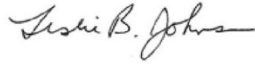




County of Fairfax, Virginia

MEMORANDUM

DATE: April 12, 2024
TO: Board of Supervisors
FROM: Leslie B. Johnson, Zoning Administrator 
SUBJECT: Report on Accessory Living Units and Home-Based Businesses

This memorandum is in response to Zoning Ordinance Work Program Item #1A, which directs staff to continue to monitor and evaluate the provisions for accessory living units (ALUs) and home-based businesses (HBBs) as a follow up to the status update report issued in January 2023.¹ The new Zoning Ordinance that went into effect on July 1, 2021, and was readopted on May 9, 2023, modernized the provisions for ALUs and HBBs. The January 2023 report, which was prepared in response to a follow-on motion approved by the Board of Supervisors (Board) with the adoption of the new Zoning Ordinance, recommended that the standards and implementation of ALUs and HBBs be reviewed after another year, with a similar report provided to the Board in early 2024. This memorandum provides a cumulative update on the implementation of the ALU and HBB provisions from July 1, 2021, through December 31, 2023, with analysis and recommendations.

This document has two sections, A. Accessory Living Units and B. Home-Based Businesses, and for each section, includes the following:

1. Adopted Standards and Processes
2. Administrative and Special Permits Received
3. Complaint Information
4. Implementation Challenges and Potential Amendment Topics

A. ACCESSORY LIVING UNITS (ALUs)

An ALU is a secondary dwelling unit established in conjunction with and clearly subordinate to a single-family detached dwelling unit. These living spaces include areas for eating, cooking, sleeping, living, and sanitation.

1. Adopted Standards and Processes

[Subsection 4102.7.B](#) includes the use-specific standards for ALUs. The revised standards allow for an administrative approval of interior ALUs that meet the standards while also allowing a special permit request to modify certain standards. A special permit is needed for a detached ALU, with a minimum lot size of two acres. In addition, the new Zoning Ordinance removed the previous requirement that an occupant of either the principal dwelling or the ALU be 55 years or older or a person with a disability. A summary of the adopted standards and processes is included in Attachment 1.

¹ ALU and HBB Report, January 25, 2023: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/Assets/documents/Zoning%20Ordinance/AmendmentWorkProgram/ALU-HBB-Report-Board.pdf>



2. Administrative Permits and Special Permits Received

Between July 1, 2021, and December 31, 2023, a total of 223 ALU applications have been submitted. Of these, 204 (92 percent) were applications for an administrative permit (AP). The number of applications has reduced over time, likely because there were a number of applications waiting on the new regulations to go into effect that were initially submitted soon after adoption. The average number of applications per month has reduced by approximately 20 percent for the 13-month period from December 1, 2022, to December 31, 2023, as compared to the previous 17-month reporting period from July 1, 2021, to December 1, 2022.

Administrative Permit Applications: The status of AP applications from July 1, 2021, to December 31, 2023, is shown below:

AP Applications by Status	
Status	Number
Approved	80 ²
Denied	14
Voided or Withdrawn	21
In Review	1
Waiting for Information	29 ³
Waiting for Other Approvals	59 ⁴
TOTAL	204

Table 1: Administrative Permits by Status

Of the 204 applications submitted for review, 139 have either been approved or determined to meet the ALU standards but require issuance of other permits, such as building or electrical permits and completion of construction associated with those permits before the ALU permit can be issued. The processing times shown in Table 2 below represent the active review time as reported in the PLUS system, and do not include the time in the “waiting” status. The review time generally reflects the complexity of the review, which often requires multiple exchanges of information between the applicant and staff and the submission of revised application materials. Table 3 shows the distribution of applications by magisterial district.

AP Approvals Processing Time	
Number of Days ⁵	Total # of Approvals
0 - 30	24
31 - 60	12
61 - 120	9
121+	35

Table 2: Administrative Permit Processing Time

AP Applications by Magisterial District	
District	Total #
Dranesville	37
Mason	30

² The 80 total AP applications approved includes 11 that have subsequently expired and two renewals.

³ These applications required additional information from the applicant before the zoning review could be completed. This number does not include three duplicate records.

