



**ARLINGTON COUNTY, VIRGINIA**  
ARLINGTON COUNTY PLANNING COMMISSION



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October 18, 2017

Arlington County Board  
2100 Clarendon Boulevard  
Suite 300  
Arlington, Virginia 22201

**SUBJECT: 3.** Request to Authorize Advertisement of public hearings by the Planning Commission and County Board to consider proposed amendments to Section 12, 14 and 18 of the Arlington County Zoning Ordinance to revise accessory dwelling regulations in order to increase opportunities for residents to add accessory dwellings, while maintaining the residential neighborhood character.

**RECOMMENDATIONS**

The Planning Commission recommends the County Board:

Adopt the attached resolution to authorize advertisement of public hearings by the Planning Commission on November 6, 2017 and by the County Board on November 18, 2017 as shown in staff report dated October 4, 2017 to consider proposed amendments to Section 12, 14 and 18 of the Arlington County Zoning Ordinance to revise accessory dwelling regulations in order to increase opportunities for residents to add accessory dwellings as shown in Attachment A.

With the following amendments:

1. Direct the County Manager to include language in the RTA allowing consideration of attached accessory dwellings wholly within a basement without limitation as to square footage.
2. Direct the County Manager to pursue including an alternative to a deed covenant including the use permit model from the accessory homestays as well as practices in other jurisdictions that already have accessory dwelling rules.
3. Consider alternative language to C3 Lines 130-134 to read "the owner of the main dwelling must occupy either the main dwelling or the accessory dwelling as his or her primary residence except when residing elsewhere on a bona fide time limited work assignment."

4. Consider for line 71 increasing the area limitation for an accessory detached dwelling to go up to 1,000 square feet.

Dear County Board Members:

The Planning Commission heard these items at its Tuesday, October 10, 2017 hearing. Joel Franklin, Department of Community Planning, Housing, and Development (CPHD) – Housing, gave an overview of the proposed Request to Advertise. Additional staff present included David Cristeal, Director, CPHD- Housing and Deborah Albert, CPHD-Planning.

### **Public Speakers**

There was one public speaker for this item.

Jim Hurysz, Fairlington resident, suggested the Planning Commission Chair had a conflict of interest on this topic and moved on to question enforcement of regulations of accessory dwelling units of all types. There are increasing non-resident owners of units in his neighborhood renting units for short-terms. The draft standards are deficient and there are no metrics measuring impacts regarding additional students, parking, impact on public infrastructure or County services. Given the significant restrictions on affordable housing in Arlington, accessory units will be the primary source of affordable housing in Arlington.

### **Planning Commission Discussion**

#### *Committee Report*

Commissioner Gearin, Zoning Committee (ZOCO) Chair, reported ZOCO conducted two meetings on this topic. The ZOCO consensus by the end of the second meeting was that the changes proposed could certainly facilitate some opportunities to create accessory dwelling units; but that the remaining requirements, including the limited dwelling unit size, the recorded deed covenant and the related financing, and the building code requirements continue to pose significant barriers to creating legal ADUs. Commissioner Gearin suggested further discussion on size and height limits, owner-occupancy requirements, and compliance requirements.

#### *Size and Height Limits*

Commissioner McSweeney thanked staff for changing lot size requirements and asked if a basement size larger than 1,000 feet could be considered later if advertised as currently written. Ms. Albert clarified that anything larger than 1,000 feet would not be within the scope of this advertisement.

Commissioner Weir asked about the 650-square foot footprint in R-5 and R-6 and why not say the detached building could have a footprint up to the maximum allowable footprint so long as the former doesn't exceed the latter. Staff responded footprint size is just one of the ways accessory structure is defined.

Commissioner Weir said if there is a sense that 750 square feet is the largest size that a detached ADU should be but the massing is 650 square feet we are either pushing people to 650 de facto limit or pushing the ADU upward and creating a different massing problem. You can either build a 2-story building or only build to 650 square feet which is inconsistent with the discussion. Ms.

Albert added the footprint size is the maximum size but it is important to be consistent and not introduce conflict into the zoning ordinance.

Commissioner Hughes asked why a larger basement footprint would be excluded. Mr. Franklin said there was a lot of discussion on what could be considered accessory in nature. The working group ultimately decided to limit the square footage within the basement.

