

MEMORANDUM

October 5, 2018

TO: County Council

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing

PURPOSE: Action – roll call voted required

Planning, Housing and Economic Development Committee recommendation (3-0):
enact Bill 26-18 as introduced.

Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing, sponsored by Lead Sponsors Councilmembers Floreen, Leventhal and Council President Riemer, was introduced on July 17, 2018. A public hearing was held on September 11 at which the lone speaker, Yvonne Brooks-Little testified in support of Bill 26-18. A Planning, Housing and Economic Development Committee worksession was held on September 24.

Bill 26-18 would amend the licensing procedures for an accessory apartment rental license and amend the process for appeals, objections and waivers. This Bill is associated with ZTA 18-07. ZTA 18-07, also introduced on July 17, 2018. ZTA 18-07 would remove the requirement for conditional use approval for all accessory apartments and revise the limited use provisions for accessory apartments. Approval of this Bill in some form would be necessary to implement the core concepts in ZTA 18-07.

Issues

1) What does Bill 26-18 do?

Bill 26-18:

revises the power and duties of the Hearing Examiner by allowing the approval of waivers to findings made by the Director of the Department of Housing and Community Affairs in accessory apartment licensing;

requires that the sign currently required on-site to inform residents of the accessory apartment application, include notice of any waiver request;

revises the time period for noticing an objection (from 5 days to 10 days) and the time period in which a hearing must be held (from 20 days to 30 days); and

allows for a waiver of the minimum distance between accessory apartments (the current code allows for the Hearing Examiner to determine if there is adequate on-street parking) and to sustain or deny any objection and waivers to DHCA's findings regarding the license in a single proceeding.

2) How is ZTA 18-07 and Bill 26-18 related?

ZTA 18-07 deletes the possibility of a conditional use and allows the possibility for a waiver within the licensing approval process. Bill 26-18 does the same in the Chapter concerning licensing. The "waiver" concept is new in terms of the Hearing Examiner's authority. In the absence of Bill 26-18, the Hearing Examiner would not have the authority to grant a waiver.

This packet contains:

Bill 26-18

Legislative Request Report

Fiscal and Economic Impact statement

Circle #

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Bill No. 26-18
Concerning: Landlord-Tenant Relations –
Accessory Apartment Licensing
Revised: 6/8/2018 Draft No. 3
Introduced: July 17, 2018
Expires: January 17, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmembers Floreen, Leventhal and Council President Riemer

AN ACT to:

- (1) amend the licensing procedures for an accessory apartment rental license;
- (2) amend the process for appeals, objections, and waivers, and
- (3) generally amend County law relating to accessory apartment licensing.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-140

Chapter 29, Landlord Tenant Relations
Sections 29-19 and 29-26

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 2-140, 29-19, and 29-26 are amended as follows:

2-140. Powers, duties and functions.

* * *

(c) The Office may hear, and submit a written report and decision to the specified officer or body on, any:

- (1) [petition to the County Council to] application to initiate, modify or revoke a special exception or conditional use, as provided in Chapter 59;
- (2) designation by the County Council of a geographic area as a community redevelopment area;
- (3) matter referred by the Board of Appeals under Section 2-112(b); or
- (4) waiver or objection to a finding made by the Director of the Department of Housing and Community Affairs concerning an application for an accessory apartment rental housing license under Section 29-26.

* * *

29-19. Licensing procedures.

* * *

(b) Accessory apartment rental license.

- (1) An owner of a lot or parcel in a zone that permits accessory apartments may obtain a license to operate an accessory apartment if:
 - (A) the owner places a sign provided by the Director on the lot of the proposed accessory apartment within 5 days after the Director accepts an application license[, unless a sign is required as part of an application for a special exception].

The sign must identify any requested waivers under Section 29-26(b). The sign provided by the Director must remain in place on the lot for a period of time and in a location determined by the Director.

* * *

(C) the Director finds that:

(i) the accessory apartment satisfies the standards for an accessory apartment in Section 59-3.3.3. and if needed, a Hearing Examiner granted a waiver under Section 29-26; or

(ii) the accessory apartment was approved under Article 59-G as a special exception under the Zoning Ordinance applicable before October 30, 2014.

* * *

29-26. Appeals, Waivers, and Objections.

* * *

(b) Waivers and [Objections] objections concerning any new accessory apartment license.

(1) The applicant for a new license for an accessory apartment may request a waiver of a standard to the extent allowed by Section 59.3.3.3 or object to an adverse finding of fact by the Director by filing a waiver or an objection and a request for a hearing with the Office of Zoning and Administrative Hearings.

(2) Any other aggrieved person may file an objection and request for a hearing with the Office of Zoning and Administrative Hearings by:

(A) objecting to any finding of fact by the Director; or

55 (B) alleging that on-street parking is inadequate [when a special
56 exception is not required].

