



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of July 19, 2008**

**DATE:** July 10, 2008

**SUBJECTS:** Amendments to the Arlington County Zoning Ordinance

- A. Section 1. Definitions and Section 5. "R-20" One-Family Dwelling Districts to allow a) one (1) or b) two (2) unrelated persons to live in a family/caregiver suite for the purpose of providing a) care or assistance to a child under age thirteen (13), elder or person with disabilities living in the main dwelling or b) to any child, elder or person with disabilities living in the main dwelling, or c) to provide care or support services for an occupant of the main dwelling.
- B. Section 1. Definitions; Section 5. "R-20" One-Family Dwelling Districts; and Section 31. Special Provisions to allow up to one (1) Accessory Dwelling (AD) per lot of up to a maximum of seven hundred fifty (750) square feet, a) to include a definition of GFA or b) without a definition of GFA; and with a requirement that the AD be a) no greater than fifty (50) percent of the size of the main dwelling or one-third of the combined size of the main dwelling and AD combined, regardless of the size of the main dwelling; or b) up to at least 500 sf feet if the main dwelling is smaller than one thousand (1000) sf; or c) up to at least 500 sf if the main dwelling is smaller than one thousand square feet but no larger than the size of the main dwelling; within or attached to single family detached dwellings in "R" Districts, but not including "RA" Districts, provided: a) the lot meets all minimum requirements of the zoning district in which the lot is located, or b) the lot meets all minimum requirements of the district in which the lot is located with the exception of minimum width; a certificate of occupancy has been issued for the AD; the AD is occupied by no more than two (2) persons; the door of the AD on a corner lot is a) not visible from the street or b) not abutting a street; accessory uses in the AD are limited to home occupations with the exception of contractor with a) no additional limitations on employees associated with home occupations in accessory dwellings or b) limitations on employees associated with home

County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Fran Lunney, Housing Division, DCPHD  
Deborah Albert, Planning Division, DCPHD

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occupations in accessory dwellings; the owner of the main dwelling occupies one of the dwellings, files an affidavit of compliance with the Zoning Administrator attesting to compliance with the conditions of the ordinance, agrees to permit annual inspections, agrees to cooperate with the Zoning Administrator in enforcing the conditions of the ordinance, agrees to notify tenants of such conditions, and records a covenant on the property identifying the AD use and the restrictions imposed by the Zoning Ordinance; and a parking space is created if the block is more than sixty-five (65) percent parked and there are no existing off-site spaces a) explicitly counted to include standard size, non-standard size, tandem and non-tandem or b) not explicitly counted to include standard size, non-standard size, tandem and non-tandem; and the AD permit may be revoked due to failure to comply with the conditions of the ordinance or following three (3) violations of such conditions in a one (1) year period.

### **C.M. RECOMMENDATION:**

- A. Adopt the ordinance attached as Attachment A to amend, reenact, and recodify the provisions of Section 1. Definitions and Section 5. “R-20” One-Family Dwelling Districts of the Arlington County Zoning Ordinance to allow up to two unrelated persons to live in a family/caregiver suite for the purpose of providing care or assistance to a child, elder resident or person with disabilities living in the main dwelling, as provided in Option 1C in the attached ordinance; and
- B. Adopt the ordinance attached as Attachment B to amend, reenact, and recodify the provisions of Section 1. Definitions; Section 5. “R-20” One-Family Dwelling Districts; and Section 31. Special Provisions of the Arlington County Zoning Ordinance to allow Accessory Dwellings within single family detached homes with limitations as outlined in Options 4A, 6D, 13B, 15B and 16B in the attached ordinance, with an effective date of January 1, 2009; and
- C. Direct staff to research and prepare an advertisement to amend Section 37, Violations, of the Zoning Ordinance, to provide for civil penalties for zoning violations prior to the end of the calendar year.

**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? Additional considerations raised during the public hearing on the Request to Advertise the proposed amendment are provided as options in the proposed ordinance, related to the following elements (numbers in parentheses reflect the numbering of these options in the attached ordinance):

- How many unrelated occupants should be permitted in a family/caregiver suite, and for what purposes caregivers should be permitted (1);

- Minimum lot requirements for accessory dwellings (4);
- Maximum size of accessory dwellings and minimum allowable size (6);
- Calculation of parking requirements for accessory dwellings (13);
- Design requirements for accessory dwellings (15); and
- Limitations on home occupations in accessory dwellings (16).

**SUMMARY:** The recommended action would make the following two important changes to the Arlington County 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 live in the home, but could not have a separate suite with kitchen and bathroom. The recommended amendment would permit the suite to be used by up to two persons unrelated to residents of the main dwelling, for the purpose of providing care to children, elders or persons with disabilities living in the main dwelling. 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 amendment 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 goals of this change are to make more efficient use of the County's single family housing stock in a manner that retains the character of single family neighborhoods; to permit older homeowners to stay in their homes; and to create additional housing opportunities, possibly making housing available at a lower cost. This amendment would be effective starting January 1, 2009. 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 Virginia Uniform Statewide Building Code (Building Code) requirements of an independent dwelling. The 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, coverage and proximity to the lot line, the accessory dwelling would be required to meet other codes which regulate property in Arlington County, including the previously referenced Virginia Uniform Statewide Building Code, and the Arlington County Care of Premises Ordinance and the Arlington County Noise Control Ordinance. Other major limits on creating an accessory dwelling are recommended 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 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, nor could it be 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.

Staff is implementing changes to business processes and outreach efforts in order to identify any unauthorized accessory dwellings in the community and to work with homeowners to either bring the units into compliance or to eliminate them. Additional efforts are also being made to address complaints of overcrowding in single family neighborhoods. As a means to improve the effectiveness of future enforcements efforts, staff is investigating an expansion of the existing civil penalties program, and will prepare draft zoning ordinance amendments for consideration by the community, the Planning Commission and the County Board in early fall.

**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. At a public hearing on May 20, 2008, the County Board authorized advertisement of zoning ordinance amendments to the existing family suite provision and to add accessory dwellings under certain conditions, and based on public testimony, directed staff to draft additional language to incorporate options related to occupancy in family/caregiver suites, and accessory dwelling lot requirements, unit size, design requirements, parking and limitations on home occupations in accessory dwellings.

**DISCUSSION:** The attached ordinance proposes an amendment to the adopted family suite provisions to allow up to two unrelated persons to live in a family/caregiver suite for the purpose of providing care for residents of the main dwelling; and an amendment to allow accessory dwellings in single family detached dwellings. The proposed ordinance would not allow a family/caregiver suite and an accessory dwelling in the same home. Multiple options are provided in six areas of the attached ordinance, with one additional option discussed in this report, which would be addressed in the details of the proposed affidavit of compliance.

