



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of May 17, 2008**

DATE: May 14, 2008

SUBJECT: Request to Advertise public hearings on proposed Zoning Ordinance amendments to Section 1. Definitions; Section 5. "R-20" One-Family Dwelling Districts; and Section 31. Special Provisions to allow Accessory Dwelling units on single-family detached dwellings in "R" Districts, but not including "RA" Districts and to allow an unrelated person to live in a Family Suite for the purpose of providing care or assistance to a child, elderly or disabled resident living in the main dwelling.

C.M. RECOMMENDATION:

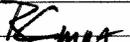
Adopt the attached resolution to advertise public hearings by the Planning Commission on July 7, 2008 and the County Board on July 19, 2008, on the attached ordinance to amend, reenact, and recodify the provisions in Section 1, Section 5 and Section 31 of the Arlington County Zoning Ordinance to allow the following:

- a. An unrelated person to live in a Family/Caregiver Suite for the purpose of providing care or assistance to a child, elderly or disabled resident living in the main dwelling; and
- b. Accessory Dwelling units within single-family detached homes with limitations as outlined in the ordinance.

ISSUES: Can Accessory Dwellings be permitted while preserving the character of Arlington's single-family neighborhoods? Can the Accessory Dwelling guidelines be effectively enforced? Can unauthorized Accessory Dwellings be brought into compliance with the new guidelines or eliminated?

SUMMARY: The action recommended for advertisement would make the following two important changes to the Arlington Zoning Ordinance:

Family/Caregiver Suite. Currently the Zoning Ordinance permits homeowners to create a suite within a single family home for another family member; however, the use of the suite by a non-family member is prohibited. Depending on the size of the family, a caregiver may be able to

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PLA-4965

live in the home, but could not have a separate suite with kitchen and bathroom. The recommended advertisement would permit the suite to be used by one person unrelated to the household for the purpose of providing care to children under the age of 13 or care to an occupant of the main dwelling who is elderly or disabled. A major goal of this change is to permit people to age in place within the community and provide greater flexibility to accommodate a person providing live-in care. No significant issues have been identified with this recommendation.

Accessory Dwelling (AD). The main part of the recommended advertisement is to authorize the creation of a secondary living unit within a single family home under a strict set of guidelines for up to two people, who may be unrelated to the homeowners. The homeowner(s) would be required to live in either the main or accessory dwelling. The goal of this change is to make housing available at a lower cost in a manner that retains the character of single-family neighborhoods, makes more efficient use of the County's single-family housing stock, and permits older homeowners to stay in their homes. The recommendation is based on work presented by the Housing Commission in January 2008; however, a number of restrictions are proposed in order to achieve the stated goals, especially addressing concerns that the character of Arlington's neighborhoods would be altered in an unintended and negative way.

An accessory dwelling would have to meet all the Building Code requirements of an independent dwelling. The Virginia Uniform Statewide Building Code (Building Code) requires that the accessory dwelling have a separate entrance, a separate ventilation system from the main dwelling, and access to all electrical panels. It requires a minimum ceiling height of seven feet, emergency egress from each sleeping area, and fire-resistance rated construction between the accessory dwelling and the main dwelling. In addition to meeting zoning requirements dictating height and placement of the dwelling on the lot and proximity to the lot line, the accessory dwelling would be required to meet other codes which regulate property in Arlington County, including the Virginia Uniform Statewide Building Code, the Arlington County Care of Premises Ordinance and the Arlington County Noise Control Ordinance. Other major limits on creating an accessory dwelling are proposed as follows:

- Only one accessory dwelling would be allowed per lot and only as part of the main dwelling. The accessory dwelling could not be in a separate building.
- The size of the accessory dwelling is limited to only 750 square feet or less.
- Only two persons could occupy the accessory dwelling.
- Non-conforming lots, in terms of lot area and lot width, would not be eligible for accessory dwellings.
- Lots with non-conforming structures would only be eligible for accessory dwellings that conform to all requirements of the zoning district in which the lot is located.
- A Certificate of Occupancy would be required for the accessory dwelling before initial occupancy.
- The homeowner would be required to occupy either the main or accessory dwelling.
- The homeowner would be required to record a covenant on the property in the County's land records which identifies the accessory dwelling use.

- The homeowner would be required to file an annual affidavit of compliance with the Zoning Administrator.
- The homeowner would be required to agree to annual inspections, to cooperate with County officials, and to notify all tenants of this requirement.
- The entrance to the accessory dwelling would not be allowed on the same side of the house as the main entrance to the main dwelling, or visible from the street for dwellings on a corner lot; no exterior stairs could be visible from the street for a second floor accessory dwelling.
- An additional off-site parking space would be required if the block on which the main dwelling is located is more than 65% parked and there are no existing off-site spaces.

Based on the preceding, it is expected that approval of the recommended ordinance changes would result in relatively few accessory dwellings. This restraint will enable Arlington to assess the impacts of the accessory dwellings and determine if they can be successful in meeting the desired goals without unintended negative impacts. After the County has experience with accessory dwellings, modifications to the ordinance could be considered in future years to reduce restrictions or discontinue additional units if they are not successful. Based on national data, only about 28 units per year would be expected.