57 (3) A request for a [review by the Hearing Examiner] waiver or an
58 objection must be submitted to the Office of Zoning and
59 Administrative Hearings within 30 days after the date of the
60 Director's report and must state the basis for the waiver or
61 objection.

62 (4) The Hearing Examiner must send notice of an adjudicatory hearing
63 to the applicant and any aggrieved person who filed an objection
64 within [5] 10 days after the waiver or objection is received and
65 conduct any such hearing within [20] 30 days of the date the
66 objection is received unless the Hearing Examiner determines that
67 necessary parties are unable to meet that schedule.

68 (5) The Hearing Examiner may only decide the issues raised by the
69 waiver or objection.

70 (6) The Hearing Examiner may [find that] waive on-street parking [is
71 inadequate] standards if:

72 (A) the available on-street parking for residents within 300 feet
73 of the proposed accessory apartment would [not] permit a
74 resident to park on-street near his or her residence on a
75 regular basis; and

76 (B) the proposed accessory apartment is not likely to reduce the
77 available on-street parking within 300 feet of the proposed
78 accessory apartment.

79 (7) The Hearing Examiner may find that more than the minimum on-
80 site parking must be required as a condition of the license and may

81 impose other conditions to assure adequate parking on granting the
 82 waiver.

83 (8) The Hearing Examiner may waive the distance separation
 84 standards between Accessory Apartments when the separation
 85 does not result in an excessive concentration of similar uses,
 86 including other conditional uses, in the general neighborhood of
 87 the proposed Accessory Apartment.

88 (9) The Hearing Examiner may consolidate public hearings on any
 89 requested waivers and any objections to the Director's findings
 90 that involve the same license application.

91 [(8)](10) The Hearing Examiner must issue a final decision within 30
 92 days after the close of the record of the adjudicatory hearing. If
 93 both a waiver request and an objection relating to the same
 94 accessory apartment license application are filed, the Hearing
 95 Examiner must issue a final decision within 30 days after the close
 96 of the record in both cases.

97 [(9)] (11) The Director must issue or deny the license based on the final
 98 decision of the Hearing Examiner.

99 [(10)] (12) Any [aggrieved party who objected under subsection 29-
 100 26(b)] party aggrieved by the Hearing Examiner's decision on an
 101 objection or a waiver may request the Circuit Court to review the
 102 Hearing Examiner's final decision under the Maryland Rules of
 103 Procedure. An appeal to the Circuit Court does not automatically
 104 stay the Director's authority to grant a license.

LEGISLATIVE REQUEST REPORT

Bill 26-18

Landlord-Tenant Relations – Accessory Apartment Licensing

DESCRIPTION:	Bill 26-18 would: <ul style="list-style-type: none">• amend the licensing procedures for an accessory apartment rental license;• amend the process for appeals, objections, and waivers; and• generally amend County law relating to accessory apartment licensing.
PROBLEM:	ZTA 18-07 would remove the conditional use approval process for any accessory apartment. Current law of accessory apartment licensing would be inconsistent if ZTA 18-07 is approved.
GOALS AND OBJECTIVES:	The goal of Bill 26-18 is to be consistent with the approval process of accessory apartments required by Chapter 59.
COORDINATION:	Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Jeffry L. Zyontz, Senior Legislative Analyst
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A



ROCKVILLE, MARYLAND

MEMORANDUM

August 16, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget *M. C. B. G. H. H.*
Alexandre A. Espinosa, Director, Department of Finance *M. C. B. G. H. H.*

SUBJECT: FEIS for Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:df

c: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Office of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Pofen Salem, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
Bill 26-18
Landlord-Tenant Relations -- Accessory Apartment Licensing

1. Legislative Summary

Bill 26-18 would amend the procedures for accessory apartment rental licenses, including the process for appeals, objections and waivers, and generally amend County law relating to accessory apartment licensing.

Specifically, Bill 26-18, and the accompanying Zoning Text Amendment (ZTA)18-07, would eliminate the Office of Zoning and Administrative Hearing's (OZAH) conditional use approval process for an accessory apartment license, replacing it with a waiver process. Current law for accessory apartment licensing would be inconsistent if ZTA 18-07 is approved.

Currently, applicants for an accessory apartment license that are rejected by the Department of Housing and Community Affairs (DHCA) may file an application to obtain a conditional use for an accessory apartment only in the following limited circumstances:

- To deviate from the requirements for on-site parking and/or for distance from other accessory apartments; or
- To permit a detached accessory apartment in the AR, R and RC zones.