The following sections include tables that provide an overview of the staff recommendations. Those elements that include options are highlighted in grey, with the staff recommendation in bold font. The text following each table elaborates on the proposed ordinance amendments and the options recommended by staff.

**Family/Caregiver Suites**

	<b>ELEMENT</b>	<b>OPTIONS included in proposed ordinance</b>	<b>STAFF RECOMMENDATION</b>
1	Family / Caregiver Suite	A. Amend family suite provisions to allow one (1) unrelated caregiver for an elder, person with disability or child under age 13 who is an occupant of the main dwelling. B. Same as A with <i>but</i> with no age restriction on child under care. C. <b>Same as B but allow up to 2 unrelated persons.</b> D. Allow all households to have caregivers in a family/caregiver suite, not requiring an elder, person with disability or child to be an occupant of the main dwelling. Allow up to two (2) unrelated persons, at least one (1) of whom is a caregiver.	<b>(C)</b>  Amend family suite provisions to allow up to two (2) unrelated persons to live in a family suite, at least one (1) of whom provides care for elder residents, person(s) with disabilities or child(ren) who are occupants of the main dwelling.

The numbers shown in parentheses below correspond to the matching item in the table.

**Family/Caregiver Suite (1) (Options 1A – D):**

The family suite provision was added to the Zoning Ordinance in 1985. The amendment was developed as a means to add flexibility in accommodating the housing needs of extended

families within a single family dwelling, in a manner clearly incidental to the principal residential use of the property. The family suite is not a separate dwelling unit, and the adopted provisions were designed to address community concerns about the impact of family suites on the appearance and character of single-family neighborhoods:

- No more than one per dwelling unit;
- Maximum size of 500 square feet;
- Interior access to the rest of the dwelling is required;
- No separate utility service;
- Floor plan of the family suite showing the relationship to the rest of the dwelling must be on file with the Zoning Administrator;
- Covenant identifying the suite use and restrictions of the ordinance must be recorded;
- Only one main entrance, and no new entrance may be permitted on the same side as the entrance to the dwelling;
- Only one address for the property.

In the 23 years since the family suite provision was first adopted, 39 have been approved. The family suite records are maintained with other administrative records in the Zoning Office and no regular inspections have been conducted following approval. Using the existing case management system (in use since 1999), staff was only able to identify one instance where the owner did not abide by the family suite conditions.

Currently the Zoning Ordinance prohibits use of the family suite by a non-family member. Depending on the size of the family, a caregiver may be able to live in the home, but could not have a separate suite with kitchen and bathroom. The recommended amendment would permit the suite to be used by up to two persons unrelated to residents of the main dwelling, for the purpose of providing care to children, elders or persons with disabilities living in the main dwelling (Option 1C). The proposed amendment also includes options which would only allow one unrelated person in the family/caregiver suite, or would allow a caregiver to live in the suite for the purpose of providing services other than for care to elders, children or persons with disabilities. Staff recommends the two person limit in order to accommodate a caregiver who might have a partner or dependent of his/her own. Staff recommends limiting the care services provided to children, elders or persons with disabilities in order to maintain a clear distinction between the family/caregiver suite and the proposed accessory dwelling provisions.

With the recommended option, the need for care services would be defined based upon the occupant of the dwelling, using definitions used for qualification for other County programs:

*Elder:* A person qualifies as elderly if he or she is 60 years old or over.

This is based on the Older Americans Act (OAA) of 1965, as amended, which uses age 60 as the minimum age for participation in OAA funded programs. Verify with birth certificate, baptismal certificate, VA driver's license, etc.

*Person with Disability:* An individual who has a disability, which is a physical or mental impairment that substantially limits one or more of the major life activities, and who requires personal assistance to remain in the home. “Personal assistance” refers to help provided to people with disabilities to assist them with tasks essential for daily living. These tasks may include bathing, dressing, getting around, toileting, eating, shopping, remembering things, and other activities. A letter from a doctor or other medical professional is required verifying the need for personal assistance services.

There are a number of fundamental distinctions between the family suite and an accessory dwelling as proposed. An accessory dwelling, discussed in detail below, is considered a separate dwelling unit under the Virginia Uniform Statewide Building Code, and requires fire-rated construction, separate ventilation, access to the electrical panel from both units, and a number of other features not applicable to a family suite. In addition, in order for a lot to be eligible for consideration for an accessory dwelling, staff is recommending that it meet both lot area and width requirements. Property owners requesting approval of an accessory dwelling must provide an annual affidavit of compliance, meet parking requirements following a parking survey, and have greater flexibility on the size of the unit than with a family suite.

### **Accessory Dwellings**

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 that the County Board permit accessory dwellings as means of increasing the ability of elders to age in place. This will become increasingly important as the population in Arlington 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.

Patrick Hare, a national expert on accessory dwellings, has aided communities across the country in developing AD ordinances. His 1989 survey of 47 communities found that typically one accessory dwelling per 1,000 single-family homes is added per year, but that a higher installation rate could be achieved by active efforts by localities (including financial incentives) to promote accessory dwellings. Staff has obtained current installation rate data from seven jurisdictions (Attachment 1). The staff survey found production of up to 0.5 ADs per one thousand single family detached homes, unless the locality offered financial incentives to create ADs. Montpelier, VT and Santa Cruz, CA achieved rates of over 3 AD per 1,000 houses, the former using grants of up to \$5,000, the latter using 4.5% loans of up to \$100,000 as well as waiving

fees and parking requirements.

Staff recommends that, if approved by the County Board, the ordinance become effective on January 1, 2009, in order to give staff time to fully implement the recommended enforcement and outreach measures outlined in this report, as well as to research and prepare an advertisement to amend the Zoning Ordinance to allow civil penalties. During this time, staff would also develop educational materials for homeowners interested in creating accessory dwellings, including information on:

- Accessory dwelling permit application and approval process;
- How to determine if their property qualifies for an AD;
- Zoning and parking requirements;
- Design requirements and guidelines;
- Fees and other costs involved;
- Building code requirements, building permit application process, and universal design principles;
- How to hire an architect, design professional, or contractor;
- Tenant-landlord issues, e.g. tenant screening, tenant-landlord law, availability of County tenant-landlord staff and materials.

