

SUBJECT

Zoning Text Amendment (ZTA) 21-10, Accessory Structures – Use Standards

Lead Sponsors: Councilmembers Friedson and Jawando

EXPECTED ATTENDEES

- Casey Anderson, Chair, Montgomery County Planning Board
- Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
- Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department
- Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, DPS
- Patricia Wolford, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, DPS

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

PHED Committee unanimously (3-0) recommends approval without amendment.

DESCRIPTION/ISSUE

ZTA 21-10 clarifies the “50% Rule”, which provides the maximum footprint for accessory buildings on a lot in the Agricultural, Rural Residential, and Residential Detached zones. ZTA 21-10 makes it clear that the cumulative footprint of all accessory structures may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater.

SUMMARY OF KEY DISCUSSION POINTS

- In July 2021, the Court of Special Appeals found that Section 4.4.6.B.2.d. of the Zoning Ordinance must be read to mean that a property-owner may have more than one accessory building and that each accessory building can have a maximum footprint that is 50% of the main building or 600 square feet, whichever is greater.
- The County has historically interpreted this provision to apply to the cumulative footprint of all structures, not each accessory structure.
- ZTA 21-10 will amend the Zoning Ordinance to make clear that the 50% Rule applies to the total footprint of all structures, not each accessory structure.
- ZTA 21-10 will not change the exemption for buildings for an agricultural use, nor will it apply to Detached Accessory Dwelling Units.

This report contains:

Staff Report
ZTA 21-10
Board of Appeals v. Crews

Pages 1-3
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Planning Board recommendation
Planning Staff memorandum
RESJ Impact Statement
Office of Agriculture letter of support

© 20
© 21
© 26
© 28

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Worksession/Action

MEMORANDUM

March 3, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 21-10, Accessory Structures – Use Standards

Committee recommendation (3-0): approval of the ZTA as amended.
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Expected Participants

- Casey Anderson, Chair, Montgomery County Planning Board
- Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
- Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department
- Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, DPS
- Patricia Wolford, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, DPS

Summary

Zoning Text Amendment (ZTA) 21-10, Accessory Structures – Use Standards, lead sponsors Councilmembers Friedson and Jawando, was introduced on November 16, 2021. ZTA 21-10 clarifies that the cumulative footprint of all accessory structures may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater.

Public Hearing

A public hearing was held on January 18, 2022. The only speaker was Casey Anderson, Planning Board Chair.

The Council also received a letter in support from a Silver Spring resident. The letter noted that the Zoning Ordinance as written is unclear, and that this lack of clarity could create widespread problems throughout the County and diminish property values. The Office of Agriculture also submitted a letter in support of ZTA 21-10.

Planning Board Recommendation

The Planning Board recommended approval of ZTA 21-10. No amendments were proposed.

Discussion

Background

In July 2021, the Court of Special Appeals found that Section 4.4.6.B.2.d. of the Zoning Ordinance must be read to mean that a property-owner may have more than one accessory building and that each accessory building can have a maximum footprint that is 50% of the main building or 600 square feet, whichever is greater. The County has historically interpreted this provision to apply to the cumulative footprint of all structures, not each accessory structure.

Language of ZTA

ZTA 21-10 will amend the Zoning Ordinance so that the “50% rule” will apply cumulatively. The amendment reads as follows:

Where an Accessory Structure is allowed as a limited use, it must satisfy the following standards:

- a. In Agricultural and Rural Residential zones, [the maximum] where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building. Buildings for an agricultural use are exempt from this size restriction.
- b. In Residential Detached zones, [the maximum] where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

ZTA 21-10 will not change the exemption for buildings for an agricultural use. In addition, it will not apply to Detached Accessory Dwelling Units. Lastly, because this language is also contained in the standard method of development tables for the Agricultural, Rural Residential, and Residential Detached zones, the text in those tables has been updated as well. For example:

Section 4.4.6. Residential Estate – 1 Zone (RE-1)

* * *

B. RE-1 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] <u>all</u> accessory [building] <u>buildings</u> on [a] <u>that</u> lot [where the main building is a detached house is] <u>may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit.</u> Buildings for an agricultural use are exempt from this size restriction.</u>	

RESJ Impact Statement

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) impact statement on December 8, 2021. OLO found that ZTA 21-10 would have little to no impact on racial equity and social justice in the County because it clarifies existing practice.

