

ACCESSORY DWELLING UNITS – ZTA 19-1

On January 15, 2019, Councilmember Hans Riemer introduced Zoning Text Amendment 19-1, a proposal designed to remove barriers that currently limit homeowners throughout the County from creating “Accessory Dwelling Units” (“ADUs”) on their property. ADUs are separate dwelling units on the same property as a principal residence. An ADU can be an “Attached ADU,” which is part of the interior of the principal dwelling, including in its cellar, or a “Detached ADU,” which is in a separate building on the same property as the principal dwelling. In either case, the ADU must have a separate entrance, a full kitchen, a bathroom, living quarters, and the same address as the principal dwelling. The ADU must also be “subordinate” to the principal residence.

Impacts on single-family neighborhoods. Many residents of the County’s single-family neighborhoods, especially those with small lots in the R-60 and R-90 zones, view ADUs in general and the provisions of ZTA 19-1 in particular as a blatant attack on the integrity and quality of life of those neighborhoods. ADUs have been controversial since 1983 when they were first allowed. Since then, residents of single-family neighborhoods have routinely opposed ADUs on the grounds that they create significant parking, noise, trash, traffic congestion, school overcrowding, code enforcement and licensing issues that the County lacks the resources and/or the will to address. Those County residents have argued vigorously for additional restrictions on ADUs in their neighborhoods.

Efforts to Relax the Requirements for ADUs. Proponents of affordable housing have been equally adamant that the approval process for ADUs should be simplified and relaxed. Much of the debate came to a head during the discussions leading to the rewrite of the County’s zoning code in 2014. Previously, a special exception was required for ADUs that required notice to neighboring properties, public hearings, evidentiary submissions, and approval of the County Board of Appeals, a process that usually took from nine to 13 months. Advocates for affordable housing argued that the County’s special exception process for ADUs was unnecessarily time-consuming and expensive, and therefore should be significantly relaxed.

In February 2013, the County Council responded by unanimously approving a zoning text amendment, ZTA 12-11, that made sweeping changes to the rules for ADUs. Under the ZTA, ADUs would no longer be special exceptions, but instead would be subject to “Limited Use” or “by right” objective criteria. If these criteria were met, the ADU could be created with no notice to neighbors or public hearing. If the ADUs did not meet the “Limited Use” criteria, it could still be approved through a “Conditional Use” process similar to the old special exception rules. In 2014, the final version of ZTA 12-11 was included in the current zoning ordinance.

Protections for Single Family Neighborhoods. In response to vehement opposition to ZTA 12-11 from single family communities, the Council included numerous protections for those communities in the “Limited Use” criteria for all ADUs. For example, a property owner desiring to create an ADU has to provide at least one parking space dedicated to the ADU or two spaces if a separate driveway is constructed for the ADU; the owner must live in either the principal dwelling or the ADU; occupancy of the ADU is limited to no more than two adults (no restriction on children); and the gross floor area of the ADU, including any cellar area used for the ADU, is limited to the lesser of 50% of the total floor space of the principal dwelling including any cellar space used for the ADU, or 1,200 square feet. Also, no ADU can be created on a property with an existing residential rental unit.

Significantly, only Attached ADUs can be created within a dwelling in the R-200, R-90 and R-60 zones, and these units are subject to additional limitations. The ADU may not be located in the basement of the principal dwelling; the principal dwelling must be at least five years old; and if the ADU is constructed as an addition to the principal dwelling, maximum floor area for the ADU is limited to 800 square feet. In addition, ADUs located on property zoned R-200, R-90 or R-60 cannot be closer than 300 feet from any other ADU on the same block, and there are specific requirements for the entrance of the ADU intended to reflect the single-family nature of the principal dwelling. Perhaps most importantly, **“Detached ADUs” are not currently permitted as either Limited or Conditional Uses in the R-200, R-90 and R-60 zones.**

Deletion of These Limitations in ZTA 19-1. Most of these protections for single-family neighborhoods would be deleted under Councilmember Riemer’s proposal. Because the requirement that “Detached ADUs” be created on lots of one-acre or more would be deleted, **“Detached ADUs” would now be allowed as a Limited Use in the R-200, R-90 and R-60 zones.** Moreover, dedicated parking space(s) would no longer be required for any ADUs; instead, the same two parking spaces generally required for a single-family home would also serve the ADU.

