

Accessory Dwelling Units

How a Berlin property owner develops — or legalizes an existing — accessory dwelling unit under the proposed §108-719.
Source: Draft ADU Ordinance, PC/Council Meeting Sept. 14, 2026

Maryland's ADU Mandate — Ch. 197 (HB 1466)

State law requires every Maryland county and municipality to adopt a local ADU law by October 1, 2026. It sets a floor and ceiling on what the Town's ordinance can do:

- Applies only to a lot whose primary dwelling is an existing single-family detached home (not tied to a zoning label)
 - The Town may cap an ADU at up to 75% of the primary home's size — the Town's own 800 sf / 35% cap is stricter, which is allowed
 - The Town must exclude ADUs from density calculations (larger lot size requirement) and growth-management measures
 - The Town may not set ADU setbacks stricter than its existing accessory-structure setbacks – Town's current code requires 6 ft side/rear setbacks
 - The Town may add off-street parking requirements only after a parking study, weighing cost, curb space, stormwater impact & lot size, with a waiver process
 - Restrictive covenants/HOA rules can't unreasonably block or effectively prohibit building or renting an ADU (though they may still restrict short-term rentals); an HOA may treat an ADU as its own lot for voting and assessments
 - That restrictive-covenant protection doesn't apply to historic property listed in, or determined by the Director to be eligible for inclusion in, the Maryland Register of Historic Properties
- Md. Code Ann., Land Use §§4-501-.504; Real Prop. §§2-126, 11B-101, 11B-111.11, 11B-117 – eff. Oct. 1, 2025 (last bullet: §2-126(c))

Key Definitions — Berlin Draft Ordinance

- **ADU**: subordinate attached or detached unit on the primary home's lot — ≤1.5 stories (or 25 ft. above a no-livable-space accessory structure); ≤800 sf of Livable Space or 35% of the primary home's, whichever is less.
- **Elderly/Disabled Owners**: 65+/receiving disability
- **Dwelling Unit**: complete independent living facilities for ≤3 adults (or 2 adults + 2 minor Immediate Family); requires permanent attachment to foundation; excludes multifamily units, mobile homes & RVs
- **One/Half Stories**: upper floor ½ livable space sq.ft. of 1st floor
- **Owner**: a natural person (or a revocable living trust for one) — never a corporate entity or single-member LLC
- **Immediate Family Members**: spouse/partner, children/grandchildren, parents, siblings, nieces/nephews & grandparents of the Owner or spouse/partner
- **Livable Space**: any indoor area designed for living, sleeping, eating, cooking or sanitation — a garage/storage room counts too if it has habitability hallmarks (plumbing, finish, access) to practice of design for post-construction expansion
- **Permanent Residence**: Owner lives there 180+ days/yr. as the Homestead Tax Credit principal residence

§108-719.02

Who Qualifies

- Lot is zoned R-1 or R-2, with a primary single-family detached home already on it
 - Owner personally (not LLC or corporate entity) develops the ADU for his or her own use and exclusively controls the lot
 - No blocking limitation on water, sewer, fire, floodplain, or landslide risk
 - Not Historic District / historic-register listed — unless it goes through Historic Commission review (Step 4)
 - Owner occupies the ADU or the primary home as a primary residence
- §108-719.03; .04(A), (C)

Purpose of the Ordinance

- Brings the Town Code into compliance with the State ADU Law, requiring ADUs on single-family lots by October 1, 2026
 - Satisfies Md. Code Ann., Land Use §4-504(a) without limiting the Town's zoning authority under Chapter 108
 - Provides clear, administrable ADU standards, considering health, safety, welfare, and Town facilities (electric, water, sewer)
 - Not intended to permit two-unit rental or multi-family use in single-family zones
- Recitals; §108-719.01(A)–(B)

Main Sequence — Matter-of-Right ADU

1

Confirm Eligibility
Lot is zoned R-1/R-2 with an existing primary home; Owner personally develops the ADU for own use; no blocking water, sewer, fire, floodplain, or landslide constraint.

§108-719.03

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2

Meet Development Standards
≤800 net sq. ft. of Livable Space or 35% of the primary home's (whichever is less); one kitchen, one bath, ≤2 bedrooms; one ADU per lot; standard accessory-structure setbacks; massed subordinate to, and sited behind, the primary home.

§108-719.04, .05

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3

Apply to the Planning Department
Applicant submits a building permit / zoning certificate / certificate of occupancy application on the Department's form, with all required information.

§108-719.07(A)

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4

Historic District Review (if applicable)
Properties in the Historic District also go to the Historic Commission, which must affirmatively find the design compatible (materials, roof pitch, windows, privacy screening) and shall deny the ADU if it would materially impact the historic character of the property or its neighbors historic property.