PHED Committee

The PHED Committee held a worksession on ZTA 21-10 on February 7, 2022. The PHED Committee unanimously (3-0) recommended approval of ZTA 21-10 without amendment.

This packet contains:

ZTA 21-10	<u>Pages</u> © 1
<i>Board of Appeals v. Crews</i>	© 13
Planning Board recommendation	© 20
Planning Staff memorandum	© 21
RESJ Impact Statement	© 26
Office of Agriculture letter of support	© 28

Ordinance No.:
Zoning Text Amendment No.: 21-10
Concerning: Accessory Structures –
Use Standards
Draft No. & Date: 2 – 3/1/2022
Introduced: November 16, 2021
Public Hearing: January 18, 2022
Adopted:
Effective:

**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 Sponsors: Councilmembers Friedson and Jawando

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- clarify the standards for the total allowed square footage for all accessory structures.

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

Division 3.7.	“Miscellaneous Uses”
Section 3.7.4.	“Accessory Miscellaneous Uses”
Division 4.2.	“Agricultural Zone”
Section 4.2.1.	“Agricultural Reserve Zone (AR)”
Division 4.3.	“Rural Residential Zones”
Section 4.3.3.	“Rural Zone (R)”
Section 4.3.4.	“Rural Cluster Zone (RC)”
Section 4.3.5.	“Rural Neighborhood Cluster Zone (RNC)”
Division 4.4.	“Residential Zones”
Section 4.4.4.	“Residential Estate – 2 Zone (RE-2)”
Section 4.4.5.	“Residential Estate – 2C Zone (RE-2C)”
Section 4.4.6.	“Residential Estate – 1 Zone (RE-1)”
Section 4.4.7.	“Residential – 200 Zone (R-200)”
Section 4.4.8.	“Residential – 90 Zone (R-90)”
Section 4.4.9.	“Residential – 60 Zone (R-60)”
Section 4.4.10.	“Residential – 40 Zone (R-40)”

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.*

OPINION

Zoning Text Amendment (ZTA) 21-10, Accessory Structures – Use Standards, was introduced on November 16, 2021, by lead sponsors Councilmembers Friedson and Jawando. ZTA 21-10 clarifies that the cumulative footprint of all accessory structures may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. ZTA 21-10 will not change the exemption for buildings that have an agricultural use. In addition, it will not apply to Detached Accessory Dwelling Units.

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) impact statement on December 8, 2021. OLO found that ZTA 21-10 would have little to no impact on racial equity and social justice in the County because it clarifies existing practice.

The Montgomery County Planning Board reviewed ZTA 21-10 at its regular meeting on January 6, 2022. The Planning Board unanimously (5-0) recommended approval of ZTA 21-10 as introduced.

A public hearing was held on January 18, 2022. Planning Board Chair Casey Anderson testified in support. The Council also received letters in support from the Office of Agriculture and from a Silver Spring resident.

The PHED Committee held a worksession on February 7, 2022. The PHED Committee unanimously recommended approval of ZTA 21-10 without amendment.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 21-10 will be approved as amended.

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 59-3.7 is amended as follows:

Division 3.7. Miscellaneous Uses

* * *

Section 3.7.4. Accessory Miscellaneous Uses

A. Accessory Structure

1. Defined

Accessory Structure means a structure subordinate to and located on the same lot as a principal building, the use of which is incidental to the use of the principal building or to the use of the land. An Accessory Structure is not attached by any part of a common wall or common roof to the principal building.

