

## LEXINGTON PLANNING COMMISSION

**August 24, 2023 - 5:00 P.M**

**Rockbridge County Administrative Offices – First Floor Meeting Room  
150 South Main Street, Lexington, VA 24450**

### AGENDA

- 1. CALL TO ORDER**
- 2. APPROVAL OF THE AGENDA**
- 3. APPROVAL OF MINUTES**  
Minutes from August 10, 2023\*
- 4. CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**
- 5. NEW BUSINESS**
  - A. CUP 2023-02: An application by Lorelei Pisha requesting approval of a conditional use permit to allow an educational facility, primary/secondary / family home daycare at 10 N. Lewis Street, (Tax Map #25-4-B & 25-4-C), owned by Lorelei and Jonathan Pisha.
    - 1) Staff Report\*
    - 2) Applicant Statement
    - 3) Public Comment
    - 4) Commission Discussion & Decision
  - B. ZOA 2023-01: Annual Zoning Ordinance Amendments. Accessory Dwelling Units (A.D.U).
    - 1) Staff Report\* and continued Commission Discussion
    - 2) Public Comment
- 6. OTHER BUSINESS**
  - A. Zoning and Planning Report – If applicable
  - B. Key Annual PC Milestones: Ongoing. Remaining items:
    - 1) Zoning Text Amendments: Ongoing. Remaining items:
      - a. Cottage Housing
      - b. What else, if any?
    - 2) Comp Plan Review: Ongoing
    - 3) Major Project Update
- 7. CITY COUNCIL REPORT**
- 8. ADJOURN**

\*indicates attachment

## MINUTES

**The Lexington Planning Commission**  
**Thursday, August 10, 2023 – 5:00 p.m.**  
**Rockbridge County Administrative Offices – First Floor Meeting Room**  
**150 South Main Street, Lexington, VA 24450**

### Planning Commission:

Presiding: Shannon Spencer, Vice-Chair  
 Present: Jon Eastwood  
 Mary Stuart Harlow  
 Gladys Hopkins  
 Leslie Straughan, Counsel Liaison

### City Staff:

Arne Glaeser, Planning Director  
 Kate Beard, Administrative Assistant

Absent: Pat Bradley, Chair  
 John Driscoll

### CALL TO ORDER

Vice-Chair Spencer called the meeting to order at 5:00 p.m.

### AGENDA

S. Spencer suggested the agenda be amended to remove Commission discussion from the zoning ordinance agenda item. She recommended Director Glaeser provide a staff report that could serve as a primer for the new Commissioners and have the Commission continue discussion of the item at the next meeting when Commissioners Bradley and Driscoll would be present. The agenda was unanimously approved with that amendment. (J. Eastwood / L. Straughan)

Vice-Chair Spencer welcomed Mr. Eastwood and Ms. Harlow to the Lexington Planning Commission.

### MINUTES

L. Straughan requested the minutes from the July 13, 2023 meeting be amended to correctly identify the newly elected Commission officers and to correct the address of the property mentioned in the Zoning Report as the subject of an application for demolition. The minutes were unanimously approved with those amendments. (L. Straughan / G. Hopkins)

### CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA

None

### NEW BUSINESS

**A. CUP 2023-02: An application by Lorelei Pisha requesting approval of a conditional use permit to allow an educational facility, primary/secondary at 10 N. Lewis Street, (Tax Map # 25-4-B & #24-4-C), owned by Jonathan Pisha and Lorelei Pisha.**

1) Staff Report –

Director Glaeser explained why a conditional use permit (CUP) was required for the use being requested at the subject property and pointed to the Use Matrix as the reference for determining what uses are allowed, whether by-right or conditionally, in each

of the City's zoning districts. He noted the subject property is located in the R-1 zoning district and an *educational facility, primary/secondary* is a conditional use in that district.