Were the County Board to adopt the accessory dwelling provisions, staff would undertake an intensive effort to identify any unauthorized accessory dwellings in the community and work with homeowners to either bring the units into compliance or to eliminate them. Additional efforts, regardless, will be made to address complaints of overcrowding in single family neighborhoods.

BACKGROUND: The Accessory Dwelling Subcommittee of the Housing Commission studied the issue over a three-year period, meeting with a range of community stakeholders, consulting with a national expert, and researching the ordinances and experiences of other jurisdictions. The subcommittee included representatives of the Planning Commission and the Transportation Commission. In January 2008, the Housing Commission sent a report to the County Board which recommended that the County Board amend the Zoning Ordinance to permit accessory dwellings. The County Board discussed the Housing Commission's report in a work session with the Housing Commission on January 31, 2008. At that time, the Board directed staff to evaluate the report and develop staff recommendations which would include a proposed zoning ordinance amendment to come before the County Board as a request for advertisement in May, 2008. Additionally, the Elder Readiness Plan also recommends that the County Board permit accessory dwellings as means of increasing the ability of elders to age in place.

DISCUSSION: The Housing Commission's research indicated that accessory dwellings could provide many benefits with little County investment. One of the benefits shown by existing studies is a potential increase in the number of affordable rental units. Even with no restriction on rents for accessory dwellings, studies have shown that rents for ADs are typically below market rates. While the change is not expected to provide a large number of units, it would provide another tool in the toolbox for increasing the County's supply of affordable units.

Accessory dwellings can also contribute to making home ownership more affordable as the rental income stream could allow a homeowner on limited income to remain in his/her home or permit people to qualify for a higher mortgage. The Elder Readiness Plan, accepted by the County Board, specifically recommends accessory dwellings. The population over age 65 is expected to double and the population over age 85 is expected to triple between 2000 and 2025. Most elders prefer to live in their homes as long as possible. Allowing accessory dwellings and expanding the definition of Family Suites to permit occupancy by caregivers would enhance elders' ability to continue living in their homes.

The following table provides a comparison of the Housing Commission and staff recommendations on some of the key elements of any Accessory Dwelling ordinance.

Comparison of Housing Commission and Staff Recommendations			
	Element	Housing Commission Proposal	Staff Recommendations
1	Type of Unit	Interior and Exterior ADs	Interior ADs only
2	Type of House	Allow in single-family homes and duplexes, but not in townhouses.	Allow in single-family houses only
3	Lot Requirements	<i>No reference made</i>	Lot area and width must meet minimum requirements of the zoning district
4	Approval Process	Interior: Administrative Process Exterior: Use Permit	Interior: Administrative Process Exterior: N/A
5	Size Limits	Interior: No cap Exterior: 1,000 sq. ft.; maximum footprint of 650 sq. ft.	Interior: Maximum of 750 sq. ft. <i>or</i> one-third of the size of the overall structure, <i>whichever is less</i> Exterior: N/A
6	Owner Occupancy Requirement	Yes; some waivers allowed, e.g. for military	Yes; no waivers allowed
7	Maximum Occupancy	Unspecified cap on number of occupants.	Maximum of two occupants
8	Owner provision of access for code enforcement staff	Owner agrees to provide access for Code Enforcement staff	Owner agrees to cooperate with Code Enforcement staff for annual inspections and in response to complaints.
9	Deed Covenant	<i>No reference made</i>	Required
10	Certificate of Occupancy	<i>No reference made</i>	Required at initial occupancy
11	Affidavit with Tenant Identification Information	<i>No reference made</i>	Required at initial occupancy and whenever new tenant(s) move in
12	Parking Requirements	Parking survey required; parking requirements if over 65% parked	Same as Housing Commission

Comparison of Housing Commission and Staff Recommendations			
	Element	Housing Commission Proposal	Staff Recommendations
13	Public Notification	Interior: None Exterior: Yes	Interior: Recordation in Real Estate Database Exterior: N/A
14	Design Guidelines	<i>No reference made</i>	AD door cannot be on the same side of house as the main entrance; AD door on a corner lot cannot be visible from the street; exterior stairs to a second floor dwelling cannot be visible from the street. A voluntary style guide will be developed for owners considering additions to their homes.
15	Home Occupations	<i>No reference made</i>	Home occupations allowed in AD, other than contractor; permit required
16	Annual Reports	Yes	Yes
17	Fees	<i>No reference made</i>	Not recommended at this time.

The following elaborates on the preceding. The numbers shown in parentheses correspond to the matching items in the table.

Type of Unit (1): An interior accessory dwelling, as recommended, is one that is entirely within the main structure, e.g. in basements, on second floors, or in an addition to the house. An exterior accessory dwelling, which is not recommended, is one that is in a detached accessory structure, e.g. in a converted garage, a second floor of a garage, or a separate accessory building on the property. Interior accessory dwellings are more consistent with the character of single family neighborhoods and should not be intrusive. If interior accessory dwellings prove to be successful, the County Board may want to consider regulations for exterior units at a future date.

Eligible Zoning Districts (2): Accessory dwellings would be permitted in single-family detached homes in R-Districts (R-20, 10, 8, 6, 5, 10T, 15-30T, and 2-7). Accessory dwellings would not be permitted in townhouses or duplexes. Again, if over time accessory dwellings prove to be successful, consideration could be given to permit them in structures other than single family detached dwellings. Until Arlington has more experience managing accessory dwellings, staff recommends a cautious approach in order to avoid any unintended neighborhood changes.