⁴ These applications were reviewed by zoning and found to meet the standards. After building permits and related inspections, the ALU permit will be issued.

⁵ Time from submittal to issuance of permit.

AP Applications by Magisterial District	
Springfield	29
Franconia	23
Braddock	21
Providence	18
Hunter Mill	17
Mount Vernon	15
Sully	14

Table 3: Administrative Permits by Magisterial District

Special Permit Applications: The status of special permit (SP) applications from July 1, 2021, to December 31, 2023, is shown below:

SP Applications				
Appl #	District	Status	Request	Number of Days ⁶
SP-2021-PR-00049	Providence	Approved	Increase in Size	99 ⁷
SP-2021-SP-00097	Springfield	Approved	Detached ALU	127 ⁸
SP-2021-SP-00115	Springfield	Approved	Detached ALU	84
SP-2021-SP-00143	Springfield	Approved	Detached ALU	467 ⁹
SP-2022-DR-00021	Dranesville	Approved	Increase in Size	135 ¹⁰
SP-2022-DR-00024	Dranesville	Approved	Detached ALU	138
SP-2022-MA-00087	Mason	Approved	Increase in Size	118
SP-2022-BR-00100	Braddock	Approved	Increase in Size	147
SP-2022-PR-00109	Providence	Approved	Increase in Size	84
SP-2022-SP-00113	Springfield	Approved	Increase in Size	167 ¹¹
SP-2022-PR-00137	Providence	Approved	Parking	124
SP-2022-LE-00172	Franconia	Approved	Parking	111
SP-2022-DR-00212	Dranesville	Approved	Increase in Size	124 ¹²
SP-2023-SP-00068	Springfield	Approved	Increase in Size	113
SP-2023-DR-00071	Dranesville	Approved	Increase in Size	98
SP-2023-DR-00076	Dranesville	Approved	Detached ALU	98
SP-2023-DR-00026	Dranesville	Denied	Detached ALU	209 ¹³
SP-2023-SU-00100	Sully	In Review ¹⁴	Increase in Size	121
SP-2023-SP-00107	Springfield	In Review ¹⁵	Detached ALU	127

Table 4: Special Permit Applications for ALUs

As of December 31, 2023, 16 ALU SPs had been approved, one was denied, and two were in review (which were subsequently approved in January and February 2024). Deferrals or speakers at the public hearings are noted in the footnotes.

⁶ This is the time from acceptance of the SP application to BZA decision.

⁷ There were five speakers at the public hearing, all in opposition.

⁸ One deferral to allow the applicant to address encroachments onto Park Authority property.

⁹ The applicant requested four administrative deferrals to allow time to obtain building permits and final inspections for the detached structure that had been constructed without approvals.

¹⁰ The total time of 135 days included one three-week deferral of the decision by the BZA. There were seven speakers in opposition and one in favor of the application.

¹¹ One administrative move to allow time to address outstanding issues.

¹² One administrative move to allow time to address outstanding issues.

¹³ There were two deferrals and two speakers at the public hearing, both in opposition.

¹⁴ In review on December 31, 2023. Approved in February 2024.

¹⁵ In review on December 31, 2023. Approved in January 2024.

3. Complaint Information

Following adoption of the new Ordinance, the Department of Code Compliance (DCC) began tracking complaint information specific to ALUs and HBBs. DCC received approximately 111 complaints related to potential ALUs from July 1, 2021, to December 31, 2023. None of the complaints were for properties with a previous ALU approval. Three complaints resulted in applications for an ALU administrative permit, two of which were subsequently approved, and one denied. None of the complaints resulted in an application for a special permit.

These complaints generally fell into the broad categories included in Table 5 and further described below. Certain complaints mentioned multiple issues, but only one category was selected based on the main concern identified in the complaint.