If the proposed ordinance were approved and subsequently removed from the zoning ordinance through a later County Board action, no new accessory dwellings could be created. An approved AD would then become a nonconforming use that would remain legal as long as it continued to be used as an AD without an interruption of two years. State law limits the County’s authority to impose further limits on nonconforming uses.

The following summarizes the elements related to accessory dwellings in the proposed ordinance. Those elements with options are highlighted in grey, with the staff recommendation in bold font.

	<b>ELEMENT</b>	<b>OPTIONS included in proposed ordinance</b>	<b>STAFF RECOMMENDATION</b>
2	Type of Unit	Interior ADs only.	Same
3	Type of House	Allow in single family detached houses only.	Same
4	Lot Requirements	A. <b>Lot must meet minimum area and width requirements of the zoning district.</b> B. Lot area must meet minimum lot requirements of the district, but not width.	(A) Lot must meet minimum area <i>and</i> width requirements of the zoning district.
5	Approval Process	Administrative approval by Zoning Administrator, plus necessary permit approvals, inspections and Certificate of Occupancy when completed.	Same

	ELEMENT	OPTIONS included in proposed ordinance	STAFF RECOMMENDATION
6	Size Limits	<p>A. 50% of main dwelling (or 1/3 of total AD and main dwelling combined), up to a maximum of 750 feet.</p> <p>B. Same as A, <i>and</i> also include definition of GFA.</p> <p>C. Same as B, but allow ADs to be a minimum of 500 sq. ft. regardless of the size of the main dwelling.</p> <p>D. <b>Same as B, but for a main dwelling smaller than 1000 sq. ft., allow ADs to be a minimum of 80% of the main dwelling, up to 500 sq. ft.</b></p>	<p><b>(D)</b></p> <p>50% of main dwelling (or 1/3 of total AD and main dwelling combined), up to a maximum of 750 square feet <i>and</i> include a definition of GFA. For dwellings smaller than 1000 sq. ft., the accessory dwelling may be up to 80% of the main dwelling up to a maximum of 500 sq. ft.</p>
7	Owner Occupancy Requirement	Required, no waivers permitted	Same
8	Maximum Occupancy	Maximum of two persons	Same
9	Owner provision of access for Code Enforcement staff	Owner agrees to cooperate with Code Enforcement staff for annual inspections and in response to complaints	Same
10	Deed Covenant	Required	Same
11	Certificate of Occupancy	Required at initial occupancy	Same
12	Affidavit of Compliance	<p>Affidavit of Compliance required at initial occupancy and whenever new tenant(s) move in.</p> <p>A. <b>Include names of tenants on affidavit.</b></p> <p>B. Do not include names of tenants on affidavit, but require owner to provide a copy of a signed lease upon request.</p>	<p><b>(A)</b></p> <p>Affidavit of Compliance required at initial occupancy and whenever new tenant(s) move in <i>and</i> include names of tenants on affidavit</p>
13	Parking Requirements	<p>AD triggers a parking survey. If the block is more than 65% parked and there are one (1) or two (2) existing off-street spaces, then those spaces must be maintained; and if there are no existing off-street spaces, one (1) off-street parking space must be created.</p> <p>A. Do not specify what counts as a parking space other than as provided in Section 33.</p> <p>B. <b>Require parking spaces to be standard size (as counted and created new) and explicitly address tandem spaces in the ordinance.</b></p> <p>C. Require parking spaces to be standard size, as in B above, but <i>do not</i> explicitly address tandem spaces.</p>	<p><b>(B)</b></p> <p>Every AD triggers a parking survey to determine if the street meets the 65% threshold; Parking requirements if over 65% parked <i>and</i> require parking spaces to be standard size and explicitly address tandem spaces.</p>
14	Public Notification	Note approval in County's Real Estate Database	Same

	<b>ELEMENT</b>	<b>OPTIONS included in proposed ordinance</b>	<b>STAFF RECOMMENDATION</b>
15	Design Guidelines	AD door cannot be on the same side of house as the main entrance	Same
		A. AD on a corner lot cannot have its entrance on a side of the main dwelling that is visible from the street. B. <b>AD on a corner lot cannot be have its entrance visible from the street.</b>	<b>(B)</b>  AD on a corner lot cannot have its entrance visible from the street.
		Exterior stairs to a second floor dwelling cannot be visible from the street.	Same
		Staff will develop a voluntary style guide for owners considering additions to their homes.	Same
16	Home Occupations	A. Home Occupations permitted in the AD, except "Contractor and Service Business." B. <b>Home Occupations permitted in the AD, as above, but not permitted to have employees on the premises, except in the case of an employee providing assistance to a person with disabilities who resides in the AD.</b>	<b>(B)</b>  Home Occupations permitted in the AD, as above, but not permitted to have employees on the premises, except in the case of an employee providing assistance to a person with disabilities who resides in the AD.
17	Annual Report	Yes	Same
18	Fee	Not recommended at this time. Applicants will be required to pay fees for building and trade permits, the Certificate of Occupancy and to record the deed covenant.	Same

The numbers shown in parentheses below correspond to the matching items in the above table.

**Type of Unit (2):** 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. A detached 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 detached units at a future date.

**Type of House (3):** 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 limited approach in order to avoid any unintended neighborhood changes.

**Lot Requirements (4) (Options 4A - B):** 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 (Option 4A).

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. Data on the number of lots that are nonconforming with respect to width are not available, as these data would have to be determined from individual surveys on a lot by lot basis.

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 by staff to accommodate creation of accessory dwellings.

The proposed amendment alternatively includes an option that would allow accessory dwellings on lots that do not meet minimum width requirements of the district in which they are located (Option 4B). A minimum width requirement could preclude entire blocks of some older neighborhoods which have lots narrower than is currently required. However, staff concludes that the area and width limitations in Option 4A are necessary in order to limit the expansion of nonconforming conditions; to avoid unintended changes in neighborhood character; and to minimize impacts on neighbors. While lots with substandard widths would be subject to the same setback requirements as standard lots, the impact would be greater on a smaller lot given the proximity to neighbors. As with other elements of the proposed ordinance, this requirement could be amended at a future date should accessory dwellings prove to be successful.

**Approval Process (5):** 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 (based on those options recommended by staff):

- 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 the extent of allowed modifications to the main dwelling. Lot coverage would also be calculated at this time to determine if the lot could accommodate an accessory dwelling and 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 (described in more detail below).
  - 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. Accessory Dwelling is created and inspected.
  - j. The Building Official and Zoning Administrator issue the Certificate of Occupancy.
  - k. The Department of Real Estate Assessment updates the County's real estate database records to indicate the presence of the accessory dwelling.
  - l. The resident homeowner updates the affidavit of compliance with name(s) of tenants of the accessory dwelling, both annually and when tenants change.