2. Use Standards

Where an Accessory Structure is allowed as a limited use, it must satisfy the following standards:

- a. In Agricultural and Rural Residential zones, [the maximum] where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building. Buildings for an agricultural use are exempt from this size restriction.
- b. In Residential Detached zones, [the maximum] where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not

apply to Section 3.3.3.C, Detached Accessory Dwelling Unit.
Buildings for an agricultural use are exempt from this size
restriction.

* * *

Sec. 2. Division 59-4.2 is amended as follows:

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)

* * *

F. AR Zone, Standard Method Development Standards

	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
3. Placement	
* * *	
Specification for Principal Building and Accessory Structure Setbacks	
* * *	
c. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative</u> footprint of [an] <u>all</u> accessory [building] <u>buildings</u> on [a] <u>that</u> lot [where the main building is a detached house is] <u>may not exceed</u> 50% of the footprint of the [main] <u>principal</u> building. Buildings for an agricultural use are exempt from this size restriction.	

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Sec. 3. Division 59-4.3 is amended as follows:

Division 4.3. Rural Residential Zones

* * *

41 **Section 4.3.3. Rural Zone (R)**

42 * * *

43 B. R Zone, Standard Method Development Standards

	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building. Buildings for an agricultural use are exempt from this size restriction.</u>	

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45 **Section 4.3.4. Rural Cluster Zone (RC)**

46 * * *

47 B. RC Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	

2. Placement

* * *

Specifications for Principal Building and Accessory Structure Setbacks (min)

* * *

e. [The maximum] Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building. Buildings for an agricultural use are exempt from this size restriction.

* * *

Section 4.3.5. Rural Neighborhood Cluster Zone (RNC)

* * *

C. RNC Zone, Standard Method Development Standards

1. Site	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone	
* * *		
3. Placement		
* * *		
Specifications for Principal Building and Accessory Structure Setbacks		* * *
* * *		
d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main]</u>		

<u>principal</u> building. Buildings for an agricultural use are exempt from this size restriction.	
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* * *

Sec. 4. Division 59-4.4 is amended as follows:

Division 4.4. Residential Zones

* * *

Section 4.4.4. Residential Estate – 2 Zone (RE-2)

* * *

B. RE-2 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.</u>	

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Section 4.4.5. Residential Estate – 2C Zone (RE-2C)

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62 B. RE-2C Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.</u>	

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64 **Section 4.4.6. Residential Estate – 1 Zone (RE-1)**

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66 B. RE-1 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	

2. Placement

* * *

Specifications for Accessory Structure Setbacks

* * *

d. [The maximum] Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

* * *

Section 4.4.7. Residential – 200 Zone (R-200)

* * *

B. R-200 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specification for Accessory Structure Setbacks	
* * *	
b. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the</u>	

footprint of the [main] principal building or 600 square feet, whichever is greater.
This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

* * *

Section 4.4.8. Residential – 90 Zone (R-90)

* * *

B. R-90 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
<p>d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit.</u> Buildings for an agricultural use are exempt from this size restriction.</p>	

* * *

Section 4.4.9. Residential – 60 Zone (R-60)

* * *

B. R-60 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
<p>d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.</u></p>	

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* * *

80 **Section 4.4.10. Residential – 40 Zone (R-40)**

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* * *

82 **B. R-40 Zone, Standard Method Development Standards**

1. Site	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone	* * *
* * *		
3. Placement		
* * *		

Specifications for Accessory Structure Setbacks		
*	*	*
<p>d. [The maximum] <u>Where the principal building on a lot is a detached house, the cumulative</u> footprint of [an] <u>all</u> accessory [building] <u>buildings</u> on [a] <u>that</u> lot [where the main building is a detached house is] <u>may not exceed</u> 50% of the footprint of the [main] <u>principal</u> building or 600 square feet, whichever is greater. <u>This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit.</u> Buildings for an agricultural use are exempt from this size restriction.</p>		

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* * *

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Sec. 5. Effective date. This ordinance becomes effective 20 days after the

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date of Council adoption.