This proposal was for the House Mountain Learning Cooperative (the "Co-Op"), a homeschool cooperative, to operate out of the upstairs unit of the two-family dwelling at 10 N. Lewis Street. The Co-Op would meet there no more than three days per week, primarily between the hours of 10 am and 2 pm, and would enroll no more than 12 children and their families. The property has considerable frontage on Lewis Street, which A. Glaeser noted was worth considering as the proposal did not include a provision for off-street parking. It was his opinion that sufficient on-street parking would be available for the residents of the downstairs unit of the subject parcel, as well as those on-street parking spaces needed for the limited drop-off and pick-up generated by a school with only 12 students on a flexible schedule. The CUP was being sought only for the 2023-2024 and 2024-2025 school years while a permanent location could be found.

A. Glaeser pointed out the intent of the (R-1) General Residential District and the definition of an *educational facility, primary/secondary*. He said his understanding of the proposal was that the Co-Op would serve homeschooled children who would not necessarily be following a curriculum, but whose progress would be reported to the state. He then led the Commission through the criteria to be considered for the issuance of a CUP and pointed out staff's response to each as it relates to the subject application. He noted the criteria are the same for any conditional use in any zoning district and allowed for a fair amount of latitude. He explained how staff developed the recommended conditions for the approval of the application, adding that the Planning Commission could amend or add conditions as it saw fit, provided the condition addressed some impact foreseen from the proposed use.

Responding to a question from L. Straughan, A. Glaeser confirmed both units of the duplex had the same owners and one of the units served as the owner's primary residence. G. Hopkins asked how the proposal would impact on-street parking. A. Glaeser suggested the applicant could clarify how many spots would be occupied during the school day but offered an explanation as to why he believed the parking proposal was adequate.

2) Applicant Statement –

The applicant and co-owner of the property, Lorelei Pisha, and fellow Co-Op member, Ann Bailey-Lipsett, gave a presentation about their plans for the Co-Op, including how they intended for it to operate and be structured, as well as how they envisioned making it work well for the neighbors. Ms. Pisha said they intended the Lewis Street property to operate as the Co-Op's "home base" on Mondays, Tuesdays and possibly Wednesdays, and for the primary hours of operation to be between 10:00 a.m. and 2:00 p.m, with a flexible, staggered pick-up and drop-off window from 8:30 a.m. to 10:00 a.m. and 2:00 p.m. to 3:30 p.m. for those families who need it. She said no more than twelve children from eight families would be enrolled, and she explained the local parking conditions and anticipated Co-Op parking demand.

Noting the proposal was for the Co-Op to operate solely out of the upstairs unit, L. Straughan recommended the applicant contact the Fire Marshal to determine whether life-safety requirements could be met. She asked how many adults/teachers would be on site

during operating hours and whether the Co-Op would charge a fee. Ms. Pisha stated three teachers would be on site and confirmed a fee would be charged. Noting that the definition of the *educational facility* use included the provision that State requirements be met, but that as a homeschool cooperative, all reporting to the state would be done by the children's parents rather than by the Co-Op, L. Straughan suggested the proposal might better fit the definition of a *family home daycare*. Ms. Pisha indicated she would not object to that designation.

Responding to a question from G. Hopkins, Ms. Pisha said she believed the street frontage could accommodate the 3-4 cars that would require parking during the Co-Op's hours of operation, but she added those cars could be parked off site if that was a condition of the proposal's approval.

3) Public Comment – None

4) Commission Discussion & Decision –

Prior to the Commission's discussion, Director Glaeser reported notices of the subject application had been mailed to adjacent property owners and advertised in the paper. Two adjacent property owners reviewed the application and voiced no opposition.

L. Straughan provided some history of a previous CUP application for a school in this neighborhood which was denied due to concerns about allowing too many nonresidential uses in this particular residential neighborhood. She offered that while she still had that concern, the proposed Co-Op's small size, temporary nature, and the fact that the owner would reside on the property made her more comfortable recommending approval of the application. She read the definition for *family home daycare* and said she thought the proposal fit the definition. She indicated she believed it would be inappropriate to approve a school without an off-street parking requirement, but would support approval of the proposal with the family home daycare designation. A. Glaeser remarked that a *family home daycare* was also a conditional use in the R-1 zoning district, so the process for an approval would remain the same. He suggested the Commission might want to review the recommended conditions to determine if they were in line with the different use designation.

