

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN**

ORDINANCE NO: G-21-15

AN ORDINANCE concerning

Accessory dwelling units

FOR the purpose of revising a certain definition; adding a certain notice requirement; allowing accessory dwelling units as a permitted use in certain zoning districts; allowing accessory dwelling units as a conditional use in certain zoning districts; imposing certain approval criteria; establishing certain minimum lot requirements; and generally relating to accessory dwelling units within the City of Frederick.

BY repealing and reenacting, with amendments:

Section 301
Appendix A, "Land Management Code"
The Code of the City of Frederick 1966 (as amended)

BY repealing and reenacting, with amendments:

Section 404
Appendix A, "Land Management Code"
The Code of the City of Frederick, 1966 (as amended)

BY repealing:

Sec. 801
Appendix A, "Land Management Code"
The Code of the City of Frederick, 1966 (as amended)

BY repealing:

Section 802
Appendix A, "Land Management Code"
The Code of the City of Frederick, 1966 (as amended)

BY adding:

Section 802
Appendix A, "Land Management Code"
The Code of the City of Frederick, 1966 (as amended)

By repealing and reenacting, with amendments:

Section 803
Appendix A, "Land Management Code"
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments:

Section 1002
 Appendix A, "Land Management Code"
 The Code of the City of Frederick 1966 (as amended)

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That the Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), § 301, be repealed and reenacted with amendments, as follows:

- (a) **Pre-application process. *****
- (b) **Application. *****
- (c) **Development Review Conference (DRC). *****
- (d) **Notice provisions. *****

Table 301-1 Notice Requirements

Application	Reviewing Body	Publication	Signage	Mailing	NAC Meeting
Annexation	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory with every NAC sharing a boundary with the area proposed to be annexed
	Board of Aldermen	In accordance with § 4-406 of the Local Government Article, Annotated Code of Maryland	at least 15 days before the hearing	at least 18 days before the hearing	
Master Plan	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	at least 15 days before the hearing	at least 18 days before the hearing	not required
Area Plan	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14	at least 15 days before the hearing	at least 18 days before the hearing	

		days before the hearing			
Zoning Map Amendments	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application>	within 8 days after filing the application	mandatory
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	at least 15 days before the hearing	at least 18 days before the hearing	
Major Site Plan	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory
Minor Site Plan	Division	one time at least 14 days before DRC	within 8 days after filing the application	within 8 days after filing the application	mandatory
Preliminary Subdivision Plat	Planning Commission	two separate dates in 2 consecutive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory
Final Subdivision Plat Requiring Planning Commission Approval	Planning Commission	two separate dates in 2 consecutive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory
Final Subdivision Plat Requiring Deputy Director Approval and Public Notice	Division (pursuant to Table 505-1)	one time at least 14 days before DRC	within 8 days after the filing the application	within 8 days after filing the application	mandatory
Preliminary Forest Conservation Plan	Planning Commission	two separate dates in 2 consecutive weeks, the first of which is published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	mandatory
Fence Modification	Planning Commission	not required	at least 15 days before the hearing	not required	not required
<u>ADU Modification</u>	<u>Planning Commission</u>	<u>Not required</u>	<u>at least 15 days before the hearing</u>	<u>not required</u>	<u>not required</u>
Land Management Code Text Amendments	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	not required	not required	not required
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14	not required	not required	not required

		days before the hearing			
Comprehensive Plan Text Amendments	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	not required	If a text amendment affects a specific geographical area, notices should be sent out to the adjoining property owner within 8 days after filing the application	not required
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	not required	If a text amendment affects a specific geographical area, notices should be sent out to the adjoining property owner 18 days before hearing.	not required
Comprehensive Plan Map Amendments	Planning Commission	once each week for 3 successive weeks, the first of which must be published at least 14 days before the hearing	within 8 days after filing the application	within 8 days after filing the application	not required
	Board of Aldermen	three separate dates in three consecutive weeks, the first of which must be published at least 14 days before the hearing	at least 15 days before hearing	at least 18 days before the hearing	
Conditions During Comprehensive Rezoning Per § 307(d) of this LMC	Board of Aldermen	two separate dates in 2 consecutive weeks, the first of which is published at least 14 days before the public hearing	not required	not required	not required
Development Rights and Responsibilities Agreement	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	not required	not required	not required
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	not required	not required	not required
Variances, Conditional Uses, Temporary Uses, Nonconforming Uses, and Other Actions Subject to the Original Jurisdiction of the ZBA	Zoning Board of Appeals	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	at least 15 days before the hearing	at least 18 days before the hearing	not required
Administrative Adjustments for Residential Accessibility	Division	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	at least 10 days before approval	not required	not required

