

TO: Planning Commission

FROM: Anne McClung, Planning and Building Department Director

RE: Zoning Ordinance Amendment #47/Ordinance #2022 - Zoning Ordinance Amendment Update to Accessory Apartment Regulations and Add Detached Accessory Apartment

DATE: March 17, 2023

BACKGROUND

The purpose of Zoning Ordinance Amendment #47 is to expand the Accessory Apartment Program to include detached accessory apartments and to update the existing Accessory Apartment Program based on what staff has learned from implementation of the program to date. The provisions that establish the program and relate to administration are found in Zoning Ordinance Section (§)1270 and the development parameters are contained in the Use and Design Standards, §4201. This amendment has been prepared by the Planning staff and the Housing and Community Connections staff. Two different perspectives are represented and there may be issues that require the Zoning Ordinance Review Committee, Planning Commission or Council to discuss and determine the appropriate path forward recognizing there is not agreement between the two perspectives on all issues.

The proposed amendment has been reviewed by the Zoning Ordinance Review Committee (ZORC). This subcommittee of the Planning Commission includes both Planning Commissioners and several citizen representatives. The ZORC met on February 27, March 6, and March 13, 2023 to discuss the issues, policies and proposed changes to be included in Ordinance #2022 with significant discussion and consideration of all of the different aspects of the Accessory Apartment Program. Most of the recommendations of the ZORC have been incorporated in the draft of Ordinance #2022 (attached). Summaries of the ZORC discussion are included in the different topic areas covered in the staff report. The Town Attorney has conducted a preliminary review of the proposed ordinance.

In 2017, Zoning Ordinance #32 was adopted with Ordinance #1816 and reintroduced accessory apartments as an allowed use in the R-4, RR-1 and RR-2 zoning districts. Ordinance #1816 and the staff reports/memo from the 2017 amendment are attached. This will provide background on the items discussed during the original consideration of the use and how the current provisions governing accessory apartments developed into Ordinance #1816. The use was limited to attached units only and did not allow for a detached accessory unit. An example of an attached or interior unit would be a basement apartment. An example of a detached or exterior unit would be an apartment over a detached garage. The allowance for attached units only was a conscious decision at the time to reintroduce the use in a limited way. The intent of introducing the more limited accessory apartment use was to assess the level of interest and understand what impacts, if any, might occur before any broadening of the program. Key elements in the program include requiring the owner to live on-site and having occupancy considered cumulatively between the main unit and the accessory unit. A registration program was developed to implement the ordinance. A copy of the accessory apartments registered to date, the application form and the required deed restriction are attached with a cover memo from the Zoning Administrator.

Staff would note that the 2017 program does not apply to any accessory units built in the 1960s and early 1970s when the use was previously allowed. Accessory apartments were encouraged at that time to help accommodate housing for the University during a period of rapid growth. The majority of these lawful non-conforming apartments can be found in the Miller-Southside and McBryde neighborhoods. The Town does maintain a list of the non-conforming units by address. There are also likely accessory apartments that were created over time and exist today. These apartments are illegal as opposed to non-conforming. These units were created without the approval or knowledge of the Town. Staff does not have a way of calculating the number of these units.

To date, staff has not seen an uptake in the addition of accessory apartments from the 2017 program. The lack of accessory apartments created through the program may be due to a lack of awareness about the opportunity or the costs associated with construction. It is possible that some owners are not seeking approval through the current permitted process because they already have an allowed non-conforming unit or an illegal unit. Others may be not be interested in an attached unit, which is what is allowed today, but are interested in a detached unit such as an apartment over a detached garage. Lastly, the lack of interest could be due to the interest in using the Homestay program and not the Accessory Apartment Program.

PROS AND CONS

There a number of pros and cons for the accessory apartment use in general and the changes proposed in the amendment. The main issues are summarized below.