Circuit Court for Montgomery County
Case No. 450978-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1687
September Term, 2019

BOARD OF APPEALS FOR MONTGOMERY
COUNTY

v.

LARRY J. CREWS, *et al.*

Nazarian,
Friedman,
Wells,

JJ.

Opinion by Friedman, J.

Filed: July 6, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case concerns the application of a provision of the Montgomery County Zoning Ordinance regarding accessory buildings (basically non-residential outbuildings) on a property-owner’s lot. The rule, which the parties refer to as the “50% Rule,” provides:

The maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the main building or 600 square feet, whichever is greater.

MONT. CNTY. ZONING ORDINANCE, § 59-4.4.6.B.2.d. Larry and Sharon Crews, property-owners in Montgomery County and appellees here, have several accessory buildings on their property and read this provision to apply individually to each accessory building. According to the Crewses’ interpretation, no single one of their accessory buildings is or can be bigger than 50% of the size of their house or 600 square feet, whichever is greater. The appellant Board of Appeals, by contrast, reads the provision to apply cumulatively to all of the Crewses’ accessory buildings. Thus, according to the Board, the cumulative total of the square footage of all of the Crewses’ accessory buildings cannot exceed 50% of the size of their house or 600 square feet, whichever is greater. For the reasons that follow, we hold that the Crewses’ interpretation is correct as a matter of law and therefore affirm the decision of the Circuit Court for Montgomery County.

BACKGROUND

Mr. and Ms. Crews own a 29,714 square foot lot in Silver Spring. The Crewses’ lot is improved with a detached home of 1,176 square feet and seven (count ‘em, 7) accessory buildings: (1) a long, narrow building, that looks like a single-wide mobile home or construction trailer of 840 square feet; (2) a shed of 130 square feet; (3) a shed of 100 square feet; (4) a Costco canopy shed of 200 square feet; (5) a second Costco canopy shed

of 200 square feet; (6) a proposed canopy shed of 200 square feet; and (7) a second proposed canopy shed of 200 square feet.¹ Accessory buildings #6 and #7 are the subjects of this appeal. The Crewses applied for permits to build Accessory buildings #6 and #7 but when the permits weren't forthcoming, as we describe below, built them anyhow. As a result, they now have seven accessory buildings that have a cumulative total square footage of 1,870 square feet.

The Crewses' applications for permits for accessory buildings #6 and #7 were denied by the Montgomery County Department of Permitting Services. The Crewses appealed to the Board of Appeals, which denied their appeal. The Crewses then petitioned for judicial review in the Circuit Court for Montgomery County, which reversed the Board and ordered Permitting Services to issue the permits. The Board appealed to this Court.

DISCUSSION

In appeals from decisions of administrative agencies, we don't review the decision of the circuit court, but look back and review the decision of the agency. We give some deference to the agency's legal interpretation of its governing statute, but otherwise do not defer to the agency when we find their decision is based on erroneous legal conclusions. *Priester v. Board of Appeals of Baltimore Cnty.*, 233 Md. App. 514, 534 (2017). Here, we

¹ Regrettably, the record does not give us many details about the construction, permanence, and use of the Crewses' collection of accessory buildings. We assume that the Crewses' accessory buildings are all permanent structures and subject to the Zoning Ordinance.

are reviewing the agency’s interpretation of its governing statute, the Montgomery County Zoning Ordinance, so we are mindful and respectful of the Board’s expertise.

