

# FAIRFAX COUNTY



## ZONING ORDINANCE MODERNIZATION PROJECT

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### SUMMARY OF ADOPTED ACCESSORY LIVING UNIT PROVISIONS

APRIL 6, 2021

On March 23, 2021, the Board adopted a new and modernized Zoning Ordinance as a part of the Zoning Ordinance Modernization (zMOD) project which will be effective on July 1, 2021. As a part of this new Ordinance, changes were made to accessory living units (ALUs), which is the new name for the use previously called “accessory dwelling units.” This document provides an overview of the use and the changes to the process and standards.

### What are Accessory Living Units?

An ALU is a subordinate living space that includes areas for eating, sleeping, living, and sanitation. These units should not be confused with “ADUs.” In Fairfax County, this abbreviation is used for a different use, affordable dwelling units. ADUs are separate units dedicated under the County’s Affordable Dwelling Unit Ordinance, where an accessory living unit is a subordinate unit located in conjunction with a single-family detached dwelling. The ‘ADU’ abbreviation should not be used when referencing accessory living units.

### Main Changes to ALU Standards

Many standards from the previous accessory dwelling unit provisions have been brought forward, but the most notable changes include:

- **Removal of the Age and Disability Requirement.** Under the previous Ordinance, one of the units had to be occupied by either somebody who was 55 years in age or older, or by a person with a disability. The new ALU provisions remove that requirement, and the principal dwelling and ALU no longer need to be occupied by someone meeting those requirements. However, one of the occupants must be the property owner.
- **Administrative Permit.** Previously, all accessory dwelling units required special permit approval with a public hearing before the Board of Zoning Appeals (BZA). The adopted changes now permit internal ALUs (such as in a basement or in an addition to a home) to be approved administratively. The process will include submission of an administrative permit application and other required submission materials to County staff, and a review will be conducted based on the required standards. Detached ALUs continue to require special permit approval and a minimum lot size of two acres.
- **Parking.** While previously, the BZA evaluated whether there was sufficient off-street parking as a part of the special permit approval, the administrative process requires one additional off-street parking space to be provided. Off-street parking will need to equal the requirement for the

dwelling plus one additional space. On a public street, this means that a total of three off-street parking spaces would need to be provided and on a private street, four off-street parking spaces would need to be provided. Garage space may count towards the required parking spaces, but it must be demonstrated that a car can park there, and the garage must be maintained as available for parking. Expansion of existing driveways may be limited, as front yard driveway surfacing is limited to 25 percent in the R-1 and R-2 Districts and 30 percent in the R-3 and R-4 Districts. A special permit can be applied for if the required off-street parking is not provided.

- **Size.** The maximum size of the ALU has been modified from the previous requirement of no more than 35 percent of the principal dwelling to 800 square feet or 40% (whichever is less) for interior units, and 1,200 square feet for detached units. Interior units may also use the entirety of their basement or cellar up to the size existing as of July 1, 2021. For interior units, this size limitation may be exceeded with special permit approval.

## Additional Standards

Other required standards are summarized below. The adopted text is included as Attachment 1.

- ALUs are only permitted in association with single-family detached dwellings (i.e., no townhouses, duplexes, etc.)
- Only one ALU is permitted per lot.
- Any new entrances must be located on the side or rear of the dwelling, and any proposed garage or carport must be located directly adjacent to an existing garage or carport. The driveway and curb cut must be the same as the one that serves the principal dwelling.
- The ALU is limited to two bedrooms and two people.
- One of the units must be occupied by the owner of the property.
- The ALU must meet all applicable building, safety, health, and sanitation requirements. If an ALU is on a property served by a well or septic system, Health Department approval is required prior to administrative or special permit approval.
- A working fire extinguisher and interconnected smoke detectors and carbon monoxide detector (when required) must be provided.
- The owner must record a copy of the permit in the land records prior to occupancy of the ALU.
- The initial permit is valid for two years and may be extended by the Zoning Administrator for succeeding five-year periods based on the record of compliance with the standards.
- A special permit may be approved by the BZA for a detached ALU on 2+ acres, modification of the external entrances and access from the street, the maximum size of an internal ALU, and when on-site parking is not provided.

## Questions?

If you have additional questions, please visit our [ALU Frequently Asked Questions](#) page. You can also email any additional questions to [OrdAdmin@fairfaxcounty.gov](mailto:OrdAdmin@fairfaxcounty.gov).