ALU Complaints by Topic Area	
Complaint	Total #
Occupancy issues, rental, or general secondary dwelling unit	70
Occupancy of a detached accessory structure	21
Unpermitted work or safety concern	17
Parking issues	3

Table 5: ALU Complaints by Topic

- **Occupancy issues, rental, or general secondary dwelling unit:**¹⁶ The largest number of complaints related to the dwelling potentially exceeding the occupancy standards, suspected rental of a portion of the dwelling, or a general complaint mentioning a second dwelling being present on the property. These complaints often mentioned multiple unrelated people living in the dwelling, the advertisement of rental or apartment units online, or general mentions of multiple dwellings or second kitchens.
- **Occupancy of detached structures:** The next largest number of complaints included those specifically mentioning occupancy of a detached structure as a dwelling unit, including garages, sheds, and other structures separate from the principal dwelling.
- **Unpermitted work or safety concerns:** DCC received 17 complaints related to an area being used as an ALU without proper permits or general safety concerns associated with the dwelling. The complaints in this category included examples such as a second kitchen being present without receiving permits, as well as fire safety concerns (including lack of emergency egress).
- **Parking issues:** Three complaints mentioned an excessive number of vehicles or use of on-street parking related to a potential ALU.

Complaints were distributed throughout the County as shown below:

Complaints by Magisterial District	
District	Total #
Franconia	27
Mason	21
Mount Vernon	16
Sully	14
Providence	10
Braddock	9

¹⁶ Since the report issued in 2023, due to the similarity of the nature of the complaints, staff consolidated two previous categories “occupancy issues or rental” and “general secondary dwelling” into one category.

Complaints by Magisterial District	
Dranesville	7
Springfield	5
Hunter Mill	2

Table 6: ALU Complaints by Magisterial District

4. Implementation Challenges and Potential Amendment Topics

Overall, the processing of the administrative permit and special permit applications has been relatively smooth, and with no complaints received for approved ALUs. However, several challenges and topics have been identified. As discussed below, many of the challenges relate to interpretations of whether an application requires ALU approval, not the actual AP or SP process for an ALU:

- a) **Determining whether an arrangement constitutes an ALU.** As mentioned in the previous status update, determining whether an arrangement constitutes an ALU continues to require interpretation and can result in delays in obtaining approval of proposed renovations of a dwelling. When building permit applications are submitted showing all of the components of a secondary dwelling unit (living, sleeping, eating, cooking, and sanitation), and the applicant is advised that an ALU permit is required, some applicants want to modify the proposal to avoid having to obtain an ALU permit, even an administrative one. Various reasons have been expressed for wanting to avoid pursuing an ALU permit, including the Zoning Ordinance limitations on ALUs, such as size, and the renewal requirement, as well as the Building Code requirement for having a monitored fire alarm system. Applicants have also expressed reluctance to obtain an ALU permit if the proposed renovation is for the convenience of a family member like a parent or adult child.

In order to not be defined as an ALU, the area cannot contain all of the components of a secondary dwelling unit. For instance, an applicant may be able to show that the renovation is for entertainment purposes and will not be used as an ALU. In these cases, the applicant often proposes to replace the kitchen with a wet bar by removing the cooking appliances and replacing a full-size refrigerator with an undercounter one. Since the area can still be used for food preparation, staff is then in the difficult position of determining whether to allow these facilities without ALU approval, even though all of the other components such as areas for sleeping and sanitation exist.

To provide additional clarity for applicants and staff, it is recommended that a Zoning Ordinance amendment be considered that would add objective standards for when an ALU permit is required. Options for consideration include, but are not limited to:

- (1) **Focus on the occupancy of the dwelling.** The Zoning Ordinance specifies the allowable occupancy of a dwelling unit in subsection 4102.3.A.¹⁷ The ALU standards further clarify that the principal unit may be occupied by:
- Two or more persons related by blood or marriage and their children; or
 - One or two persons with their children; or
 - A group of up to four persons not related by blood or marriage.
- (a) Consideration could be given to not requiring an interior ALU permit when the occupants of the overall dwelling, including the principal unit and ALU unit, meet these occupancy standards. This would allow flexibility for people related by blood or marriage (such as parents and in-laws, children returning from college, or other relatives) to occupy a more independent space with a kitchen without the need for an ALU approval. In addition, a focus on occupancy rather than physical layout

¹⁷ Household occupancy: <https://online.encodeplus.com/regs/fairfaxcounty-va/doc-viewer.aspx#secid-2549>

and features allows future owners the flexibility to adapt the space to fit their specific needs within the occupancy limitations, rather than being the subject of a potential violation simply for having taken ownership of what may be considered an ALU. This change would be in line with certain other jurisdictions, including Arlington County and the City of Alexandria.

