



**MCPB**  
**Item #13**  
**05/04/06**

**DATE:** April 21, 2006  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review  
Carlton Gilbert, Zoning Supervisor  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To revise the definition of accessory building, to limit the size of an accessory building in relation to the size of the main building; to require accessory buildings of a certain size to be approved by the Board of Appeals; to establish standards for Board of Appeals review of an accessory building; and to generally amend the definition and standards for an accessory building.

**TEXT AMENDMENT:** No. 06-10  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmembers Praisner and Silverman  
**INTRODUCED DATE:** March 28, 2006  
**PLANNING BOARD REVIEW:** May 4, 2006  
**PUBLIC HEARING:** May 2, 2006; 1:30 p.m.

---

**STAFF RECOMMENDATION:** APPROVAL with modifications

**PURPOSE OF THE TEXT AMENDMENT**

To revise the definition of accessory building, to limit the size of an accessory building in relation to the size of the main building; to require accessory buildings of a certain size to be approved by the Board of Appeals; to establish standards for Board of Appeals review of an accessory building; and to generally amend the definition and standards for an accessory building.

**BACKGROUND/ANALYSIS**

Councilmembers Praisner and Silverman introduced the subject text amendment as a companion to ZTA 06-08 (reduction of height and increased setbacks for accessory structures located in the small lot residential zones to address a growing trend toward the construction of large accessory buildings on relatively small lots). The proposed modifications herein, however, pertain to all residential and agricultural zones (as opposed to small lot residential zones only). An accessory building is defined as a use that is customarily incidental and subordinate to the principal use of a lot or the main building. However, some accessory buildings are being constructed that are almost as large or larger than the main building. The proposed text amendment would help reduce the likelihood that this would occur by clarifying that an accessory building must be subordinate in size to the main building and can not exceed 50 percent of the floor area or 50 percent of the footprint of the main building.

#### Definition of an Accessory Building

The current definition of an accessory building is as follows:

***Building, accessory:*** *A building subordinate to, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or common roof to the main building.*

The intent of this term is to permit accessory buildings incidental to the main structure and subordinate in size to the main structure. The subject zoning text amendment proposes to clarify this intent by adding the words "in size" to the definition. Staff agrees with this recommendation. The proposed clarification would assist in enforcing the provision of subordinate accessory structures to the main building. This is especially crucial in the larger lot residential and agricultural zones where the maximum building height requirement for accessory and main buildings is the same.

#### Accessory Structures in One-Family Residential and Agricultural Zones

Accessory buildings and uses currently are permitted in all one-family residential and agricultural zones. The proposed text amendment recommends adding a footnote to the land use tables of both the residential and agricultural zones to limit the size of a permitted accessory building to no more than 50 percent of the floor area or 50 percent of the footprint of the main building. The exception to this proposal would include buildings that are accessory to agricultural uses (which can typically be larger than the main building -barns, stables, etc.). Further, the proposal would permit accessory buildings greater than 50 percent of the floor area or 50 percent of the footprint of the main building (up to the floor area or 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 including: (1) *the floor area and footprint of the accessory building in relation to the size of the parcel;* (2) *the floor area and footprint of the accessory building in relation to the main building;* (3) *the location of the accessory building in relation to other buildings on the parcel and any adjoining parcel;* and (4) *whether the accessory building alters the character of the parcel.*

Establishing a threshold of 50 percent of the floor area 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 greater than 50 percent of the floor area or 50 percent of the footprint of the main building would be acceptable and would not negatively impact the character of the surrounding area. In these cases, it would be appropriate to require public hearings by the Board of Appeals to ensure compatibility with surrounding uses.

#### Grandfathering Provisions for existing Accessory Structures

The proposed text amendment does not provide grandfathering provisions for existing accessory structures that are greater than 50 percent of the floor area or 50 percent of the footprint of the main building. Staff recommends that a grandfathering provision be included with the subject proposal that states that an existing accessory building (as of the effective date of the ZTA) would be conforming and could continue under the standards in effect when the accessory building was constructed but any replacement or reconstruction of the structure must conform to the standards in effect at the time of replacement or reconstruction.

#### **RECOMMENDATION**

The staff supports the proposed text amendment to revise the definition of accessory building, to limit the size of an accessory building in relation to the size of the main building; to require accessory buildings of a certain size to be approved by the Board of Appeals; to establish standards for Board of Appeals review of an accessory building; and to generally amend the definition and standards for an accessory building. Staff proposes to modify the proposed language to include grandfathering provisions for those existing lots that do not adhere to the proposed new provisions. Staff further recommends that the grandfathering provisions be clarified to state that any replacement or reconstruction of a grandfathered structure must conform to the standards in effect at the time of replacement or reconstruction. The proposed text amendment language as modified by staff is included as Attachment 1.

GR

#### Attachments

1. Proposed Text Amendment 06-10 (as modified by staff)

# ATTACHMENT 1

Zoning Text Amendment No: 06-10  
Concerning: Subordinate structure  
Draft No. & Date: 2 – 3/20/06  
Introduced: March 28, 2006  
Public Hearing: May 2, 2006; 1:30 PM  
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: Councilmembers Praisner and Silverman

---

**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- revising the definition of “Building, accessory”;
- limiting the size of an accessory building in relation to the size of the main building;
- requiring accessory buildings of a certain size to be approved by the Board of Appeals; and
- establishing standards for Board of Appeals review of an accessory building; and
- generally amending the definition and standards for an accessory building.