Historic Preservation Overlay (HPO) Designation	Historic Preservation Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing	For individual site or structure, applicant shall post sign at least 15 days before hearing. For proposed district or adjustment to the boundaries of a district, Division shall post sign at least 30 days before hearing.	For individual site or structure, applicant shall mail notices at least 18 days before hearing. For proposed district, Division shall mail notices at least 30 days before hearing.	mandatory
	Planning Commission	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing			
	Board of Aldermen	once each week for 2 successive weeks, the first of which is published at least 14 days before the hearing			
HPO Review of Major changes (major exterior rehabilitation, adaptive reuse, etc.)	Historic Preservation Commission	at least 7 days before the hearing	at least 7 days before the hearing	not required	not required
HPO Review of Minor Changes & Improvements (administrative approval)	Division	not required	not required	not required	not required

- (e) Scope of action. ***
- (f) Public hearing. ***
- (g) Post-decision proceedings. ***
- (h) Judicial review. ***

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That the Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), § 404, Table 404-1 be repealed and reenacted, with amendments, by deleting “accessory apartments” and modifying “accessory detached dwelling unit”, as follows:

Table 404-1 Use Matrix

Use	R C	R O	R 4	R 6	R 8	R 12	R 16	R 20	P B	N C	G C	M O	M 1	M 2	D B	D R	DB O	MU	MX E	I S T	P R K	LBCS Func- tion	LBCS Structure	NAIC S	
Residential Uses																									
Accessory Apartments			G	G	G	G	G	G	P	G	G		G	G	P	G	G	P	P	G					
Accessory Detached Dwelling Unit		<u>P</u> <u>or</u> <u>C*</u>	P	P	P	P	P	P	-	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		P	<u>P</u> <u>or</u> <u>C*</u>	[P]	[C]	<u>C</u>					

*subject to Section 802

SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That the Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), § 801 be repealed in its entirety.

SECTION IV. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That the Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), § 802 be repealed and a new § 802 be added to read as follows:

Sec. 802 ACCESSORY DWELLING UNITS (ADUs)

(a) Purpose. The purposes of this section are to:

- (1) promote the development of housing with costs that reflect the range of incomes generated within the City while protecting the quality of life of existing neighborhoods;
- (2) make additional dwelling units available in the City with the objective of increasing the amount of affordable housing to the public;
- (3) promote opportunities for a variety of housing types for current and future residents of all income levels;
- (4) improve the availability of housing for the elderly and individuals with disabilities as well as shelter for the homeless;
- (5) support diverse residential development in the City; and
- (6) Promote new development that is compatible with the character of the existing neighborhood.

(b) Nonresidential properties.

- (1) As indicated in the use matrix (Table 404-1 of this LMC), in the NC, GC, MO, M1, M2, MXE, and IST districts, an ADU is allowed as a conditional use on a nonresidential property
- (2) If the principal structure on the property is used for a nonresidential purpose, an ADU is allowed as a conditional use on a nonresidential property in the DBO and RO districts.
- (3) The approval of an ADU as a conditional use is subject to the following conditions:
 - A. The ADU must be integrated into the principal structure containing the nonresidential use.
 - B. The principal structure must be designed to provide a separate entrance for the ADU.

- C. There must be at least one parking space in addition to the required number of parking spaces required for the principal use. The additional space must be located in the rear yard or the side yard.
- D. An ADU must meet the following minimum lot area requirements:

Zoning District	Lot area per ADU
RO DBO	6,000 square feet
NC GC IST MO M1 M2	10,000 square feet

- E. The residents of the ADU will be protected from noise, traffic, air pollution or other hazards associated with the nonresidential use.

(c) Residential properties – general requirements.