Lot Requirements (3): Staff recommends that in order to be eligible for an accessory dwelling, all minimum area and width requirements of the district in which the accessory dwelling is located would have to be met.

Lots that are non-conforming in the district in which they are located, with reference to lot area or width would not be eligible for creation of ADs. Approximately twenty percent of the single-family lots in Arlington County are nonconforming with respect to

area.

Structures that are non-conforming with reference to coverage and placement, including setbacks and side and rear yard requirements, would be eligible to create accessory dwellings, however, any modifications to create the accessory dwelling (i.e., a rear or side addition to the main dwelling) would have to meet all requirements of the district in which they are located.

No variances or use permits would be supported to accommodate creation of accessory dwellings. This restriction would limit the perpetuation of nonconforming conditions.

Approval Process (4): Each accessory dwelling would need an accessory dwelling permit approved by the Zoning Administrator and a Certificate of Occupancy approved by the Zoning Administrator and the Building Official. The Zoning Administrator would certify that all requirements are met, including Building Code, Zoning Ordinance, and parking requirements.

The following provides a step-by-step summary of the proposed approval process:

- a. The resident homeowner files an application for an accessory dwelling, which includes a floor plan of the proposed accessory dwelling and its relationship to the main dwelling, and a certified plat of the lot and structure in question.
- b. The Zoning Administrator determines that the lot meets the minimum area and width requirements for the district in which it is located.
- c. The Zoning Administrator reviews the property plat and determines that the main dwelling is a conforming structure and the extent of allowed modifications to the main dwelling. A determination of lot coverage would also be calculated at this time to determine if the lot could accommodate an accessory dwelling or any required off-street parking for an accessory dwelling.
- d. The Department of Environmental Services conducts a parking survey to determine if an off-street parking space would be required to be created. If an off-street space is required, that space would have to be created within the coverage requirements for the district in which the lot is located.
- e. The resident homeowner signs and files an affidavit of compliance with the Zoning Administrator. This affidavit contains identifying information on the tenant(s) and indicates compliance with the conditions imposed by the ordinance, including inspection by Code Enforcement staff on an annual basis, or when tenants change.
- f. The Zoning Administrator issues the accessory dwelling permit.
- g. The owner records an accessory dwelling covenant with the Land Records Division of the Clerk of Circuit Court.
- h. The Building Official (or other appropriate staff) issues building and other required permits.
- i. The Building Official and Zoning Administrator issue the Certificate of Occupancy.
- j. The Department of Real Estate Assessment updates the County's real estate database records to indicate the presence of the accessory dwelling.

- k. The resident homeowner updates the affidavit of compliance with name(s) of tenants of the accessory dwelling and does so both annually and when tenants change.

Size Limits (5): In order to ensure that the accessory dwelling is secondary to the main residence, the size of an accessory dwelling would be limited. The largest that the unit could be is 750 square feet (sq. ft.), which would require a total main house of 2,250 square feet or more. If the total structure is less than 2,250, the accessory dwelling is limited to one-third of the total structure. This means that an accessory dwelling in a 1,000 square foot house could be no larger than 333 square feet; in a 1,500 square foot house, the accessory dwelling could be no larger than 500 square feet.

Owner-occupancy Requirement (6): Owner occupancy would be required. The owner could occupy either the main or the accessory dwelling. The Housing Commission recommendation allows for waivers (e.g., overseas assignments of military personnel); however, staff considers the presence of the homeowner on-site to be critical for managing the accessory dwelling. Waivers would also be difficult to monitor and enforce. Therefore, no waivers are recommended.

Maximum Occupancy (7): Staff recommends a maximum of two persons to keep the AD subordinate to the potential occupancy in the main dwelling. The owner would be required to file an annual affidavit of compliance which would include identifying information on the tenant(s) of the AD. The affidavit would be required to be updated annually and each time there is a change in tenant.

Code Enforcement (8 - 11): Code Enforcement staff would enforce the maintenance and occupancy requirements. The proposed ordinance builds in several layers of accountability to support compliance with the ordinance including the following:

- A requirement that the owner of the main dwelling agree to file an affidavit of compliance with the Zoning Administrator that identifies the tenants of the accessory dwelling and acknowledges the owner's agreement to the conditions of the permit.
- The conditions of the permit would require the owner to cooperate with County staff in permitting annual inspections of the accessory dwelling.
- The accessory dwelling would require a building permit and a Certificate of Occupancy.
- Public records in the County's real estate database would identify the AD use on the property.
- A covenant identifying the accessory dwelling would be recorded in the land records.
- The homeowner must occupy one of the dwellings.

The accessory dwelling Permit and Certificate of Occupancy could be revoked by the Zoning Administrator for the following reasons:

- Failure of the owner to maintain owner occupancy or to enforce maximum occupancy limits of the accessory dwelling;

- Failure to maintain required off-street parking;
- Failure to cooperate with the County in investigating complaints; and
- Repeat violations of AD Permit conditions.

The dwelling must also be maintained in compliance with the Virginia Uniform Statewide Building Code. If the Permit is revoked, the owner would no longer be able to rent the unit.