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

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1	“Definitions”
DIVISION 59-A-4	“COUNTY BOARD OF APPEALS”
Section 59-A-4.1	“Authority and powers”
DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.3	“Standard development”
Section 59-C-1.32	“Development standards”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.3	“Land uses”
Section 59-C-9.4	“Development standards”

*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:*

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

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

3           **59-A-2.1. Definitions.**

4           \* \* \*

5           **Building, accessory:** A building subordinate in size to, and located on the same  
6 lot with, a main building, the use of which is clearly incidental to that of the main  
7 building or to the use of the land, and which is not attached by any part of a  
8 common wall or common roof to the main building.

9           \* \* \*

10          **Use, accessory:** A use which is (1) customarily incidental and subordinate to the  
11 principal use of a lot or the main building [thereon], and (2) located on the same lot  
12 as the principal use or building. [In addition, a] A temporary structure or trailer  
13 used for construction administration or real estate sales in conjunction with and  
14 during the period of development, construction, or sales within the same site or  
15 subdivision in which it is located is [also] an accessory use.

16           **Sec. 2. DIVISION 59-A-4 is amended as follows:**

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

18           **59-A-4.1. Authority and powers.**

19           **59-A-4.11. Authority.**

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

- 22           (a) Petitions for special exceptions, subject to articles 59-G-1 and 59-G-2.  
23           (b) Petitions for variances from the strict application of this chapter, as  
24 provided in article 59-G-3.  
25           (c) Appeals from any refusal to issue a building or use-and-occupancy  
26 permit, or from any order or decision of the Department or the

27 Commission, when passing upon an application for a building or other  
 28 permit, or by any other officer or body, under this chapter.

29 (d) Appeals in regard to property affected by the master plan of highways.

30 (e) Petitions concerning public nuisances as specified in section 59-A-5.7.

31 (f) Petitions for an increase in the proportion of guest rooms to more than  
 32 20 percent, but not more than 45 percent of the total units in apartment  
 33 hotels, under the hotel-motel special exception.

34 (g) Petitions for an increase in the floor area or footprint of an accessory  
 35 building not to exceed the floor area or footprint of the main building  
 36 in or accordance with the standards established under 59-C-1.31(g)  
 37 and 59-C-9.3(j).

38 [(g)] (h) Appeals from an action or decision of the Sign Review Board under  
 39 Section 59-F-10.2.

40 [(h)] (i) Appeals from the issuance, revocation, suspension, or refusal to renew  
 41 a sign installer license under Section 59-F-9.2.

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

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

44 \* \* \*

45 **59-C-1.3. Standard development.**

46 \* \* \*

47 **59-C-1.31. Land uses.**

48 \* \* \*

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
* * *										
<b>(g) Miscellaneous.</b>										
Accessory buildings or structures for housing animals or fowl.	P	P	P	P	P	P	P			

Accessory buildings and uses.*	P	P	P	P	P	P	P	P	P	P
Kennels, noncommercial. <sup>31</sup>	P	P	P	P	P <sup>30</sup>	P <sup>30</sup>	P <sup>30</sup>	P <sup>30</sup>	P <sup>30</sup>	P <sup>30</sup>

49

50 \* Except for a building accessory to an agricultural use, an accessory building  
 51 must not exceed 50 percent of the floor area or 50 percent of the footprint of  
 52 the main building; however, the Board of Appeals may approve by  
 53 resolution, after a public hearing, an increase in the floor area or footprint of  
 54 an accessory building not to exceed the floor area or footprint of the main  
 55 building. The following standards must be considered: (1) the floor area and  
 56 footprint of the accessory building in relation to the size of the parcel; (2) the  
 57 floor area and footprint of the accessory building in relation to the main  
 58 building; (3) the location of the accessory building in relation to other  
 59 buildings on the parcel and any adjoining parcel; and (4) whether the  
 60 accessory building alters the character of the parcel.

61

62 Any accessory building lawfully existing before (ZTA Effective Date) is a  
 63 conforming building and may continue under the standards in effect when  
 64 the accessory building was constructed. Replacement or reconstruction of  
 65 any accessory building must conform to the standards in effect at the time of  
 66 replacement or reconstruction.

67 \* \* \*

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

69 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

70 \* \* \*

71 **59-C-9.3. Land uses.**

72 \* \* \*

	Rural	RC	LDRC	RDT	RS	RNC
--	-------	----	------	-----	----	-----



* * *						
<b>(j) Miscellaneous:</b>						
Accessory buildings and uses.*	P	P	P	P	P	P
Security pavilion.	P <sup>43</sup>	P <sup>43</sup>	P <sup>43</sup>	P <sup>43</sup>	P <sup>43</sup>	P <sup>43</sup>

73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97

\* Except for a building accessory to an agricultural use, an accessory building must not exceed 50 percent of the floor area or 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 floor area or footprint of an accessory building not to exceed the floor area or footprint of the main building. The following standards must be considered: (1) the floor area and footprint of the accessory building in relation to the size of the parcel; (2) the floor area and footprint of the accessory building in relation to the main building; (3) the location of the accessory building in relation to other buildings on the parcel and any adjoining parcel; and (4) whether the accessory building alters the character of the parcel.

Any accessory building lawfully existing before (ZTA Effective Date) is a conforming building and may continue under the standards in effect when the accessory building was constructed. Replacement or reconstruction of any accessory building must conform to the standards in effect at the time of replacement or reconstruction.

\* \* \*

**Sec. 5. Effective date.** This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

98

99

---

100 Linda M. Lauer, Clerk of the Council