- (b) In order to implement and not inadvertently circumvent the requirement for SP approval for a detached ALU, the Ordinance could be clarified to require SP approval for any sleeping accommodations in a detached structure.
- (c) Staff has also received inquiries from builders requesting the ability to construct new homes that include an ALU with the specific intent to market the dwelling with an ALU. Because of the requirement for owner-occupancy, and the fact that the builder is still the owner and does not occupy the home, that standard of the Zoning Ordinance cannot be met; a process to allow ALUs as part of new construction could be considered.

- (2) **Revise “eating, cooking” in the definition of a dwelling unit to refer to food preparation.** The definition currently includes both eating and cooking. These terms are somewhat redundant, and it is recognized that the technology of heating food is evolving. As currently interpreted, any appliance for heating food, including a microwave or air fryer meets the definition of “cooking,” and installation of countertop appliances does not require any sort of permit. To assist staff in determining what elements constitute a kitchen versus a wet bar, adding a definition for each would also be helpful. Staff currently uses a wet bar or second kitchen certification form to document when a wet bar or second kitchen is being constructed that is not proposed to be used as part of an ALU. It may also be helpful to codify this process.

- b) **Standards for whether the ALU is interior or detached.** Some applicants would prefer to have a detached or semi-detached ALU, but either want to avoid the required special permit process or do not meet the minimum lot size of two acres for a detached ALU. The Ordinance requires interior/attached ALUs to be wholly contained within the single-family dwelling and have direct access to the principal dwelling through an interior space that is finished, temperature controlled, and fully enclosed. Additional language is contained in the general standards for accessory uses that states that an accessory structure that is designed as a cohesive part of the principal building is considered part of the building and must comply with the principal building setbacks. Together, these provisions have informed staff interpretations of whether a proposed ALU meets the standards for an administrative permit for an interior ALU. However, a wide variety of proposed floorplans have been submitted, with ALUs connected to the principal dwelling through areas such as an open breezeway, a skywalk, a garage, or a closet. One of the goals of the ALU provisions is to allow for flexibility in the arrangement and use of a secondary dwelling unit, while maintaining the external appearance of one single-family detached dwelling on the lot, as required by the Zoning Ordinance. Subsection 4102.7.B(3) furthers this goal by requiring any new external entrances to be on the side or rear of the dwelling and any proposed garage or carport to be adjacent to any existing garage or carport. Additional clarification of the types of arrangements that would be eligible to apply for an administrative or special permit would facilitate the submission and review of applications.

Options for consideration include, but are not limited to:

- (1) **Focus on the exterior appearance instead of the floorplan and internal connection.** Clarify and include illustrations or diagrams (see Figure 1 below) of the types of arrangements that may apply for an interior ALU, and consider the following changes and clarifications:

- Allow any size ALU in a basement or cellar, as these spaces are not generally visible from the exterior. This would include removing the current limitation allowing the ALU to occupy the entire basement or cellar only for those basements or cellars existing as of May 10, 2023.
- Allow a garage conversion (if minimum parking requirements are met) or a finished area over a garage, as a second level on a garage is not atypical when the garage itself is attached and provides access to the principal dwelling.
- For hallway or breezeway-type connections, define a minimum width and maximum length.
- Add a provision for semi-detached ALUs that meet certain standards to be approved by an administrative permit and allow a special permit for modification of standards.



Figure 1: Potential illustration demonstrating interior ALU configurations (in orange)

- (2) **Consider reducing the two-acre minimum lot size** for a detached ALU to a smaller size, such as 36,000 square feet, while still requiring special permit review and approval.
- c) **Update standards.** Based on implementation and feedback, certain revisions to the requirements may improve and streamline the process. Topics for consideration include:
- (1) Allow the BZA to modify the size limit of 1,200 square feet for detached ALUs.
 - (2) Create a one-stop approval process for administrative permits by removing the time limit and requirement for renewal. Also, consider removing the requirement for recording the ALU approval in the land records. Other permit approvals do not have a similar requirement, and without the age and disability limitations previously required, staff does not see the need to record the approval. Initially, residents faced conflicting information and difficulties when attempting to record a copy of the approval in the land records, but staff has implemented a process to make it easier for applicants to complete this requirement.
 - (3) Requiring an extra parking space for an ALU was a significant concern to the public when the provisions for ALUs were updated as part of zMOD; however, a number of residents commented on this provision during the public hearing on the Parking Reimagined Zoning Ordinance amendment and encouraged it be removed since it was seen as a disincentive to providing ALUs and increased the cost to the homeowner. Staff supports continued review of this topic.