Following discussion about whether the *family home daycare* use designation would need to be readvertised and whether the *family home daycare* use was more or less restrictive than the *educational facility* use, there was general agreement to proceed with a recommendation with the understanding that the application would be reconsidered at the Commission's next meeting should the City Attorney determine the different use designation required readvertising. **L. Straughan moved to approve Conditional Use Permit number CUP 2023-02 for a family home daycare at 10 N. Lewis Street with the staff recommended conditions, provided the City Attorney did not recommend readvertising the application. M. Harlow seconded and the motion passed unanimously. (5-0)**

**B. CUP 2023-03: An application by Sarah Dudley requesting approval of a conditional use permit to allow the first floor of an existing building at 221 S. Main Street, (Tax Map #23-1-129), owned by Tenacious Properties, LLC, to be used as a residential dwelling unit.**

1) Staff Report –

The subject application was a request for a conditional use permit to allow an unfinished space at the rear of the first floor of an existing building at 221 S. Main Street, in the C-1 zoning district, to be converted into a residential apartment. The zoning ordinance allows residential dwelling units on the second floor and higher as a by right use in the C-1 zoning district, however a conditional use permit is required when they occupy the first floor. Article 11.1.3 of the Zoning Ordinance contains use and design standards specifying that first floor residential units should not be visible from a public street, and if the building fronts on a public street, the residential portion of the first floor shall be required to be shielded by office or retail space or a lobby that maintains a commercial appearance. The subject parcel runs the length of the block with the front of the building facing Main Street and the rear of the building facing a driveway entrance to Jefferson Street. The front of the building contains the Alcova Mortgage office and the applicant's proposal was to renovate an unfinished space located behind the office into an apartment. The apartment would not be visible from Main Street and would be accessed only from the Jefferson Street side of the building. A. Glaeser noted the considerational criteria for the issuance of a conditional use permit, the suggested motion, and stated it was his opinion that the application met the zoning requirements.

2) Applicant Statement –

The applicant and owner of the property, Sarah Dudley, said her intent was to renovate some unfinished space at the back of the building and use it as a short term rental to offset expenses. She indicated she had spoken with the owner of a neighboring property on McDowell Street who would be most impacted by the project. She also said she had spoken with the Fire Marshal and would hire an architect to ensure code requirements are met. She confirmed there was adequate space for a vehicle to turn around at the end of the driveway to the rear of the building and said the proposal did not include a provision for parking because there is no parking requirement in the C-1 zoning district.

3) Public Comment – None

4) Commission Discussion & Decision –

A. Glaeser reported the Planning Department had received one inquiry from the owner of an adjacent property who voiced no opposition. Addressing a concern voiced by M. Harlow, Director Glaeser said he did not see a reason to be concerned about setting a precedent with the approval of this application. He added that the use and design standards would remain consistent for any application for residential units on the first floor in the C-1 zoning district, but that conditional use permits were decided on a case-by-case basis. L. Straughan indicated she was in support of the proposal largely because it involved the use of unfinished space but would not have been in favor of renovating existing office or retail space for use as residential space. **L. Straughan moved to approve Conditional Use Permit number CUP 2023-03 to allow the rear portion of the first floor of the building located at 212 South Main Street in the C-1 zoning district to be used as a residential dwelling unit with the following condition: 1. The uses and layout of the first floor of the subject building shall be in substantial compliance with the floorplan dated**

**7.25.2023 and included in the application. J. Eastwood seconded and the motion passed unanimously. (5-0)**

Before moving on to the next item of business, Director Glaeser noted that a conditional use permit remains with the property even if the ownership of the property should change. The conditional use and its associated conditions expire only at the property owner's request or after two years of disuse.

**C. ZOA 2023-01: Annual Zoning Ordinance Amendments. Accessory Dwelling Units (A.D.U.).**

- 1) Staff Report– Director Glaeser provided an overview of the Commission's work thus far on an ordinance to allow accessory dwelling units in accessory structures. He briefly explained how the text was structured and the issues remaining to be finalized. He explained the process for the adoption of a new ordinance and noted the immediate goal was to develop a draft that could be advertised for public hearing. He suggested the Commissioners who were new to this discussion could, if they wished, find links to the minutes and/or audio from past discussions on the City's website and that staff would be happy help them locate them if needed.
- 2) Public Comment – None

**OTHER BUSINESS**

- A. Zoning and Planning Report – Director Glaeser reported that at its August 3<sup>rd</sup> meeting, the Architectural Review Board approved an application seeking a Certificate of Appropriateness for the demolition of the burned-out structure at 201 N. Randolph Street.