Commissioner Siegel asked whether staff had investigated affordability with respect to the size of accessory dwelling units. She also asked whether staff was aware of any research regarding households that use ADUs as nanny suites and mother-in-law suits, as opposed to income-producing property. Mr. Franklin responded there are only 20 of these units in Arlington and staff does not have that level of detail on those properties.

Commissioner McSweeney pointed out there are percentages referencing the size comparison of accessory dwelling to primary dwelling and asked how that is reconciled with the square footage limit. Mr. Franklin responded the intent is that the basement would be restricted by the percentage as well, whichever is smaller, and said staff would review for clarity.

Commissioner Gutshall asked if it would be within scope if the Board wanted to include a setback of greater than one foot and Ms. Albert said it would not be within scope.

#### *Non-Conforming Accessory Uses*

Commissioner Schroll asked staff to explain how non-conforming uses would be treated.

Commissioner Iacomini clarified that if there is a structure that is a non-conforming accessory building but it doesn't have a half story, it can't have a half-story put on. If it is non-conforming and already has a half story, it is fine if it complies with other regulations.

Ms. Albert added that staff will create an expansive table of various non-conformities possible for an accessory building and how those would apply to an accessory dwelling.

#### *Owner Occupancy*

Commissioner Hughes asked about the definition of primary resident in Accessory Homestay versus this accessory dwelling unit. Ms. Albert said in Accessory Homestay, an owner can rent out a residence and doesn't need to be present which means clarification was required. Generally primary residence is a commonly understood tax term and staff did not feel an additional provision was needed.

Commissioner Gearin said there was comment during the ZOCO process related to the unique nature of many residents locally where there are short periods of absence due to work assignments such as Foreign Service, Military, etc. Commissioner Siegel said she was confused because she lives next door to a home that was owned by an owner that she never met but has had many renters over the years. She lives near the Pentagon and the current owners have been Military and transferred to other stations and it seems to her that the current families moving through this home know each other and she can't imagine they would want to develop an accessory dwelling as they are renters. She doesn't understand how to identify a discreet group of renters who are employed by the State Department or Pentagon who would have an ability to build an accessory detached unit.

Commissioner Weir said there are cases of honest and temporary absence that should not disqualify someone from being an owner who is occupying the main dwelling. He wondered if the Board should consider language such as "bona fide temporary absence".

Commissioner Gutshall asked staff if an owner has an accessory dwelling unit and the owner is leaving and it will not be their primary residence anymore, that the permit would be revoked but the unit would not have to be dismantled, it just could not be rented out. Commissioner Gearin asked if one could rent an entire unit to one household. Commissioner Lantelme asked if leases need to be broken when the primary resident leaves town.

Ms. Albert said the Owner Occupancy permit is not a new proposal. It is an existing requirement.

Commissioner Hughes asked for clarification in the future of what is meant by primary residence in Line 131.

Commissioner Shelby asked if the removal of the one year requirement would allow for a tear down and new construction project to include a new ADU. Staff confirmed it would.

Commissioner Gutshall said that the Board would be unlikely to call out a particular class of people.

Commissioner Iacomini pointed out it would be difficult for the County to enforce the fact that someone has left without a sales transaction or recordation.

Commissioner Gutshall asked about family caregiver suites and the expansion to 750 square feet. Staff responded it was in response to a request to make them more similar.

#### *Compliance*

Commissioner Schroll asked about mechanisms for notifying property owners during purchase about the ADU and said some other jurisdictions use a license. Mr. Franklin responded staff looked at something that could be triggered on the real estate database but it does not have the same weight as the deed covenant. A license requires an owner to be proactive and apply for the license.

Commissioner Schroll said the zoning text talks about how an owner would file a deed and asked how a property owner would undo it. Mr. Franklin said there is a small fee associated with undoing and staff can get more information on the specific process.

Commissioner Schroll asked about the mixed response from the lending community and Mr. Franklin said there are no other options to achieve the same end.

Commissioner Iacomini asked how a new owner would know that a new affidavit is required when the property is changing hands. Mr. Franklin said the deed covenant states the owner needs to file the certificate of compliance.

Commissioner Iacomini would like to see a sample of what is included in a deed covenant and added that Portland does not require a certificate of compliance and instead creates an additional RPC. There should be some internal mechanism to flag the ADU. The reason given for doing this is that so the new owner can comply with regulations but many of the regulations come with construction of the ADU and the only one that continues is the occupancy number. The solution is not commensurate with the problem. Another question is whether this is considered subordinate and it would not be taxed separately and how would we know whether to tax the property appropriately.