- d) **Navigating a complex Building Code.** As previously discussed with the Board, a new Building Code went into effect at the same time as the Zoning Ordinance update that requires interior ALUs to have fire-resistant rated wall and floor assemblies or a household fire alarm system with a dual power supply and third-party monitoring through a company providing such services. For the household fire alarm system, Land Development Services staff in conjunction with the Fire Marshal’s office developed a certification form for an applicant to show compliance with this requirement. As noted above, applicants have expressed that this requirement adds an on-going monthly expense and an extra procedural step. Staff should continue to monitor and discuss potential changes related to updating this provision of the Building Code.

- e) **Monitor General Assembly Legislation.** This year’s legislative session included House Bill 900 and Senate Bill 304 relating to accessory dwelling units. These bills were continued to 2025, and the Virginia Housing Commission will be studying accessory dwelling units this summer. The County should participate in the study and continue to monitor any legislation that may be introduced next year. These bills included some provisions that are less restrictive than the current Zoning Ordinance, including:

HB 900/SB 304	Fairfax County Zoning Ordinance
By-right ALUs that are interior or detached with both single-family detached and attached dwellings	ALUs not allowed with single-family attached dwellings Detached ALUs require an SP and 2+ acres
Maximum size of ALU of 1,500 square feet or 50 percent of the size of the principal dwelling, whichever is less	Interior: maximum size of 800 square feet or 40 percent of the dwelling or the entire basement (existing as of May 10, 2023) Detached: maximum size of 1,200 square feet
No limit on the number of bedrooms	Maximum of two bedrooms
Owner occupancy of the ALU or the principal dwelling	Same
No specific limit on occupancy of ALU	Maximum of two people in the ALU and principal dwelling subject to occupancy requirements in subsection 4102.7.B(8).
Maximum permit fee: \$250	Administrative permit fee: \$205 Special permit fee: \$435 Renewal fee: \$70
Maximum distance of 400 feet (HB 900) or 500 feet (SB 304) between ALU and principal dwelling (SB 304)	No limit on distance between the principal dwelling and a detached ALU (requires 2+ acres and SP approval)
Prohibits requiring dedicated parking for the ALU (HB 900); allows requirement for dedicated parking for ALU (SB 304, amended)	One additional parking space required
Prohibits rear or side setbacks greater than the setbacks required for the principal dwelling, or four feet, whichever is less (HB 900)	Detached ALUs are subject to the setbacks for accessory structures, which for structures taller than 12 feet equals the side setback for the zoning district and a distance equal to the height of the structure from the rear lot line; a setback of four feet would not be allowed

The County’s ALU standards were adopted following extensive public input and maintaining local authority over this land use is important. As noted above, overall, the ALU provisions are working to provide both administrative and special permit opportunities to create a secondary dwelling unit on a lot with a single-family detached dwelling. However, as indicated above, some of the provisions of the state legislation may be worthy of future study, in particular, increasing the maximum size of an ALU and the removal of the parking requirements. The Virginia Housing Commission is forming a workgroup to study HB 900 and SB 304 this summer, and the County will be actively engaged and involved in the discussions. Review of some or all of these provisions could be considered and may put the County in a better position during the Housing Commission meetings and next General Assembly session to advocate for maintaining local authority.

B. HOME-BASED BUSINESSES (HBBs)

1. Adopted Standards and Processes

The new Zoning Ordinance revised the permissions and standards for HBBs (see [subsection 4102.7.H](#)). The standards clarified the types of uses that are permitted, and allow for a special permit for most HBBs to have customers come to the home. A summary of the adopted standards and processes is included in Attachment 2.