**Size Limits (6) (Options 6A – D):** 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 under this proposal. Staff recommends that if the total main house is less than 2,250 square feet, the accessory dwelling is limited to one-third of the total structure or fifty percent of the size of the main dwelling. However, for houses smaller than 1,000 square feet, an accessory dwelling could be up to eighty (80) percent of the size of the main dwelling up to a maximum of 500 square feet (Option 6D). This means that an accessory dwelling in a 1,000 square foot house could be no larger than 444 square feet; in a 1,400 square foot house, the accessory dwelling could be no larger than 466 square feet. The following table summarizes the allowable sizes for accessory dwellings created within existing houses of various sizes, or as an addition to the existing house, under all four options provided in the proposed amendment. The proposed amendment also includes a definition of gross floor area (GFA) which would establish the area of the main dwelling used to calculate the size of the accessory dwelling.

**Allowable Sizes for Accessory Dwellings under Options 6A – D for Sample Houses**

	<b>Option A/B:</b>		<b>Option C:</b>		<b>Option D:</b>	
	Up to 50% of main dwelling or 1/3 of combined total up to a maximum of 750 sf		Up to 50% of main dwelling or 1/3 of combined total up to a maximum of 750 sf; allow up to 500 sf for any house		Up to 50% of main dwelling or 1/3 of combined total up to a maximum of 750 sf; Up to 80% of main dwelling for houses smaller than 1000 sf up to a maximum of 500 sf	
<b>Main House (MD)</b>	<b>AD (Addition)</b>	<b>AD (w/in house)</b>	<b>AD (Addition)</b>	<b>AD (w/in house)</b>	<b>AD (Addition)</b>	<b>AD (w/in house)</b>
2250 sq. ft. (allows up to max size AD)	750 sq. ft.	750 sq. ft. 1500 sf MD	750 sq. ft.	750 sq. ft. 1500 sq. ft. MD	750 sq. ft.	750 sq. ft. 1500 sq. ft. MD
1400 sq. ft.	700 sq. ft.	466 sq. ft. 934 sf. MD	700 sq. ft.	500 sq. ft. 900 sq. ft. MD	700 sq. ft.	466 sq. ft. 934 sq. ft. MD
1000 sq. ft.	500 sq. ft.	333 sq. ft. 667 sq. ft. MD	500 sq. ft.	500 sq. ft. 500 sq. ft. MD	500 sq. ft.	444 sq. ft. 556 sq. ft. MD
650 sq. ft.	325 sq. ft.	n/a*	500 sq. ft.	325 sq. ft. 325 sq. ft. MD	500 sq. ft.	288 sq. ft. 362 sq. ft. MD
626 sq. ft. (min. size house to allow 500 sq. ft. addition for AD)	313 sq. ft.	n/a*	500 sq. ft.	313 sq. ft. 313 sq. ft. MD	500 sq. ft.	278 sq. ft. 348 sq. ft. MD
600 sq. ft.	300 sq. ft.	n/a*	500 sq. ft.	300 sq. ft. 300 sq. ft. MD	480 sq. ft.	n/a*

\*n/a denotes calculated size that may not meet minimum size for a dwelling, based on building code requirements

Three alternative options are included in the proposed ordinance. The first two options (Options 6A and 6B) would apply the same rule to all houses, regardless of size, and only differ in that Option 6B provides a definition of gross floor area (GFA). Option 6C would impose the same size restrictions and GFA definition described in Option 6B, however, the accessory dwelling would be allowed to be at least 500 square feet regardless of the size of the main dwelling. Under this option, accessory dwellings associated with the 2,250 square foot house described above, could still be a maximum of 750 square feet, but an accessory dwelling up to a maximum of 500 square feet would be allowed on all other houses described above. This option would allow accessory dwellings to be the same size as what is currently allowed for a family suite. Both this option and the staff recommended option (6D) would allow for an accessory dwelling that may be more practical for rental purposes. However, with the flat 500 square foot allowance on a house smaller than 1,000 square feet (Option 6C), an addition intended as an accessory dwelling could result in a unit similar in size to the main dwelling, creating a relationship more similar to a duplex than between a main and accessory dwelling. Staff concludes that maintaining size restrictions relative to the size of the main dwelling for all houses, with allowances for small houses (Option 6D), would ensure that the accessory dwelling is subordinate to the main dwelling, consistent with its accessory use.

**Owner-occupancy Requirements (7):** Owner occupancy would be required. The owner could occupy either the main or the accessory dwelling. Staff considers the presence of the

homeowner on-site to be critical for managing the accessory dwelling and being accountable to the conditions in the proposed ordinance.

**Maximum Occupancy (8):** Maximum occupancy in the accessory dwelling would be limited to two persons in order to keep the AD subordinate to the potential occupancy in the main dwelling.

Occupancy in the main dwelling is regulated through the Zoning Ordinance definition of family. Adults and children are counted in the definition.

Under current zoning regulations, there is no limit on the number of related persons (related by blood, marriage, adoption or approved foster care) who can live in a single-family dwelling. Up to four unrelated persons can live together. As such, the combination of related and unrelated persons cannot exceed four persons to be in compliance with zoning occupancy limitations.

Households that include four persons plus a nanny or exchange student technically violate the zoning ordinance, however, these situations are seldom reported for enforcement as these households typically present no problems for neighbors.

These limits are independent of the number of bedrooms in a dwelling. In other words, a five bedroom house can only be occupied by four unrelated persons.

**Code Enforcement (9 - 12):** 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:

- (7) The homeowner must occupy one of the dwellings.
- (9) The conditions of the permit would require the owner to cooperate with County staff in permitting annual inspections of the accessory dwelling.
- (10) A deed covenant identifying the accessory dwelling would be recorded in the land records. The deed covenant would also serve to alert a new owner of the AD use of the property.
- (11) The accessory dwelling would require a building permit and a Certificate of Occupancy.
- (12) The owner of the main dwelling would be required 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 (with alternative option, as discussed in the next section).
- (14) Public records in the County's real estate database would identify the AD use on the property.

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.

**Affidavit of Compliance (12):** The owner would be required to file an affidavit of compliance with the Zoning Administrator and to update it annually and each time there is a change in tenant. Staff recommends that this affidavit contain identifying information on the tenant(s) of the AD and indicate compliance with the conditions imposed by the ordinance, including inspection by Code Enforcement staff on an annual basis, or when tenants change.