- (1) As indicated in the use matrix (Table 404-1 of this LMC), in the RO, R4, R6, R8, R12, R16, R20, DBO, and DR districts, an ADU is permitted by right on a lot with a single family detached dwelling, a duplex dwelling, or a townhouse dwelling subject to the following conditions:
 - A. Only one ADU may be established on a lot.
 - B. If the parking serving the primary residence on the lot is less than or equal to the minimum required parking per Table 607-1 of this LMC, one additional parking space must be provided. If the conversion of an existing structure to an ADU eliminates parking for the primary residence, additional parking must be provided for the primary residence equal to the number of spaces lost as well as for the ADU.
 - C. The property owner must live in either the primary residence or the ADU.
 - D. The dwelling not occupied by the property owner may not be leased for a period of less than 90 days.
 - E. A home occupation may not be located within an ADU.
 - F. Before the City issues building permits for the construction of an ADU, the property owner must record a declaration of restrictions containing a reference to the deed under which the property was acquired. The declaration must:
 - 1. be binding upon all successors in ownership;

2. require that within 60 days after the sale of the property, the new owner must file with the Planning Division an ADU registration acknowledging the deed restrictions on the property; and
3. require all property owners to abide by this section.

(d) Residential properties - integrated ADUs.

- (1) This subsection applies to an ADU integrated within an existing principal residence or within a proposed addition to the principal residence.
- (2) An integrated ADU may comprise no more than 35% of the gross floor area of the principal structure.
- (3) Any new separate entrance for the ADU must be on the rear of the building or on a side of the building that is not a street side.

(e) Residential properties - detached ADUs in existing structures.

- (1) This subsection applies to an ADU within an existing accessory structure or an addition to an existing accessory structure.
- (2) The ADU may not exceed 800 square feet in area.
- (3) Except as otherwise provided in this paragraph, the height of an ADU may not exceed the height of the principal structure on the lot or 25 feet, whichever is less. The height of an addition to an existing accessory structure that does not meet the minimum setbacks established in subsection (f)(3) of this section may not exceed 20 feet.
- (4) A lot on which an ADU is located is subject to the impervious surface ratio requirements of Section 405, Table 405-1 of this LMC and the maximum rear yard coverage requirements of Section 803 of this LMC.

(f) Residential properties – detached ADUs in new accessory structures.

- (1) This subsection applies to the construction of a new accessory structure to be used as an ADU after July 25, 2021.
- (2) In addition to the requirements of this subsection, the structure must meet the requirements of subsection (e)(2) through (e)(4) of this section.
- (3) The ADU must be located in the actual rear yard of the principal structure.
- (4) Detached ADUs must be constructed on a foundation. Structures not designed to be permanent are subject to the provisions of Section 867(g) of this LMC applicable to trailers, mobile homes, and recreational vehicles.
- (5) The minimum interior setback and minimum rear setback required for an ADU located less than 6 feet from the principal structure is the setback established under Table 405-1 of this LMC. Each minimum setback for an ADU located more

than 6 feet from the principal structure is either half of the setback required under Table 405-1 of this LMC or 3 feet, whichever is greater.

- (6) Unless the Planning Commission modifies this requirement in accordance with paragraph (8) of this subsection, the exterior building materials of the ADU must include building materials used in the construction of the primary residence.
 - (7) Unless the Planning Commission modifies this requirement in accordance with paragraph (8) of this subsection, an ADU must include at least one of the following design elements:
 - A. a pitched roof;
 - B. a dormer located above each window; or
 - C. windows oriented so that the length of the vertical side is at least twice and not more than three times the horizontal length.
 - (8) The Planning Commission may grant a modification upon finding that:
 - A. the modification will not be contrary to the purpose and intent of the LMC;
 - B. the modification is consistent with the comprehensive plan;
 - C. the proposed structure includes compensating design or architectural features so as to meet the overall objectives of this section; and
 - D. the proposed structure is consistent with the scale and design of the surrounding neighborhood.
- (g) TNDs, PNDs, and MU Zones.**
- (1) An accessory dwelling unit proposed to be located in a TND, PND, or MU development must be approved as part of the master plan for that development.
 - (2) In reviewing the master plan, the Reviewing Authority will consider:
 - A. the number of ADUs proposed;
 - B. the compatibility between the exterior building materials of the structure proposed to contain the ADU and the materials and features of the principal structure;
 - C. the ratio of open space and greenspace on a lot; and
 - D. the proposed setbacks and building heights
 - (3) No more than 10% of the lots containing detached single family dwelling units in a development may include ADUs.