Pros: The use of accessory apartments can be a good way to expand housing supply and housing choice, providing more affordable options for all types of residents, including students. It can be an effective way to provide housing for extended family or to support aging-in-place. The accessory unit is often income producing and helps owners afford the cost of the main house, thus supporting homeownership and wealth building.

Home purchase and rental costs continue to escalate and the availability of all types of housing is limited in Town. How to provide affordable housing and increase housing supply to better meet community needs is an ever-growing issue. Accessory units are often one strategy, among others, to try to help with housing issues. The trend to allow and encourage accessory apartments is happening nationwide. Staff would note, however, that the use of accessory apartments is somewhat different in a university town where a student population and lucrative investment student housing rentals are common.

Cons: Allowing accessory units can go against the expectations of owners who bought in single family neighborhoods not expecting additional dwelling units to be constructed. Many newer subdivisions have covenants and restrictions prohibiting the creation and rental of accessory units. The actual cost of either renovating a home to create an attached unit, constructing an addition to the home for an attached unit or constructing a detached accessory apartment can be expensive and costs can vary widely. According to a 2020 study prepared for the City of Alexandria, the costs can be significant ranging from \$20,000 to \$400,000 or more depending on design and construction costs, unit style, size and amenities.

Staff would note the accessory unit created is a full dwelling unit with all the same facilities as the main house including sleeping, eating, cooking and sanitation facilities. This can have the effect of turning a single family home in a single family zoned neighborhood into a duplex if not controlled. How to keep the unit "accessory" is part of the discussion on updating and expanding the Accessory Apartment

Program. Unit size and occupancy are the main standards that govern this aspect of the program. This is a significant concern of Planning Staff. See also Building Code Changes.

WHAT'S NEW TO CONSIDER?

New information and changes in the housing market are relevant in considering updates to the program.

Short Term Rentals

The prevalence of rental services such as Airbnb and VRBO have grown tremendously since 2017. The Town does have a Homestay or short term rental program. Often the inquiries from those interested in the Accessory Apartment Program are interested in creating a dwelling unit for short term rental purposes only. The Accessory Apartment Program is seen a way to create a full second dwelling unit for short term rental with no intention of complying with the intent of the program to provide housing to residents. The short term rental fees for events such as football weekends, graduation, summer orientation, etc. are competitive with the income from a year round rental. Owners see the advantage of having the income from the unit without having a year round tenant. The unit can then be used for guests when not rented out. The goal of the Accessory Apartment Program is not to promote or enhance short term rentals in single family neighborhoods. Planning staff is concerned about how to monitor or effectively enforce the difference between the two programs. While there are clear program requirements for each, effective enforcement is and will continue to be an issue.

Building Code Changes

There have been changes in the 2018 Virginia statewide building code to make the construction of accessory units easier. These are specific changes based on impediments that previously made the use less viable and more expensive. The changes are helpful to support and encourage the construction of accessory units but staff would note that the changes also make it easier to construct or convert a home into a duplex. The Building Code now defines an accessory apartment as a "two-family" dwelling. In the Town of Blacksburg, a single family home with an accessory apartment is a very different use than a two-family dwelling/duplex. Enforcement will now fall wholly on enforcement of the Zoning Ordinance, which better differentiates between those two uses. This further supports the need to make sure an accessory apartment is indeed accessory. Information from the Department of Housing and Community Development (DHCD) is attached.

Studies and Resources

A recent study about the State of the Market and Local Policy: Accessory Dwelling Unit in the Commonwealth of Virginia is attached. This study does use nationwide data but has new and thoughtful information on the topic of accessory apartments. Also attached is a user guide prepared by the City of Charlottesville on how the build an accessory unit. This type of resource makes it much easier for a homeowner to navigate the process of how to go about creating an accessory apartment. The Housing and Community Connections staff envision using this guide as a model to create a similar guide for the Town of Blacksburg.

ACCESSORY APARTMENT PROGRAM AREAS NOT CHANGING

Section 2103 Definitions

The following definitions are in the Zoning Ordinance and not proposed for change but are provided here for reference.