As we are engaged in statutory interpretation, we are attempting to determine the intention of the legislative body that adopted the Zoning Ordinance, in this case, the Montgomery County Council. Our analysis begins with the plain ordinary meaning of the statute, as that is often the best indication of the legislative intent. *Daughtry v. Nadel*, 248 Md. App. 594, 611-14 (2020). We also look at the 50% Rule in the context of the Zoning Ordinance as a whole, and in doing so must ensure all of the Zoning Ordinance’s parts are in harmony with each other. *Id.*

There is no difficulty in applying the 50% Rule when a property-owner has a single accessory building. The accessory building cannot be larger than 50% of the size of the main building or 600 square feet, whichever is greater. The problem comes, however, when a property-owner wishes to have two or more accessory buildings. As a matter of logic, we can see three alternatives: (1) no property-owner is allowed to have more than one accessory building; (2) a property-owner may have more than one accessory building and each accessory building can have a maximum footprint that is 50% of the main building or 600 square feet, whichever is greater; or (3) a property-owner may have more than one accessory building but all of the accessory buildings can have a cumulative total maximum footprint that is 50% of the main building or 600 square feet, whichever is greater.

No party is arguing for Option 1, that property-owners cannot have multiple accessory buildings regardless of their size. There are several reasons for this. Most basically, it is because the subject of the 50% Rule is the accessory building, not the lot. It

is a rule about how big an accessory building can be, not how many accessory buildings a property-owner can have or how many accessory buildings may be on a property.

Additionally, the Montgomery County Zoning Ordinance contains a very standard interpretive provision, that says that the “singular includes the plural.”² This interpretive rule makes clear that a property-owner can have more than one accessory building. The interpretive rule allows the singular noun “footprint” to be read as the plural noun, “footprints.” The interpretive rule allows us to delete the indefinite article “an,” which means “one.” *Pleasants Investments v. SDAT*, 141 Md. App. 481, 496 (2001). And it allows the singular noun “accessory building” to be read as the plural noun “accessory buildings.” Thus, applying the singular includes the plural interpretive rule to the 50% Rule results in the following: “The maximum footprints of ~~an~~ accessory buildings on a lot where the main building is a detached house is 50% of the main building or 600 square feet, whichever is greater.” (strikethrough indicates deletion; underline indicates substituted text). Thus, we know that there is no prohibition on having more than one accessory building.

This understanding of why Option 1 is incorrect also begins to explain why Option 3 (the Board’s interpretation) is also not correct. Even accounting for the singular including the plural, the 50% Rule is still directed at the accessory buildings, not the lot. It says how big the accessory buildings can be. Moreover, there is no other singular noun that could be logically made into a plural. That is, it doesn’t make sense or advance the Board’s argument to talk about “lots” instead of “lot,” “detached houses” instead of “detached house,” or

² The full text of that interpretive rule is: “The singular includes the plural and the plural includes the singular.” MONT. CNTY. ZONING ORDINANCE, § 59-1.4.1.

“main buildings” instead of “main building.” Thus, we have gone as far as we can with the “singular includes the plural” interpretive tool. It just doesn’t get us any further.³ In the end, we think the text of the rule suggests Option 2 as the correct reading.

To completely rule out Option 3 we rely on two other interpretive tools. First, we are compelled to read statutes and ordinances as written and we disfavor an interpretation that requires us to add words to make them work. *Taylor v. NationsBank, N.A.*, 365 Md. 166, 181 (2001). Although Option 2 is improved and clarified if we pretend the word “each” is in the text of the ordinance, it isn’t necessary to the interpretation. By contrast, Option 3 cannot work unless we add the phrase “cumulative total” or the like to the text of the ordinance. As a result, we are constrained to prefer Option 2. And, second, as the circuit court pointed out, reading the 50% Rule as a lot coverage rule makes it redundant to the actual lot coverage rule, which limits a property-owner to 15% lot coverage. MONT. CNTY. ZONING ORDINANCE, § 59-4.4.6.B.1. (stating in Table 4.4.6B that the “Coverage (max)”

