

July 2, 2013

MEMO

From: Land Use Committee

To: Town Council

CC: Town Manager

RE: Land Use Committee Comments Regarding New County Rules for Accessory Apartments

The Land Use Committee (LUC) has reviewed Montgomery County's new regulations for accessory apartments in single-family homes and discussed possible actions the Town could take. In May, the LUC hosted a Town meeting to inform residents of the new regulations and to answer residents' questions and listen to their comments about the regulations.

Overview of new county regulations pertaining to accessory apartments

Montgomery County adopted new regulations for accessory apartments on February 5, 2013 which make it much easier to have a licensed apartment in a single-family home. These regulations became effective on May 20, 2013.

The new regulations are in Zoning Text Amendment (ZTA) 12-11 and Bill 31-12 . They are available at:

ZTA 12-11: http://www6.montgomerycountymd.gov/content/council/pdf/zta/2013/20130205_17-28.pdf

Bill 31-12: http://www6.montgomerycountymd.gov/content/council/pdf/bill/2013/20130205_31-12A.pdf

What is an accessory apartment?

An "accessory apartment, attached" (the type allowed in residential areas) is defined to be "a second dwelling unit that is part of a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. An attached accessory apartment is subordinate to the principal dwelling."

"By right" versus "by Special exception"

Under the former County regulations, a home owner had to go through the "special exception process" in order to obtain a license for an accessory apartment in the house which among other things involved going before a Hearing Examiner (which is rather like obtaining a variance). Under the new County regulations, a homeowner may have an accessory apartment in the house "by right," rather than by "special exception". This means that as long as the apartment meets the conditions specified in the ZTA, the homeowner simply has to apply to the Department of Housing and Community Affairs to obtain a license for it. If it does not meet those conditions, the homeowner may still

apply for a license via the special exception route. The apartment will still need to be “up to code” to be licensed.

Length of process

The County estimates that it will take about 3 months to get a license for an accessory apartment “by right”. Currently, it takes about 6 months to get a license under the “special exception” process.

Main approval conditions for an attached accessory apartment in ZTA 12-11

Number of units	1 apartment per house
Other rentals?	Accessory apartment prohibited if there is a “registered living unit”, rented guest room, or other rental at the address
Owner occupancy	Owner must reside at the address 6 months of the year.
Entrance for apartment	1) Separate rear or side entrance, or 2) Separate front entrance if it existed before the ZTA 3) Shared front entrance
Number of occupants	1) 2 adults 2) No limit on number of minors (except housing code)
Size of apartment	The lesser of: 1) Less than 50% of the square footage of the house, and 2) 1,200 square feet No more than 800 square feet of a new addition to a house.
Age of house	Must be at least 5 years old
Spacing of apartments	1) Must be at least 300 feet from any other apartment located on the same side of the street and in the same block
Parking	1) If there is an existing driveway, 1 on-site space must be provided in addition to any spaces required for the main dwelling 2) If a new driveway is required, 2 on-site spaces must be provided in addition to the spaces required for the main dwelling
Notification of neighbors	The applicant must post a sign once the final approval stage of the licensing process has begun (usually about 30 days before the license is issued). Neighbors must look up the project online to review details and submit written comments if they have concerns.
Waiver	Under some conditions, the 300 foot spacing and the on-site parking requirements can be waived. This requires applying for a license through the Special Exception process.
Appeal	If the County decides NOT to issue a license, the applicant may appeal the decision. If the County decides to issue the license, neighbors also may appeal that decision.

Town Resident Comments

- Town residents generally approve of making it easier to get a license for an accessory apartment. They recognize that some residents could benefit from the income from these apartments and also that the apartments provide housing options.
- They noted that licensed apartments which should be “up to code” are potentially safer than unlicensed apartments. They hope that the Town will encourage residents with unlicensed apartments to get them licensed. They thought it would be good for the Town to know where the apartments are located.
- Town residents are most concerned about the impact of apartments on parking. Many stated that parking on their street is tight and the addition of more cars could be a problem, not only when parking their vehicles but also for service vehicles.
- It was noted that outdoor lighting installed for an apartment entrance or to light the way to a side or rear apartment entrance could be unnecessarily bothersome to a neighboring house if any floodlights are directed so that they shine light directly into a neighbor’s windows. It was suggested that the Town adopt the County’s lighting regulation which stipulates that exterior lights should not be aimed at neighbors’ windows. It was felt that the Town could enforce the lighting regulation more effectively than the County does.

LUC Recommendations

1. The Town should publicize the new accessory apartment regulations and encourage residents who have unlicensed apartments to apply for licenses.
2. The Town should consider requiring that residents who obtain a county license for an accessory apartment also obtain a license from the Town. A nominal license fee could be charged to cover the extra costs to the Town for garbage and recycling disposal (including the recycling bin). Additional advantages are that the Town will know the location and number of accessory apartments, can monitor parking especially for streets where parking permits are required, and will know to notify the apartment residents of Town events and services.
3. Town residents should not be required to apply for a Town license at the same time as they apply for the County license. The advantage of such a requirement would be that the Town could notify neighbors that an apartment license had been applied for so that they could comment to the County on any issues such as parking. However, LUC opines that it would be difficult to enforce this regulation. We suggest a “wait and see if it is needed” approach.
4. The Town driveway regulations should not be relaxed. Driveway variances requested to construct an on-site parking space for an accessory apartment generally should not be granted. Residents who cannot meet the on-site parking place requirements

for a “by right” accessory apartment should apply for a waiver under the special exception process.

5. The Town should monitor the number and location of licensed apartments in the Town to see how much the new regulations impact the Town.
6. The Town may want to consider explicitly adopting the County exterior lighting regulations. This action would not increase the number of regulations Town residents are subject to, but would make it possible for the Town to enforce the existing County exterior lighting regulation and also make this County regulation more visible to Town residents.