As an alternative, which would maintain privacy of potential tenants, the owner could be required to provide a copy of a signed lease upon request by County officials rather than providing names of the tenants. Staff views the names of the AD tenants on the affidavit as a critical measure for enforcement of conditions of the proposed ordinance. As outlined in the previous section, several layers of accountability have been built into the proposed ordinance in response to concerns expressed by the community related to enforcement of occupancy limits. Having the names of AD tenants available to Code Enforcement staff during investigation of complaints or violations, would be of assistance during such an investigation. While a lease could be easily generated on a home computer at any time in response to a notice of violation, the proposed affidavit would be filed on a regular basis and require the owner of the main dwelling to be proactive in maintaining the conditions of the AD. Furthermore, a dwelling could potentially be rented without a signed lease. Therefore, staff concludes that including tenants' names on the affidavit of compliance would support the enforcement efforts in the attached ordinance and outlined in this report.

**Parking Requirements (13) (Options 13A – C):** Under all three options in the proposed ordinance, no more than one on-site parking space would need to be created for an accessory dwelling under any conditions. The parking requirement would be determined based on a parking survey conducted by the County for each accessory dwelling application. The parking survey determines a percentage to which the block is parked, by a method established by the Department of Environmental Services (DES). The survey proposed here would use the same methodology to determine this percentage as that established by DES and in use for identifying areas eligible for zoned permit parking.

- If the results of the parking survey indicate the block is less than 65% parked, an owner would be allowed to add an AD without a parking requirement. The 65% threshold for the parking survey is a tighter standard than the 75% used to determine if a block is eligible for zoned permit parking.

- If the survey indicates the block is more than 65% parked, the homeowner would have to create or maintain at least one existing off-street parking space. If there are two existing off-street parking spaces, both spaces would have to be maintained.
- In zoned permit parking areas (Attachment 2: revisions to “Residential Permit Parking Program Administrative Policy And Procedures”):
  - The accessory dwelling occupant would be allowed one Flex Pass if the block is less than 65% parked (plus one book of visitor passes).
  - If the block is more than 65% parked, the owner would have to make available, either a parking permit or Flex Pass, and one book of visitor passes, to the AD tenant from the standard allotment for a single family lot.

Unlike parking requirements for other uses addressed in the Zoning Ordinance, parking spaces required for ADs would be based upon existing conditions. The options in the proposed ordinance differ only in the way parking spaces would be counted to determine existing conditions. Option 13A would not require that existing spaces be measured against the standard size parking spaces (8.5’ x 18’) defined in the adopted ordinance. Option 13B would clearly define what constitutes a parking space (by size) and explicitly set forth the requirements on a property that starts with more than two parking spaces, including explicit provisions to preclude the reduction of standard size spaces to compact size spaces and the reduction of two pairs of tandem spaces to one set of tandem spaces. Option 13C addresses standard size spaces, as in Option B, but does not address tandem spaces. Staff recommends Option 13B, which would ensure that existing spaces that are most directly accessible are those that are maintained under the requirement.

**Public Notification (14):** 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 (15) (Options 15A – B):** 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 not be visible from the street (Option 15B); 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 by staff for owners considering an addition to their

homes to accommodate an Accessory Dwelling.

An alternative option is included in the proposed ordinance that would preclude the entrance to an accessory dwelling on a corner lot from being on a side of the house facing the street. Physical barriers, such as plumbing and electrical panels, or location of the AD within the house, may make it difficult to place the entrance to the AD on some facades of the house. Staff concludes that appropriate screening techniques can restrict visibility of the door from the street. Expanded options for placement of the door could more appropriately be addressed on a site-specific basis with restrictions based upon visibility rather than proximity to the street.

**Home Occupations (16):** 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. Staff also recommends that this section be amended to restrict daily employees present on the premises of an accessory dwelling to those whose assistance is related to overcoming the effect of a disability for a resident of the accessory dwelling (Option 16B). An alternative option is included, which does not limit employees of home occupations (Option 16A). No additional restrictions would be placed on Home Occupations in the main dwelling.

**Annual Report (17):** If the ordinance is adopted, staff would provide an annual report to include the data outlined below.

Permitting data:

- Number of Accessory Dwelling Permit applications received, showing subtotals for new and for legalization of unauthorized accessory dwellings;
- Number of accessory dwelling permits approved, showing subtotals for new and for legalization of unauthorized accessory dwellings;
- Number of family/caregiver suites applied for; and
- Number of family/caregiver suites approved.

Occupancy data:

- Number of occupants in individual accessory dwellings and in main dwelling;
- Length of tenure of owner of main dwelling prior to applying for accessory dwelling permit; and
- Average rent for accessory dwellings (if available) compared to the average rent for units in multi-family apartment complexes;
- Age of owner(s), if available

Physical data:

- GFA of main and accessory dwellings;
- Age of main dwelling at time of application;
- Location of accessory dwelling within the main dwelling; and
- Number of accessory dwellings by Civic Association.

Enforcement data:

- Number of complaints filed;

- Outcome of complaints investigated: violations found; violations corrected; permits revoked.

Family/caregiver suites data:

- Number of applications received;
- Number approved;
- Planned occupant(s) (family member or caregiver);
- Status of occupant needing care: elder, person with disability, child or other;
- Nature of care to be provided.

**Fee (18):** 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. During the early stages of implementation, staff would assess time and workload related to accessory dwellings in order to determine the need for an accessory dwelling permit fee and the appropriate amount for such a fee.

### **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 dwellings may not be able to come into compliance with Building Code and would be given a notice of violation and ordered to vacate the unit and discontinue its use. However, for those units that could meet code requirements, the 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. A review of complaint data from March 1 through June 30 reveals an increase in the number of complaints about overcrowding and illegal conversions. This timeframe coincides with the most extensive period of community review of the AD proposal. During this period, Code Enforcement received 64 complaints of overcrowding and illegal conversions, representing 11 percent of their investigations. Of the 34 overcrowding investigations, five (15%) were valid, 15 (44%) were not valid and in nine instances the inspectors were unable to gain entry. Of the 30 illegal conversion investigations, seven (23%) were determined to be valid, 13 (43%) were invalid and in five instances the inspectors were unable to gain entry.