- (h) **Parkland dedication.** ADUs approved as part of a master plan will provided parkland dedication in accordance with Section 608(b)(2) of this LMC.
- (i) **Adequate public facilities.** An ADU will be deemed a multifamily dwelling unit for purposes of the APFO.

SECTION IV. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That The Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), § 803 be repealed and reenacted, with amendments, as follows:

Sec. 803 ACCESSORY USES AND STRUCTURES

- (a) **Accessory Uses and Structures—General Regulations.** Accessory uses and structures which are customarily incidental to the permitted principal use or structure, which are clearly subordinate to the permitted principal use or structure and which do not significantly alter the character of the permitted principal use or structure are permitted subject to requirements of this section 803. This subsection (a) does not apply [to] to: a driveway or other paved parking area in a residential zoning [district] district; or an accessory dwelling unit.
 - (1) Accessory uses and structures shall be located on the same parcel as the permitted principal use or structure.
 - (2) Except as provided by subsection (d), no accessory use or structure shall be located within any required front yard.
 - (3) Any accessory uses and structures located within six feet of the permitted principal use or structure or attached in any manner to the principal use or structure shall comply with the setback (yard) requirements of such permitted principal use or structure.
 - (4) Unless otherwise regulated by this Code all accessory uses and structures which are separated from the principal use or structure by more than six feet shall be located at least three feet from every lot line and six feet from every street or alley right-of-way line.
 - (5) In the DR, DBO and DB Districts the minimum setback for an accessory structure along the side lot lines is 0'.
 - (6) Unless otherwise regulated by this Code the lot coverage of uses or structures that are accessory to a residential principal use shall not exceed 30 percent of the actual rear yard where they are being placed. [For purposes of this section, "actual rear yard" means that portion of a lot, extending between the two interior lot lines, between the rear lot line and a line parallel to the rear lot line at the point where the rear facade of the dwelling unit is closest to the rear lot line.] The following are exempt from this requirement:
 - A. Accessory residential structures in the DR, DB, DBO districts; and
 - B. Decks, landings, and related open stairs.

- (7) An accessory structure may not be higher than 25 feet or the height of the existing principal structure on the same lot, whichever is lower, except in conjunction with agriculture or industrial [use, or an ADDU as provided in Section 802 of this LMC.] use.
- (b) **Zoning Certificate. *****
- (c) **Accessory Structure for Domestic or Farm Animals. *****
- (d) **Accessory Structures in Front Yards. *****
- (e) **Corner Lots. ****
- (f) **Portable Storage Containers. *****
- (g) **Residential Driveways and Parking Areas. *****

SECTION V. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That The Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), §1002 be repealed and reenacted, with amendments, by adding, amending, and deleting certain definitions, as shown below.

Actual Rear Yard.

That portion of a lot, extending between the two interior lot lines, between the rear lot line and a line parallel to the rear lot line at the point where the rear facade of the dwelling unit is closest to the rear lot line

[Accessory Dwelling Unit

A small detached accessory dwelling unit rented or occupied by the owner of the lot on which it is located with toilet and culinary accommodations, use or designated as a residence, with a separate entrance, which is located in a proposed structure. This use is subordinate to the principal single family dwelling unit existing on the same lot.]

Accessory Dwelling Unit

A secondary dwelling unit established in conjunction with and subordinate to a primary dwelling unit, whether a part of the same structure as the primary home or a detached dwelling unit on the same lot.

Adequate Public Facilities Ordinance or APFO

The City's Adequate Public Facilities Ordinance, Chapter 4 of the Frederick City Code.

[Resident Owner


The person whose permanent residence is in the principal structure or the ADDU and who has title to a lot where there is a single family dwelling unit and an ADDU or a proposal for an ADDU.]

SECTION VI. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

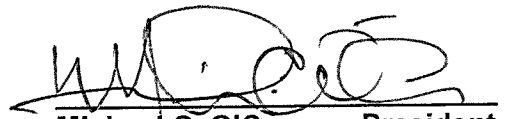
SECTION VII. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That this ordinance shall take effect on October 18, 2021 and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

NOTE: Underlining indicates material added
[**Bold brackets**] indicate material deleted
*** indicates no change

APPROVED: PASSED:




Michael C. O'Connor, Mayor



Michael C. O'Connor, President,
Board of Aldermen

Approved for Legal Sufficiency:



Sandra A. Nichols
City Attorney