ACCESSORY APARTMENT—(See Residential Dwelling).

RESIDENTIAL DWELLING—A building or part of a building, containing living, sleeping, housekeeping accommodations, and sanitary facilities for occupancy by one (1) or more individuals or families. The following are included as residential dwelling types:

ACCESSORY APARTMENT—A secondary dwelling unit or units established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached structure or structures on the same lot.

ACCESSORY APARTMENT PERMIT PROGRAM - The program established by the Town of Blacksburg for the purpose of regulating accessory apartments created after April 15, 2017. This program does not include lawful non-conforming accessory apartments created prior to 1975 that are documented on the list maintained by the Planning and Building Department.

Zoning Districts Allowing Accessory Apartments

Accessory apartments are currently allowed in the RR-1, RR-2 and R-4 zoning districts. The zoning districts in which the use is allowed are not proposed for change with the exception of clarifying how accessory apartments are handled in the Planned Residential (PR) zoning district, which is covered below.

The permitted use section of the RR-1, RR-2 and R-4 districts simply reference allowing accessory apartments in accordance with §1270 and §4201 and thus no changes to the zoning districts are needed even though others section are changing. The reference remains the same. There is a wording change in the R-4 district regulations for consistency among the districts. The R-4 district occupancy standard wording should be changed from “figured cumulatively” to “calculated cumulative” to match the RR-1 and RR-2 districts.

POLICY DECISIONS

The purpose of this amendment is to expand the program to include detached units and to update the program based on what staff has learned from implementation of the existing program. There are a number of decision points for the Zoning Ordinance Review Committee, Planning Commission and Council to consider. The points are summarized below for discussion. A draft of Ordinance #2022 is attached and sections are referenced in the text below.

• Allow for Detached Accessory Units

Expanding the program to include detached units is a logical next step in the evolution of the program.

• Allow Accessory Apartment on Non-Conforming Lots of Record

The current Accessory Apartment Program does not allow accessory units when the lot or parcel does not meet the minimum lot size for its zoning district. ZORC recommends allowing attached or detached accessory apartment on non-conforming lots of record. Staff has suggested wording in General Provisions, §1271(b) that the inclusion of the accessory unit on a lot that has a non-conforming lot size cannot exacerbate any other aspects of non-conformity. However, the impact to the other underlying standards for the primary structure will be vetted by staff. Staff will look at some examples to make sure it is possible to create an accessory unit and not increase other non-conformities.

- **Clarification on Program Requirements**

Proposed as part of this amendment is clarification that only one accessory apartment is allowed per lot or parcel. Also proposed is wording to be clear that an accessory apartment is only allowed on a lot/parcel with a single family detached home. Further, clarification is proposed to state that accessory apartments must be rented by the unit and not by the bedroom. These changes are found in §1271(g) under General Provisions.

- **Relationship to Homestay Program**

The amendment proposes further clarification of the relationship of the Accessory Apartment Program and the Town's short term rental Homestay Program. Changes are shown in §1271(h) under General Provisions. The additional wording is intended to be explicit about the differences between the two programs and that one program (Accessory Apartments) cannot be used as a work around to create an intensification of use in another program (Homestay).

- **Planned Residential District**

The accessory apartment use is being added to the PR district (§3111 and 3113) with the clarification that the accessory apartment use must have been approved as part of the rezoning to PR. For example, the recent single family subdivision approved in the Berewick rezoning allows accessory apartments. Other older approved Planned Residential development would not allow accessory apartments unless the original rezoning were amended.

- **Establish Development Standards for Detached Accessory Units**

There are standards that need to be added to the Zoning Ordinance to govern the location, setbacks and size of a detached unit. More detailed standards are needed since the detached unit is not an extension of the main structure. Attached or interior accessory units are subject to all of the standards applicable to the main structure with some changes proposed in this amendment. The different standards such as size, location, floor area ratio, height, and setbacks work together to govern the impact of the accessory apartment. Each standard is discussed below with a summary chart in this staff report.

