

ORDINANCE 2026-07

AN ORDINANCE to amend Chapter 108 (“Zoning”) of the Code of the Town of Berlin, Maryland, by adding a new Section 719 in Section of Article VIII, entitled “Supplemental District Regulations,” to authorize and regulate the development of accessory dwelling units on land zoned for single-family detached residential use, as required by Title 4, Subtitle 5 of the Land Use Article, Annotated Code of Maryland, enacted by Chapter 197 of the Laws of Maryland 2025 (House Bill 1466); establishing definitions, applicability, development and design standards, permit review procedures, limitations on development impact fees, and requirements governing utility connections for accessory dwelling units; and generally relating to the development and use of accessory dwelling units within the Town of Berlin.

WHEREAS, Title 4, Subtitle 5 of the Land Use Article, Annotated Code of Maryland (“State ADU Law”), requires the legislative body of each Maryland county and municipal corporation to adopt, on or before October 1, 2026, a local law authorizing the development of accessory dwelling units on land zoned for a single-family detached dwelling unit as the primary use; and

WHEREAS, the State ADU Law establishes certain requirements that a local law must include and certain limitations that a local law may not impose, while preserving local discretion over other aspects of accessory dwelling unit regulation; and

WHEREAS, the Mayor and Council of the Town of Berlin find that adoption of this Article is necessary to bring the Town Code into compliance with the State ADU Law and to provide clear, administrable standards for the development of accessory dwelling units within the Town with consideration of the Town’s public health, safety, welfare standards, and adequacy of the public facilities, including the Town’s electric, water, sewer, and other Town resource capacity.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Berlin, Maryland, that Chapter 108 of the Code of the Town of Berlin is hereby amended by adding a new §108-719 of Article VIII to read as follows:

SECTION 108-719, ARTICLE VIII. ACCESSORY DWELLING UNITS IN R-1 AND R-2 ZONES

§ 108-719.01 Purpose and authority.

A. This Article is adopted pursuant to, and is intended to satisfy, the requirement of Md. Code Ann., Land Use § 4-504(a) that the Town adopt a local law authorizing the development of accessory dwelling units on or before October 1, 2026. Except as expressly provided in this Article, nothing in this Article alters or abrogates the Town's zoning authority under Chapter 108 or the Land Use Article.

B. The purpose of this Article is not to establish two-unit rental units or multi-family residential uses in single-family residential zones, which are expressly prohibited by Town zoning requirements.

§ 108-719.02 Definitions.

As used in this Article, the following terms have the meanings indicated. Terms not defined in this Article have the meanings given in § 100-95 (Definitions) and Article V (Housing Standards) of the Town Code.

ACCESSORY DWELLING UNIT (ADU) — A secondary subordinate dwelling unit that is: (1) located on the same lot, parcel, or tract as a primary single-family detached dwelling unit; (2) of a height of no more than one and half stories for stand-alone Accessory Dwelling Unit structures or 25 feet in height if the ADU is constructed above an Accessory Structure garage used for storage of vehicles, workshop, or other permissible use containing that contains no Livable Space; and (3) not less than 350 net square feet and greater than 600 net square feet of Livable Space, and (4) subordinate in use to the primary single-family detached dwelling unit. An Accessory Dwelling Unit is constructed:

- (i) attached to, or through the conversion of, a portion of the Primary Dwelling Unit (such as a basement apartment);
- (ii) attached to, or through the full or partial conversion of, an existing Accessory Structure located on the same lot, parcel, or tract as the primary dwelling unit; or
- (iii) as a new building, detached from the primary dwelling unit and any existing accessory structure.

ACCESSORY DWELLING STRUCTURE — shall mean the structure in which the Accessory Dwelling Unit is located, including any portion of the Accessory Dwelling Structure that is not intended to be utilized as a Dwelling Unit (e.g., inclusive of the portion of structure that is used as a garage, for storage, or a workshop).

ACCESSORY STRUCTURE — shall mean a building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure that is permanently affixed to a foundation and constructed concurrently with or after the Primary Dwelling Unit and subject to the location requirements set forth in § 108-702 of the Town Code.

DETACHED ACCESSORY DWELLING UNIT – means any Accessory Dwelling Unit not within the building footprint of the Primary Dwelling Unit, including any Accessory Dwelling Units attached to the Primary Dwelling Structure with a breezeway.

DOMESTIC PARTNER – means a domestic partner pursuant to a Declaration of Domestic Partnership filed with the Worcester County Register of Wills.