**CITY COUNCIL REPORT -**

L. Straughan reported that at its meeting on August 3<sup>rd</sup>, City Council held public hearings for the site plan for the Williams School expansion building as well as the applications related to the PUD amendment and boundary line adjustments at Weatherburn. All three were unanimously approved. Council also approved extending the lease with FOR Swimming for the Rockbridge Aquatic Center. She said Council had acknowledged out-going Planning Commissioners Tuchler and Shester and thanked them for their service. She added she was disappointed to have missed the opportunity to thank them in person at the last meeting.

**ADJOURN**

The meeting was adjourned at 6:35 p.m. with unanimous approval. (G. Hopkins / M. Harlow)

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S. Spencer, Vice-Chair, Planning Commission

<b>Project Name</b>	House Mountain Learning Cooperative
<b>Property Location</b>	10 North Lewis Street Tax Map #: 24-5-B & 24-5-C
<b>Zoning</b>	R-1 (General Residential District)
<b>Owner/Applicant</b>	Jonathan Pisha & Lorelei Pisha / Lorelei Pisha
<b>Applicant's Intent</b>	CUP to open an educational facility, primary/secondary

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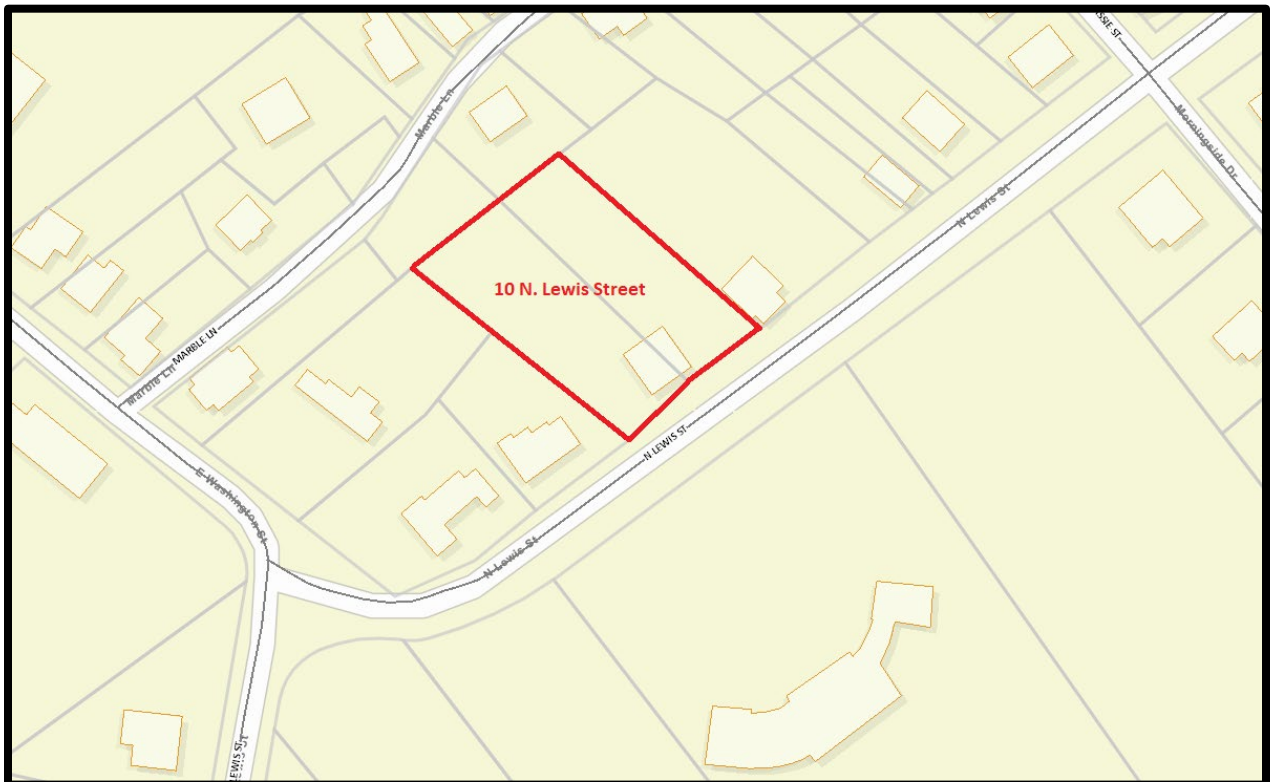
PLANNING COMMISSION RECOMMENDATION: Pending  
STAFF RECOMMENDATION: Approval with conditions