§108-719.07(B)–(C)

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5

Issuance
Planning Director issues the zoning certificate, building permit, and (where required) certificate of occupancy once building-code compliance and every standard above are met.

§108-719.02; .04(D)

Owner-Occupancy Rental Rule
The Owner must live in the ADU or the primary home as a primary residence. If not, the ADU can't be rented to, or occupied by, anyone outside Immediate Family — including tenants of the primary home. A time-limited special exception is available from the Board of Appeals for good cause.
§108-719.04(C)

Off-Street Parking
State law bars the Town from imposing any parking condition on an ADU permit until it completes a parking study. Until then, one dedicated off-street space per ADU is encouraged, not required.
§108-719.06

Short Term Rentals
Short-term (transient) rental of an ADU is separately regulated under the Town's short-term rental code. Regardless of rental term, the ADU cannot be rented and may only be occupied by the Owner or Immediate Family Members unless the Owner occupies the ADU or the primary home as a primary residence.
Town Code §8-30; §108-719.04(C)

OUTCOME

Issued Permits issue; a matter-of-right ADU can't be denied solely for not matching the design cues in Step 2. §108-719.05(G)	Denied — Historic Impact Historic Commission denial where the design would materially impact historic character of property historic registered property or eligible for inclusions on the historic register. §108-719.07(C)
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Development & Design Standards

Size, Number & Siting

- Size cap: 800 net sq. ft. of Livable Space, or 35% of the primary home's Livable Space — whichever is less. Note: Result = if Primary > 2,286 net sq. ft. → ADU up to 800 net sq. ft. (max); if Primary = 1,800 net sq. ft. → ADU capped at 630 net sq. ft.
 - One kitchen, one shower, one toilet; up to two bedrooms; only one ADU per lot
 - Limited to two Accessory Structures total on the single-family residential lot, plus one storage shed ≤12'×12' and ≤14' tall
 - Required to be in rear yard
 - No larger minimum lot size required than the zone's standard for a primary home (R-1: 10,000 sq.ft./R-2: 8,000 sq.ft; setbacks 6 ft rear/side.
 - Converting a second pre-existing (pre-Oct. 1, 2025) accessory structure into an ADU is matter-of-right, if its footprint/height isn't enlarged
 - No separate street address or mailbox; conversion barred if the only access is via an alley or another lot (to avoid *de facto* 2-residential unit lot)
- §108-719.05

Design Cues — Encouraged

Outside the Historic District, an ADU should, “to the greatest extent possible,” match the primary home's materials, roof pitch & windows, and maximize neighbor privacy. A permit can't be withheld for missing these cues — they aren't mandatory here.

§108-719.05(G)

Historic District — Mandatory

The same design elements are affirmative requirements in the Historic District, plus protecting historic structures, yards & old-growth trees. The Commission **shall deny** if any finding fails.

§108-719.07(B)–(C)

Record Covenant

An Applicant may request a recordable zoning/amnesty certificate detailing the ADU's square footage, facilities, bedrooms/bathrooms, and occupancy cap to confirm legal status of ADU for record keeping/future sale. A recorded covenant is **mandatory** whenever the ADU sits in the Historic District or relies on a BZA variance — it locks in the approved conditions and bars further changes without new approval.

§108-719.11

Pre-Existing ADUs — Amnesty Program

A path to legal, nonconforming status for an ADU built or converted without permits before October 1, 2025. · §108-719.10

1

Establish Eligibility
The Accessory Structure was physically built and in use as a dwelling before October 1, 2025 (date of enactment of Maryland ADU Mandate).

§108-719.10(B)

2

Apply by the Deadline
Application filed with the Planning Director no later than April 1, 2027, with photos of the ADU's existing interior and exterior conditions.

§108-719.10(B)(2)

3

Prove the Construction and Use Date
At least 2 forms of evidence, 1 independently verifiable: dated photos + affidavit, pre-2025 insurance records, historical aerial/satellite imagery, an official permit/inspection record, or 2+ disinterested affidavits (never sufficient alone).

§108-719.10(B)(4)

4

Meet Electrical & Plumbing Safety
Documentary proof (permit + final inspection, or a licensed electrician/plumber's invoice) — or a licensed safety-only inspection, with deficiencies fixed within 90 days. Compliance is due by January 1, 2028.

§108-719.10(C)

5

Amnesty Granted
ADU becomes a legal nonconforming unit as of its documented construction date — exempt from new-ADU dimensional/use standards, but still bound by life-safety codes, and capped at 2 bedrooms/1 bath and 800 sf / 35%.