Parking Requirements (12): The County would conduct a parking survey for each accessory dwelling application. If the block is less than 65% parked, an owner would be allowed to add an AD without a parking requirement. If the block is more than 65% parked, the homeowner would have to create one off-street space if there were none. If there were already one or two off-street spaces, they would have to be maintained, but no new spaces would be required.

For zoned permit parking areas, the accessory dwelling occupant would be allowed one Regular Permit if the block is less than 65% parked (plus one Flex Pass and one book of visitor passes). If the block is more than 65% parked, the owner would have to provide a parking permit to the tenant from the standard allotment for a single-family lot.

Public Notification (13): Notification of neighbors would not be required under the proposed ordinance. However, the presence of an Accessory Dwelling on a lot would be recorded in the County's real estate database, making the information publicly available. In addition, the owner would be required to record a deed covenant in the Circuit Court, identifying the Accessory Dwelling on the property. The deed covenant would alert a future buyer to the requirements of the AD Permit.

Design Guidelines (14): In order to further maintain the character of the neighborhood, staff recommends the following design guidelines related to the entrance into the accessory dwelling:

- The door to the accessory dwelling cannot be on the same side of the house as the main entrance;
- On a corner lot the entrance to the accessory dwelling must be on a side of the house that is not visible from the street; and
- No exterior stairs to the second floor can be visible from the front of the property.

In response to concerns expressed by the Historical Affairs and Landmarks Review Board, a voluntary style guide would be developed for owners considering an addition to their homes to accommodate an Accessory Dwelling.

Home Occupations (15): The only accessory uses that would be allowed in an accessory dwelling would be Home Occupations, as defined and regulated in subsection 31.A.12 of the zoning ordinance, which is recommended for amendment to exclude a contractor or service business in an accessory dwelling. No additional restrictions would be placed on Home Occupations in the main dwelling.

Annual Reports (16): If the ordinance is adopted, staff would provide an annual report to include the following:

- Number of accessory dwelling permit applications received;
- Number of accessory dwelling permits approved; and
- Other details to be specified, such as number of complaints by type and resolution of complaints,

Fees (17): No accessory dwelling permit fee is proposed at this time, however, applicants would be required to pay for necessary building and trade permits, the Certificate of Occupancy and recordation of the accessory dwelling covenant. Staff expects the volume of applications to be low.

Unauthorized Accessory Dwelling and Overcrowding

Another goal of adopting guidelines for accessory dwellings is to curb the creation of informal, unauthorized, and potentially unsafe units. The goal is to eliminate unauthorized units or bring them into code compliance. Some unauthorized accessory dwelling may not be able to come into compliance with Building Code and would be given notice to be vacated. However, for those units that could meet code requirements, a zoning ordinance would create a tool and a process to make those unauthorized accessory dwellings compliant to a legal standard. This would help to ensure that the unauthorized accessory dwellings provide safe housing and would give the County more control over addressing any impacts on neighbors.

The issue of enforcement of unauthorized accessory dwellings arose during development of this proposal as well as during community review. Case records in the Community Code Enforcement Office for the last three years do not reflect such a widespread problem. Between 2004 and 2007, staff received 158 complaints, of which 37 were confirmed cases of overcrowding and 26 had unauthorized accessory dwellings. (Note -- there was some overlap between the two types of cases as well.) Since January 2008, less than a dozen addresses have been reported for investigation.

Notwithstanding actual investigations, a member of the Housing Commission subcommittee surveyed 10 real estate agents active in Arlington and estimated between 930 and 1,400 unauthorized accessory dwelling in Arlington. County staff have no basis for corroborating such a large number of unauthorized accessory dwellings; however, we are aware that more exist than have been recorded. Many people have expressed an unwillingness to report addresses where they suspect unauthorized accessory dwellings.

While there are some legal nonconforming accessory dwellings and legal Family Suites currently in existence, residents have indicated that many illegal ADs are unreported as neighbors do not like to report on neighbors. In order to reach owners of illegal dwellings, a program involving both investigation and proactive outreach by the office of Community Code Enforcement is proposed as follows:

- Perform an initial investigation on all complaints about overcrowding and illegal conversions of dwelling units within three to five business days.
- Establish dialogue with the Northern Virginia Association of Realtors, local area appraisers and property management firms advising of the County's effort to identify illegal accessory dwellings units and solicit their assistance in reporting conditions they discover while performing their work.
- Solicit the assistance of the leadership of area civic associations and residents as partners with enforcement staff to accurately report property conditions or activities that may be evidence of overcrowding conditions or illegal conversions at residential properties.
- Conduct evening and weekend inspections, where warranted, to collect evidence documenting the likelihood of the existence of over-crowding conditions or an illegal conversion of a residential dwelling.
- Establish a schedule of follow-up inspections using a three, six and twelve month timeframe where overcrowding conditions and illegal conversions have been validated and corrected, to assure continued compliance with County standards.
- Create an annual article for the Arlington Citizen, addressing over-crowding and illegal conversions, as well as a series of brochures in English and Spanish (how to register a property complaint; what to do once a violation notice has been received; regulations on property maintenance and occupancy).
- Although the advertisement does not constitute a violation of the County's codes, send letters to those owners who advertise the availability of a unit that it is a potentially unlawful condition in order to educate on code standards and the penalty for non-compliance should a violation occur.
- Establish meetings with Arlington County Police, Fire, Inspection Services, Solid Waste and the protective services agencies of the Department of Human Services to highlight County concerns of overcrowding or illegal dwellings, and facilitate an easy reporting process for those agencies of potential violations.