³ Most of the Board’s arguments are directed at this “singular includes the plural” interpretive tool, including its arguments below and in this Court and the legislative history documents that it has supplied. While these arguments are useful in explaining why Option 1 is not appropriate—an argument nobody is advancing—they offer no help in picking between Options 2 and 3. Moreover, even if they did, that isn’t the point of the interpretive technique. The purpose of “singular includes the plural” rules of construction, here and elsewhere, is to resolve ambiguities in statutes, not change the statutes’ meaning. *See, e.g.*, SHAMBIE SINGER & NORMAN SINGER, 2A SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47:34 (7th ed. 2010); *Diaz v. State*, 129 Md. App. 51, 84-85 (1999) (permitting flexible interpretation without changing statute’s meaning). The rule of construction does not mean that singular and plural words are always interchangeable, just that where there is an intention for a statute to apply to a subject, irrespective of whether there is more than one, then the statute will apply. *See, e.g.*, 2A SUTHERLAND § 47:34.

for a “Lot” is “15%”). We will not read the 50% Rule to obviate the lot coverage rule.⁴ Thus, the zoning ordinances, read in context, support our reading as well.

The best reading of the 50% Rule is Option 2—that the 50% Rule permits landowners to have two or more accessory buildings on their lot and it applies to each accessory building individually. If the Montgomery County Council wants the 50% Rule to apply to the cumulative total square footage when there are two or more accessory buildings on a lot then it will need to amend the language of the 50% Rule. We affirm the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; CASE REMANDED TO THE
BOARD OF APPEALS FOR
MONTGOMERY COUNTY TO ISSUE THE
PERMITS; COSTS ASSESSED TO THE
APPELLANT.**

⁴ The Board argued that Option 3 does not make the lot coverage rule redundant, but we disagree. The argument that the 50% Rule and the lot coverage rule can coexist ignores the fact that under the Board’s interpretation a property-owner could be prevented from using the full 15% of their lot if they have a small home and are, as a result, limited to only a single 600 square foot accessory building. The Crewses face this very situation: under the lot coverage rule they could cover approximately 4,500 square feet of their lot, but under the Board’s interpretation of the 50% Rule they would be limited to their 1,176 square foot home and a single 600 square foot accessory building—only 5.98% of their lot. In that situation, the lot coverage rule serves no purpose at all, because the 50% Rule is, in fact, dictating a much lower maximum lot coverage. We are not persuaded that this is a reasonable interpretation of the Zoning Ordinance and, therefore, we agree with the circuit court.



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

January 7, 2022

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 21-10

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 21-10 (ZTA 21-10) at its regular meeting on January 6, 2022. By a vote of 5:0, the Planning Board recommends approval of the ZTA as introduced. The Board is supportive of the ZTA that clarifies the maximum footprint of accessory structures in the agricultural, rural residential, and residential zones.

Specifically, ZTA 21-10 clarifies the language found under the Specifications for Accessory Structure Setbacks in the Standard Method Development Standards Tables for the agricultural, rural residential, and residential zones. The previous language, while interpreted by county agencies to read that the cumulative footprint of accessory structures shall not exceed 50% of the footprint of the main building, was determined by the courts to instead allow each individual accessory structure to have a footprint up to 50% of the main building's footprint. This ZTA adjusts the language to clearly specify the footprint of accessory structures is measured as a cumulative footprint, allowing the code to better match historic interpretations. The amended language further clarifies that accessory dwelling units, covered under Section 3.3.3.C. are separate from accessory structures and do not count toward the cumulative limits.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, January 6, 2022.

Casey Anderson
Chair

CA:BB:aj

ZTA 21-10 ACCESSORY STRUCTURES – USE STANDARDS

Description

ZTA 21-10 would clarify the provisions that limit the maximum footprint for accessory buildings on lots in the Agricultural, Rural Residential, and Residential Detached Zones, to make it clear the cumulative footprint of all accessory structures may not exceed 50% of the principal building or 600 square feet, whichever is greater.

