

SENATE BILL 871

L6, N1

2lr2393
CF 2lr0726

By: **Senator Washington**

Introduced and read first time: February 7, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

Accessory Dwelling Unit Authorization and Promotion Act

FOR the purpose of requiring, on or before a certain date, each legislative body to adopt a local law authorizing the development of accessory dwelling units on land zoned for single-family residential use subject to certain requirements; providing for requirements for approval of a zoning use permit application, the calculation of development impact fees or building excise taxes, and restrictions on the ability of a utility to require a certain connection or charge a certain fee; prohibiting a restriction on use in an instrument affecting the transfer or sale of real property or any other interest in real property from imposing or acting to impose certain limitations on the development or use of accessory dwelling units on property zoned for single-family residential use; and generally relating to the development and use of accessory dwelling units.

BY repealing and reenacting, without amendments,
Article – Land Use
Section 1–401(a) and (c), 1–402, and 10–103(a)
Annotated Code of Maryland
(2012 Volume and 2021 Supplement)

BY adding to
Article – Land Use
Section 1–401(b)(16); 4–501 through 4–509 to be under the new subtitle “Subtitle 5.
Accessory Dwelling Unit Authorization and Promotion Act”; and
10–103(b)(15)
Annotated Code of Maryland
(2012 Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Land Use
Section 1–401(b)(16) through (27) and 10–103(b)(15) through (20)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2012 Volume and 2021 Supplement)

BY adding to

Article – Real Property

Section 2–126

Annotated Code of Maryland

(2015 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Land Use

1–401.

(a) Except as provided in this section, this division does not apply to charter counties.

(b) The following provisions of this division apply to a charter county:

(16) TITLE 4, SUBTITLE 5 (ACCESSORY DWELLING UNIT AUTHORIZATION AND PROMOTION ACT);

[(16)] (17) § 5–102(d) (Subdivision regulations – Burial sites);

[(17)] (18) § 5–104 (Major subdivision – Review);

[(18)] (19) Title 7, Subtitle 1 (Development Mechanisms);

[(19)] (20) Title 7, Subtitle 2 (Transfer of Development Rights);

[(20)] (21) except in Montgomery County or Prince George’s County, Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);

[(21)] (22) Title 7, Subtitle 4 (Inclusionary Zoning);

[(22)] (23) § 8–401 (Conversion of overhead facilities);

[(23)] (24) for Baltimore County only, Title 9, Subtitle 3 (Single–County Provisions – Baltimore County);

[(24)] (25) for Frederick County only, Title 9, Subtitle 10 (Single–County Provisions – Frederick County);

~~[(25)]~~ **(26)** for Howard County only, Title 9, Subtitle 13 (Single-County Provisions – Howard County);

~~[(26)]~~ **(27)** for Talbot County only, Title 9, Subtitle 18 (Single-County Provisions – Talbot County); and

~~[(27)]~~ **(28)** Title 11, Subtitle 2 (Civil Penalty).

(c) This section supersedes any inconsistent provision of Division II of this article.

1–402.

(a) In addition to the powers the county may have had under this division before adopting code home rule, a code county may exercise the powers relating to land use stated in Title 10 of the Local Government Article.

(b) A code county that chooses to exercise the powers relating to land use stated in Title 10 of the Local Government Article shall be treated as a charter county for purposes of § 1–401 of this subtitle.

SUBTITLE 5. ACCESSORY DWELLING UNIT AUTHORIZATION AND PROMOTION ACT.

4–501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ACCESSORY DWELLING UNIT” MEANS A SECONDARY DWELLING UNIT ON THE SAME LOT, PARCEL, OR TRACT AS A PRIMARY DWELLING UNIT THAT IS CONSTRUCTED:

(1) ATTACHED TO, OR THROUGH THE CONVERSION OF, A PORTION OF THE PRIMARY DWELLING UNIT;

(2) ATTACHED TO, OR THROUGH THE FULL OR PARTIAL CONVERSION OF, AN ACCESSORY STRUCTURE LOCATED ON THE SAME LOT, PARCEL, OR TRACT AS THE PRIMARY DWELLING UNIT; OR

(3) AS A NEW BUILDING, DETACHED FROM THE PRIMARY DWELLING UNIT AND ANY EXISTING ACCESSORY STRUCTURES.

(C) (1) “DWELLING UNIT” MEANS A SINGLE UNIT PROVIDING COMPLETE, INDEPENDENT LIVING FACILITIES FOR AT LEAST ONE PERSON, INCLUDING PERMANENT PROVISIONS FOR SANITATION, COOKING, EATING, SLEEPING, AND OTHER ACTIVITIES ROUTINELY ASSOCIATED WITH DAILY LIFE.