2. Administrative Permits and Special Permits Received

Between July 1, 2021, and December 31, 2023, a total of 639 HBB applications have been submitted.¹⁸ Of these, 630 (99%) were applications for an administrative permit.

Administrative Permit Applications: The status as of December 31, 2023, of the AP applications is shown below:

AP Applications by Status	
Status	Number
Approved	552
Denied	9
Voided or Withdrawn	55
In Review	14
TOTAL	630

Table 7: Administrative Permits by Status

As shown in Table 8 below, most APs were approved within two weeks of submittal, some even on the same day. Table 9 lists the types of HBB uses, and Table 10 shows the distribution of applications by magisterial district.

AP Approvals Processing Time	
Number of Days ¹⁹	Total # of Approvals
0 - 14	472
15 - 30	57
31+	23

Table 8: Administrative Permit Processing Time

AP Applications Approved by Type	
Type	Number
Office	321
Small-scale production	95

¹⁸ This number does not include applications submitted but not yet accepted for review as of December 1, 2023.

¹⁹ Time from submittal to completion

AP Applications Approved by Type	
Retail sales	79
Music, photography, art studio	24
Health and exercise	12
Specialized instruction center	11
Repairing small household items	5
Sewing or tailoring	5

Table 9: Administrative Permits by Type

AP Applications by Magisterial District	
District	Total #
Springfield	78
Mt. Vernon	72
Braddock	69
Providence	65
Hunter Mill	65
Sully	61
Franconia	57
Dranesville	44
Mason	41

Table 10: Administrative Permits by District

Special Permit Applications: The status of the special permit applications as of December 31, 2023, is shown below:

SP Applications							
Appl #	District	Status	Type	Customers	Size of HBB	Parking	Number of Days ²⁰
SP-2021-BR-00052	Braddock	Approved	Office	1/time 5/day	250 SF	Driveway	103
SP-2021-MA-00057	Mason	Approved	Office	1/time 2/day	160 SF	Driveway	91
SP-2021-LE-00148	Franconia	Approved	Hair salon	1/time 4/day	429 SF	Driveway	90
SP-2022-PR-00001	Providence	Approved	Office	1/time 3/day	120 SF	Garage	82
SP-2022-LE-00098	Franconia	Approved	Hair salon	1/time 3/day	377 SF	Driveway	84
SP-2022-SP-00167	Springfield	Approved	Office	3/day 7/week	300 SF	Driveway	107
SP-2022-SU-00174	Sully	Approved	Office	1/time 5/day	300 SF	Driveway	103
SP-2023-SU-00025	Sully	Approved	Hair Salon	1/time 6/day	400 SF	Driveway	125 ²¹
SP-2023-FR-00179	Franconia	In Review	Office	8/day	304 SF	Driveway	112

Table 11: HBB Special Permit Applications

²⁰ Time from acceptance to BZA decision

²¹ The longer processing time was due to the August BZA recess.

The processing time has generally been comparable to the 90 days that is typical for SP applications. No deferrals were needed for the applications that had a public hearing. There has been only one speaker at a public hearing, and that one was in favor of the application (SP-2021-LE-00148). The SPs listed above were needed in order to permit customers, and one also increased the size of the area used by the HBB beyond the 400 square feet allowed with an AP. In addition, nine SP applications have been submitted but have not yet been accepted, and one has been withdrawn.

3. Complaint Information

A total of 282 complaints were received from July 1, 2021, to December 31, 2023, that were identified as potentially related to HBBs. Most complaints were for businesses which had not been and could not be approved as an HBB, such as vehicle repair or contractor's office and shop. The issues that prompted most of the complaints involved outdoor evidence of the business, such as commercial or construction vehicles, other parking issues, outdoor storage, customers, or noise. The standards for an HBB do not permit any exterior evidence of the business, and customers are only allowed for instructional uses without special permit approval. It should be noted that not all of the complaints were substantiated. For example, some of the complaints related to instances of home improvements to the property and not a business operation.