According to OZAH, the conditional use review process takes four to five months to complete and requires a review by Montgomery County Planning Department (Montgomery Planning). Eliminating the conditional use review and implementing a new waiver process would streamline the process by removing Montgomery Planning's required review. Whereas the standard of review would not change under this Bill, the new process would reduce processing time by approximately 50 percent.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill 26-18 might have an impact on Montgomery Planning's workload due to removing its required review in the process, but information was not available from Montgomery Planning at this time. This Bill would slightly reduce revenue. Between FY14 and FY18, a total of 13 accessory apartment conditional use applications were filed. This represents an average of 2.6 applications per year. Each applicant must pay a \$300 conditional use application fee. There is no fee for the waiver process. Based on the assumption of three applications a year, it is anticipated that County revenues would be reduced by \$900 per year. Note that properties granted accessory apartment licenses could have a higher assessment than the ones without and this could have an impact on County property tax revenues. However, it is impossible to estimate revenue changes because no data is available on tax assessments for accessory apartments.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Based on the assumption provided in #2, estimated fee revenues for the next six years would be reduced by \$5,400 (= \$900 x 6). These may be offset by increased property tax revenues. There would be no changes in County expenditures.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not Applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The bill does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

None. However, it should be noted that Bill 26-18 would eliminate the involvement of MCPD staff from the accessory apartment review process.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Not Applicable.

9. An estimate of costs when an additional appropriation is needed.

Not Applicable.

10. A description of any variable that could affect revenue and cost estimates.

The number of applications reviewed under a waiver process could affect revenue estimates. Given the number of conditional use applications filed in previous years, the impact is likely to be insignificant.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.


Not Applicable.

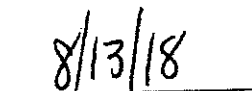
13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

Clarence Snuggs, Department of Housing and Community Affairs
Martin Grossman, Office of Zoning and Administrative Hearings
Tim Goetzinger, Department of Housing and Community Affairs
Francene Hill, Department of Housing and Community Affairs
Pofen Salem, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget


Date

Economic Impact Statement
Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing

Background:

Bill 26-18 would:

- amend the licensing procedures for an accessory apartment rental license;
- amend the process for appeals, objections, and waivers; and
- amend County law relating to accessory apartment licensing.

The proposed legislation would conform to provisions of the Zoning Text Amendments (ZTA) No. 18-07 that amends sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code.

1. The sources of information, assumptions, and methodologies used.

Sources of information used in the preparation of the economic impact statement include a report entitled “Stimulating Accessory Apartment Development: 2018”, prepared by Jane Lyons, Department of Public Policy, University of Maryland, for the County Council; and information provided by County Council staff. The Department of Finance (Finance) did not make any assumptions or use any methodologies in the preparation of the economic impact statement.

According to the report prepared for the County Council, the economic benefits of accessory apartments include the creation of construction jobs, an increase in the property tax base, and an increase in the supply of affordable housing. The report also states that “accessory apartments help to diversify the housing stock in places where land is limited and create more affordable options for young professionals, non-nuclear households, multigenerational households, empty nesters, immigrants, and seniors.”

The report also outlines the current accessory apartment approval process. Portions of that process include:

- The applicant obtains a Rental Housing License from DHCA Licensing and Registration;
- The applicant applies for a Class 3 Accessory Apartment license through DHCA Licensing;
- DHCA sends a written notification of the application acceptance or returns the application and all fees with a written explanation regarding missing documents;
- The Hearing Examiner receives a copy of the application with documents of acceptance of the application;
- The DHCA Director issues a report on the findings of the Licensing review and Housing Code inspection; and
- A license is either issued or denied 30 days after the issuance of the DHCA Director’s report.

Economic Impact Statement
Bill 26-18, Landlord-Tenant Relations – Accessory Apartment Licensing

If the application is rejected by DHCA, then the applicant or applicants may file an application to obtain a conditional use permit only under specified conditions. If the property does not meet the requirements, the applicant can object with the Office of Zoning and Administrative Hearings (OZAH) and request a hearing within 30 days of the DHCA's Director report.

As stated previously, Bill 26-18 and ZTA No. 18-07 remove the requirement for conditional use approval for all accessory apartments and revise the limited use provisions for attached and detached accessory apartments.

Based on data in the report of the 258 applications, 100 were not approved since 2013 and 22 of those 100 are pending. According to County Council staff, some of those applications awaiting approval would have the opportunity to seek a waiver under Bill 26-18. In addition to those awaiting approval, there could be additional applications because the conditional use approval would not be required under Bill 26-18 and ZTA No. 18-07. County Council staff estimates there could be an additional 20 accessory apartments per year at the high end of a range of uncertainty.

2. A description of any variable that could affect the economic impact estimates.

The variable that could affect the economic impact estimates is the number of additional accessory apartments per year. As stated in #1, the estimate is an additional 20 per year.


3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill 26-18 could have a positive economic impact on construction employment, an increase in the County's real property tax base, and an increase in affordable housing.

4. If a Bill is likely to have no economic impact, why is that the case?

As stated in #3, Bill 26-18 could have a positive impact on the County's economy with the addition of accessory apartments and thereby an increase in construction employment, an increase in property values and property tax base, and an increase in the supply of affordable housing for County residents such as young professionals, immigrants, and multigenerational households.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.



Alexandre Espinosa, Director
Department of Finance

8/2/18
Date