Accessory Apartment ZTA being recommended separately from the zoning rewrite process?

Addressing changes to the accessory apartment use outside of the Zoning Ordinance Rewrite provides a dedicated review of the issue that will include more time for Planning Board discussion and review and more opportunities for the public to testify on proposed changes. A review within the context of the Rewrite would minimize the time spent on one particular issue.

- What are the main policy objectives behind this ZTA? If affordable housing is the main goal, will it really result in enough units to warrant the change?

The primary objective of the accessory apartment ZTA is to provide a more flexible housing option than currently exists in the zoning ordinance. The ZTA recognizes the potential benefit of providing a revised review procedure for a small, attached accessory unit to address a wider variety of housing needs not captured by Registered Living Units (RLUs). The benefit of a small attached unit may be that the owner does not require physical care, nor have a family member able to move in, but may want the company, and/or rental income the unit could provide. The unit may provide a young professional the ability to afford their first home, or access to a neighborhood while they save for their first home.

- How will the accessory apartment ZTA improve availability of affordable housing?

Typically, rental units within a single-family home rent below the average market rate for a unit of the same size in an apartment/condo building (“Accessory Units: An Increasing Source of Affordable Housing,” by Patrick Hare and John Danbury, Public Management, International City Management

Association, (9/1991). Lower rents are possible primarily because accessory apartments do not require the development of new land and are cheaper to build than conventional rental units.

- How will the law that requires 300 foot separation of accessory apartments in a neighborhood on same side of the street affect homeowners' rights? How will this hold up if challenged in a court of law?

Currently, special exceptions can be denied based on an overconcentration. In addition, the code also contains a spacing requirement for other uses such as an adult entertainment business.

- Will accessory apartments lower home values? Accessory apartments are currently permitted by special exception approval in the same locations as recommended by right in the proposed legislation. The proposed use standards were drafted from many of the existing, objective standards by which a special exception use is granted for an accessory apartment. The current subjective special exception standard prohibiting an overconcentration of accessory apartments in a neighborhood is being replaced with a quantifiable spacing provision.
- Is there a problem with the approval process for accessory apartments that the ZTA is attempting to fix?

No, the rationale for introducing a revised accessory apartment use is to provide a flexible option for housing that retains most of the special exception regulations in the current code. The proposed ZTA retains requirement of DHCA approval and licensing including an annual renewal of the rental license.

- Explain how the new ZTA will not lead to tandem housing?

Tandem housing is two separate houses on one lot, detached. The small attached unit being recommended by right cannot be separate from the principal dwelling. Both detached and attached units must be less than 50% the size of the principal dwelling and cannot be subdivided and sold as a separate detached house.

- The proposed ZTA relaxes the approval process of accessory apartments; how will the ZTA affect the administration and enforcement of the standards for accessory apartments. How will the County meet the increased demand for inspection and enforcement?

No change is proposed in the approval and licensing by DHCA or enforcement of code violations. Staff research on accessory dwelling unit show annual installation rates that generally range between .2 to .5 accessory units per 1,000 single-family detached homes. In any case, DHCA will address issues about licensing and enforcement should a ZTA be introduced by County Council.

- How will the county be accountable for accessory apartments that are established “by right”?

An accessory apartment that is permitted by-right does not mean it can be created without approval or licensing. Accessory units must still meet all building code requirements for approval and all rental requirements for licensing, requiring annual renewal.

- Why not place an annual ceiling on the number of accessory apartment approvals in the County?

Staff believes that by establishing a spacing provision we can better address overconcentration and therefore minimizing impacts of allowing new units in the County (versus placing an annual ceiling on the number of units allowed). As indicated by DHCA, approximately 26% of the active accessory apartment special exceptions are within 300 feet of another accessory apartment. The proposed spacing provision would make it unlikely that another accessory apartment could locate within those areas.

- What happens to special exceptions already granted to homeowners?

The proposed ZTA would grandfather existing approved special exceptions to the conditions and requirements as they existed when approved.

- How will accessory apartments operating without a special exception approval or license be handled if the ZTA is adopted? What happens if a building cannot be brought into compliance such as accessory apartments currently in detached garages?

Currently, the ZTA does not include an amnesty provision. As such, any illegal accessory apartment will have to apply for legal status based on the proposed standards and requirements.

- Why does proposed ZTA reduce the required number of parking spaces on the homeowner's property for occupants of the accessory unit? Could the provision of additional parking on-site lead to increased paving of yards?

Required parking space has been reduced to 1 because the size of apartment was decreased from 1,200 to 800 SF and occupancy is limited to 3 people in new ZTA. In the smaller lot residential zones (minimum size less than an acre), there is a maximum percentage of the area of the front yard that can be covered by surfaced area



TOWN OF SOMERSET

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clerk@townofsomerset.com

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OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

1906



Jeffrey Z. Slavin
Mayor

Rich Charnovich
Town Manager/Clerk-Treasurer

Ms. Françoise Carrier, Chairman
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910

Francoise
Dear Chair Carrier,

The Somerset Town Council and I have been closely following the proposed changes for permitting accessory apartments in the County. It is our understanding that a staff report on this topic will be released in September.

At this month's Town meeting, the Council authorized me to send a letter expressing a deep concern about these changes. While we are very mindful of the need for more affordable housing units in our County and the desire to streamline the administrative process, we think it would be a mistake to do anything that lessens the ability of the neighbors of such proposed units to comment on their placement. We know from history that the residents of our Town always want to make their views known when a new accessory apartment is proposed because often they have a severe impact on the block and even the whole neighborhood.

Please do everything you can to keep the current requirements on public comment in place.

All the best,

Jeffrey Z. Slavin
Mayor/Town of Somerset

MCP-CTRACK

From: Lynda K. Bloom <lyndabloom@gmail.com>
Sent: Tuesday, July 31, 2012 5:19 PM
To: MCP-Chair
Subject: Accessory apartment amendment

RECEIVED
0023
AUG 01 2012

OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Sirs,

I am writing to say how strongly I support the accessory apartment amendments.

I am 53 and considering my future housing choices.

As someone who used to have a family of 4 in my current home with 5 cars and more trash than you can imagine (teenagers and friends...need I say more), I am now alone in my home.

In order to afford to stay in my home, I have considered turning the basement into an accessory apartment. That would allow me financially to stay here. If I cannot do that, then I will have to sell the house, probably to another family of 4+ (and friends). So the parking and trash situation will go back to what it was. My so called "neighbors" who don't want the extra cars on their street didn't complain when it was my family's cars. They weren't concerned about paying more for trash pickup because of the output from my family. I doubt a single renter and I will produce near as much trash as the whole family did. This argument simply does not hold water as the prices and limitations that now exist cover both a senior living alone and a family with 6 kids. The accessory apartment is no different.

Additionally, I'm sure the Council is aware of the projected drastic rise in the senior population in Montgomery County over the next 10-20 years. This amendment is one more way in which we could facilitate our seniors "aging in place". Financial assistance from rent, plus the possibility of some help with snow shoveling and yard work from a younger tenant in exchange for a reasonable rent.

It's a win-win and so far the arguments against it simply don't hold any water.

Sincerely,

Lynda K. Bloom