§108-719.10(D)

OUTCOME

Granted ADU is legal nonconforming; no penalty or retroactive fee multiplier applies. §108-719.10(E)	Denied May be appealed to the Housing Board of Review. §108-719.10(F)
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Missed the Deadline

Filing after April 1, 2027 forfeits amnesty — the Owner must then meet every requirement (and pay every fee, multiplier, and applicable fine) that applies to a newly built ADU.

§108-719.10(E)

Limitations of Amnesty

Amnesty covers electrical, plumbing & zoning nonconformity only — not general habitability. It runs with the ADU as documented: no expansion, structural change, or use beyond the standard caps without a new approval (and a BZA variance if the existing unit already exceeds them).

§108-719.10(D)

Hardship Variance — Exceeding the ADU Matter-Of-Right Limitations

§108-719.13

Mandatory Findings (Board of Zoning Appeals)

Granted only on clear-and-convincing proof of **every** element below — no partial showing substitutes for one missing element:

- Unique physical circumstance not shared by other lots in the zone — not created by the Applicant or a prior owner after Oct. 1, 2025
 - Requested footage is the minimum necessary, backed by a floor-plan analysis (or, for amnesty ADUs, proof of significant financial hardship)
 - No substantial detriment to neighborhood character or adjacent property use/privacy/value; still can't exceed the primary home's footprint or height
 - Consistent with the ADU's subordinate purpose — not a competing, co-equal unit; rental income or convenience alone is never sufficient
 - Massing and design are considered
 - Impact on neighbors within 100 feet to be given great weight, including parking limitations
- Even with a variance: capped at 1,200 sf (or 75% of the primary home, whichever is less); no more than 3 toilets/2 showers; still only one ADU per lot. Runs only with the approved plans — any later change needs a new variance.
- §108-719.13(C)–(F)

Enforcement, Appeals, Fees & Fines

*Council can waive fees/fines for Elderly/Disabled owners for good cause shown. §108-719.08(C)

§108-719.12

1	Inspection & Notice If the Housing Inspector suspects an unpermitted ADU in use after April 1, 2027, the Owner gets mailed or posted notice, then has 30 days to file a permit application and pay the fee — or state in writing the space isn't (and won't be) used as an ADU.	§108-719.12(A)
2	Enforcement Remedies An unresolved violation exposes the Owner to fines/multipliers, a recordable judicial lien, a cease-and-desist order, and civil/injunctive relief — including a court order to remove habitable features like a kitchen or bathroom.	§108-719.12(B)
3	Appeal Any denial or enforcement action can be appealed to the Housing Board of Review within 10 days; the Board hears it within 30 days. Fines/penalties are stayed pending that hearing, except where safety or a neighbor's peaceful enjoyment is at immediate risk. Further appeal runs to the Circuit Court.	§108-719.12(C)

Impact Fees - No impact fee or excise tax on amnesty-qualifying ADUs under the 800 sf / 35% cap - New/converted ADU greater than matter-of-right: fee is proportional to size, or per the Town's published schedule - Town Council may waive or reduce fees for ADUs serving Elderly or Disabled Owners, at its sole discretion §108-719.08	Utility Connections & EDUs - No separate water/sewer connection needed if the existing connection can support one added shower + toilet - Separate EDU purchase required if topography needs separate lines, capacity needs upgrades, or the ADU has more than one toilet/shower - Integrated ADUs get no added connection fee while usage stays ≤250 gal/day; ADU must have its own water meter or submeter §108-719.09
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ADU Fee Schedule (Proposed — To Be Established by Council Resolution)

Fee	FY27 (eff. 7/1/26)	FY28 (eff. 7/1/27)	FY29 (eff. 7/1/28)	FY30 (eff. 7/1/29)
Amnesty application (filed by 4/1/27)	\$300	N/A	N/A	N/A
Amnesty application (filed by 4/1/27) — long-term owners (deed before 10/1/2006)	Waived	N/A	N/A	N/A
New construction ADU	\$500	\$525	\$550	\$575
Existing accessory-structure conversion (≤110% of pre-10/1/25 footprint)	\$350	\$375	\$400	\$425
ADU certificate (zoning / occupancy / covenant)	\$150	\$155	\$160	\$165
New/converted structure over 35% of primary structure	% of then-current dwelling-unit fee	same	same	same

Note: Fees are in addition to any other applicable fees, multipliers, review or license fees

ADU Fine Schedule (Proposed - To Be Established by Council Resolution)

Violation	Notice to Correct	Failure to Correct in Time
Non-registered ADU	30-day warning	\$100 per month
ADU housing-code violation	30-day warning	\$100 per week

See §108-719.12 for enforcement procedure