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### OVERVIEW OF REQUEST AND BACKGROUND

The subject application is a request for a temporary conditional use permit to allow an *Educational Facility, Primary/Secondary* to operate in the upstairs unit of the two-family dwelling at 10 N. Lewis Street, located in the R-1 (General Residential) zoning district.

#### *Location Map*



*photographs of 10 N. Lewis Street*







**Staff Report & Recommendation**  
**Conditional Use Permit**  
**CUP 2023-02 10 North Lewis Street**

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Lorelei Pisha is requesting a conditional use permit for an *Educational Facility, Primary/Secondary* to allow the House Mountain Learning Cooperative (the “Co-Op”), a homeschool cooperative, to operate out of the upstairs unit of the two-family dwelling located at 10 N. Lewis Street. The applicant reports there is an active search for a permanent location for the Co-Op and envisions its use of the Lewis Street location would not extend beyond the 2024-2025 academic year. The Co-Op would generally meet at the Lewis Street property no more than three days per week, primarily between the hours of 10am and 2pm, and would enroll no more than 12 children and their families.

The subject parcel fronts on N. Lewis Street for a length of 118 feet and this amount of frontage equates to approximately 5 to 6 on-street parking spaces. Additionally, the demand for on-street parking is limited in this block because the adjacent Sigma Nu headquarters provides off-street parking for all of their employees and guests. Sufficient on-street parking should be available for the residents of the downstairs unit of the subject parcel as well as those on-street parking spaces needed for the limited drop-off and pick-ups generated by a school with only 12 students that are on flexible schedules.

### **APPLICABLE ZONING ORDINANCE SECTIONS**

#### **§420-1.6. Establishment of Districts**

For the purposes of this chapter, the area within the incorporated City, as it exists at the time of the enactment of this chapter, is hereby divided into classes of districts, which are established as follows:

##### ***General Residential District (R-1)***

This district is composed of certain moderate-density residential areas, plus certain open areas where similar development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district and to promote and encourage, insofar as is compatible with the intensity of land use, a suitable environment for family life composed of a family population. For this reason, the number of unrelated individuals permitted to constitute a household unit is limited to a maximum of three in this district. Residential structures for both permanent and transient occupancy, including institutions, may be authorized.

#### **§420-20.1 Definitions**

##### ***EDUCATIONAL FACILITY, PRIMARY/SECONDARY***

A public, private or parochial school offering instruction at the elementary, junior and/or senior high school levels in the branches of learning and study required to be taught in the public schools of the Commonwealth of Virginia.

### **CONDITIONS OF ISSUANCE OF A CONDITIONAL USE PERMIT**

Section 420-1.11., ***Conditional use permits***, in part

#### C. Conditions of Issuance

- (1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of this chapter, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:

- (a) The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use. *The proposed educational facility with limited enrollment and limited hours and days of operation will not adversely affect the health and safety of persons residing or working in the neighborhood.*
  - (b) The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood. *The proposed educational facility with limited enrollment and limited hours and days of operation will not be detrimental to the public welfare.*
  - (c) The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan. *The proposed educational facility will not be in conflict with the policies and principles of the Lexington Comprehensive Plan.*
  - (d) Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use. *Adequate public services are available to support the proposed educational facility and sufficient on-street parking is available for the limited drop-off and pick-ups generated by a school with only 12 students on flexible schedules.*
- (3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C (1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.

