Takoma Park City Council Meeting - March 13, 2019
Agenda Item 7

Work Session
Discussion of Accessory Dwelling Units and ZTA-19-01

Recommended Council Action
Discussion leading to Resolution to County Council supporting ZTA 19-01

Context with Key Issues
On January 15, 2019, Montgomery County Council Member Hans Reimer introduced Zoning Text Amendment (ZTA) 19-01 – Accessory Residential Uses - Accessory Apartments that 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 amend the provisions for accessory apartments. An Accessory Dwelling Unit (ADU) is a second unit that is subordinate to a principal dwelling, which can be either an attached accessory apartment or a detached accessory structure.

Takoma Park has a long history of single-family homes that were divided into multiple apartments or utilized as rooming houses, starting with the Adventist community. The post-WWII era brought Walter Reed nurses and staff into rooms in Takoma Park, which led to the dividing up of houses into smaller apartments, a practice that persisted for decades. In 1978, Montgomery County passed a law prohibiting multifamily housing in single-family zoning, giving Takoma Park a 10-year grace period to phase-out these illegal apartments. In response, Takoma Park residents rallied, brought lawsuits, and engaged in hunger strikes to protest the mass evictions. The result was great swaths of multifamily structures converted back to single-family homes. As a concession, the “special exception” process was created to allow a minimal number of accessory apartments in single-family homes under rigid conditions. Some requirements have eased over the years, but the process is still restrictive and onerous and has consequently resulted in only six (6) ADUs in Takoma Park receiving County approval since 2013.

ZTA 19-01 reframes ADUs as a way to create more housing opportunities while maintaining the character of residential neighborhoods. The ZTA retains the limit on one ADU per lot and the requirement that one unit is owner-occupied. It also keeps the requirement that no more than two adults may live in an ADU, and no more than two unrelated people. The ZTA eliminates the minimum distance required between ADUs. The current minimum distance is so great that it may permit only one legal ADU on a single block. It eliminates minimum lot size required for a detached ADU as well as absolute maximum size restrictions so long as structures conform to existing setbacks and other zoning requirements for new construction. It reduces the number of parking spaces required but retains an on-site parking requirement.

On March 6, 2019, the Department of Housing and Community Development presented an overview of ADUs, their existence in the City of Takoma Park, and the proposed ZTA. Please refer to the video, the presentation, and the text of the ZTA itself for additional information.

In addition to the 60+ licensed ADUs in Takoma Park, there is an unknown number of unlicensed units, many built from the remnants of prior apartments that were part of homes a few decades ago. The removal of barriers to licensing will allow these “informal” ADUs to “get on the books.”
and therefore become part of the City’s regular rental inspection program, ensuring they are up to health, safety, and property maintenance code.

The ZTA as written does not discuss a process for licensing existing ADUs not currently licensed. Other jurisdictions have established amnesty periods where permitting/registration fees may be waived, or other enticements to legalize units. Takoma Park only becomes involved at the rental licensing level, not the initial approval step, so any similar programs would have to be at the County level.

The ZTA as written still has an off-site parking requirement, with the option to use a two-month waiver process if this is not possible. Other jurisdictions have removed parking requirements within a defined distance to mass transit, or within “urban village” or historic districts. Off-site parking is a rarity in City limits so this requirement has the effect of adding two months to the approval process for most residents wanting to create an ADU.

**Council Priority**
A Livable Community for All; Environmentally Sustainable Community; and Community Development for an Improved & Equitable Quality of Life

**Environmental Considerations**
Accessory dwelling units are an environmentally-friendly contribution to affordable housing. They provide an opportunity for population density near transit, placing fewer cars on the road. ADUs are “infill” housing, built on existing residential lots, often within existing homes, and do not contribute to sprawl. These housing units make use of existing utility infrastructure. Smaller homes such as detached ADUs have smaller carbon footprints.

**Fiscal Considerations**
More licensed ADUs will increase the annual/biennial licensing fees received by the City, which will be offset somewhat by the administration of the licenses and required inspections.

**Racial Equity Considerations**
While it is not entirely clear how ZTA 19-01 will impact the Takoma Park, City Council should take under advisement the racial equity study conducted by the City of Seattle concerning ADUs. The study concluded that white wealthy residents were more likely to be homeowners than any other racial group and would likely benefit from the ability to construct or retrofit units under the proposed ADU legislation. However, the study also found that removing barriers could help achieve the objective of increasing the number and variety of housing choices in single-family zones. The positive impact that ADUs bring to housing affordability could decrease economic displacement because additional housing stock could affect rent and housing prices.

**Attachments and Links**
- ZTA-19-01
- Accessory Dwelling Units 101
Zoning Text Amendment No.: 19-01
Concerning: Accessory Residential Uses – Accessory Apartments
Draft No. & Date: 1 – 1/10/19
Introduced: January 15, 2019
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 Sponsor: Councilmember Riemer

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;
- 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.

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<thead>
<tr>
<th>USE OR USE GROUP</th>
<th>Definitions and Standards</th>
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<th>Residential Residential Detached</th>
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<td>ACCESSORY RESIDENTIAL USES</td>
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<td>Attached Accessory Apartment</td>
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<td>Detached Accessory Apartment</td>
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Key: P = Permitted Use  L = Limited Use  C = Conditional Use  Blank Cell = Use Not Allowed

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

Division 3.3. Residential Uses

* * *

Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

1. Defined, In General

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

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

a. Only one Accessory Apartment is permitted for each lot.