DWELLING UNIT — for the purpose of this Chapter, a single unit providing complete, independent living facilities for no more than two adult persons with two minor Immediate Family members, including, at a minimum, permanent provisions for sanitation, cooking, eating, and sleeping, toilet, bathing, and other activities routinely associated with daily life. “Dwelling unit” in the context of Accessory Structure does not include a unit in a multifamily residential building, manufactured homes not attached to permanent foundation systems or containing chassis, mobile homes, RVs, trailers, or any structure on wheels or otherwise designed to be relocated.

ELDERLY OR DISABLED OWNERS — means an Owner or Domestic Partner of record (or their spouse, partner, parent, or child) of the subject property who, as of the date of application, either:

- (a) has attained the age of 65 years; or
- (b) has been determined to have a permanent and total disability, as evidenced by:
 - (i) an award of disability benefits from the Social Security Administration; or

(ii) an award of disability benefits from the U.S. Department of Veterans Affairs, the Railroad Retirement Board, or a federal, state, or local government retirement or disability system.

IMMEDIATE FAMILY MEMBERS — means the spouse, a domestic partner, children or grandchildren (including step-children of the Owner's current legal spouse or domestic partner), parents of the Owner or their current legal spouse or domestic partner, siblings, nieces, nephews, and grandparents of the Owner or their current legal spouse or domestic partner. Immediate Family Members does not include friends or people that the Owner otherwise considers Immediate Family.

LIVABLE SPACE — shall mean any indoor area of any structure on a residential property in R-1 or R-2 zone that is designed, constructed, or configured to be occupied by persons for living, sleeping, eating, cooking, or sanitation purposes, and shall include without limitation living rooms, dining rooms, kitchens, bedrooms, bathrooms, dens, family rooms, and finished basements or attics meeting the minimum ceiling height, egress, light, ventilation, and heating requirements of the applicable building code.

Livable Space shall not include garages, carports, unfinished basements, unfinished attics, crawl spaces, storage rooms, utility or mechanical rooms, breezeways, porches, or other accessory or ancillary spaces not intended for human occupancy, *provided that any such space shall be deemed Livable Space*, notwithstanding its designation on approved plans or its stated use, *if it*:

- (a) contains, or is constructed or plumbed in a manner that would readily allow the installation of, permanent heating, plumbing, or cooking facilities beyond what is customary for its stated accessory use;
- (b) has a finished floor, wall, and ceiling surface comparable to that of adjoining Livable Space and that is of sufficient size and dimensions to be classified as Livable Space under applicable building codes, including pool houses or workshops;
- (c) is directly accessible from Livable Space by a standard interior doorway without passing through a garage door, overhead door, or other opening not used or customarily used for pedestrian ingress and egress to habitable rooms; or
- (d) otherwise exhibits physical characteristics indicating that the space is designed, adapted, or intended for use — whether immediately or upon minor, non-structural alteration — as a living, sleeping, or other habitable area, regardless of the space's classification on any building permit, plat, or certificate of occupancy.

Any determination that a garage, storage area, or other accessory space constitutes Livable Space under subsection (d) shall be made by the Code Enforcement Officer, Building Official, or Planning Director based on the totality of the physical evidence when applying the relevant Town and Worcester County building code standards, and such space shall thereafter be subject to all applicable requirements for Livable Space, including but not

limited to minimum square footage, egress, and parking or setback calculations tied to habitable floor area.

OWNER – means a natural person or persons (including a revocable living trust established for a natural person and/or his or her spouse), but not a corporate entity, including, without limitation to, a single-member limited liability company.

ONE AND HALF STORIES — an area above the first story whose Livable Space does not exceed one-half of the usable floor space of the story directly below it.

PERMANENT RESIDENCE — the owner resides on the subject property for an aggregate of at least 180 days annually and the subject property's official designation as the owner's principal residence in accordance with the criteria governing the State of Maryland Department of Assessment and Taxation Homestead Tax Credit Program.

PRIMARY DWELLING UNIT — the primary single-family detached dwelling unit on a lot, parcel, or tract to which an accessory dwelling unit is, or is proposed to be, accessory and subordinate.

ZONING CERTIFICATE and CERTIFICATE OF OCCUPANCY — The zoning certificate and/or certificate of occupancy required under Division 3 of Subpart B (Land Development Regulations) as a condition of establishing a use and authorized occupancy, including the development and use of an Accessory Dwelling Unit.

§ 108-719.03 Applicability.

A. This Article applies to the development of Accessory Dwelling Units on all land within the Town zoned as R-1 or R-2.

B. This Article applies to a lot, parcel, or tract only if:

- (1) the Owner is personally developing or contracting for construction or conversion of the Detached Accessory Dwelling Unit for his or her personal use or occupancy, and has the exclusive right to use the lot, parcel, or tract on which the Detached Accessory Dwelling Unit is to be developed; and
- (2) the use of an existing Accessory Structure or the development of new Detached Accessory Dwelling Units on the lot, parcel, or tract is not otherwise prohibited due to limitations on available safe drinking water, public health risks arising from limitations on sewage disposal, or risks associated with fire, floodplain limitations set forth in Chapter 102 of the Town Code, or landslide.