### STAFF RECOMMENDATION

Based on the aforementioned findings and opinions, the Staff recommends the proposed Conditional Use Permit be **APPROVED WITH CONDITIONS**, as follows:

1. This conditional use permit for an Educational Facility, Primary/Secondary for the House Mountain Learning Cooperative in the upper level of the building located at 10 N. Lewis Street shall be valid for the 2023-2024 and 2024-2025 academic years and will expire on June 1, 2025.
2. The proposed educational facility building shall be occupied and used by a maximum of 12 students ages 6 and up at any one time; however, in no case shall the number of students be allowed to exceed the maximum occupancy or limits established by all applicable state and local building codes.

3. The educational facility shall operate primarily between 10 a.m. and 2 p.m. with occasional activities outside of those hours.
4. The educational facility shall not be open or hold any events prior to 8:30 a.m. or after 4:00 p.m. Monday through Friday.
5. The educational facility shall operate generally not more than 3 days per week (Monday through Friday) unless there is extended inclement weather.
6. The educational facility shall allow flexible drop-off from 8:30 a.m. to 10 a.m. and pick-up from 2 p.m. to 3:30 p.m.
7. The building will be at all times used, in full conformance with the 2009 Virginia Unified Statewide Building Code and the 2009 Virginia Statewide Fire Protection Code.
8. No change in the design or use of the building shall be undertaken unless such change is in full compliance with the above referenced building and fire codes.

**PLANNING COMMISSION RECOMMENDATION**

*Pending*

**SUGGESTED MOTION:**

I move to approve Conditional Use Permit number CUP 2023-02 for an educational facility at 10 N. Main Street with the staff recommended conditions.

## Draft Accessory Dwelling Unit ordinance language (8.24.2023)

### Article III. Use Matrix.

Zoning District	FP, Floodplain Overlay	P-OS, Parks and Open Space District	R-1, Residential General	R-2, Suburban Residential	R-M, Residential Multifamily	R-LC, Residential- Light Commercial	C-1, Central Business District	C-2, General Commercial District
<i>B = By-right uses, C = Conditional uses</i>								
Use Types								
Residential								
Accessory <del>apartment</del> Dwelling Unit - Attached			B	B	B	B	B	
<a href="#">Accessory Dwelling Unit - Detached</a>			<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		
Dish Antennas (not meeting use and design Standards in §420-11.1.1)			C	C	C	C		
Family Health Care Structure, temporary			B	B	B	B		
Fraternity/Sorority House, University Administered			C		C			
Group home			B	B	B	B		
Guest room			B	B	B	B		
Live-work dwelling					B	B	B	B
Multi-family dwelling					B	C	B <sup>1</sup> , C <sup>2</sup>	
Single-family dwelling, attached			B	B	B	B		
Single-family dwelling, detached			B	B	B	B		
Townhouse					B	B	B	C
Two-family dwelling			B		B	B		

## §420-11.1. Residential Uses.

### 1. Accessory Dwelling Unit (ADU).

- A. Purpose. In Lexington, accessory dwellings are intended to provide additional housing options **in a constrained market. Accessory dwelling units (ADUs) can benefit** in the City for the benefit and convenience of families and households with changing economic conditions and/or family structures. Accessory dwellings are expected to increase housing opportunities for individuals and households who might have difficulty finding housing in Lexington. **ADUs also could generate supplemental income to cost burdened homeowners, helping increase housing affordability for renters and owners alike.** In addition, these provisions are provided to formally recognize previously established apartments and provide for improved safety and physical appearance
- B. Definitions. The following words and phrases, as used in this subsection, shall have the following meanings:
- “Accessory Dwelling Unit - Attached” means a complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **? persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained within the principal structure of a single-family dwelling, such accessory dwelling unit constitutes an “attached accessory dwelling unit,” for which a separate entrance and street address are required.
- “Accessory Dwelling Unit - Detached” means a complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **? persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained in a separate, fully detached structure from the principal structure of a single-family dwelling, such accessory dwelling unit constitutes a “detached accessory dwelling unit,” for which a separate street address is required.
- C. General standards. Accessory Dwelling Units shall be subject to the following minimum standards:
- (1) No more than one ADU shall be allowed per parcel, **provided the parcel meets the minimum lot size and the structure meets the minimum setback requirements for the district.** *(with exceptions for C.(5), E.(9), and any others?)*
  - (2) Accessory dwelling units must comply with all applicable building code regulations.
  - (3) Same minimum lot size for the accessory dwelling unit as the minimum lot size for the primary dwelling.
  - (4) 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 dwelling unit in the calculation of these standards.
  - (5) Accessory dwelling units may be created within or attached to an existing primary dwelling located on a lot that is smaller than the minimum lot size provided the primary dwelling is a legal nonconforming use.
  - (6) The owner of the principal building or lot shall be the occupant of the principal dwelling or of the accessory dwelling unit.
  - (7) The separate sale of an accessory dwelling unit is prohibited.
  - (8) Only one short term rental registration shall be allowed per parcel.
  - (9) **Accessory dwelling units shall not be included in calculations of density.**
  - (10) Allowable square feet for accessory dwelling units shall be calculated as the sum of the total horizontal areas of all floors of the building, measured from the interior faces of exterior walls. **Rooms with structural**