Notwithstanding actual investigations, during the development of the Housing Commission proposal, 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 has 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, and heighten awareness of County regulations, a program involving both investigation and proactive outreach by the Office of Community Code Enforcement is underway:

#### Changes to Business Processes

- Office of Community Code Enforcement (OCCE) is now performing initial investigation of all complaints about overcrowding and illegal conversions of dwelling units within three to five business days.
- OCCE is now conducting evening and weekend inspections, where warranted, to collect evidence documenting the likelihood of the existence of overcrowding conditions or an illegal conversion of a residential dwelling.
- OCCE has established 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. Repeat offenders will be taken to court for failure to remain in compliance.
- Staff is developing various databases (i.e. nonconforming two-family dwellings, approved family suites) to simplify research when inquiries are received, and better monitor potential violations.
- Although the advertisement of rental property does not constitute a violation of the County's codes, when brought to the attention of OCCE, letters will be sent 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.

#### Outreach and Education

- Staff is working to 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.
- OCCE is currently soliciting 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. In early July OCCE will send letters to all civic associations

requesting their assistance in accomplishing this task as well as offering meetings with the communities to address their concerns.

- OCCE will create an annual article for the Arlington Citizen, addressing overcrowding 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). Currently there are brochures in English and Spanish about the roles and responsibilities of OCCE. Additional brochures will be ready for distribution in 30-60 days.

In addition to the aforementioned, OCCE is in the process of filling two vacant inspector positions. Those positions will be dedicated solely to monitor all zoning related matters and complaints including illegal dwelling units and overcrowding conditions. This will ensure a concentrated focus on enforcement of the zoning ordinance.

Staff also is investigating an expansion of the existing civil penalties program as a means to improve the effectiveness of enforcement efforts. Fairfax, Loudoun and Prince William Counties and the City of Alexandria use civil penalties for zoning enforcement and have found this to be a productive approach. One advantage of civil penalties is that inspectors can issue tickets, with escalating fines, up to a maximum of \$5,000. The standard of proof for a civil violation is “a preponderance of the evidence” as opposed to the standard of “beyond a reasonable doubt” for violations pursued as criminal misdemeanors. The zoning administrator, upon reasonable cause and after a good faith effort to obtain the information, is authorized to request a subpoena from General District Court to obtain data or information to be used in determining whether or not a violation of occupancy regulations has occurred in cases subject to civil penalties. Alternatively, in cases subject to criminal penalties, the zoning administrator or agent may present testimony and, if probable cause exists, obtain an inspection warrant to enter a dwelling to determine if a violation of the zoning ordinance exists. Owner or tenant consent for the inspection must be sought before seeking an inspection warrant. Taking into account this new legislative authority and the experience of neighboring jurisdictions with civil penalties, staff will prepare draft zoning ordinance amendments for consideration by the community, the Planning Commission and the County Board in early fall. This effort will be aided by the new zoning administrator for the County who will be joining the County in early September and has extensive experience with civil penalties.

### **Community Process**

There has been extensive outreach to the community. Since January, 2008, 57 meetings on the proposal have been or are scheduled to be held, including 28 Civic Association meetings, four Civic Federation meetings, three meetings of other community groups, 18 County Board Advisory Group meetings, two Community Forums, and two County Board meetings.

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 150 persons), sending them notices of County meetings on ADs and materials such as the draft staff recommendations.

Notices also go to 12 County Board advisory groups. The July issue of The Citizen included an article on the accessory dwelling proposal. 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 were 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) sends the email notices to 50 civic associations. A number of newspaper articles have been published in the Sun Gazette, the Arlington Connection, and The Examiner, as well as an editorial in The Washington Post.

Website: Staff developed an [Accessory Dwelling website](#) which is updated regularly.

Community Forums: Staff held the first forum on March 31, 2008. The purpose was to present the Housing Commission proposal and to seek community comment. Based on the input received at that forum and at a broad range of other meetings, staff developed preliminary staff recommendations, released in late April. Staff held a second forum on May 1, 2008, to present those recommendations and seek community comments. Attachments 3 and 4 are listings of the comments and questions received at the community forums.

Community Feedback: The Civic Federation conducted a survey of its members to determine the level of support for amending the Zoning Ordinance to permit 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 presented in the May 17, 2008, Board Report. On June 3, 2008, the Civic Federation voted on a resolution developed based upon the survey results, with recommendations to the County Board in three areas:

- 1) **Family Suites**: Amend the family suite provisions of the Zoning Ordinance to allow up to two live-in caregivers who are not related to the homeowner (supported by 100% of the delegates present). It should be noted that the Civic Federation also discussed allowing any household to allow a caregiver, which is a broader allowance for caregivers than that recommended by staff (Option 1C), which would only allow unrelated occupants in a family/caregiver suite for the purpose of providing care to elders, children or persons with disabilities who are occupants of the main dwelling. The caregiver option for any household is Option 1D in the attached ordinance.
- 2) **Accessory Dwellings**: Do not amend the Zoning Ordinance to allow ADs at this time (mixed support for interior ADs and minimal support for detached ADs) (supported by 67% of the delegates present); and
- 3) **Enforcement**: Demonstrate that the County has legal and practical methods for enforcing the adopted Zoning Ordinance and building code related to dwellings and occupancy (supported by 82% of the delegates present).

The Civic Federation resolution and survey results are included in Attachments 5 and 6, respectively.

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. Two updates were provided at ZOCO meetings on May 21, 2008, and June 18, 2008, where options added to the advertisement by the County Board were discussed. Discussion of concerns included non-conforming structures, owner occupancy requirements, enforcement, parking, geographic extent of implementation, and notification.

Commission on Aging: The Commission on Aging discussed the proposal at their meeting on June 9, 2008. They voted to support the family/caregiver suite proposal with the option that would allow up to two unrelated persons, one of whom is a caregiver and indicated that this modification would provide greater flexibility for caregiver arrangements. The Commission also voted to support the accessory dwelling proposal, stating that it would help elders to remain in their homes as well as potentially increase the supply of affordable rental units. They recommended that should the County Board support the proposal, the County closely monitor the ordinance's impact on older persons.

Transportation Commission: The Transportation Commission discussed the transportation-related elements of the accessory dwelling proposal at a public hearing on July 2, 2008. With respect to AD parking requirements, the Commission voted to recommend option 13B to the County Board, as the preferred configuration for allocating parking to accessory dwellings. They also recommended that design guidelines include that, to the extent possible, any parking spaces added for accessory dwellings should be added in a location similar to placement of existing driveways on the block; and that parking surveys used to trigger parking requirement be performed during peak hours (at night). The Transportation Commission recommendations specifically addressed only option 13 (parking requirements) in the proposed ordinance, and did not include a recommendation on the overall proposal.