C. This Article does not limit any restriction on use affecting property listed in the Historic District, or determined by the Director of the Maryland Historical Trust to be eligible for inclusion on the Maryland Register of Historic Properties under MD Land Use Code § 8-301 *et seq.*, as further authorized and addressed under Town Code § 104 (Historic District).

§ 108-719.04 General requirements.

A. A single Accessory Dwelling Unit (whether attached or detached) is permitted on any lot, parcel, or tract meeting the applicability requirements of § 108-719.03 and subject to the standards of this Article.

B. An Accessory Dwelling Unit, and the lot on which it is located, shall at all times satisfy all applicable public health, safety, and welfare standards, including the Town's applicable Town and Worcester County building codes; Berlin and Worcester County fire codes and best practices; life-safety codes; Historic District requirements, regulations, reviews under Town Code § 104, and any applicable requirements of this Chapter.

C. As a condition of occupancy of the Accessory Dwelling Unit, Owner shall occupy either the Accessory Dwelling Unit and/or the Primary Dwelling Unit as his or her Primary Residence. If the Owner does not occupy the property as his or her Primary Residence, the Owner may not rent or permit any persons who are not Immediate Family Members to occupy the ADU for any period of time, including any tenants occupying the primary residence. An Owner may seek a time-limited special exception from the Board of Appeals to this § 108-719.04(c) for good cause shown and so long as the special exception does not create a de facto two-unit or multi-family property (i.e., the Primary Dwelling Unit and the Accessory Dwelling Unit are rented and occupied by a single-family unit of Immediate Family).

D. The final design and construction of an Accessory Dwelling Unit shall satisfy all relevant building code requirements before a Zoning Certificate, building permit, or certificate of occupancy may be issued.

E. Construction, occupancy, or use of a Detached Accessory Dwelling Structure shall not be authorized before or during construction of the primary dwelling unit.

F. Subject to the applicable minimum open space requirements, no more than two Accessory Structures may be constructed or used on a single residential R-1 or R-2 lot, which includes a single allowed Accessory Dwelling Unit. Provided, however, one additional storage shed is allowed so long as the shed is less than 12x12 feet in width and no taller than 14 feet, and meets all other Town Code requirements.

G. The full or partial conversion of an Accessory Structure into an Accessory Dwelling Unit or construction of a new Accessory Dwelling Unit is prohibited if the only pedestrian or vehicular access to the Accessory Dwelling Structure is from an alley or through another lot.

§ 108-719.05 Development and Design Standards for Detached ADUs.

A. Size. The total square footage of Livable Space of a Detached Accessory Dwelling Unit (whether newly constructed or converted from existing Accessory Structure) shall be: (1) the total square footage of Livable Space shall not be less than 350 net square feet and not greater than 600 net square feet; (2) not contain more than one kitchen facility, one toilet and one shower; and (3) does not contain more than one bedrooms.

B. Number. In no event shall more than one Accessory Dwelling Unit, whether attached or detached, be located on a single lot.

C. Conversion of Existing Accessory Structures. If a lot contained more than one Accessory Structure on or before October 1, 2025 as evidenced by historic photography or evidence, the Owner so long as the existing structure is not enlarged or expanded beyond its existing footprint and height and subject to the other requirements set forth in this chapter, including the limitations as square footage of the Livable Space and number of bedrooms and bathrooms.

D. Lot size. No lot, parcel, or tract shall be required to exceed the minimum lot size required for a primary dwelling unit in the applicable R-1 or R-2 zoning district as a condition of developing an Accessory Dwelling Unit.

E. Setbacks. Detached Accessory Dwelling Units shall be subject to the same setback requirements set for other Accessory Structures required by the applicable residential section of the Town Code.

F. Massing and subordination. A Detached Accessory Dwelling Structure shall be designed and massed so as to be visibly subordinate to the Primary Dwelling Structure, located in the rear yard, and in conformance with the open space requirements for applicable residential zone.

G. Design. Newly constructed Detached Accessory Dwelling Structures (including the portions of the Accessory Structure that do not contain the Accessory Dwelling Unit) or modifications to the exterior of existing Accessory Structures should be to the greatest extent possible: (i) be within a converted existing Accessory Structure; (ii) designed and built with materials that are in character with Town and neighboring properties; (iii) exterior finish material (e.g. siding, trim, eaves) be same or visually match or blend in type, size, and placement to the exterior finish materials of the Principal Dwelling; (iv) the roof pitch should be same as the predominant roof pitch of the Principal Dwelling; (v) the windows should match Principal Dwelling in proportion and location; and (vi) positioned to maximize the privacy of the adjacent property owner's property (such as appropriate screening, fencing, and window placement) and so as to not impact the air and light of the neighboring properties.

