

**TOWN OF HERNDON, VIRGINIA
PLANNING COMMISSION PUBLIC HEARING AGENDA
SEPTEMBER 27, 2021
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
7:00 P.M.**

CALL TO ORDER

1. Roll Call

APPROVAL OF AGENDA

APPROVAL OF MINUTES

2. August 9, 2021, Planning Commission Work Session Draft Minutes
3. August 23, 2021, Planning Commission Public Hearing Draft Minutes

COMMENTS

4. Comments from the Staff Members
5. Comments from the Commissioners
6. Comments from the Audience

PUBLIC HEARING

7. **ZONING ORDINANCE TEXT AMENDMENT, ZOTA #21-03**, to revise regulations governing accessory dwelling units. This zoning ordinance text amendment is being considered pursuant to Virginia Code §§ 15.2-2204, 15.2-2285, 15.2-2286, and an Initiating Resolution adopted by the Town Council on June 8, 2021. Notice is hereby given to consider zoning text amendments to establish new, and clarify, revise, and/or delete, existing regulations and definitions in order to amend the regulation of accessory dwelling units. The proposed amendments under consideration include, without limitation: Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses) and other articles as deemed necessary to revise the regulations. *(Continued from the August 23, 2021 Planning Commission Public Hearing.)*

ADJOURNMENT



MEMORANDUM

To: Chairman Romeo and Members of the Planning Commission

From: David Stromberg, AICP, Zoning Administrator *DS*

Date: September 23, 2021

Subject: ZOTA #21-03 – To revise the regulations for accessory dwelling units

This memo serves as an addendum to the staff report dated July 12, 2021, the staff memos dated July 21, 2021, August 6, 2021, August 18, 2021, and September 8, 2021, which contained a comprehensive update of the zoning text amendment thus far and the purpose behind why this amendment was initiated.

Additional Zoning Provisions

The draft language for this zoning text amendment identifies language that is deleted, changed, new, or specific to accessory dwelling units. The amendment occurs in Articles 7 and 8 of the zoning ordinance. There are standards that would apply to accessory dwelling units in the other 16 Articles of the zoning ordinance, but that language will remain applicable and does not require amendment. The most relevant are summarized below:

- Lot/building coverage
 - The zoning ordinance limits the maximum cumulative footprint of all structures on a residential lot to 25 percent of the area of the lot. This maximum limit applies to the principal structure and any accessory structures. There are no provisions in the draft amendment that exempt an attached or detached accessory dwelling unit from this existing requirement.
 - For example, if an existing lot is already at this maximum limit, either through a large principal structure or multiple detached accessory structures, an attached or detached accessory dwelling unit could not be approved even if the specific criteria for an accessory dwelling unit are met.
- Impervious surface coverage
 - The zoning ordinance limits the maximum coverage of all impervious surfaces on a residential lot to 50 percent. The maximum limit applies to anything impervious and there are no provisions in the draft amendment that exempt an attached or detached accessory dwelling unit from this requirement.
- Planned development districts
 - More recent residential communities that have been developed through a proffered rezoning are governed by their respective proffers and a Generalized Development Plan (GDP). Changes to a GDP would require a proffer condition amendment that goes through the public hearing process.
- Historic District Overlay
 - There are no provisions in the draft amendment that would exempt an attached or detached accessory dwelling unit from the requirements of the Historic District Overlay if the subject property is located within the district.

Impact if ZOTA #21-03 is Approved

The 1983 regulations were intended to allow an elderly or disabled person to rent out an accessory dwelling unit for income, provide space for a caretaker, or to move into an accessory dwelling unit that is owned by someone else. This limited the amount of property owners who could benefit from this accessory use and established a lengthy legislative process, in addition to administrative reviews. It also necessitated the need for costly improvements, namely the kitchen of the accessory dwelling unit, to be removed if the property changed hands or the elderly or disabled individual was no longer living on site.

If approved, this zoning text amendment would allow owners who do not meet the age/disability requirement to benefit from the same property right, provided they comply with the requirements contained within this text amendment. This text amendment also provides assurance that significant financial improvements made to property is not required to be removed after a change in circumstances.

There is a significant cost component associated with internal, attached, or detached accessory dwelling units. In the four years since Arlington County has allowed accessory dwelling units by-right, they have issued permits for 96. Arlington has approximately 27,700 detached dwelling units, which works out to .0035 percent. If the same percentage is applied to the 3,037 detached dwelling units within Herndon, it can be expected that there would be 10-11 new accessory dwelling units in a four-year period (or 2-3 per year). This would be a mix of internal, attached, and detached units.

Impact if ZOTA #21-03 is Denied

One of the arguments for not expanding accessory dwelling units is to prevent overcrowding in the town. Illegal overcrowding has been and remains a challenge within the town. It can result in complaints, excessive vehicles, and, most importantly, unsafe living conditions for the occupants. It is unlikely that failure to pass this zoning text amendment will alleviate any of the aforementioned problems.

If illegal accessory dwelling units are found through zoning enforcement, there is currently no legal option to obtain permits and come into compliance unless the owner meets the age/disability requirement. The only method of abatement is to rip out all components of the accessory dwelling unit. Those who do meet the age/disability requirement will still be subject to the 4-6 month special exception process.

Staff Recommendation

Staff believes this iteration of the draft zoning text amendment mitigates the potential negative consequences of allowing accessory dwelling units on more properties. The text amendment limits the size, location, and occupancy of accessory dwelling units and requires additional parking. Accessory dwelling units will still be subject to other sections of the zoning ordinance. Lastly, this text amendment will improve the health, safety, and welfare of town residents by ensuring that more spaces where people in town are living will have the proper building, electrical, and plumbing permits.