Planning Commission: The Planning Commission heard the proposed ordinance amendments on July 7, 2008. They voted to recommend to the County Board that the amendments to the family suite ordinance be adopted to allow up to two (2) unrelated caregivers in a family/caregiver suite for the purposes of providing care to elders, children or persons with disabilities residing in the main dwelling (Option 1C in the attached ordinance). They had an extensive discussion on accessory dwellings, in which concerns were expressed related to enforcement of an accessory dwelling ordinance. The Planning Commission did not provide a recommendation to the County Board on the accessory dwelling ordinance. Votes on three different motions failed, including recommendations to not approve, to defer, and to approve with modifications. An amendment to the approval motion that included delayed implementation also failed.

Housing Commission: The Housing Commission heard the proposed ordinance on July 10, 2008. They voted to recommend to the County Board that the amendments to the family suite ordinance be adopted to allow all households to have caregivers in a family/caregiver suite, not requiring an elder, person with disability or child to be an occupant of the main dwelling and allow up to two unrelated persons, at least one of whom is a caregiver (Option 1D in the attached ordinance). The motion specified the need for verification of caregiver status of occupant for households without elders, children or persons with disability.

The Housing Commission voted 6-1 to recommend to the County Board that the Zoning Ordinance be amended to allow accessory dwellings within single family detached homes with limitations as outlined in 4A [lot must meet minimum area and width requirements], 6B [size limited to 50% of main dwelling up to 750 square feet], and 13A [no additional specifications for what counts as a parking space], in the proposed ordinance language. On Design Guidelines (15), the motion did not support Option 15A or 15B, but supported a requirement that AD on a corner lot cannot have its door on a side of the main dwelling that abuts a street, with exceptions allowed on a case-by-case basis for oddly-shaped lots. On Home Occupations (16), the motion supported: 1) having no limitations on the specific types of home occupations allowed; and 2) not allowing employees on premises, except in the case of an employee providing assistance to a person with disabilities who resides in the AD.

The Housing Commission motion also recommends the following additional requirements:

1. an unambiguous definition of “owner” to ensure the intentions of the owner-occupancy requirements are met;
2. maximum occupancy limits should contain an allowance for a one-year transition for change in family size;
3. additional resources dedicated to Code Enforcement, and an annual assessment to determine if additional resources are needed;
4. appropriate administrative regulations and guidance to homeowners related to removal of the deed covenant; and
5. a separate annual report on enforcement of overcrowding complaints at the same time as the annual report on Accessory Dwellings by December 31 each year.

### **Economic and Fiscal Impact of the Proposed Zoning Ordinance Amendments**

The economic impact of accessory dwellings has been one of the concerns raised by the community. According to the County Department of Real Estate Assessment (DREA), single family homes are assessed based on the sales of similar homes in the surrounding neighborhood. Since the basis of the assessment is sales in the neighborhood, no distinction is made between single family homes that are rented and those that are owner occupied. In the absence of sales data, the DREA cannot determine that significant decreases in value or future appreciation are anticipated as a result of the proposed amendments.

**CONCLUSION:** Staff recommends that the County Board adopt the attached ordinance to amend, reenact and recodify the provisions of Section 1, Section 5 and Section 31 of the Arlington County Zoning Ordinance, with options 1C, 4A, 6D, 13B, 15B and 16B, to allow Accessory Dwellings and to allow up to two unrelated persons to live in a family/caregiver suite

for the purpose of providing care or assistance to a child, elder or person with disabilities 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.

**AN ORDINANCE TO AMEND, REENACT AND RECODIFY SECTION 1. DEFINITIONS AND SECTION 5. "R-20" ONE-FAMILY DWELLING DISTRICTS OF THE ARLINGTON COUNTY ZONING ORDINANCE TO ALLOW UP TO TWO (2) UNRELATED PERSONS TO LIVE IN A FAMILY/ CAREGIVER SUITE FOR THE PURPOSE OF PROVIDING CARE OR ASSISTANCE TO CHILD(REN), ELDERS OR PERSONS WITH DISABILITIES LIVING IN THE MAIN DWELLING.**

Be it ordained that Section 1. Definitions and Section 5. "R-20" One-Family Dwelling Districts of the Arlington County Zoning Ordinance are hereby amended, reenacted and recodified as follows 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:

**Options are highlighted in Grey. Option "A" was included in the May 17 County Board Report. Other options include additional policies identified by the County Board at the May 20 hearing.**

**SECTION 1. DEFINITIONS**

**A. [Terms defined.]**

*Accessory building.* Same as "Building, accessory."

\* \* \*

**OPTION 1A. Allow up to 1 unrelated person in a family/caregiver suite with a limitation of age 13 on the age of children under care:**

*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 one or more elder(s) or person(s) with disabilities who are ~~an elderly or disabled~~ occupant(s) 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)

**OPTION 1B. Allow up to 1 unrelated person in a family/caregiver suite, as above, with no age limitation on the age of children under care:**

*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 of the principal occupant of the dwelling or care for or assistance to one (1) or more elder(s) or person(s) with disabilities who are occupant(s) 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)

**OPTION 1C. Allow up to 2 unrelated persons in a family/caregiver suite with no age limitation on children under care:**

*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 two (2) persons who may be unrelated to the principal occupant of the dwelling, at least one (1) of whom provides care for one or more children of the principal occupant of the dwelling or care for or assistance to one (1) or more elder(s) or person(s) with disabilities who are occupant(s) 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)

**OPTION 1D. Allow up to 2 unrelated persons in a family/caregiver suite, with no age limitation on children under care, as in 1C above, and allow other care/support services.**

*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 two (2) persons who may be unrelated to the principal occupant of the dwelling, at least one (1) of whom provides care for one or more children of the principal occupant of the dwelling; care for or assistance to one (1) or more elder(s) or person(s) with disabilities who are occupant(s) of the main dwelling; or other care services for an 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 family/caregiver suite shall not be permitted in a dwelling in which an accessory dwelling is located.
  - ~~(910)~~ 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.