## Accessory Living Unit

### Standards when permitted by administrative permit:

- (1)** An accessory living unit is permitted only in association with a single-family detached dwelling unit, and no more than one accessory living unit is permitted on a single-family lot.
- (2)** An accessory living unit must be wholly contained within the structure of a single-family detached dwelling unit and must have direct access to the principal dwelling through an interior space that is finished, temperature controlled, and fully enclosed.
- (3)** Any new external entrance proposed for an accessory living unit must be located on the side or rear of the dwelling. Any proposed garage or carport must be located directly adjacent to any existing garage or carport, and the associated driveway and curb cut must be the same as that which serves the principal dwelling.
- (4)** The accessory living unit must not exceed: (a) 800 square feet of gross floor area or 40% of the gross floor area of the principal dwelling, whichever is less; or (b) the entirety of the basement or cellar may be used, up to the size of the basement or cellar as of July 1, 2021. A larger size may be allowed by special permit in accordance with subsection 8100.4. For the purpose of determining the size of an accessory living unit approved either by administrative permit or special permit, regardless of the definition in Article 9, gross floor area includes the area of any basement or cellar having a structural headroom of six feet six inches or more, but does not include a garage.
- (5)** The accessory living unit may not contain more than two bedrooms.
- (6)** Either the accessory living unit or the principal dwelling unit must be owner-occupied.
- (7)** The accessory living unit may be occupied by no more than two people.
- (8)** The principal single-family dwelling unit may be occupied by not more than one of the following:
  - (a)** Two or more persons related by blood or marriage and any number of their natural children, foster children, stepchildren, adopted children, or children in kinship care;
  - (b)** One or two persons with their dependent children, including natural children, foster children, stepchildren, adopted children, or children in kinship care, functioning as a single household; or
  - (c)** A group of not more than four persons not related by blood or marriage, functioning as a single household.
- (9)** As specified in Article 6, a dwelling with an accessory living unit must provide the number of on-site parking spaces required for the principal dwelling unit, plus one additional space. Only one space serving the lot must provide convenient access to the street.
- (10)** An accessory living unit must meet all applicable regulations for building, safety, health, and sanitation, and the construction of an accessory living unit is not deemed to be a subdivision of the lot on which the dwelling is located. If the dwelling is served by a well or septic system, the applicant must obtain Health Department approval prior to administrative permit or special permit approval.
- (11)** The accessory living unit must have a working multi-purpose fire extinguisher and smoke and carbon monoxide detectors (when required for a fireplace or gas service) that are interconnected with the principal dwelling.
- (12)** Before occupancy of the accessory living unit, the owner must record a copy of the administrative permit among the land records of Fairfax County. The permit must

contain a description of the property and must be indexed in the Grantor Index in the name of the property owner(s).

- (13)** An administrative permit for an accessory living unit may be issued to the owner for an initial period of two years from the date of approval. An administrative permit may be extended by the Zoning Administrator for succeeding periods of up to five years based on the applicant's record of compliance with the standards in this subsection.
- (14)** If the standards above are no longer being met, the accessory living unit may not be occupied as a dwelling unit and the property must meet the occupancy limitations of a single-family dwelling in accordance with subsection 4102.3.A. This standard does not require the removal of any kitchen or other facilities.

**Standards when permitted by special permit:**

- (15)** The accessory living unit must conform to all applicable standards for an administrative permit above, except that the BZA may approve a special permit for an accessory living unit to modify one or more of the standards as identified in the subsections below:
  - (a)** Subsection (2), to permit an accessory living unit in a freestanding structure, but only on a lot of at least two acres;
  - (b)** Subsection (3), to modify the location of any external entrance and access from the street;
  - (c)** Subsection (4)(a), to exceed the maximum size for an interior accessory living unit; and
  - (d)** Subsection (9), when the required on-site parking is not provided.
- (16)** The area devoted to a detached accessory living unit must not exceed 1,200 square feet of gross floor area and must be clearly subordinate to the principal dwelling.
- (17)** The BZA may require the provision of off-street parking spaces in addition to the requirements specified in Article 6 for a single-family detached dwelling.
- (18)** The County may inspect the property during reasonable hours and in accordance with subsection 8106.2.D.
- (19)** Upon the approval of a special permit, the owner will record a copy of the BZA's resolution of approval, including all accompanying conditions among the land records of Fairfax County. The resolution must contain a description of the property and must be indexed in the Grantor Index in the name of the property owner(s).
- (20)** A special permit for an accessory living unit may only be issued to the owner and approved for an initial period of two years from the date of approval. The special permit may be extended for succeeding periods of up to five years based on the applicant's record of compliance, in accordance with subsection 8100.4.D(3).