Commissioner Gutshall clarified that if he wanted to finish his basement and went in for a building permit and met all the requirements but he doesn't want an accessory dwelling, he could have an accessory dwelling that is built out but no permit. He asked if the accessory dwelling permit conveys with the sale of the property like a use permit and if it is possible the ADU permit would extinguish with sale of the property other than a covenant.

Ms. Albert said if you are meeting the definition of a dwelling unit, then removing the permit would make the unit not legal.

Commissioner Gutshall asked if it would be in scope to increase the cap to a number higher than the current cap of 28 but something other than the proposed no cap scenario. Staff said that would be in scope.

Commissioner Schroll asked about the parking requirement and if the parking study assessment could move forward even when the Residential Parking Program has been temporarily suspended. Staff said they would check with parking staff.

Commissioner Weir is concerned that the Board being able to advertise a discussion about number of occupants. He is not sure that going from 2-3 solves the problem of subordinate use of the ADU. There are model policies that say there should not be occupancy limits other than what applies to the primary unit. It would not threaten the residential character to go up to as many unrelated people as allowed in the primary unit.

*Other*

Commissioner Gutshall asked if line 166 requires removal of the kitchen. Staff confirmed yes it would need to be removed.

Commissioner McSweeney asked if there is any neighborhood that does not allow ADUs. Staff confirmed ADU's could be allowed in every neighborhood although it does not mean every lot in every neighborhood.

Commissioner Gearin outlined information requests for the November hearing including: what constitutes primary residence; the fee and process for removing a deed covenant; a sample covenant; and explanation of how Arlington taxes complying properties. Outstanding issues that might be addressed via amendments to a main motion include: modifying the RTA to increase the GFA; increasing the maximum permitted number of ADU occupants; and looking at other mechanisms to indicate the presence of the dwelling unit.

## Planning Commission Motions

Commissioner Gearin moved that the Planning Commission recommend the County Board adopt the attached resolution to authorize advertisement of public hearings by the Planning Commission on November 6, 2017 and by the County Board on November 18, 2017 as shown in the staff report dated October 4, 2017 to consider proposed amendments to Section 12, 14 and 18 of the Arlington County Zoning Ordinance to revise accessory dwelling regulations in order to increase opportunities for resident to add accessory dwellings as shown in Attachment A. Commissioner McSweeney seconded the motion.

1. Commissioner Hughes moved that the Planning Commission recommend the County Board direct the County Manager to include language in the ordinance Request to Advertise for Accessory Dwelling Units affecting lines 68 and 69 related to attached accessory dwellings wholly within a basement to allow the consideration of a percentage of the dwelling alternative to the square footage requirement. Commissioner Iacomini seconded the motion.

Commissioner Hughes said his goal is to see if there an alternative to the absolute measure of 1,000 square feet and consideration given to the percentage of the dwelling and that it only be applicable to the dwellings that are wholly within a basement.

Commissioner Siegel asked whether the intent of the motion was to remove the 1000 square foot cap in authorizing language, leaving just the language about percentage. Commissioner Gearin asked if that is a maximum. Commissioner Hughes said it is an alternative. Commissioner McSweeney asked if there was a reason to not use 35%. Commissioner Hughes said the percentage in the report is applicable to an accessory dwelling that is attached or detached but that is not wholly contained within a basement.

Commissioner Gutshall clarified the appropriate upper bound would be within the basement there is no cap.

Commissioner Hughes withdrew his motion. Commissioner Iacomini as seconder supported the withdrawal.

2. Commissioner Hughes made a motion that the Planning Commission recommend the County Board direct the County Manager to include language in the RTA allowing consideration of attached accessory dwellings wholly within the basement without limitation as to square footage. Commissioner Gearin seconded the motion.

The Planning Commission voted unanimously 11-0 to support the motion with Commissioners Gutshall, Siegel, Iacomini, Schroll, Hughes, McSweeney, Gearin, Shelby, Weir, Lantelme, and Ricks in support.

3. Commissioner Iacomini moved that the Planning Commission recommend the County Board direct the County Manager to pursue including an alternative to a deed covenant including the

use permit model from accessory homestays as well as practices in other jurisdictions that already have accessory dwelling rules. Commissioner Schroll seconded the motion.