Location of Unit: Standards are proposed to govern the location of a new detached unit. The goal is to allow units but minimize the impact on adjoining property owners and not disrupt the look and feel of the neighborhood. The most likely scenario for a detached accessory unit is an apartment above a garage. However, other freestanding units such as a carriage house are also possible. The standards below require the unit to be behind the front building line of the main house and limit how much of the yard can be occupied by the accessory unit. These standards are in the Use and Design Standards, §4201(d)(ii) and (iv).

The exterior accessory apartment shall be located behind the front building line of the principal structure in the side or rear yard.

The total footprint of all accessory structures (including sheds, detached garages, pools, etc.) shall not exceed thirty (30) percent of the rear yard area. The rear yard area includes the distance from the back of the primary dwelling unit to the rear yard property line and the distance between the side property lines.

Setbacks: The current setback for an accessory structure, such as a shed, is 5 feet from the property line if the accessory structure is less than 200 square feet, and less than 12 feet in height and not located in a yard adjacent to a public right-of-way. Otherwise, the setback is per the underlying zoning district. Accessory structures must be behind the front building line of the primary structure. Many subdivisions have public utility easements of 7 ½ feet in width on the side and rear property lines. Structures are not allowed in public utility easements. Structures cannot be built over active utilities regardless of whether there is an easement in place.

Setbacks for attached accessory apartments are the same as for the main structure. Side and rear yards in the R-4 district are as follows:

Front yard thirty (30) feet:

- (1) The front yard setback may be reduced to twenty-five (25) feet for uses with parking in rear that is fully behind the structure.
- (2) For infill lots where more than fifty (50) percent of the lots on a block-face are developed, the front yard setback may be reduced to not less than the average of the front yard setbacks of the existing developed lots on the block-face.

Side yard ten (10) feet, except on corner lots, a side yard facing the street will be twenty (20) feet.

Rear yard twenty-five (25) feet.

The detached accessory apartment is also an accessory structure. Compared to an accessory structure such as a shed, however, the accessory apartment is different in size and is an occupied structure. A determination on appropriate setbacks is needed for this specific use. Other communities have allowed smaller side or rear yard setbacks of 5 feet to facilitate the use. Planning staff has concerns about creating a conflict between the 7 ½ foot public utility easement and a setback for an accessory unit that is less than the PUE. The goal is to find a balance of allowing for the accessory unit but limiting impact to adjoining neighbors. The ZORC supported setbacks of 7 ½ feet and that is included in Ordinance #2022, §4201(d)(vi).

The setback requirements of the underlying zoning district shall be met on all public street frontages. However, if the accessory apartment is not located in a yard adjacent to a public right of way the minimum setbacks shall be:

- (1) *Side yard: 7 ½ feet.*
- (2) *Rear yard: 7 ½ feet.*

With the addition of the detached accessory apartment use, the location of any patios or decks provided for the accessory unit should be addressed. The ZORC discussed this item and agreed on the concept that the outdoor spaces for the accessory unit should not be placed in a way that negatively impacts the neighbors did not have a specific recommendation to improve the wording shown below and in §4201(d)(vii). The Committee suggested that further work on the wording of this section occur.

Patios, decks, and balconies shall not be located on sides of the accessory dwelling unit immediately adjacent to adjoining property lines.

Height: Existing regulations for height for an attached accessory apartment defer to the underlying zoning district since the accessory unit is part of the primary structure. The height limit in the R-4 district is 30 feet or additional height up to 40 feet with additional setbacks.