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

c. [The] If the Accessory Apartment does not satisfy subsection b, the Accessory Apartment [is] must be licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and

i. the apartment [has] must have the same street address as the principal dwelling;

ii. either:

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

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

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

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

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

v. the principal dwelling or accessory apartment must be the primary residence of the applicant for an accessory apartment rental license.

d. An Accessory Apartment must not be located on a lot where any [other allowed] short-term rental Residential use exists or is licensed [; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Labor Housing Unit or a Guest House].

e. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.

f. Screening under Division 6.5 is not required.
g. In the AR zone, any accessory apartment may be prohibited under Section 3.1.5, Transferable Development Rights.

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 have a separate entrance and 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.]

[c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached Accessory Apartment is located at least 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.]
C. Detached Accessory Apartment

1. Defined

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

2. Use Standards

a. Where a Detached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2. [and the following standards:]

   [a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory Apartment must be located a minimum distance of 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.] 

   [b. A Detached Accessory Apartment built after May 30, 2012 must have the same minimum side setback as the principal dwelling and a minimum rear setback of 12 feet, unless more...]

[d. In the RNC, R-90, and R-60 zones, the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.] 

[e. Under Section 29-26(b), the Hearing Examiner may grant a waiver from the parking and distance separation standards.]
restrictive accessory building or structure setback standards are required under Article 59-4.]
[c. The minimum lot area is one acre.]
b. Any structure constructed before May 31, 2012 may be used for a detached Accessory Apartment without regard to setbacks.
c. A Detached Accessory Apartment built after May 30, 2012 must have the same minimum side setback as the principal dwelling and a minimum rear setback of 12 feet, unless more restrictive accessory building or structure setback standards are required under Article 59-4.
* * *
Sec. 3. Effective date. This ordinance becomes effective 90 days after the date of Council adoption.

This is a correct copy of Council action.

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Megan Davey Limarzi, Esq.
Clerk of the Council
Accessory Dwelling Units
101

Presented by:

Patti Mallin
Licensing Specialist, Housing and Community Development, City of Takoma Park
and
Lisa Govoni
Montgomery County Planning Department, M-NCPDC
ADUs: Why Now?

Proposed Zoning Text Amendment ZTA 19-01

Takoma Park City Council Work Session 3/13

Montgomery County Planning, Housing, and Economic Development Committee 3/18

Takoma Park City Council (Tentative) Resolution 3/20
ADU: Definition
ADU: Definition

Must have separate entrance, full kitchen, full bath
ADUs: Benefits

- Create affordable rental units
- Create income stream to make mortgages affordable
  - Young families
  - Seniors Aging in Place
- Increase density near transit without changing character of neighborhood
ADUs: Takoma Park

- Initial approval by Montgomery County
- Licensing and oversight by Takoma Park
- 60+ Licensed Accessory Dwelling Units, all wards
- 97% have biennial licenses, on time renewals
- Only 6 since 2013
Zoning Text Amendment (ZTA) No. 19-01, Accessory Residential Uses – Accessory Apartments

Limited Use Standards
Timeline

ADUs reviewed as Special Exceptions
Pre 2013

ZTA 12-11
Allows ADUs as a limited use in certain zones
Effective 5/20/13

ZTA 18-07
Allows waiver for ADUs that do not meet parking/spacing
Effective 10/29/18

ZTA 19-01
Generally amends the provisions for ADUs
Introduced 1/5/19
Use Standards - Zones Allowed

- Attached Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, RE-1, R-200, R-90 and R-60 Zone following all limited use standards.

- Detached Accessory Apartments are allowed in the AR, R, RC, RNC, RE-2, RE-2C, and RE-1 zone if the property is a minimum of 1 acre in size, and all limited use standards are met.

- There must be no approved or pending attached accessory apartments within 500 feet within the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones.

- There must be no approved or pending attached accessory apartments within 300 feet in the R-90 (including Plan Development zones), R-60, and RNC zones.

- There must be no approved or pending detached accessory apartments within 500 feet within the RE-2, RE-2C, and RE-1 zones.

  - If your property does not meet the spacing requirement, you can apply for a waiver with the Hearing Examiner.
Use Standards

- The property must be the owner’s primary address
- The house must be at least 5 years old
- The ADU must have the same street address as the main house
- The ADU must be internal to the main dwelling on a property smaller than one acre. Complete separation of the units is required.
- Only one ADU apartment may be created on the same lot as an existing one family detached house. ADUs are prohibited in Townhomes.
Use Standards - Size

- Accessory Apartments must be less than 50 percent of the gross habitable floor area in the principal dwelling; or 1200 square feet, whichever is less.
- The maximum floor area for an addition is 800 square feet if it increases the footprint of the principal dwelling.
Use Standards - Parking

• If there is an existing driveway, one on-site parking space is required in addition to any required on-site parking space required for principal dwelling; however, if a new driveway must be constructed for the accessory apartment, then two on-site parking spaces must be provided.

• If your property does not meet the parking requirement, you can apply for a waiver with the Hearing Examiner.
Additional ZTA 19-01 Provisions

• Allow an accessory structure built before May 31, 2012 to be used as an accessory apartment without regard to setbacks.

• Delete requirement that the separate entrance be located on the side or rear of the dwelling unless front entrance existed before a certain date or there exists a single entrance for use of the principal dwelling and the Attached Accessory Apartment.

• Owner can live in the principal dwelling or accessory structure
Questions?

Please join us in the Azalea Room for Q&A

Contact Information

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