(2) “DWELLING UNIT” DOES NOT INCLUDE A UNIT IN A MULTIFAMILY RESIDENTIAL BUILDING.

(D) “UTILITY” MEANS WATER OR SEWER DISPOSAL SERVICES PROVIDED BY:

(1) A PRIVATE COMPANY REGULATED UNDER DIVISION I OF THE PUBLIC UTILITIES ARTICLE;

(2) THE WASHINGTON SUBURBAN SANITARY COMMISSION REGULATED UNDER DIVISION II OF THE PUBLIC UTILITIES ARTICLE;

(3) A SANITARY COMMISSION REGULATED UNDER TITLE 9, SUBTITLE 6 OF THE ENVIRONMENT ARTICLE; OR

(4) A MUNICIPAL AUTHORITY REGULATED UNDER TITLE 9, SUBTITLE 7 OF THE ENVIRONMENT ARTICLE.

4-502.

THIS SUBTITLE APPLIES ONLY TO THE DEVELOPMENT OF ACCESSORY DWELLING UNITS ON LAND ZONED FOR SINGLE-FAMILY RESIDENTIAL USE.

4-503.

(A) IT IS THE POLICY OF THE STATE TO PROMOTE AND ENCOURAGE THE CREATION OF ACCESSORY DWELLING UNITS ON LAND ZONED FOR SINGLE-FAMILY RESIDENTIAL USE IN ORDER TO MEET THE HOUSING NEEDS OF THE CITIZENS OF MARYLAND.

(B) (1) EXCEPT AS PROVIDED IN THIS SUBTITLE AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBTITLE DOES NOT ALTER OR ABROGATE ANY ZONING POWER OR RELATED AUTHORITY GRANTED TO A LOCAL JURISDICTION UNDER THIS TITLE.

(2) LOCAL JURISDICTIONS SHALL ESTABLISH POLICIES THAT FURTHER THE INTENT OF THIS SUBTITLE.

4-504.

(A) ON OR BEFORE OCTOBER 1, 2023, EACH LEGISLATIVE BODY SHALL ADOPT A LOCAL LAW AUTHORIZING THE DEVELOPMENT OF ACCESSORY DWELLING

UNITS ON LAND ZONED FOR SINGLE-FAMILY RESIDENTIAL USE IN ACCORDANCE WITH THIS SECTION.

(B) A LOCAL LAW ADOPTED UNDER THIS SECTION SHALL APPLY TO ALL LAND IN THE LOCAL JURISDICTION ZONED FOR SINGLE-FAMILY RESIDENTIAL USE, PROVIDED THAT:

(1) THE PARTY DEVELOPING THE ACCESSORY DWELLING UNIT OWNS AND HAS THE EXCLUSIVE RIGHT TO USE THE LOT, PARCEL, OR TRACT ON WHICH THE ACCESSORY DWELLING UNIT IS TO BE DEVELOPED; AND

(2) THE DEVELOPMENT OF NEW DWELLING UNITS ON THE LOT, TRACT, OR PARCEL IS NOT OTHERWISE PROHIBITED DUE TO:

(I) LIMITATIONS ON AVAILABLE SAFE DRINKING WATER;

(II) THE EXISTENCE OF PUBLIC HEALTH RISKS DUE TO LIMITATIONS ON SEWAGE DISPOSAL; OR

(III) RISKS ASSOCIATED WITH FIRES, FLOODS, OR LANDSLIDES.

(C) A LOCAL LAW ADOPTED UNDER THIS SECTION SHALL:

(1) REQUIRE THAT THE TOTAL SQUARE FOOTAGE OF THE ACCESSORY DWELLING UNIT BE LESS THAN THE TOTAL SQUARE FOOTAGE OF THE PRIMARY DWELLING UNIT;

(2) REQUIRE THAT THE FINAL DESIGN FOR THE ACCESSORY DWELLING UNIT SATISFY ALL RELEVANT BUILDING CODE REQUIREMENTS;

(3) AUTHORIZE CONSTRUCTION OF AN ACCESSORY DWELLING UNIT BEFORE OR DURING THE CONSTRUCTION OF THE PRIMARY DWELLING UNIT, UNLESS THE CONSTRUCTION OF THE ACCESSORY DWELLING UNIT WOULD RESULT IN THE NEED FOR A VARIANCE FROM THE ZONING LAW OF THE LOCAL JURISDICTION IN ORDER TO CONSTRUCT THE PRIMARY DWELLING UNIT; AND

(4) EXCLUDE THE DEVELOPMENT OF AN ACCESSORY DWELLING UNIT FROM THE CALCULATION OF DENSITY AND THE APPLICATION OF ANY MEASURES LIMITING RESIDENTIAL GROWTH THAT PERTAIN TO THE LOT, PARCEL, OR TRACT PROPOSED FOR THE DEVELOPMENT OF THE ACCESSORY DWELLING UNIT.