Community Process

There has been extensive outreach to the community. Since January, 2008, thirty-nine meetings on the proposal have been or are scheduled to be held, including 22 Civic Association meetings, four Civic Federation meetings, eight County Board Advisory Group meetings, two Community Forums, and three other meetings (the Committee of 100, the Unitarian Universalist Church, and the National Association of Retired Federal Employees).

Outreach Efforts: The Housing Commission and staff developed a list of organizations to notify of the Accessory Dwelling proposal and staff developed contact information for these groups. Staff is additionally maintaining a list of interested parties (currently over 90 persons), sending them notices of County meetings on ADs and materials such as the draft staff recommendations. Notices also go to eight County advisory groups. Notice has been placed in two County newsletters: the Arlington Insider with over 8,600 recipients, and the Housing Online Newsletter

with over 500 recipients. To help publicize the forums, flyers have been posted in libraries, parks, and recreation centers.

Notices have been included in Civic Federation newsletters and civic association newsletters. Civic Federation notices go to 89 member organizations, including 59 of the County's 61 civic associations as well as 30 other organizations. Staff of the Neighborhood Conservation Advisory Committee (NCAC) send the email notices to 50 civic associations. A number of articles have been in newspapers articles in the Sun Gazette, the Arlington Connection, and The Examiner.

Website: Staff developed an Accessory Dwelling website which is updated regularly.

Community Feedback: The Civic Federation adopted a resolution on February 5, 2008 (Attachment 1), which included a number of considerations for staff to assess as they developed the staff recommendations. Staff incorporated most of the Civic Federation recommendations in its recommendations. Also attached is a listing of the comments and questions received at the community forum held on March 31, 2008 (Attachment 2). The comments received at the May 1, 2008, forum will be provided in a supplemental report.

The Civic Federation met on May 6, 2008, and conducted a survey of its members to determine the level of support for amending the Zoning Ordinance to permit internal ADs, and/or to broaden the provisions for Family Suites. The survey offered members the opportunity to indicate support or lack of support for specific aspects of the staff recommendations. The results of the survey will be submitted in a later report. Making use of the member input received, a Civic Federation committee will develop a resolution to express its position on the staff recommendations. The Federation plans to review that resolution at its June 3, 2008, meeting.

Zoning Committee of the Planning Commission (ZOCO): ZOCO members discussed the proposal outlined in the Housing Commission's Accessory Dwelling report at three meetings on January 30, 2008, February 18, 2008, and March 26, 2008, and reviewed proposed zoning ordinance amendments based on a preliminary staff proposal on April 23, 2008. Discussion of concerns included non-conforming structures, owner occupancy requirements, enforcement, parking, geographic extent of implementation, and notification. Staff recommendations on each of these parameters are described above in the Discussion section of this report. It is anticipated that an update on the proposed amendment will be included on the May 21, 2008, ZOCO meeting agenda.

CONCLUSION: Staff recommends that the County Board adopt the attached resolution to advertise public hearings by the Planning Commission on July 7, 2008, and the County Board on July 19, 2008, on Zoning Ordinance provisions in Section 1, Section 5 and Section 31 of the Arlington County Zoning Ordinance to allow Accessory Dwellings and to allow an unrelated person to live in a Family/caregiver Suite for the purpose of providing care or assistance to a child, elderly or disabled resident living in the main dwelling, and in order to facilitate the creation of a convenient, attractive and harmonious community; and for other reasons required by the public necessity, convenience and general welfare and good zoning practice.

RESOLUTION TO AUTHORIZE THE ADVERTISEMENT OF PUBLIC HEARINGS TO CONSIDER THE PROPOSED AMENDMENTS TO SECTION 1. DEFINITIONS, SECTION 5. "R-20" ONE-FAMILY DWELLING DISTRICTS AND SECTION 31. SPECIAL PROVISIONS OF THE ARLINGTON COUNTY ZONING ORDINANCE AT THE JULY 7, 2008 PLANNING COMMISSION AND THE JULY 19, 2008 COUNTY BOARD MEETINGS TO ALLOW ACCESSORY DWELLING UNITS AND TO ALLOW FAMILY SUITES TO BE OCCUPIED BY A CAREGIVER

The County Board of Arlington County hereby resolves to advertise the following amendments to Section 1. Definitions, Section 5. "R-20" One-Family Dwelling Districts, and Section 31. Special Provisions of the Arlington County Zoning Ordinance for public hearings at the July 7, 2008 Planning Commission and the July 19, 2008 County Board meetings. This amendment would amend, reenact and recodify the proposed zoning ordinance provisions in order to reduce or prevent congestion in the streets, to facilitate the creation of a convenient, attractive and harmonious community; and for other reasons required by the public necessity, convenience and general welfare and good zoning practice:

* * *

SECTION 1. DEFINITIONS

A. [Terms defined.]

Accessory building. Same as "Building, accessory."

Accessory Dwelling. Same as "Dwelling, Accessory"

* * *

Dwelling, Accessory. A complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than two (2) persons for living purposes and meeting the standards of Subsection 31.A.18.