headroom of less than 6' 6" shall not be counted, nor shall garage space, provided the area of the garage does not exceed the counted floor area. Covered porches, balconies, etc. shall not be counted unless they are enclosed, but shall not exceed 50 percent (50%) of the area of the counted floor area. (decks?)

(11) Any accessory dwelling units shall comply with the following parking requirements:

- i. If no parking spaces exist prior to an application for approval of an ADU, 1 space shall be created, provided, however, that if an applicant can demonstrate to the Zoning Administrator that adequate on-street parking exists on the block on which the main dwelling is located, such new space may not be required.
- ii. Where either 1 or 2 spaces exist prior to the issuance of the accessory dwelling permit, all such space(s) shall be maintained.
- iii. Where more than 2 spaces exist prior to issuance of the accessory dwelling permit, at least two spaces shall be maintained.

-OR-

(11) One parking space per accessory dwelling unit shall be required in addition to the number of parking spaces associated with the primary dwelling existing as of the date of approval.

D. Accessory Dwelling Unit – Attached standards. Attached Accessory Dwelling Units shall be subject to the following additional standards:

- (1) The gross floor area of an attached accessory dwelling unit may not exceed forty (40) percent of the gross floor area of the principal structure in which it is located nor more than the total of 750 square feet (possibly strike the square footage cap to allow flexibility for larger structures).
- (2) No attached accessory dwelling unit with an entrance above the first floor shall have exterior stairs to that entrance on the side of the lot fronting a street. Accessory dwelling units facing an alley as determined by the Zoning Administrator may have external stairs on the side of the lot facing the alley.

E. Accessory Dwelling Unit – Detached standards. Detached Accessory Dwelling Units shall be subject to the following additional standards:

- (1) The gross floor area of a detached accessory dwelling unit may not exceed forty (40) percent of the gross floor area of the primary dwelling on the property nor more than the total of 800 square feet. Additionally, detached accessory buildings and structures cumulatively shall not occupy more than ?? percent of a rear yard.
- (2) Detached accessory buildings containing accessory dwellings shall exceed neither 25 feet nor 1 ½ stories in height.
- (3) Any detached accessory building approved after \_\_\_\_\_, containing an accessory dwelling shall comply with setbacks as follows:
  - i. For lots in the R-1 zoning district, the nearest wall of the accessory building shall not be located closer than fifteen (or ten) feet to a side lot line or fifteen feet to a rear lot line;
  - ii. For lots in the R-2 zoning district, the nearest wall of the accessory building shall not be located closer than twenty (or fifteen) feet to a side lot line or twenty feet to a rear lot line; and
  - iii. When a garage situated within a required rear yard is entered from an alley, the garage shall not be nearer than ten (10) feet to the property line adjacent to the alley or side street.