(D) A LOCAL LAW ADOPTED UNDER THIS SECTION MAY NOT:

(1) REQUIRE, AS A CONDITION TO DEVELOPING AN ACCESSORY DWELLING UNIT, THAT THE LOT, PARCEL, OR TRACT EXCEED THE MINIMUM SIZE REQUIRED FOR A PRIMARY DWELLING UNIT IN THE ZONE OR DISTRICT;

(2) ESTABLISH SETBACK REQUIREMENTS FROM THE SIDE AND REAR LOT LINES FOR AN ACCESSORY DWELLING UNIT THAT IS CONVERTED FROM AN EXISTING ACCESSORY STRUCTURE IF:

(I) THE LOCATION OF THE PROPOSED ACCESSORY DWELLING UNIT IS IDENTICAL TO THE EXISTING ACCESSORY STRUCTURE; AND

(II) THE DIMENSIONS OF THE PROPOSED ACCESSORY DWELLING UNIT ARE IDENTICAL TO OR SMALLER THAN THE EXISTING ACCESSORY STRUCTURE;

(3) FOR AN ACCESSORY DWELLING UNIT OTHER THAN A UNIT THAT MEETS THE REQUIREMENTS OF ITEM (2) OF THIS SUBSECTION, ESTABLISH SETBACK REQUIREMENTS THAT EXCEED 4 FEET FROM THE SIDE AND REAR LOT LINES; OR

(4) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, REQUIRE THE CREATION OF ADDITIONAL OFF-STREET PARKING AS A CONDITION TO DEVELOPING AN ACCESSORY DWELLING UNIT.

(E) A LOCAL LAW ADOPTED UNDER THIS SECTION MAY:

(1) IMPOSE REASONABLE LIMITATIONS ON THE MAXIMUM SQUARE FOOTAGE OF AN ACCESSORY DWELLING UNIT;

(2) REQUIRE THAT EXISTING OFF-STREET PARKING LOST TO THE DEVELOPMENT OF AN ACCESSORY DWELLING UNIT BE REPLACED WITH AN EQUIVALENT AMOUNT OF NEW OFF-STREET PARKING ON THE PROPERTY; AND

(3) ALLOW AN EQUIVALENT AMOUNT OF NEW ON-STREET PARKING TO BE SUBSTITUTED FOR THE NEW OFF-STREET PARKING UNDER ITEM (2) OF THIS SUBSECTION, IF SUFFICIENT CURB AREA EXISTS ALONG THE FRONT LINE OF THE PROPERTY OR MAY BE CREATED BY REMOVING ACCESS TO THE OFF-STREET PARKING LOST TO THE DEVELOPMENT OF THE ACCESSORY DWELLING UNIT.

4-505.

(A) A LOCAL JURISDICTION SHALL APPROVE OR DENY A COMPLETE APPLICATION FOR A ZONING USE PERMIT FOR AN ACCESSORY DWELLING UNIT

WITHIN 90 DAYS AFTER RECEIPT BY THE AGENCY RESPONSIBLE FOR MAKING ZONING DECISIONS.

(B) APPROVAL OF A COMPLETE APPLICATION UNDER THIS SECTION SHALL BE PERFORMED IN A MINISTERIAL MANNER.

(C) IF AN APPLICANT REQUESTS A DELAY IN THE REVIEW OF AN APPLICATION, THE 90 DAY REVIEW PERIOD REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE TOLLED FOR THE DURATION OF THE DELAY.

(D) THIS SECTION MAY NOT BE CONSTRUED TO ALTER THE APPELLATE OR JUDICIAL REVIEW PROCESSES FOR A ZONING USE PERMIT APPLICATION FOR AN ACCESSORY DWELLING UNIT.

4-506.

(A) A LOCAL JURISDICTION MAY NOT CHARGE A DEVELOPMENT IMPACT FEE OR A BUILDING EXCISE TAX ON AN ACCESSORY DWELLING UNIT WITH A TOTAL SQUARE FOOTAGE LESS THAN 750 SQUARE FEET.