\* \* \*

**AN ORDINANCE TO AMEND, REENACT AND RECODIFY SECTION 1. DEFINITIONS, SECTION 5. "R-20" ONE-FAMILY DWELLING DISTRICTS AND SECTION 31. SPECIAL PROVISIONS OF THE ARLINGTON COUNTY ZONING ORDINANCE TO ALLOW ACCESSORY DWELLINGS WITHIN SINGLE FAMILY DETACHED HOMES WITH LIMITATIONS AS OUTLINED IN THE ORDINANCE.**

Be it ordained that effective January 1, 2009:

Section 1. Definitions, Section 5. "R-20" One-Family Dwelling Districts, and Section 31. Special Provisions of the Arlington County Zoning Ordinance are hereby amended, reenacted and recodified as follows 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:

\* \* \*

**All sections with options are highlighted in Grey. For all options, "A" was included in the May 17 County Board Report. Other options include additional policies identified by the County Board at the May 20 hearing.**

**SECTION 1. DEFINITIONS**

**B. [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.

\* \* \*

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

\* \* \*

**B. 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.

\* \* \*

- 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.

\* \* \*

**OPTION 16A. do not place additional limits on employees for home occupations in accessory dwellings.**

**OPTION 16B. include the following highlighted section to amend the home occupation section to limit daily employees associated with a home occupation in an accessory dwelling to those whose assistance is related to overcoming the effect of a disability for a resident with disabilities who is a resident of the accessory dwelling.**

- c. Home occupation uses shall be subject to the following limitations. All limitations apply together. No limitation shall be interpreted as relaxing another limitation.

\* \* \*

- (6) Only one (1) person, at any time, who is not a bona fide resident of the dwelling, may be employed or perform work on the premises. In addition, a disabled resident may employ assistance from one (1) person at a time who is not a resident and whose assistance is limited to overcoming the effect of the disability. A written statement identifying the person who will give the assistance, the kind of assistance that will be given and the time the person will be in the dwelling must be filed in the office of the Zoning Administrator as to each person permitted to be employed as an assistant to a disabled person before that person may be employed in the dwelling. If the dwelling is an accessory dwelling, persons who are not bona fide residents of the dwelling may not be employed or perform work on the premises except one (1) non-resident employee may be employed or perform work on the premises providing assistance to a disabled resident, as above.

\* \* \*

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:

**OPTION 4A. Allow accessory dwellings *only* on lots that meet all zoning regulations for the district in which they are located, including area *and* width.**

- (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~~ recordation of newly created lots in the district.

**OPTION 4B. Allow accessory dwellings on lots that do not meet minimum width requirements for the district in which they are located.**

- (1) Except for minimum lot width, the lot conforms to all zoning regulations for the zoning district in which the lot is located, including the minimum lot area for recordation of newly created 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.
  - (3) An accessory dwelling shall not be permitted on a lot with a family/caregiver suite.
- c. Not more than one (1) Accessory Dwelling shall be permitted on a lot.

**OPTION 6A. Restrict size of AD to 50% of main dwelling (or 1/3 of total GFA of main and accessory dwelling combined). Definition of GFA is not provided in this option).**

- 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 (or a third of the combined gross floor area), up to a maximum of seven hundred fifty (750) square feet ~~whichever is less.~~

**OPTION 6B. Restrict size of AD to 50% of main dwelling (or 1/3 of total GFA of main and accessory dwelling combined) and define GFA.**

- d. The gross floor area of an Accessory Dwelling shall not exceed fifty (50) percent of the gross floor area of the main dwelling (or a third of the combined gross floor area), up to a maximum of seven hundred fifty (750) square feet. For the purposes of this section, gross floor area shall be calculated to include all floor area within the inside perimeter of the exterior walls, including basement, corridors, stairways, closets and interior walls.

**OPTION 6C. Restrict size of AD to 50% of main dwelling (or 1/3 of total GFA of main and accessory dwelling combined) and define GFA but allow ADs to be a minimum of 500 sf, regardless of size of main dwelling.**

- d. The gross floor area of an Accessory Dwelling shall not exceed fifty (50) percent of the gross floor area of the main dwelling (or a third of the combined gross floor area), up to a maximum of 750 square feet; except if the gross floor area of the main dwelling is one thousand (1000) square feet or less, the Accessory Dwelling may be up to 500 square feet. For the purposes of this section, gross floor area shall be calculated to include all floor area within the inside perimeter of the exterior walls, including basement, corridors, stairways, closets and interior walls.

**OPTION 6D. Restrict size of AD to 50% of main dwelling (or 1/3 of total GFA of main and accessory dwelling combined) and define GFA but allow ADs to be up to 80% of the size of the main dwelling up to 500 sq. ft. if the dwelling is smaller than 1000 sq. ft..**

- d. The gross floor area of an Accessory Dwelling shall not exceed fifty (50) percent of the gross floor area of the main dwelling (or a third of the combined gross floor area), up to a maximum of seven hundred fifty (750) square feet; except, if the gross floor area of the main dwelling is one thousand (1000) square feet or less, the Accessory Dwelling shall not exceed eighty (80) percent of the gross floor area of the main dwelling up to a maximum of 500 square feet. For the purposes of this section, gross floor area shall be calculated to include all floor area within the inside perimeter of the exterior walls, including basement, corridors, stairways, closets and interior walls.
- 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.

**OPTION 15A. Door of AD cannot be on a side of the house visible from the street on a corner lot.**

- (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.

**OPTION 15B. Door of AD cannot be visible from the street on a corner lot.**

- (b) On a corner lot, no Accessory Dwelling shall have its entrance 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.

**OPTION 13A. Do not address tandem or standard size parking spaces in ordinance.**

- 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).

**OPTION 13B. Address tandem and standard sized parking spaces explicitly in ordinance.**

- 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 there is on-site, existing before issuance of the Accessory dwelling permit:
  - (1) Exactly one (1) standard-size space, then such a space shall be maintained; or
  - (2) Two (2) or more standard-size spaces that are not tandem, then at least two (2) such spaces shall be maintained; or
  - (3) No standard-sized parking spaces, then at least 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); and
  - (4) In any other case, at least two (2) standard-sized parking spaces shall be maintained, at least one (1) of which must provide direct vehicular access.

For the purposes of this section, a standard-sized space shall be as defined

in Section 33.A.3 and shall be exclusive of sidewalk area.

**OPTION 13C. Address tandem and standard sized parking spaces in ordinance, but do not explicitly address tandem spaces in reference to parking spaces maintained.**

- 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) If there are one (1) or two (2) tandem or non-tandem, standard-size, on-site parking spaces existing before issuance of the Accessory Dwelling permit, then those spaces shall be maintained; or
  - (2) If there are no standard-size 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).

For the purposes of this section, a standard-sized space shall be as defined in Section 33.A.3 and shall be exclusive of sidewalk area.

- 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.

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