ZTA 21-10

COMPLETED: 12-30-2021

MCPB

Item No. 4

1-6-2022

2425 Reedie Drive

Floor 14

Wheaton, MD 20902



Benjamin Berbert, Planner Coordinator, CP&P, Benjamin.Berbert@montgomeryplanning.org, 301-495-4644

Jason Sartori, Chief, CP&P, Jason.Sartori@montgomeryplanning.org, 301-495-2172

Summary

- In July 2021, the Court of Special Appeals found Section 4.4.6.B.2.d (in the RE-1 zone) of the Zoning Ordinance must read that a property may have more than one accessory building and that each building can have a footprint that is up to 50% of the main building or 600 square feet, whichever is greater
- Historic interpretation by the county and Planning staff was that the 50% or 600 feet were cumulative of all accessory buildings, rather than applied to each individual structure
- ZTA 21-10 clarifies this provision in each applicable section of the code, making the 50% or 600 feet cumulative of all accessory structures on a lot
- This ZTA does not change any existing exemptions including for agricultural buildings, and does not apply to Accessory Dwelling Units
- This ZTA is scheduled for a Public Hearing before the Council on Tuesday, January 18, 2022

LEAD SPONSORS

Councilmembers Friedson and Jawando

INTRODUCTION DATE:

November 16, 2021

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 21-10

ZTA 21-10 was introduced by Councilmembers Friedson and Jawando on November 16, 2021. This ZTA is intended to clarify the provisions in the code that limit the size of accessory structures on lots in the Agricultural, Rural Residential, and Residential Detached zones. The Court of Special Appeals in July 2021 found that the existing provisions would allow a property owner to have multiple accessory buildings, and each building could have a footprint up to 50% the footprint of the principal building or 600 SF, whichever is greater. This went against the historic interpretation of this provision, which would allow multiple accessory buildings on a lot, but placed a cumulative footprint cap across all accessory buildings at 50% the footprint of the principal building or 600 SF. This ZTA would amend the code to clearly read the way the county has historically interpreted the section.

SECTION TWO

ANALYSIS

ZTA 21-10 as introduced

ZTA 20-10 is a long ZTA that makes the same change in multiple subsections of the code. The first section to be modified is Section 3.7.4 Accessory Miscellaneous Uses. Subsections 2.a. and 2.b. define the limits on accessory structures and accessory buildings and would be modified as follows:

- a. In Agricultural and Rural Residential zones, [the maximum] where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building. Buildings for an agricultural use are exempt from this size restriction.
- b. In Residential Detached zones, [the maximum] where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

These changes clarify that on lots within the respective zones with detached houses, the size of the accessory buildings is measured cumulatively. In the Agricultural and Rural Residential zones the only metric measured ensures the cumulative footprint of all accessory buildings does not exceed 50% of

the footprint of the principal building. In Residential Detached zones, the cumulative footprint of all accessory buildings needs to be at or below 50% of the principal building, or below 600 SF, whichever is greater. For zones where detached Accessory Dwelling Units are allowed, a new provision was also added clarifying that these standards to not apply toward those buildings.

The remainder of the ZTA makes identical text changes to the development standards tables for every zone in the Agricultural, Rural Residential, or Residential Detached Zone. In each table, the same text updated above in Section 3.7.4.2. (a or b) was also updated under Specifications for Principal Building and Accessory Structure Setbacks. As an example, below is the modified standards table from the ZTA for the RE-1 Zone.

Section 4.4.6. Residential Estate – 1 Zone (RE-1)

* * *

B. RE-1 Zone, Standard Method Development Standards

1. Lot and Density	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
d. <u>[The maximum] Where the principal building on a lot is a detached house, the cumulative footprint of [an] all accessory [building] buildings on [a] that lot [where the main building is a detached house is] may not exceed 50% of the footprint of the [main] principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit.</u> Buildings for an agricultural use are exempt from this size restriction.	

* * *

Conclusion

Staff supports the changes as introduced for ZTA 21-10 and recommends the Board transmit comments in support of the ZTA to the District Council. The code changes clarify the provisions in the code that limit the cumulative size of accessory buildings on lots with residential detached buildings to be consistent with past practices.