Eleven complaints were resolved by the responsible parties subsequently applying for an AP permit, and no further complaints were received for those eleven properties. Three complaints have resulted in AP or SP applications that are still pending. Three complaints were related to a previously approved HBB. In one case, the business expanded to another dwelling and following the investigation, the violator left the property to come into compliance and no further complaints were received. In another case, a complaint was received for an approved yoga studio, which was operating in accordance with the approved permit. Lastly, an approved HBB for an office use received complaints regarding commercial vehicles and outdoor storage, but those complaints have been closed with no violations observed during the investigations.

4. Implementation Challenges and Potential Amendment Topics

As noted in last year's report, the revised standards for HBBs have been generally well-received and processing has continued to be relatively smooth, both for administrative and special permit applications. No specific challenges or amendment topics have been identified at this time.

In providing feedback, DCC staff has identified that the sharing economy continues to create challenges in the enforcement of certain HBB-related provisions. Beyond dog sitting and short-term lodging, various private companies now offer software platforms providing ways for property owners to monetize resources – such as pools, backyards, equipment, vehicles, and more – through these applications. This is an emerging area in the field of code compliance, and DPD and DCC will continue to collaborate to determine whether future amendments may be required to address these uses.

Overall, the implementation of the revised standards and procedures for ALUs and HBBs has generally been in line with expected results. However, it is recommended that a Zoning Ordinance amendment for the clarifications and other revisions for ALUs as described above be considered for prioritization on the Zoning Ordinance Work Program. Please reach out to me, Carmen Bishop, or Casey Judge with any questions about the information in this report. Questions about enforcement should be directed to Ben Aiken with the Department of Code Compliance.

Board of Supervisors

April 12, 2024

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Attachments:

Attachment 1 – Summary of Adopted ALU Standards and Processes

Attachment 2 – Summary of Adopted HBB Standards and Processes

cc: Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Elizabeth D. Teare, County Attorney
Members, Fairfax County Planning Commission
Members, Fairfax County Board of Zoning Appeals
Tracy Strunk, Director, Department of Planning and Development
Gabe Zakkak, Director, Department of Code Compliance
Ben Aiken, Deputy Director, Department of Code Compliance
Bill Hicks, Director, Land Development Services
Jay Riat, Fairfax County Building Official
John Walser, Assistant Chief, Office of the Fire Chief
David T. Stoner, Deputy County Attorney
Laura Gori, Senior Assistant County Attorney
William Mayland, Assistant Zoning Administrator
Andrew Hushour, Assistant Zoning Administrator
Carmen Bishop, Deputy Zoning Administrator, Zoning Administration Division, DPD
Casey Judge, Deputy Zoning Administrator, Zoning Administration Division, DPD
Brent Krasner, Branch Chief, Zoning Evaluation Division, DPD

Accessory Living Units Current Zoning Ordinance Standards and Processes

All ALUs, regardless of approval process, are subject to the following:

- An ALU is only allowed in conjunction with a single-family detached dwelling and is limited to one per dwelling;
- The ALU is limited to no more than two bedrooms and two people;
- The principal dwelling or ALU must be owner-occupied;
- The principal dwelling must meet the listed occupancy standards;
- All building, safety, health, and sanitation standards must be met, and any dwellings served by well or septic require Health Department approval;
- The ALU must contain a working multi-purpose fire extinguisher, interconnected smoke detectors, and, when required, interconnected carbon monoxide detectors;
- Off-street parking must be provided – one additional space for administrative permits and as determined by the Board of Zoning Appeals (BZA) for special permits;
- A copy of the approved permit must be recorded in the land records;
- Permits are issued for an initial two-year period and may be extended by the Zoning Administrator for succeeding periods of up to five years based on the record of compliance; and
- If the standards are no longer being met, the ALU may no longer be occupied as a secondary dwelling, but removal of facilities (such as kitchen appliances) is not required.

ALUs eligible for an **administrative permit** are subject to the following additional standards:

- The ALU must be interior and wholly contained within the single-family dwelling with direct access through a finished, temperature controlled, and fully enclosed space;
- Any new external entrances must be located on the side or rear of the dwelling, and any new garage or carport must be directly adjacent to the existing garage or carport served by the same associated driveway and curb cut; and
- The size may not exceed 800 square feet or 40% of the gross floor area of the principal dwelling (whichever is less), or the entirety of the basement or cellar existing as of May 10, 2023.