* * *

Family/caregiver suite. Not more than two (2) rooms plus a bathroom and "efficiency" kitchen in a dwelling that are designed, arranged, used or intended for occupancy by either not more than two (2) persons who are related by blood or marriage to the principal occupant of the dwelling or not more than one (1) person who may be unrelated to the principal occupant of the dwelling, who provides care for one or more children under age thirteen (13) of the principal occupant of the dwelling or care for or assistance to an elderly or disabled occupant of the main dwelling. The suite shall be designed so that it can function as an integral part of the dwelling although the occupants may live independently of each other. (Ord. No. 85-23, 7-13-85)

* * *

SECTION 5. "R-20" ONE-FAMILY DWELLING DISTRICTS

* * *

A. Uses Permitted.

* * *

8. Accessory uses:
 - a. Accessory buildings, including a private garage, provided that a detached accessory building shall be located as required in Section 32.
 - b. Family/caregiver suites in all "R" Districts, not including "RA" Districts, subject to approval by the Zoning Administrator consistent with the following conditions:
 - (1) Not more than one (1) family/caregiver suite shall be permitted in a dwelling.
 - (2) The gross floor area of the suite shall not exceed five hundred (500) square feet.
 - (3) The suite shall have interior access to the rest of the dwelling.
 - (4) The suite shall not have separate utility service (i.e., electric meter and water meter).
 - (5) A floor plan of the suite that also identifies its relationship to the rest of the dwelling shall be filed with the Zoning Administrator.
 - (6) The property owner shall record a covenant on the property which identifies the suite use and the restrictions imposed by this ordinance.
 - (7) The dwelling in which the suite is located shall have only one (1) main entrance and no new entrance shall be permitted on the same side of the structure as the existing main entrance of the dwelling.
 - (8) There shall be only one (1) address for the property.
 - (9) A written statement identifying the person who will provide the care and the kind of care that will be given must be filed in the office of the Zoning Administrator as to an unrelated resident of the family/caregiver suite.

* * *

- f. Accessory Dwellings as specified, and only (by reference) in zoning districts provided for in Section 31.A.18.

* * *

SECTION 31. SPECIAL PROVISIONS

The regulations specified in this ordinance shall be subject to the following special provisions, except as permitted by site plan approval or otherwise specified in the district classifications:

A. Use.

* * *

12. *Home Occupation*, as defined in Section 1, is permitted in dwelling units "R" and "RA" District regulations when such use is clearly subordinate or incidental to the principal use of the premises for dwelling purposes.

a. Home occupations which are conducted as limited by paragraph 12.c., below, and which have the general character of the following uses are permitted:

* * *

- (3) Contractor or service business, provided that all requirements of this section are met as well as the following additional requirements:
 - (a) Not more than one (1) commercial vehicle, as defined in Section 1, shall be parked on the property and then only in accordance with applicable regulations of Section 31, subsection A.3, of this ordinance.
 - (b) No contracting equipment or materials shall be stored on the premises, except in a commercial vehicle used for transporting said equipment and materials between jobs, and no loading or unloading shall be done on or in the vicinity of the premises.
 - (c) The dwelling is not an Accessory Dwelling.

* * *

18. Accessory Dwellings are allowed by permit within or attached to one-family dwellings provided they comply with the following:

- a. Accessory Dwellings are permitted on lots containing one-family dwellings in all "R" Districts, not including "RA" Districts, subject to issuance of a permit by the Zoning Administrator.
- b. Accessory Dwellings are permitted only on lots that meet the following criteria:
 - (1) The lot conforms to all zoning regulations for the zoning district in which the lot is located, including the minimum lot area and width for creation of new lots in the district.
 - (2) On a lot containing a structure with legal nonconforming conditions, including side and rear yards, setbacks and coverage, any

- modifications to the structure to create the Accessory Dwelling shall conform to all zoning regulations for the district in which the lot is located.
- c. Not more than one (1) Accessory Dwelling shall be permitted on a lot.
 - d. The gross floor area of an Accessory Dwelling shall not exceed seven hundred fifty (750) square feet, or fifty (50) percent of the gross floor area of the main dwelling, whichever is less.
 - e. A valid Certificate of Occupancy shall have been issued for the Accessory Dwelling.
 - f. Before approval of a building permit, the Owner shall record a covenant on the property in a form acceptable to the Zoning Administrator, which identifies the Accessory Dwelling use and that it is subject to the restrictions imposed by the zoning ordinance.
 - g. The following shall be filed with the Zoning Administrator with the application for an Accessory Dwelling permit:
 - (1) A floor plan of the Accessory Dwelling that also identifies its relationship to the rest of the dwelling and that provides such further details as may be required by the Zoning Administrator.
 - (a) No Accessory Dwelling shall have its entrance on the same side of the main dwelling as the main entrance of the main dwelling.
 - (b) On a corner lot, no Accessory Dwelling shall have its entrance on a side of the main dwelling that is visible from the street.
 - (c) No Accessory Dwelling with an entrance above the first floor shall have exterior stairs to that entrance visible from the street.
 - (2) A certified plat of the lot.
 - h. If a parking survey conducted by the County determines that the block on which the main dwelling is located is more than sixty-five (65) percent parked and:
 - (1) There are one (1) or two (2) on site parking spaces existing before issuance of the Accessory Dwelling permit, then those spaces shall be maintained; or
 - (2) There are no on-site parking spaces existing before issuance of the Accessory Dwelling permit, then one (1) on-site parking space shall be provided. The Owner shall be responsible for providing evidence of creation of the additional parking space to the Zoning Administrator. All new parking spaces shall be constructed to meet all applicable requirements in Section 32 and Section 33 (including coverage).
 - i. Conditions for Accessory Dwellings:
 - (1) No more than two (2) persons shall occupy the Accessory Dwelling.
 - (2) The Owner shall occupy one of the dwelling units.
 - (3) Before a Certificate of Occupancy is issued for the Accessory Dwelling, the Owner shall file an affidavit of compliance with the Zoning Administrator in a form acceptable to the Zoning Administrator attesting to compliance with the conditions of this