(B) A DEVELOPMENT IMPACT FEE OR A BUILDING EXCISE TAX CHARGED FOR THE DEVELOPMENT OF AN ACCESSORY DWELLING UNIT THAT IS AT LEAST 750 SQUARE FEET SHALL BE ASSESSED PROPORTIONATELY IN RELATION TO THE SQUARE FOOTAGE OF THE PRIMARY DWELLING UNIT.

4-507.

(A) (1) THIS SUBSECTION DOES NOT APPLY TO AN ACCESSORY DWELLING UNIT THAT IS DEVELOPED IN CONJUNCTION WITH A NEW OR SUBSTANTIALLY RENOVATED PRIMARY DWELLING UNIT.

(2) A UTILITY MAY NOT REQUIRE THE USE OF A SEPARATE CONNECTION BETWEEN AN ACCESSORY DWELLING UNIT AND THE WATER OR SEWER MAIN IF THE EXISTING CONNECTION BETWEEN THE PRIMARY DWELLING UNIT AND THE WATER OR SEWER MAIN IS DETERMINED TO BE SUFFICIENT TO SUPPORT THE ADDITION OF THE ACCESSORY DWELLING UNIT.

(B) IF AN ACCESSORY DWELLING UNIT IS INTEGRATED INTO THE EXISTING CONNECTION BETWEEN THE PRIMARY DWELLING UNIT AND THE WATER OR SEWER MAIN, A UTILITY MAY NOT CHARGE A CONNECTION FEE ASSOCIATED WITH THE INTEGRATION OF THE ACCESSORY DWELLING UNIT.

(C) A PERSON DEVELOPING AN ACCESSORY DWELLING UNIT MAY ELECT TO USE A METER THAT IS SHARED WITH THE PRIMARY DWELLING UNIT TO TRACK THE DELIVERY OF WATER FROM A UTILITY.

4-508.

(A) ON OR BEFORE SEPTEMBER 30, 2023, AND EACH SEPTEMBER 30 THEREAFTER, EACH LOCAL JURISDICTION SHALL REPORT THE FOLLOWING INFORMATION TO THE DEPARTMENT OF PLANNING FOR THE PREVIOUS FISCAL YEAR:

(1) THE NUMBER OF PRIMARY, SINGLE-FAMILY DWELLING UNITS IN THE LOCAL JURISDICTION, WITH THE ZONING DESIGNATION FOR THE DWELLING UNITS;

(2) A LIST OF ALL ZONING DESIGNATIONS IN THE LOCAL JURISDICTION IN WHICH ACCESSORY DWELLING UNITS ARE PERMITTED;

(3) THE NUMBER OF ILLEGAL ACCESSORY DWELLING UNITS KNOWN TO BE IN THE LOCAL JURISDICTION;

(4) THE NUMBER OF APPLICATIONS TO LEGALIZE AN ILLEGAL ACCESSORY DWELLING UNIT SUBMITTED TO THE LOCAL JURISDICTION AND THE RESULTS OF PROCESSING THE APPLICATIONS;

(5) THE NUMBER OF LEGAL ACCESSORY DWELLING UNITS IN THE LOCAL JURISDICTION;

(6) THE NUMBER OF APPLICATIONS FOR NEW ACCESSORY DWELLING UNITS ACCEPTED FOR PROCESSING;

(7) THE NUMBER OF ACCESSORY DWELLING UNIT APPLICATIONS THAT WERE APPROVED AND THAT RECEIVED ALL REQUIRED PERMITS;

(8) FOR EACH ACCESSORY DWELLING UNIT APPLICATION IDENTIFIED IN ITEM (7) OF THIS SUBSECTION, A STATEMENT ON:

(I) WHETHER THE ACCESSORY DWELLING UNIT IS:

1. ATTACHED TO OR CONVERTED FROM A PORTION OF THE PRIMARY DWELLING UNIT;

2. ATTACHED TO OR CONVERTED FROM AN ACCESSORY STRUCTURE LOCATED ON THE SAME LOT, PARCEL, OR TRACT AS THE PRIMARY DWELLING UNIT; OR

3. DETACHED FROM THE PRIMARY DWELLING UNIT AND ANY OTHER ACCESSORY STRUCTURES LOCATED ON THE LOT, PARCEL, OR TRACT;

(II) THE SIZE OF THE ACCESSORY DWELLING UNIT;

(III) THE NUMBER OF BEDROOMS IN THE ACCESSORY DWELLING UNIT; AND

(IV) THE LEVEL OF ACCESSIBILITY OF THE ACCESSORY DWELLING UNIT;

(9) THE NUMBER OF ACCESSORY DWELLING UNIT APPLICATIONS THAT WERE DENIED; AND

(10) FOR EACH ACCESSORY DWELLING UNIT APPLICATION IDENTIFIED IN ITEM (9) OF THIS SUBSECTION, THE REASON THAT THE APPLICATION WAS DENIED.