H. Mail. An Accessory Dwelling Unit shall not be given a separate street or mailing address unless the Fire Marshall or police department determines that separate street or mailing addresses are required for public safety.

§ 108-719.06 Off-street Parking Requirements.

Per State ADU Law, no parking requirements or restrictions may be imposed as a condition of issuance of a building permit, zoning certificate, or, if applicable, certificate of occupancy for an Accessory Dwelling Unit unless and until the Town conducts requisite parking study. Unless and until the Town conducts a parking study, Applicants are strongly encouraged to provide at least one dedicated off-street parking space per Accessory Dwelling Unit.

§ 108-719.07 Review procedure.

A. An application for a building permit, zoning certificate or certificate of occupancy for an Accessory Dwelling Unit shall be submitted to the Planning Department in the form prescribed by the Planning Department along with all information required by the Planning Department.

B. If the subject property is located within the Historic District and involves changes to the exterior of the existing Accessory Structure, the Applicant shall also submit an application for the Historic District Commission review as required under Town Code §104-26 of the Town Code and shall be considered pursuant to the terms and requirements of Town Code §

104. The Historic District Commission shall also review and, as a condition of approval of the Detached Accessory Dwelling Structure, make the following affirmative determinations:

- (i) the design and proposed materials are in character with the historic nature of the Town and, specifically, the subject property and neighboring properties;
- (ii) exterior finish material (e.g. siding, trim, eaves) is the same or visually matches or blends in type, size, and placement to the exterior finish materials of the Principal Dwelling;
- (iii) the roof pitch shall be the same as the predominant roof pitch of the Principal Dwelling;
- (iv) the windows must match the Principal Dwelling Unit in proportion and location;
- (v) positioned to maximize the privacy and air/light of the adjacent property owner's property (such as appropriate screening, fencing, and window placement so long such screening, fencing, and window placement do not impede the historic nature of the Historic District);
- (vi) whether the requested Accessory Dwelling Unit is new (less preferred) or could be constructed in an existing Accessory Structure; and
- (vii) do not otherwise impact the historic nature of the Historic District or the historic nature of structures and properties listed on the Maryland Register of Historic Properties, including historically significant yards and old growth trees.

C. The Historic Commission shall deny an Applicant's request for a Detached Accessory Dwelling Unit if it determines that an Applicant has not met all requirements set forth in (B) above. The Historic Commission shall give great weight to the historic nature of the subject property and any reasonable design modifications requested by neighboring property owners when addressing § 108-719.07(B)(v) when evaluating an Applicant's request to construct a new Accessory Dwelling Structure. The Historic Commission shall deny an Applicant's request if the Historic Commission determines that the proposed Detached Accessory Dwelling Structure would materially impact the historic nature of the subject property and neighboring properties.

D. For Detached Accessory Dwelling Structure Applicants that do not require Historic Commission or Board of Zoning and Appeals review, as a condition of receiving a Zoning Certificate, the Applicant's proposed design of the Detached Accessory Dwelling Structure shall be submitted to the Planning and Zoning Commission for its confirmation that the proposed Detached Accessory Dwelling Unit meets the requirements of § 108-719.05, including the design standards under § 108-719.05 (G).

§ 108-719.08 Development impact fees; Fee Waivers.

A. For Detached Accessory Dwelling Structures granted amnesty pursuant to § 108-719.10, no development impact fee or building excise tax will be charged on a Detached Accessory Dwelling Unit with a total Livable Space square footage of not less than 350 net square feet and not greater than 600 net square feet or Accessory Dwelling Units attached to or within the Primary Dwelling Unit greater than two bedrooms and two bathrooms and less than 1200 net square feet of Livable Space. For existing Detached Accessory Dwelling Units with

greater than 600 net square feet of Livable Space, the development impact fee shall be assessed proportionately in relation to square footage of the Primary Dwelling Unit less 600 square feet (i.e. if the Detached Accessory Dwelling Unit is 800 net square feet of Livable Space and the Primary Dwelling Unit is 1800 net square feet of Livable Space, the impact fee would be $800-600/1800 = 0.11\%$ of the published impact fee for primary structures). The impact fee shall be paid prior to the issuance of an amnesty certificate.