In addition, the 1,200 square foot total floor area limit for all ADUs would be deleted, and the ADU could now be as large as 50% of the habitable floor space in the principal dwelling, including any cellar used for an ADU. ADUs could also be located in the basement of a principal dwelling, and the 800 square foot limit for an addition to a principal dwelling to house an ADU would be deleted. The requirement limiting Attached ADUs to principal dwellings that are at least five years old would be deleted, as would the 300-foot spacing limitation between ADUs located on the same block in an R-200, R-90 or R-60 zone.

Councilmember Riemer's Arguments in Support of ZTA 19-1. According to a press release issued by Councilmember Riemer, ADUs are “an inherently affordable form of housing that may allow some people to live in expensive neighborhoods that would otherwise be out of reach.” Removal of the existing restrictions and protections for owners of small lots in the R-60 and R-90 zones will facilitate more affordable housing “in parts of the County where housing has become prohibitively expensive,” and provide a “wonderful solution for housing different generations of a family.”

Councilmember Riemer also claims that ZTA 19-1 will change the County's current treatment of ADUs “as a nuisance to be avoided rather than a resource to be welcomed,” because ADUs are “great housing options for parents or grandparents, adult children and relatives, individuals with special needs and caregivers, and of course people generally.” He urges us to think of all ADUs as potential “in-law suites or granny flats,” and to imagine Detached ADUs as “tiny houses or cottages,” or as “apartments over a garage.”

The Fatal Flaws in Councilmember Riemer's Argument. The most obvious problem with ZTA 19-1 is the glaring disparity between the Councilmember's reassuring descriptions of ADUs and their harsh realities. There is no requirement in ZTA 19-1 that occupants of an ADU be in-laws, grannies, or other inter-generational members of the owner's family. Instead, the ADU can be occupied by a large family of unrelated renters.

There are also no meaningful limitations on the size of Detached ADUs guaranteeing that the unit will be a “tiny house,” “cottage,” or even an “apartment over a garage.” Under ZTA 19-1, enterprising home owners will be allowed to build new “second homes” in their back yards that they can even rent out on a short-term basis through online travel sites (think Airbnb, HomeAway, VRBO).

Moreover, with no dedicated parking space(s) for the ADU, no 300-foot spacing limitations for Attached ADUs on a single block, no limitation on number of children occupying an ADU, no limit on ADUs in basements and cellars, and allowable floor space as large as 50% of the habitable space in principal dwelling, the impacts on the neighborhoods in which these ADUs are located will inevitably lead to congested streets, scarcity of street parking, elevated noise levels, overflowing trash, and school overcrowding. In other words, ZTA 19-1 is a formula for unacceptable degradation of the quality of life in small lot R-60 and R-90 communities throughout the County. A table comparing the rules for ADUs in the current zoning code with the proposed ADU rules in ZTA 19-1 is attached.¹

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¹ Arguments have been made that Montgomery County's rules regarding ADUs are comparatively more restrictive than the rules for ADUs in the District of Columbia. However, a review of the D.C. rules reveals the opposite. Occupancy in D.C. ADUs is restricted to a total of three persons (not just three “adults”) in some residential zones, and to a total of six persons in both the ADU and principal dwelling in other zones. Attached ADUs are limited to 35% of the gross floor area of the principal dwelling; either the principal dwelling or ADU must be the primary residents of the property owner even if the ADU is not rented; and the principal dwelling must meet specified minimum square footage requirements in certain residential zones before an ADU can be created.