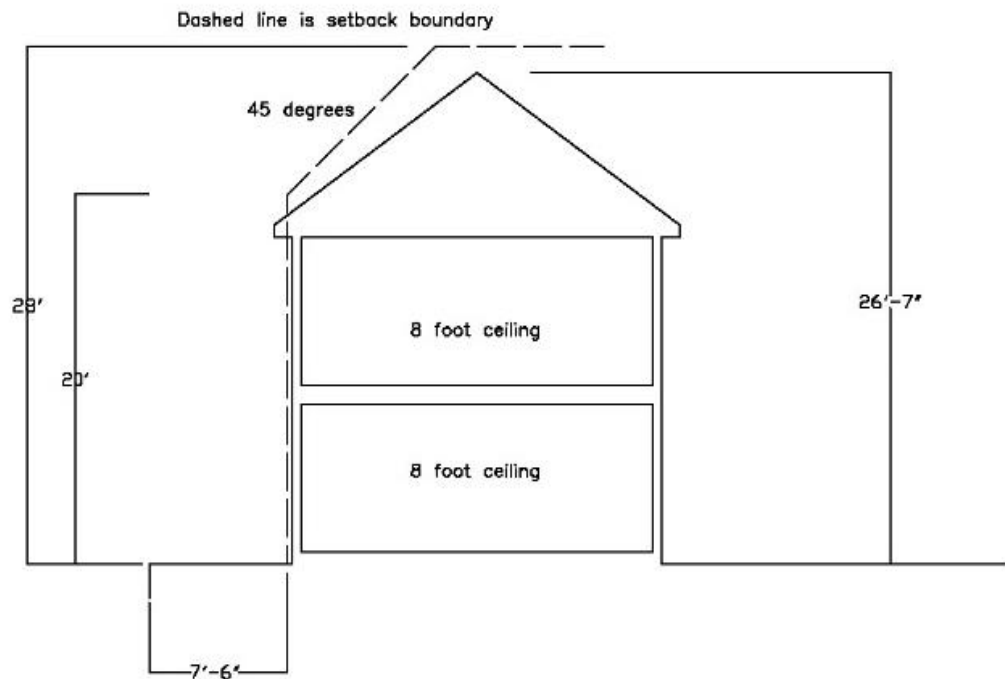
~~(7) The underlying zoning district development standards for lot coverage, height, setbacks and floor area ratio that apply to the primary dwelling shall also include the accessory apartment in the calculations of these standards.~~

However, the impact of a second freestanding structure will be different and a specific and a lesser height standard is needed. The height standard also needs to be clear on how the height will be measured. Height is one of the ways to control the mass and scale of the second unit on the lot.

The Charlottesville Guide has a maximum height of 25 feet. The ZORC in discussion was concerned this was not adequate for a 2-story unit and to allow variation in roof pitch. The Committee was also concerned, however, about the impact of the structure height at the setback, particularly if the full volume of the structure occurred at the setback line. The ZORC recommendation proposes a change for both attached and detached accessory apartment. The ZORC recommendation is included in Ordinance #2022, General Standards, §4201(b)(3) and shown below.

No accessory apartment shall exceed twenty-eight (28) feet in height, or twenty (20) feet in height at the eaves at the setback line, or the highest point of the primary dwelling unit roof. Height shall be measured in accordance with Section 2301 and the measurements shall be taken at the adjoining grade of the front entrance for the primary structure and for the accessory apartment.

Staff suggests that including the phrase “whichever is less” may need to be considered. Additional wording and a labeled graphic may be needed to better illustrate the height requirements. One of the ZORC members illustrated the concepts for ZORC discussion (shown on the following page) and a version of the graphic may be helpful to include in the ordinance to supplement the wording.



Size of Accessory Units:

The current maximum size of attached/interior accessory apartments is 800 square feet. This is larger than many efficiency or one-bedroom apartments and the maximum in other communities' accessory apartment regulations. Often the units are 500-650 square feet in size. From a housing perspective, increasing the maximum size to 1,000 square feet would allow the unit to serve more market segments who need housing. A larger unit could more easily accommodate a couple with a child or single parent with children. It would also make it easier if when finishing a basement area, to be able to finish the entire basement, as opposed to creating a wall for the purpose of complying with the maximum allowed square footage.