B. For new construction or conversions with Livable Space in excess of 600 net square feet whether detached or attached, the development impact fee shall be: (1) assessed proportionately in relation to the net square footage of Livable Space of the Primary Dwelling Unit (i.e. if the Applicant is seeking Accessory Dwelling Unit of 700 net square feet of Livable Space and the Primary Dwelling Unit is 1800 net square feet of Livable Space, the impact fee would be $700-600/1800 = 0.055\%$ of the published impact fee for primary structures) or (2) as otherwise published in an updated General Fee Schedule published by Town Council. The impact fee shall be paid prior to the issuance of a zoning certificate.

C. Town Council may waive or reduce an impact fee, utility connection or EDU fees, or any application fee charged under this section for Accessory Dwelling Units designed to accommodate Elderly or Disabled Owners for good cause shown, as determined by the Town Council in its sole and absolute discretion.

§ 108-719.09 Utility connections and EDUs.

A. No separate connection between an Accessory Dwelling Unit and the water or sewer main of the existing primary structure is required if the existing connection between the Primary Dwelling Unit and the water or sewer main is determined by the Building Official to be sufficient to support the addition of the Accessory Dwelling Unit that contains one shower facility and one toilet facility.

B. As a condition of the issuance of a building permit, zoning certificate, or, if applicable, certificate of occupancy, an Applicant must purchase additional water EDUs and sewer EDUs for an Accessory Dwelling Unit at the amount set by the General EDU Fee Schedule and as may be later adjusted by Town based upon actual water and sewage usage if any of the following applies:

(i) site topography requires separate water and/or sewer connections as determined by the Building Official;

(ii) the existing capacity of the water and sewer lines located in the space servicing the applicable property at the time of the passage of this chapter necessitates upgrades by the Town in size or locations to accommodate the Accessory Dwelling Unit; or

(iii) the Accessory Dwelling Structure includes more than one toilet or shower as may be authorized by a conditional use authorization granted by the Board of Zoning Appeals.

C. If an Accessory Dwelling Unit is integrated into the existing connection between the Primary Dwelling Unit and the water or sewer main as of October 1, 2025 or structurally attached to the Primary Structure, no additional connection fee associated with the integration of the Accessory Dwelling Unit may be charged by the Town so long as water annual average usage for the subject property remains at 250 gallons or less per day.

D. For all new construction or conversion of Accessory Dwelling Units whether attached or detached, an Accessory Dwelling Unit shall use a separate meter or submeter from the Primary Dwelling Unit to track the delivery of water from a utility to the Accessory Dwelling Structure.

§ 108-719.10 Amnesty for Detached Accessory Dwelling Units Constructed and Used Prior to October 1, 2026.

- A. Purpose. The Mayor and Council recognize that Detached Accessory Dwelling Units may exist within the Town that were constructed, converted, or established prior to October 1, 2025, without the benefit of a building permit, zoning certificate, or other authorization, and that requiring such units to meet all current code requirements applicable to new construction may impose an undue hardship where the unit has been safely occupied for a substantial period. This § 108-719.10 establishes a limited amnesty program allowing such ADUs to obtain legal, non-conforming status upon a showing of (1) the date of original construction and continuous use, and (2) verified compliance with applicable electrical and plumbing safety standards.
- B. Eligibility. An Detached Accessory Dwelling Unit is eligible for amnesty under this § 108-719.10 if:
- (i) The Accessory Structure was physically constructed and in use as a Dwelling Unit prior to October 1, 2025;
 - (ii) The application for amnesty is submitted to the Planning Director no later than April 1, 2027 with accompanying photographs of the existing conditions of the exterior and interior of the Detached Accessory Dwelling Unit;
 - (iii) The Detached Accessory Dwelling otherwise complies, or is brought into compliance with the structural, electrical and plumbing safety requirements of this § 108-719.10 within the period set by the Building Official, which shall not be later than January 1, 2028; and
 - (iv) Any impact fees are paid to the Town.
- C. Evidence of Pre-October 1, 2025 Construction and Use. An applicant shall establish the construction date and continuous use of the ADU by submitting at least two of the following, at least one of which must be independently verifiable through a third-party source not created or controlled by the applicant:
- (i) Photographs bearing a machine-generated date stamp, metadata timestamp, or other embedded date data showing the ADU's exterior and/or interior condition prior to October 1, 2025 (such as photos from previous MRIS listings), together with an affidavit from the applicant attesting to the authenticity and circumstances of the photographs;
 - (ii) Insurance policies, riders, or declarations pages referencing the ADU and predating October 1, 2025;
 - (iii) Aerial or satellite imagery (including Google Earth historical imagery, County GIS historical imagery, or comparable services) showing the structure's footprint as of a date prior to October 1, 2025;
 - (iv) A permit, inspection record, or other official document issued by the Town, Worcester County, or the State of Maryland referencing the structure prior to October 1, 2025, even

- if such permit did not authorize the ADU use itself (e.g., a building permit for an unrelated addition that depicts the ADU on an accompanying plan); or
- (v) Sworn affidavits from a disinterested third party (e.g., neighbors, contractors, former tenants) with personal knowledge attesting to the ADU's existence and use prior to October 1, 2025, provided that affidavit evidence alone, absent any documentary corroboration under § 108-719.10 subsections (i)–(iv), shall not be sufficient to establish eligibility.