Attachment A – ZTA 21-10 introduction packet

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 21-10 ACCESSORY STRUCTURES — USE STANDARDS

SUMMARY

The Office of Legislative Oversight anticipates that Zoning Text Amendment 21-10 would have little or no impact on racial equity and social justice (RESJ) in the County.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities¹. Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 21-10

The purpose of Zoning Text Amendment 21-10 is to provide clearer language in the Zoning Ordinance that within its use standards for accessory structures to specify that the cumulative footprint of all accessory structures may not exceed 50 percent of the footprint of the principal building or 600 square feet, whichever is greater. The intent of this ZTA is to make the language of the Zoning Ordinance consistent with the County's current interpretation of this requirement.

The County (DPS) has historically interpreted the accessory structures use standard provision of the Zoning Code to apply to the cumulative footprint of all structures, not each accessory structure. The Court of Special Appeals, however, disagreed with the Montgomery County Board of Appeals' reading of this provision determining that the best reading of the 50 Percent Rule permits landowners to have two or more accessory buildings on their lot that meet this specification individually.³ ZTA 21-10 revises the language of the original provision to make it clear that the cumulative footprint of all accessory structures may not exceed 50 percent of the footprint of the principal building or 600 square feet, whichever is greater. ZTA 21-10 was introduced on November 16, 2021.

ANTICIPATED RESJ IMPACTS

OLO does not anticipate RESJ impact for ZTA 21-10 because this ZTA clarifies existing practice rather than changes the intent of the Zoning Code. In turn, ZTA 21-10 will have little to no impact on RESJ in Montgomery County.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

December 8, 2021

RESJ Impact Statement

Zoning Text Amendment 21-10

CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

² Ibid

³ UNREPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND-No. 1687, September Term, 2019 BOARD OF APPEALS FOR MONTGOMERY COUNTY v. LARRY J. CREWS, et al., Nazarian, Friedman, Wells, JJ., Opinion by Friedman, J. Filed: July 6, 2021



THE OFFICE OF AGRICULTURE

Marc Elrich
County Executive
January 14, 2022

Jeremy V. Criss
Director

The Honorable Gabe Albornoz, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: ZTA 21-10- Accessory Structures-Use Standards

Dear Council President Albornoz,

Please accept this letter from the Office of Agriculture-OAG in support of ZTA 21-10 Accessory Structures-Use Standards. The Agricultural Advisory Committee-AAC will be meeting on Tuesday January 18, 2022 at 7:00 pm and therefore, the AAC will not be able to remit comments to the County Council on ZTA 21-10 until after the public hearing.

The OAG acknowledges that ZTA 21-10 memorializes the current practice of the Department of Permitting Services-DPS to review and approve accessory structures on properties that are NOT farms and when the accessory structure is NOT used for an agricultural purpose. The DPS will review the size of Nonagricultural structures to make sure they do not exceed 50% of the footprint of the principle dwelling PLUS the cumulative footprint of all existing accessory structures. The OAG acknowledges that accessory structures on farms that are used for agricultural purposes are exempt from the size restriction.

When a property owner requests an accessory structure to be used for agricultural purposes, the DPS will consult with the OAG to help determine whether the request is truly for an agricultural use. This collaboration helps to make sure that the DPS permitting requirements are met and that specific exemptions for agricultural buildings and structures are valid.

Please note that there is a size restriction on accessory structures used for agricultural education and tourism as outlined in section 59.3.2.6.F that we recommend should be revisited as part of a future ZTA.

Thank you for this opportunity to comment on the ZTA 21-10 and we will participate in the Council Work Session when it is scheduled.

Sincerely,

A handwritten signature in blue ink that reads "Jeremy V. Criss".

Jeremy V Criss, Director, Office of Agriculture

cc: Doug Lechliden