From a zoning perspective, increasing the size of the unit begins to go against the idea the unit is "accessory" to the main house. When is a unit "accessory" and when has the structure become a duplex? With a larger square footage allowed, there is likely greater occupancy of the unit. This is already a significant issue in the Town. While staff investigates every over occupancy reported, violations are often difficult to prove. This is affecting many neighborhoods and community members have concerns about changes to the character of their neighborhood resulting from over occupied rentals to unrelated individuals, mostly students.

Existing regulations, shown below, speak to the accessory unit as secondary and subordinate to the primary structure in General Standards, §(b)(2) and limits the size of an accessory apartment to 800 square feet in #(3). Should the size requirement remain the same and apply to attached and detached accessory units? Should the size be increased?

(b)(2) The accessory apartment shall be clearly secondary and accessory to the primary dwelling unit as to location, height, square footage, floor area ratio, and building

coverage and in keeping with the character of a single family neighborhood. and shall not change its character as a detached single family residence. ~~The accessory apartment must be integrated into, or compatible with, the primary structure using features such as roof lines, exterior materials, window patterning or exterior color.~~

(3) The maximum size of an accessory apartment shall be 800 square feet.

The ZORC recommendation is to increase the maximum accessory apartment size from 800 to 1,000 square feet. The new maximum would apply to both attached and detached units. ZORC also recommends adding a percentage of the primary unit as a factor. The Charlottesville Guide suggests 40% of the primary unit. ZORC is recommending 80%. As written, it would not be a comparison of the measurements and “whichever is less.” The guiding factor will be the 1,000 square feet limit as proposed by ZORC. It may be that the percentage is not needed if the guiding factor is always going to be the maximum square footage allowed. Planning staff does have some concerns that an increase in square footage as proposed could result in units that are not “accessory” in nature given the proportionality of the accessory unit to the primary unit. This would especially be the case with smaller homes, where the accessory unit could be close to or exceed the size of the primary structure.

The wording recommended by ZORC is shown below with a several examples following. Staff is working on some sample applications to existing developed lots in Town and will include this in the discussion at the Planning Commission work session. The wording can be found in §4201 (c) and (d) of Ordinance #2022 and is shown below.

In addition to the requirements set forth above in paragraph (b), the following shall apply to **interior (attached)** accessory apartments:

- (i). The accessory apartment must be entirely contained within the principal structure or an addition in accordance with these regulations.
- (ii). The gross floor area of the accessory apartment may not exceed eighty (80) percent of the gross floor area of the primary structure in which it is located. In no case shall the maximum square footage exceed 1,000 square feet.
- (iii). Setback for accessory apartment setbacks shall comply with setbacks for the zoning district.

In addition to the requirement set forth in paragraph (b), the following shall apply to **exterior (detached)** accessory apartments:

- (i). The footprint of the exterior accessory apartment shall not exceed eighty (80) percent of the building footprint of the primary structure on the property.
- (ii). The gross floor area of the accessory apartment may not exceed eighty (80) percent of the gross floor area of the primary structure, or a maximum of 1,000 square feet of gross floor area. For a garage apartment, the gross floor area includes the square footage of the garage.

Example #1

2,000 square foot primary dwelling unit
80% of the primary dwelling unit = 1,600 square feet
1,000 square foot maximum
Maximum size of accessory apartment: 1,000 square feet

Example #2

1,200 square foot primary dwelling unit
80% of the primary dwelling unit = 960 square feet
1,000 square foot maximum
Maximum size of accessory apartment: 1,000 square feet

Example #3

800 square foot primary dwelling unit
80% of the primary dwelling unit = 640 square feet
1,000 square foot maximum
Maximum size of accessory apartment = 1,000 square feet

ZORC did not discuss the relationship of the maximum square footage in relation to the footprint of the home, §4201(d)(3). The discussion was focused on the maximum square footage of an accessory apartment. The relationship to the primary structure footprint can be discussed at the Planning Commission work session. The relevance of the primary structure footprint is being able to compare the maximum square footage of the primary unit of a one-story home versus a 2-story or 3-story home in relation to the size of the accessory unit.