- (4) No detached accessory dwelling unit with an entrance above the first floor shall have exterior stairs to that entrance on the side of the lot fronting a street unless the accessory building was built prior to the date of the adoption of this ordinance.
- (5) A detached accessory dwelling unit located in the Residential Historic District must be reviewed by the Architectural Review Board for consistency with the Historic District Design Guidelines.
- (6) An accessory building in which the accessory apartment is located shall not be required to be separately metered for utilities from the principal single family home.
- (7) A modular dwelling affixed to a permanent foundation may be used as an accessory dwelling unit in any zone in which an accessory dwelling unit is permitted.
- (8) An accessory building in which the accessory apartment is located shall not be required to be separately metered for utilities from the principal single-family home.
- (9) Detached nonconforming accessory buildings **with the exception of temporary structures such as gazebos** existing prior to May 18, 2019, may be altered to make interior *(strike interior?)* alterations, whether structural or non-structural, in accordance with all requirements of Article 16, to create an accessory dwelling provided the detached accessory dwelling unit can meet the following additional requirements:
  - 1) **The maximum square footage of the accessory dwelling may not exceed that of the main dwelling.**
  - 2) ~~Maximum square footage of \_\_\_\_\_ (only so much can be used for the ADU)~~
  - 3) **Any entrance to an ADU located on an alley must be at least 5 feet from the property line adjacent to the alley.**
  - 4) **Fenestration, including bay window encroachments, or mechanical/HVAC units must be at least 5 feet from the property line unless it is located on a wall facing an alley or side street.**
  - 5) **Exterior doors must be at least 5 feet from the property line adjacent to an alley or side street and at least 10 feet from the property line in all other cases.**
  - 6) ~~On interior lots ... *the nearest wall of the accessory building shall not be located closer than five feet to a side or rear lot line UNLESS the nearest wall of the accessory building is at least 15 feet from the nearest wall of the neighboring structure. If an ADU is located in an accessory building that is within the setback, no window or HVAC unit shall be located on the wall closest to the property line.*~~
  - 7) ~~On corner lots ...~~
  - 8) ~~Some allowance for ADU reduced rear and/or side yard setback when adjacent to an "alley"~~
  - 9) ~~Bigger setbacks to road than to alley (see Arlington County B.3.)~~
  - 10) **There is no maximum height limit on a nonconforming accessory structure to be used as an accessory dwelling, however no additional height may be added to such a structure.**
  - 11) ~~Bay window additional allowance to encroach into setback (or just reference Article 4 that allows this additional encroachment for bay windows?)~~
  - 12) ~~A post and beam structure such as a carport that is located within a yard setback may have exterior walls infilled between the posts and still comply with this section provided the all other standards found in this section can be met. *(to allow carport and gazebo conversions)*~~
  - 13) **Except as otherwise provided in Section 420-16-1.C, a nonconforming accessory building may be changed to the accessory dwelling use in compliance with the standards contained in this section.**

#### F. Administration.

- (1) Illegal accessory apartments in detached structures are required to seek approval for the detached accessory apartment through the conditional use permit **and the accessory apartment must meet all requirements thereof.**



(2) *Legal nonconforming ADUs may continue to exist as is.*

(3) Reiterate the accessory cannot be constructed without the primary dwelling existing on the parcel.

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## §420-20.1. Definitions

### **ACCESSORY APARTMENT**

~~A residential use having the external appearance of a single-family residence in which there is located a second dwelling unit that comprises no more than 25% of the gross floor area of the building nor more than a total of 750 square feet.~~

### **ACCESSORY DWELLING UNIT - ATTACHED**

A complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **2 persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained within the principal structure of a single-family dwelling, such accessory dwelling unit constitutes an “attached accessory dwelling unit,” for which a separate entrance and street address are required.

### **ACCESSORY DWELLING UNIT - DETACHED**

A complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **2 persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained in a separate, fully detached structure from the principal structure of a single-family dwelling, such accessory dwelling unit constitutes a “detached accessory dwelling unit,” for which a separate street address is required.

### **BUILDING ACCESSORY**

~~A subordinate structure customarily incidental to and located upon the same lot occupied by the main structure. No such accessory structure shall be used for housekeeping purposes.~~

### **DWELLING UNIT**

A room or group of rooms connected together containing cooking, bathroom and sleeping facilities constituting a separate, independent housekeeping unit, physically separated from any other dwelling unit in the same structure.