The Housing Inspector and Planning Director shall have discretion to request additional evidence where the evidence submitted is inconsistent, incomplete, or insufficient to establish a reliable construction and use date.

D. Electrical and Plumbing Compliance.

- (i) *Documentary compliance.* An applicant may establish electrical and plumbing compliance by submitting:
 - (a) A copy of an electrical and/or plumbing permit issued by the Town or Worcester County for the ADU's electrical or plumbing systems, together with evidence of final inspection or approval (if available); or
 - (b) A written agreement, contract, or invoice from a Maryland-licensed electrician and master plumber reflecting installation, alteration, or repair of the ADU's electrical or plumbing systems, together with such additional evidence as the Planning Director may require to confirm the scope of work performed.
- (ii) *Inspection in lieu of documentation.* Where an applicant cannot produce documentation under § 108-719.10(D)(i), or where the Planning Director determines that the documentation produced is insufficient to confirm current safety compliance, the applicant shall have the ADU's electrical and plumbing systems inspected by a Maryland-licensed electrician and/or master plumber, at the applicant's sole expense. The inspection shall assess the electrical and plumbing systems against the safety provisions of the electrical and plumbing codes currently in effect in Worcester County, provided that:
 - (a) The inspection shall be limited to health and life-safety elements of the electrical and plumbing systems (including but not limited to service capacity and grounding, GFCI/AFCI protection where required for the systems' use, absence of unsafe wiring methods, water supply and drain-waste-vent integrity, and absence of cross-connection or backflow hazards), and shall not require full compliance with dimensional, cosmetic, or non-safety-related provisions of the current code applicable to new construction;
 - (b) Any deficiencies identified shall be corrected by the applicant within 90 days of the inspection, or such longer period as the Building Official may allow for good cause, and shall be subject to re-inspection and applicable re-inspection fees; and
 - (c) Nothing in this § 108-719.10(D) shall be construed to require strict compliance with ceiling height, room area, or other habitability provisions of the building code as a condition of amnesty under this § 108-719.10 (D), except as separately required under § 108-719.10(E) below.

- E. Effect of Amnesty; Continued Applicability of Other Standards. An ADU granted amnesty under this § 108-719.10 shall be deemed a legal, nonconforming Accessory Dwelling Unit for zoning purposes as of its documented construction date, and shall not be required to meet dimensional or use standards applicable to new ADU construction under Chapter 108, ADU ordinance above, provided that:
- (i) The ADU shall at all times comply with minimum life-safety standards, including but not limited to structural integrity, smoke and carbon monoxide alarm requirements and emergency egress, regardless of the ADU's status under this § 108-719.10;
 - (ii) Amnesty granted under this § 108-719.10 addresses electrical, plumbing, and zoning nonconformity only, and does not constitute a determination that any room within the ADU satisfies other habitability requirements; and
 - (iii) Amnesty under this § 108-719.10 is personal to the ADU as documented and does not authorize expansion; structural alteration; or rental or use of an ADU that exceeds the one bedrooms and one bathroom (inclusive of one toilet and one shower); or any occupancy of an ADU of more than 600 net Livable Square Feet, but less than 1200 net square feet of Livable Space unless and until the requisite impact fee is paid to the Town within the amnesty period;
 - (iv) Amnesty for ADUs that contain greater than 800 net square feet of Livable Space (but less than 1200 net square feet) or with more than two bedrooms and two bathrooms shall require a conditional use authorization under § 108-719.13 prior to the issuance of an amnesty certificate;
 - (v) Before the issuance of a rental license for a detached ADU that exceeds the maximum square footage, bedroom, and bathroom count, the Owner must obtain a BZA conditional use authorization if the existing ADU exceeds the maximum square footage, bathroom, and bedroom restrictions.
 - (vi) Failure to file an amnesty application on or before April 1, 2027 shall require Owner to meet all requirements, filings, and approvals required for newly constructed or converted ADUs under this § 108-719, including payment of fees and any applicable fee multipliers and any applicable fines or other applicable enforcement penalties.
- F. Fees. The application fee for amnesty under this § 108-719.10 shall be set forth on the "Town of Berlin General Fee Schedule." No penalty or retroactive permit-fee multiplier otherwise applicable to unpermitted work shall be assessed against an ADU granted amnesty under this Section, provided the application is submitted to the Planning Department on or before April 1, 2027, as may be extended by Town Council.
- G. Denial; Appeal. A denial of amnesty under this § 108-719.10 may be appealed to the Housing Board of Review in accordance with § 108-719.10.