(B) THE DEPARTMENT OF PLANNING SHALL ESTABLISH THE METHODS USED BY THE LOCAL JURISDICTIONS TO REPORT THE INFORMATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

(C) (1) ON OR BEFORE DECEMBER 31, 2023, AND EACH DECEMBER 31 THEREAFTER, THE DEPARTMENT OF PLANNING SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE DEVELOPMENT OF ACCESSORY DWELLING UNITS THROUGHOUT THE STATE.

(2) THE INFORMATION IN THE REPORT SHALL BE DISAGGREGATED BY LOCAL JURISDICTION.

(3) THE REPORT SHALL CONTAIN RECOMMENDATIONS TO FURTHER THE GOALS OF THIS SUBTITLE.

4-509.

THIS SUBTITLE MAY BE CITED AS THE ACCESSORY DWELLING UNIT AUTHORIZATION AND PROMOTION ACT.

10–103.

(a) Except as provided in this section, this division does not apply to Baltimore City.

(b) The following provisions of this division apply to Baltimore City:

(15) TITLE 4, SUBTITLE 5 (ACCESSORY DWELLING UNIT AUTHORIZATION AND PROMOTION ACT)

[(15)] (16) § 5–102(d) (Subdivision regulations – Burial sites);

[(16)] (17) Title 7, Subtitle 1 (Development Mechanisms);

[(17)] (18) Title 7, Subtitle 2 (Transfer of Development Rights);

[(18)] (19) Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);

[(19)] (20) Title 7, Subtitle 4 (Inclusionary Zoning); and

[(20)] (21) Title 11, Subtitle 2 (Civil Penalty).

Article – Real Property

2–126.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ACCESSORY DWELLING UNIT” HAS THE MEANING STATED IN § 4–501 OF THE LAND USE ARTICLE.

(3) “RESTRICTION ON USE” INCLUDES ANY COVENANT, RESTRICTION, OR CONDITION CONTAINED IN:

(I) A DEED;

(II) A DECLARATION;

(III) A CONTRACT;

(IV) THE BYLAWS OR RULES OF A CONDOMINIUM OR HOMEOWNERS ASSOCIATION;

(V) A SECURITY INSTRUMENT; OR

(VI) ANY OTHER INSTRUMENT AFFECTING:

1. THE TRANSFER OR SALE OF REAL PROPERTY; OR

2. ANY OTHER INTEREST IN REAL PROPERTY.

(B) (1) IF A PROPERTY OWNER HAS THE EXCLUSIVE RIGHT TO USE THE PROPERTY AND ABIDES BY ALL APPLICABLE LAWS AND REGULATIONS, A RESTRICTION ON USE REGARDING LAND USE MAY NOT IMPOSE OR ACT TO IMPOSE AN UNREASONABLE LIMITATION ON THE ABILITY OF THE PROPERTY OWNER TO:

(I) DEVELOP AN ACCESSORY DWELLING UNIT ON A PROPERTY ZONED FOR SINGLE-FAMILY RESIDENTIAL USE; OR

(II) USE AN ACCESSORY DWELLING UNIT AS A RENTAL UNIT.

(2) FOR THE PURPOSE OF PARAGRAPH (1) OF THIS SUBSECTION, AN UNREASONABLE LIMITATION INCLUDES A LIMITATION THAT:

(I) SIGNIFICANTLY INCREASES THE COST OF DEVELOPING AN ACCESSORY DWELLING UNIT OR THE COST OF OPERATING THE ACCESSORY DWELLING UNIT AS A RENTAL UNIT; OR

(II) PROHIBITS, EITHER EXPLICITLY OR BY EFFECT OF THE RESTRICTIONS, THE DEVELOPMENT OF AN ACCESSORY DWELLING UNIT OR THE USE OF AN ACCESSORY DWELLING UNIT AS A RENTAL UNIT.

(C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A RESTRICTION ON USE FROM INCLUDING REASONABLE DESIGN AND AESTHETIC GUIDELINES FOR ACCESSORY DWELLING UNITS.

(D) THIS SECTION DOES NOT APPLY TO A RESTRICTION ON USE ON HISTORIC PROPERTY THAT IS LISTED IN, OR DETERMINED BY THE DIRECTOR OF THE MARYLAND HISTORICAL TRUST TO BE ELIGIBLE FOR INCLUSION IN, THE MARYLAND REGISTER OF HISTORIC PROPERTIES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.