- section, and shall do so annually thereafter, as well as when a new occupant(s) occupies the Accessory Dwelling and when any structural modifications are made to the Accessory Dwelling.
- (4) The Owner shall permit annual inspections of the Accessory Dwelling by the Zoning Administrator or his designee upon reasonable notice to ensure compliance with the conditions of this section.
 - (5) The Owner shall cooperate with the Zoning Administrator and his designee in ensuring compliance with conditions of this section and in the investigation of complaints of violations of this section.
 - (6) The Owner shall advise all tenants of the Accessory Dwelling of the annual inspection requirement and obligation to cooperate with the Zoning Administrator in ensuring compliance with the conditions of this section.
 - (7) Accessory uses shall not be permitted in the Accessory Dwelling except Home Occupations as permitted and regulated in Section 31.A.12.
- j. Failure to comply with the conditions in Subsection 31.A.18 will result in revocation of an Accessory Dwelling permit and of the Certificate of Occupancy for the Accessory Dwelling by the Zoning Administrator. Revocation of the Accessory Dwelling permit and revocation of the Certificate of Occupancy shall be effective after:
- (1) A finding by the Zoning Administrator of violation;
 - (2) Notice with thirty (30) day opportunity to correct the violation; and
 - (3) A finding by the Zoning Administrator after thirty (30) days that the violation has not been corrected.
- k. Notwithstanding subsection 31.A.18.j, if more than three (3) violations of the provisions of subsection 31.A.18 are found to exist by the Zoning Administrator within a (1) one-year period, the permit may be revoked.

* * *

The Arlington County Civic Federation Accessory Dwelling Resolution

2/5/08

Whereas Arlington has a shortage of affordable housing and Accessory Dwellings (ADs) can offer an affordable housing option;

Whereas the Housing Commission and the Elder Readiness Plan have proposed to allow some homeowners to include certain configurations of ADs on their property;

Whereas ADs provide additional flexibility to homeowners for family living arrangements, child care, elder care, and other service workers;

Whereas AD rental income could provide homeowners more economic flexibility in continuing to afford their homes; and

Whereas Arlington homeowners will want assurances that ADs will not change the character of single-family neighborhoods by increasing congestion, noise, or overcrowding, or by worsening parking;

1. Therefore be it RESOLVED that the Arlington County Civic Federation supports consideration of the following if the Zoning Ordinance is amended to allow **Interior/SemiDetached ADs**:

(A) Allowing Interior/SemiDetached ADs only on single-family properties — not duplex properties; and

(B) Providing critical protections of neighborhood character, which are legally and practically enforceable, including occupancy limits, owner-occupancy requirements, ongoing inspection authority, transparency of the permitting process, and limitations as to size, form, placement, and lot size as follows.¹

- The allowable occupancy for the entire property (main building with AD) is limited to 4 unrelated persons.
- Both the homeowner and AD occupant(s) agree to the terms of the AD, including giving Code Enforcement timely access to make inspections when complaints are made.
- The County Attorney determines that such occupancy limits and inspections can be legally enforced and provides guidance and options concerning what types of rules are enforceable and how they could be enforced.
- Homeowner occupancy is required, with some limited exceptions for military reserve and guard called to active duty.
- The main building with AD conforms to the current building code and all setback, height, and coverage requirements in the current Zoning Ordinance.

¹ Underlining indicates revisions, deletions, or additions to the Housing Commission proposal.

- Properties that do not have the minimum lot area for the Zoning District are not eligible for ADs.
- Any renovations to a main building to provide an AD be required to maintain the home's single-family exterior character — for example, no exterior stairs to a second-story AD or construction of a second front door.
- The AD provides parking per the Housing Commission's recommendation — except the use of driveway tandem parking to meet the AD parking requirement.
- The public is notified when the AD is permit is applied for and, when granted, the AD permit is recorded in the County's Real Estate database.
- The ordinance change is reviewed by the County Manager after approximately three years to determine what adjustments, if any, need to be made.

And WHEREAS Arlington homeowners and home-workers will benefit from the ability to have care-givers and other home-workers by providing on-site housing with access to the family living quarters;

2. Therefore be it FURTHER RESOLVED that the Civic Federation recommends consideration of expanding the eligibility for **Family Suites** to allow occupancy by workers providing family support services, such as eldercare and daycare, thus expanding this section of the Zoning Ordinance to be Family Support Suites.