An applicant may submit a **special permit** application to permit the following ALU modifications by the BZA:

- A detached ALU (limited to a maximum size of 1,200 square feet) on lots containing at least two acres;
- New external entrances on the front of the dwelling or street access not provided by the same driveway or curb cut;
- Increase in size beyond 800 square feet or 40% of the gross floor area of the dwelling for an interior ALU; and
- Waiver of the additional parking space requirement.

Administrative Permit Fee and Process: An administrative permit requires a \$200 application fee, and staff reviews the submission materials to confirm that all use-specific standards have been met. Often, creating an ALU involves construction and installation of appliances. For the building permit(s) and ALU administrative permit to proceed in tandem, staff requires submission of the ALU permit and conducts a preliminary review before issuance of the associated building permit. Then, the status of the ALU permit in the PLUS system is set to “waiting” until completion and final inspection of the construction and submission of the fire alarm system certification form. Upon final inspection, the ALU permit is issued allowing for occupancy of the ALU. This process ensures that required safety improvements and inspections take place prior to the final approval of the ALU administrative permit.

Special Permit Fee and Process: A special permit requires a \$435 fee and a public hearing by the BZA. If the BZA approves the special permit, the ALU may be occupied immediately upon approval if all construction, permits, and other requirements (such as installation of an interconnected fire alarm system for interior ALUs as required by the Building Code) have been met. However, similar to the administrative permit, the ALU may not be occupied until all required permits have been approved; a development condition is typically included to this effect.

Home-Based Businesses Current Zoning Ordinance Standards and Processes

The HBB standards address the process for approval and include regulations intended to minimize potential impacts on the neighborhood. As an accessory use, an HBB must be conducted on the lot (in the dwelling or in an accessory structure) that is the HBB operator's primary residence. The following types of businesses are allowed as an HBB:²²

- Health and exercise facility (such as yoga or other exercise classes)
- Specialized instruction center (such as tutoring, music, or other teaching activities)
- Repair of small household items such as musical instruments, sewing machines, and watches
- Office
- Sewing or tailoring
- Music, photography, and art studios
- Retail sales (no customers may come to the home)
- Small-scale production (only items created on-site and home-based food production; no customers may come to the home)
- Barbershop or beauty parlor (special permit only; no nail, facial, massage, or other similar services are allowed)

Approval Process: All types of HBBs (except for a barbershop or beauty parlor) may be permitted with an administrative permit, although special permit approval from the BZA is required for most types of businesses to have customers come to the home (see below). Special permit approval from the BZA is also required to modify other limitations, such as to allow a larger area, more employees or different work hours, or to allow outdoor activities such as swimming or soccer lessons. The application fee for an administrative permit is \$100; the application fee for a special permit is \$435. The approval is not transferable and is for the original applicant and location only.

Customers and Parking: Only teaching activities (the first two types of businesses in the list above) are allowed to have customers come to the home with an administrative permit. Up to four students at a time and eight in a day are allowed, during the hours of 8:00 AM to 9:00 PM. Except for retail sales and small-scale production, other types of HBBs may have customers come to the home with approval of a special permit from the BZA. The Zoning Ordinance does not include a process for allowing customers to come to the home for retail sales or small-scale production. One parking space must be designated as available for any on-site customer or clients, and as part of a special permit application, the BZA may require additional parking.

Employees: With an administrative permit, one nonresident employee is allowed in a single-family detached dwelling during the hours of 7:00 AM to 6:00 PM. A special permit is required for additional employees or longer hours, or to allow any employees in other dwelling unit types (e.g., townhouse, apartment).

Exterior Appearance, Size, and Other Standards: There must be no exterior evidence of an HBB (other than yard signs that are allowed for any residence). No outdoor storage or display is allowed. The maximum size of the area used by the HBB is 400 square feet with an administrative permit. Deliveries or distribution vehicles must not exceed 28 feet in length and may not include semitrailers. Flammable or hazardous materials are limited, and Health Department approval is required if the property is served by a private well or septic system.

²² HBBs do not include home day care facilities or short-term lodging, which are separate uses in the Zoning Ordinance.