The Planning Commission voted unanimously 11-0 to support the motion with Commissioners Gutshall, Siegel, Iacomini, Schroll, Hughes, McSweeney, Gearin, Shelby, Weir, Lantelme, and Ricks in support.

4. Commissioner Weir moved that the Planning Commission recommend the County Board include language in the RTA allowing consideration of

- a. maximum occupancy of accessory units of up to no more persons than would be allowed to occupy the primary building and;
- b. For any lower occupancy limits a time period following issuance of a permit after which the limitation would expire.

Commissioner McSweeney seconded the motion.

Commissioner Weir explained there is an optimal and favored model policy. The optimal is no limit and favored is a sunset period as a middle ground between a limitation on one hand and no limitation on the other.

Commissioner McSweeney asked if he would consider dropping the b.

Commissioner Gearin said there had been ZOCO discussion regarding the cap of three people. Some felt this was too small to accommodate all appropriate households.

Commissioner Siegel noted the current ordinance allows four unrelated persons in a primary home, and therefore, under the proposed motion there could be as many as four in an ADU. She further asked why the motion doesn't state a limit of four people. Commissioner Weir responded he would like the Board to be able to consider that in the RTA, and that furthermore, the issue is related people.

Commissioner Iacomini is comfortable with dropping part "b" of the motion, because Arlington is still a community that needs to take on ADUs incrementally. Commissioner Iacomini will not support the motion because it essentially makes the unit a duplex and specifically the group is not looking to change the character of the neighborhoods and suddenly there is a proliferation of duplexes.

Commissioner Weir disagrees and everything else in the proposed changes works to keep the accessory unit as an accessory unit. Were there no other limitations, then it would be creating a duplex. Simply saying the number of people can be as many as in the primary unit still preserves the accessory nature.

Commissioner Ricks said there is a building code issue that would dictate the number of people.

Commissioner Hughes said allowing the same occupancy limit is imposing on the community essentially a two-family dwelling district.

Commissioner McSweeney agreed the building code dictates the number of people.

Commissioner Weir asked for unanimous consent to withdraw part b. There was no objection and part b was removed.

Commissioner Gutshall is torn but supports incrementalism.

The motion failed 5-6 with Commissioners Weir, Gearin, Ricks, McSweeney, and Lantelme in favor and Commissioners Iacomini, Siegel, Gutshall, Schroll, Hughes, and Shelby opposed.

5. Commissioner Lantelme moved the Planning Commission recommend the County Board consider alternative language to C3 Lines 130-134 to read "the owner of the main dwelling must occupy either the main dwelling or the accessory dwelling as his or her primary residence except when residing elsewhere on a bona fide time limited work assignment." Commissioner Siegel seconded the motion.

The Planning Commission voted unanimously 11-0 to support the motion with Commissioners Gutshall, Siegel, Iacomini, Schroll, Hughes, McSweeney, Gearin, Shelby, Weir, Lantelme, and Ricks in support.

6. Commissioner Ricks moved the Planning Commission recommend the County Board consider for line 71 increasing the area limitation for an accessory detached dwelling to go up to 1,000 square feet. Commissioner Gutshall seconded the motion.

Commissioner Ricks clarified 1,000 square feet is consistent with occupiable area that the County currently allows for a 1.5 story garage that is up to the 560 square feet allowed space. Commissioner McSweeney asked if the 35% is being retained. Commissioner Ricks said it allows the Board to consider something between 750 to 1000 square feet.

The Planning Commission voted unanimously 11-0 to support the motion with Commissioners Gutshall, Siegel, Iacomini, Schroll, Hughes, McSweeney, Gearin, Shelby, Weir, Lantelme, and Ricks in support.

**Main Motion**

Commissioner Gutshall wanted to note for the record that he has in the past and will continue to consult with the County Attorney on any conflict of interest laws that would apply and he is confident that he is fully compliant with all requirements both legal ethical and his own standards.

The Planning Commission voted unanimously 11-0 to support the motion with Commissioners Gutshall, Siegel, Iacomini, Schroll, Hughes, McSweeney, Gearin, Shelby, Weir, Lantelme, and Ricks in support.

Respectfully Submitted,

Arlington County Planning Commission  
Erik Gutshall

A handwritten signature in black ink, appearing to read "Erik Gutshall". The signature is fluid and cursive, with the first name "Erik" being more prominent and the last name "Gutshall" following in a similar style.