And WHEREAS exterior ADs are significantly more likely than interior/semi-detached ADs to reduce the privacy that adjacent homeowners currently enjoy;

3. Therefore be it ALSO RESOLVED that the Civic Federation recommends consideration of the following for **Exterior ADs**:
 - (A) Not allowing Exterior ADs at this time; and
 - (B) If considering Exterior ADs in the future, requiring the relevant Interior/Semi-Detached requirements listed above and the following additional limitations:
 - Exterior AD permits are granted by the County Board using a public process that enables the Board to set additional use permit conditions for the Exterior AD; and
 - Exterior ADs are allowed only on larger lots that that have significant unbuilt space, which could be achieved by requiring:
 - That the exterior AD meet the setback requirements for the main building on the property, with no exceptions for ADs in garages that are within the setback area.
 - That the allowable footprint of the main building and the AD footprint (added together) be limited to the current maximum allowable main building footprint.

Comments and Questions

recorded at the

Community Forum on the Accessory Dwelling Proposal

March 31, 2008

(listed in chronological order)

- Be clear that the purpose of the proposal is to no longer have zoning to protect single family homes, but instead multi-family homes can now be anywhere.
- Please publish this proposal widely.
- All neighborhood associations should consider this issue.
- Take the word “affordability” out of proposal.
- There are Bed and Breakfasts and youth hostels in neighborhoods and there needs to be a Countywide program to identify these units.
- Are there other options to address these issues?
- Consider other ways to permit families of four or more to have au pairs, without violating the Zoning Ordinance definition of “family”.
- Who will occupy these? Service industry personnel? Students?
- This proposal does not help the affordable housing crisis; what about giving a tax break to people that install accessory dwellings?
- Excellent report; supports proposal, but who will rent these accessory units since housing is hard to afford and the proposal won’t address boarding houses.
- Housing Commission is a volunteer organization that prepared a thoughtful report and the speaker appreciates the opportunity provided for citizen input.
- How many affordable units does Arlington County have compared with Fairfax County? Are we inviting more people into the County who need affordable housing or solving our affordable housing problem?
- Enforcement is key, e.g. trash cans that remain in front of property for too long.
- This proposal will allow County employees to buy homes.
- Why is enforcement not taking place now?
- Question to clarify what defines “four unrelated persons.”
- What are the other opportunities for input?
- Why is this proposal good for the elderly?
- What happens to the accessory dwelling when owner dies?
- How will this be tracked?
- Accessory dwellings are “environmental”
- Need to ease into this – could explore limiting it to one occupant.
- What studies have been done on impact on home values? Is there enough staff to enforce this?
- Why entertain this, especially with all the current overcrowding?
- Other jurisdictions have more limitations than are proposed here.
- Enforcement of the owner occupancy requirement is untested.
- Single-family homeowners have rights.

- Under the proposal accessory dwellings can be close to the property line and large.
- Thinking it will be closer to 1,000 units added per year, not 28.
- Request staff to post the 1983 ADU report and the Saturday, March 29 Washington Post article on the web.
- Owner may be in the military and need to vacate the house quickly.
- Why not cap the number of ADs allowed per year for 3 years and see where you are?
- Why play with housing that exists and works?
- Accessory dwellings are a good idea on surface, but a lot for a senior to care for.
- Neighbors don't like boarding houses.
- Having 30 – 40 people per block is going to cause decay; this issue needs to go to a vote by each neighborhood association.
- A Historic Affairs and Landmark Review Board member expressed concern over what this would do to the historic appearance of many of the homes in Arlington.
- Keep small affordable houses in the County; this proposal allows ADs to be too close for safety; many are non-compliant now.
- New resident who was concerned with the move to allow multi-family in single-family areas and issues with enforcement.
- There are unsafe illegal accessory units out there now and this ordinance would encourage safe legal ones.
- The ordinance has the benefit of notifying neighbors, strict requirements to build, owners must live on site and the County can inspect the units.
- Applaud work on report; illegal units had no path to become legal units.
- Accessory dwellings will have negative consequences because crowding reduces home values.
- Expressed support for the ordinance stating that the extra rental unit will help affordability.
- Stop calling them accessory dwellings, these are private rental units.
- This will benefit elders' ability to age in place.
- Hard to gain access to current illegal accessory dwellings and feels owners are unlikely to come in for a permit.
- Estimate of 28 accessory dwellings being produced annually is a false assumption; more units will be done for income.
- Arlington has a reputation of caring for those who live & work here and this is a cost effective solution.
- Large enforcement issue with owners leaving.
- English basements add value and are a good way to get affordable units that have no impact.
- People feel unhappy and threatened. Overcrowding is not enforced. Solve this first.
- Support proposal – this helps make ownership affordable.
- Supports proposal – mother-in-law may come.
- Enforcement is an issue, long standing complaints need to be resolved.
- Insure that home values don't decline.

- Owners will be “invited” to apply to come into compliance, what if they don’t?
- Supports proposal, wants to use this to be able to stay in home; it is hard to afford homes.
- Is there an egress issue for fire safety?
- Directly notify single-family homeowners about this proposal.
- Subsidies are already available for renters and County employees who want to become homeowners.
- Commended the report and asked why ADs were previously studied?
- Code enforcement is an issue that must be dealt with.
- Report recommendations will require extensive compliance monitoring.
- Attorney needs to resolve some questions regarding occupancy.
- Should look at limiting cars in the accessory unit to reduce environmental impact.
- Legitimate enforcement issues currently exist.