§ 108-719.11 Record Covenant

- A. Amnesty Certificate. An Applicant may request the Town to issue a zoning certificate or amnesty certificate in the form prescribed by the Planning Director that may be recorded in the land records of Worcester County. Such certificate shall detail the estimated square footage of Livable Space; number and type of cooking facilities; number of bedrooms, bathrooms (including number of toilets and showers); maximum occupancy under

applicable Town and Worcester County code; any other conditions deemed relevant to be listed on the certificate, such as limitations on expansion of the Accessory Structure's Livable Space without further Town authorization.

- B. Non-Conforming Certificate. As a condition of the issuance of a zoning certificate and, if applicable, certificate of occupancy for Accessory Unit Dwelling is located in the Historic District or receive a conditional use authorization from the Board of Zoning Appeals under § 108-719.13, the issuance of such zoning certificate or certificate of occupancy shall be conditioned upon recording of a covenant in the land records that states the specific conditions upon which Board of Appeals or Historic Commission authorized their approvals, including the maximum authorized square footage of Livable Space, number of bathrooms, maximum occupancy, and statement that any further modifications to the interior or exterior of the Accessory Structure used as Detached Accessory Dwelling Unit are not authorized without additional required approvals.

§ 108-719.12 Enforcement; Penalties; Appeals

- A. Inspections. If the Housing Inspector has reason to believe that Accessory Structure is being utilized as a Dwelling Unit without the issuance of a zoning certificate or certificate of occupancy authorizing such use after April 1, 2027 or otherwise in violation of this § 108-719 and other applicable Town Codes, the Housing Inspector shall provide the Owner notice of inspection, which shall be delivered via first class mail return receipt requested at the mailing address of the owners listed on the SDAT and posted on the front door of the Primary Dwelling. If the Housing Inspector determines that the Accessory Structure is being utilized or capable of being utilized as a Dwelling Unit, the Owner shall have 30-days to file the required application and pay the necessary fees for such Accessory Structure to be permitted as an Accessory Dwelling Unit under this §108-719 or provide a written statement that such Accessory Structure is not and will not be utilized as an Accessory Dwelling Unit. If it is later determined that the Accessory Dwelling Structure is being utilized as a Dwelling Unit without a zoning certificate or certificate of occupancy (as applicable), the Owner shall be subject to fines (and fine multipliers) as may be published by the Town Council and the other remedies set forth in § 108-719.12(B) below.
- B. Enforcement. In addition to the remedies under § 108-118 or § 108-119, failure to meet the applicable public health, safety or welfare standards or any applicable Town noise ordinance shall entitle the Building Official or Housing Inspector to issue a cease and desist order; impose fines set by the Town Council in the General and seek a judicial lien to be recorded in the land records Worcester County for any fines imposed; and seek civil and injunctive relief against the Owner and any occupants of the Accessory Dwelling Unit, including court order requiring the removal of habitable structures within Accessory Structure (such as bathrooms, kitchens, etc) or as otherwise provided in the Town Code.
- C. Appeals.
 - (i) Any person denied a building permit, zoning certificate, or certificate or otherwise aggrieved by the action of the Building Official or Housing Inspector under this § 108-719 or other applicable provisions of the Town Code, within ten days of receipt of written notice of such action, appeal such action to the town Housing Board of Review by filing a notice of appeal to the Building Official or Housing Inspector. The Housing Board of

Review shall meet within 30 days of such notice and conduct a hearing according to its regulations as established under Article 5 of the Town Code (Housing Standards). Except in incidents involving the life, safety or an immediate neighbor's peaceful enjoyment of their property, all fines, penalties, suspensions or revocations shall be stayed pending the board of review hearing and the decision of the Housing Board of Review.

- (ii) Any person aggrieved by an action of the Housing Board of Review may appeal such action to the circuit court for the county pursuant to the Maryland Rules of Procedure.

§ 108-719.13 Conditional Use Authorization.