Floor Area Ratio:

Floor Area Ratio (FAR) is a standard in the Town's residential zoning districts. For an attached unit, the underlying FAR would continue to apply because the space is contributing to the mass and scale of the primary structure. In addition, it would create a mechanism for owners to exceed the maximum FAR by indicating the additional space is for an accessory apartment and then not using the apartment. FAR is a development standard that is likely to be reviewed in a future Zoning Ordinance Amendment. Detached units do not contribute to a greater mass of the primary structure. In addition, if the FAR were to include the detached unit, it is unlikely that any detached units could be built. The ZORC recommendation is to include attached units in the FAR and exclude detached units in the FAR, as shown in §4201(d)(v).

• Overall Requirements

After a great deal of discussion and calculations, the ZORC has recommended that the maximum size of accessory apartments be governed by a combination of percentage of the primary unit, but with an absolute maximum. The chart below is a summary of the factors and how they apply.

Summary of Factors in Regulating Size	Applies to Attached Apartment	Applies to Detached Apartment
% of primary dwelling unit square footage ZORC = 80%	Yes	Yes Garage counts in square footage
Absolute maximum square footage of any apartment = 1,000	Yes	Yes Garage counts in square footage
30 % of yard area Behind Front Building Line	No	Yes
Floor Area Ratio	Yes	No
Lot Coverage	Yes	Yes

• Occupancy of Primary and Accessory Structures

Currently, occupancy is considered cumulatively with the main house/primary structure and the accessory apartment. In the districts in which accessory apartments are allowed, the occupancy allowed is a family plus two unrelated individuals or three unrelated individuals. The existing wording regarding occupancy is found in the Development Standards for the R-4, RR-1 and RR-2 districts shown in (e) below and in the Use and Design Standard shown in (8) below.

(e) The maximum dwelling unit occupancy shall be a family plus two (2) persons unrelated to the family; or no more than three (3) unrelated persons. For a detached single-family dwelling with a nonconforming accessory apartment, or accessory apartment as allowed through the accessory apartment permit program, occupancy shall be ~~figured~~ calculated cumulatively, to include both the single-family dwelling and the accessory apartment, for a total not to exceed three (3) unrelated persons.

(8) Occupancy standards are set forth in the underlying zoning district regulations.

The Housing and Community Connections staff has researched a number of other communities for options regarding occupancy standards and how occupancy is handled to see if changing the standard in Blacksburg could make the accessory units more attractive to year round residents. Alternative wording was put forward for consideration. The proposal was trying to address two unrelated persons plus their offspring in the accessory apartment and also require that either the accessory apartment or primary structure must be occupied by a “family”. Planning staff expressed concerns about changing the occupancy standard given current challenges in enforcement. ZORC concurred and the occupancy standard is not proposed for change.

• Universal Design Standards

One of the goals with establishment of the program in 2017 was to support aging-in-place and provide housing for differently-abled individuals. This aspect of the program has been difficult to interpret and to enforce. It becomes more problematic when adding detached units, which may be located above a

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garage. Staff's proposed change to this section is to highlight the value of incorporating universal design features and encourage consideration of these features in the design and construction of accessory apartment and can be found in §4201(e). This approach was supported by ZORC.

PUBLIC INPUT MEETING

A public input meeting was held on Thursday, March 9, 2023 with one attendee. The attendee was interested in constructing a detached accessory unit and indicated the code amendment was timely. In summary, there was discussion about the attendee's specific property and how the regulations would apply. The sign-in sheet from the meeting is attached.

ATTACHMENTS

- Draft Ordinance #2022 for ZOA #47
- Staff Reports/Memos from 2017
- Current Accessory Apartment Program Information
- New Information including Study on the State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia, Charlottesville, VA User Guide, DHCD Updates to Virginia Building Code
- Sign-in Sheet from Public Input Meeting