- A. General prohibition. Except for previously permitted attached ADUs granted amnesty hereunder, an Detached Accessory Dwelling Unit shall exceed 600 net square feet of net Livable Space and shall not contain more than one toilet, one shower and one bedroom, , except upon grant of a conditional use authorization sought and granted by the Board of Zoning Appeals under this § 108-719.13.
- B. Burden of proof. The Applicant bears the burden of proving each element below by clear and convincing evidence. Failure to satisfy any single element shall result in denial. The Board of Appeals shall not grant a conditional use authorization based on the cumulative weight of partial showings.
- C. Mandatory findings. The Board of Appeals may grant a size conditional use authorization only upon written findings that:
 - (i) *Unique physical circumstance.* The lot possesses an exceptional physical condition — topography, large lot size, lot configuration, easement, or environmental constraint — not shared generally by other lots in the same zoning district, and that condition is determined to lessen the impact of the additional square footage and need for additional bedrooms and bathrooms;
 - (ii) *Not self-created.* The condition necessitating the variance was not created by the Applicant, a prior owner, or any voluntary act (including subdivision, prior construction, or lot-line adjustment) undertaken after October 1, 2025;
 - (iii) *Minimum necessary relief.* The requested square footage is the minimum necessary to afford relief, supported by a floor-plan analysis demonstrating that the stated functional need cannot reasonably be met within the base size cap or, in the case of existing Detached Accessory Dwelling Units seeking amnesty, would cause the Owner significant financial hardship should the Owner be required to convert the Accessory Structure to a non-habitable space or significantly small habitable space;
 - (iv) *Existing Accessory Structure.* Whether the requested ADU is or can be located in an existing Accessory Structure on the subject property as opposed to a new Accessory Structure;
 - (v) *No substantial detriment.* The increased size, number of bedrooms, bathrooms will not (i) alter the essential character of the neighborhood, (ii) substantially diminish or impair the use, privacy, or value of adjacent properties, or (iii) result in an ADU exceeding the footprint or height of the principal dwelling;

- (vi) *Consistency with purpose.* The conditional use is consistent with the stated purpose of this Article — to provide supplemental, subordinate housing — and does not result in an ADU that functions as a co-equal or competing dwelling unit; and
 - (vii) *No economic hardship alone.* Desire for increased rental income, resale value, or general convenience shall not, standing alone or in combination with other non-physical factors, constitute grounds for granting the conditional use;
 - (viii) *Massing and Design Considerations.* The Board of Appeals shall consider, and may decline a conditional use, if the massing or design requirements under § 108-719.05(E) and (F) are not appropriately addressed or, if applicable, the Applicant has not received all required approvals of the Historic Commission; and
 - (ix) *Impact on Neighbors.* Any conditional use granted under this § 108-719.10 shall be conditioned on the Board of Zoning Appeals giving great weight to the impact of granting the relief on the immediately adjacent neighbors (within 100 feet of the subject properties' lines), including the potential need for additional on- or off-street parking to support the ADU.
- D. Additional conditions on any conditional use granted. The granting of conditional use shall not relieve an Applicant from the requirements to pay additional Town fees, including any applicable impact fees or EDUs fees.
- E. No self-perpetuation. A conditional use granted under this § 108-719.10 runs with the specific approved plans only. Any subsequent modification, expansion, or reconstruction of the ADU requires a new conditional use application under this § 108-719.10 in its entirety.
- F. Limitations on Relief. In no event shall the Board of Appeals grant a conditional use authorization for an Detached Accessory Dwelling Structure that is greater than 1,200 square feet of Livable Space or 75% of net square footage of Livable Space of the Primary Dwelling Unit (whichever is less); authorize more than two toilets and two showers; and two bedrooms; or for more than one Accessory Dwelling Unit to be located on a single lot or property.
- § 108-719.14 Relationship to restrictive covenants and to other Town Code provisions; severability.
- A. Except as expressly modified by this Article, all other applicable requirements of the Town Code and this Chapter, including nonconforming use and structure provisions under Chapters 104 and 108 shall continue to apply. In the event of a conflict between this §108-719 and other provisions of this chapter regarding Accessory Structures or Accessory Dwelling Structures, this Chapter 108-719 shall govern.
- C. If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article that can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared severable.

THIS ORDINANCE was introduced and read at a meeting of the Town Council held on the _____ day of _____, 2026, and thereafter a statement of the substance of the Ordinance was published as required by law.

A PUBLIC HEARING was held, and this Ordinance was adopted this _____ day of _____ 2026, by the Mayor and Council of the Town of Berlin, Maryland, by the vote as indicated below:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Dean Burrell, VP					
Steve Green					
Jay Knerr					
Shaneka Nichols					
Jack Orris					
<i>Voting Tally</i>					

Dean Burrell Sr., Vice President of the Council

This Ordinance was approved this _____ day of _____, 2026 by the Mayor of the Town of Berlin and is effective at the start of the 2027 Fiscal Year on July 1, 2026.

Zackery Tyndall, Mayor, President of the Council

ATTEST:

Mary Bohlen, Town Administrator