

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

MARCIA L. NORDGREN, NORMAN)
TYLER, ALEXANDER MACKENZIE,)
ROBERT P. PARKER, MONA C.)
PARKER, KATHERINE PERNIA,)
MARGARET P. FIBEL, RICARDO J.)
ROZADA, MABEL GABIG, AND ERIC)
ACKERMAN)

Plaintiffs,)

v.)

Case No.:

COUNTY BOARD OF ARLINGTON,)
VIRGINIA)

SERVE:)
MinhChau Corr)
County Attorney)
2100 Clarendon Blvd., Suite 403)
Arlington, VA 22201)

ARLINGTON COUNTY PLANNING)
COMMISSION)

SERVE:)
MinhChau Corr)
County Attorney)
2100 Clarendon Blvd., Suite 403)
Arlington, VA 22201)

Defendants.)

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CLERK OF CIRCUIT COURT
FOR THE COUNTY OF ARLINGTON

**VERIFIED¹ COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

COMES NOW Plaintiffs Marcia L. Nordgren, Norman Tyler, Alexander MacKenzie, Robert P. Parker, Mona C. Parker, Katherine Pernia, Margaret P. Fibel, Ricardo J. Rozada, Mabel Gabig, and Eric Ackerman (collectively “Residents”), by counsel, pursuant to Virginia Code § 8.01-184, and request this Honorable Court grant Declaratory Judgment and Injunctive Relief against Defendants County Board of Arlington County, Virginia (the “Board”) and the Arlington County Planning Commission (“Planning Commission”), and as grounds therefor state as follows:

INTRODUCTION

On March 22, 2023, the Board enacted the most sweeping and significant change to Arlington’s Zoning Ordinance in more than 50 years—the across-the-board elimination of low-density zones consisting largely of single-family detached homes. The zoning ordinance amendments empower developers to tear down lower-cost existing homes and replace them, by right, with up to six-unit mini-apartments, or “multiplexes,” on lots as small as 6,000 square feet. Termed “Missing Middle Housing” (and rebranded at the last minute as Expanded Housing Option Development (“EHO Development”)), the change authorizes by-right construction of 290 multiplexes over the next five years through an unlawful use permit process and allows an unlimited number thereafter. Under the amended Zoning Ordinance, developers can purchase an unlimited number of residential lots with single family homes on them, raze those homes, and replace them with far larger multiplexes, fundamentally changing the density and nature of certain residential neighborhoods. This enormous increase in density will lead to overcrowding

¹ Mona C. and Robert P. Parker are abroad but authorized the undersigned to insert their facsimile signatures, having read the Complaint and with intent per Virginia Code § 8.01-4.3.

and congestion and have significant adverse impacts on the County's infrastructure, tree canopy, air quality, schools, and public services, among other things.

In seeking to implement this extraordinary change, the Board was not forthright with County residents in explaining the purpose of the Missing Middle Housing proposal, the scope of the changes it contemplated, and the studies and analysis it claimed would be done before the proposal was advertised and submitted to a vote. The Board represented to County residents that their primary purpose was to provide affordable homeownership options to low and middle-income residents; however, the proposal will not do so. The Board represented to County residents that the program would be limited in scope, not an across-the-board upzoning that would eliminate low-density zoning; the proposal it ultimately approved is a County-wide, across-the-board upzoning that does, in fact, eliminate low-density zones in Arlington. The Board also represented to County residents that before it would propose and vote on specific zoning ordinance amendments, it would undertake "detailed studies" of the impact of the Missing Middle Housing proposal on County facilities and infrastructure, traffic congestion, sewer and stormwater management and overcrowding in the public schools, among other things. It conducted no such studies, even though it was required by law to give "reasonable consideration" to all of these issues in formulating the zoning ordinance amendments.

The Board's authority to enact or amend zoning ordinances is granted by, and subject to, statute. The Virginia Code establishes strict procedural and substantive requirements that must be complied with by the Board for any zoning enactment or amendment, much less one of the scope now before the Court. The Supreme Court of Virginia has recently upheld the necessity of a locality's strict compliance with procedural requirements. Literally *the day after* the Board enacted the densification and changes that are the focus of this suit, the Court reaffirmed the

importance of statutory guardrails by invalidating Fairfax County's zoning overhaul on procedural grounds. In so doing, the Court affirmed that compliance with Virginia Code's procedural requirements is not optional.

As shown in greater detail below, the County failed to comply with a number of these statutory requirements. Among other things, it failed to advertise the proposed amendments in accordance with Virginia Code §§ 15.2-2204 and 15.2-2285 and failed to make available to the public "all materials furnished to members of a public body for a meeting . . . at the same time such documents are furnished to the members of the public body," as required by Virginia Code § 2.2-3707(F). Even worse, the County failed to give "reasonable consideration" to the impact of the proposed zoning ordinance amendments on traffic and road congestion, the County's tree canopy, or the County's ability to provide adequate police and fire protection, necessary water, sanitary sewer, and flood protection infrastructure, and adequate schools to handle the significant increase in population density, as expressly required by Virginia Code §§ 15.2-2283 and 15.2-2284. Nor were the Zoning Ordinance amendments designed to give reasonable consideration to "the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality," as required by Virginia Code §15.2-2283(x). To the contrary, the amendments will lead to the loss of lower-cost homes and to the construction of luxury multiplexes affordable only to the most affluent residents in the County.

Further, the Board minimized the effects of this consequential change on issues such as school crowding, stormwater management, parking, and transportation, relying on scarce data and unrealistic estimates. Based on the Board's lack of required studies, one would think that EHO Development was a small change. Yet, the Board's public discussion of the effects and the resulting zoning ordinance and map amendment ("Zoning Amendment") show EHO

Development is a significant and important change that will produce the sort of profound negative impacts the General Assembly intended municipalities avoid by requiring the sort of studies and mandated consideration the Board failed to undertake.

As further detailed below, the Board failed to comply with statutory notice and initiation requirements for approving the Zoning Amendment. The Board cobbled together a slew of confusing options that kept residents in the dark about the nature of the proposed ordinance until the Board discussed the options after it closed time for public comment. Given that the advertisement of the Zoning Amendment omitted a description of the options, including the statutorily-required density range of the proposed change, it was insufficient to inform the public of the confusing nature of what would be discussed at the public hearings held by the Planning Commission and the Board. As detailed below, the Code of Virginia requires that a proposed ordinance be advertised and that the advertisement be accurate in its description of what is proposed. The confusing options were the antithesis of a proposed ordinance, and the advertisement lacked necessary disclosures and was inaccurate and misleading in creating the false impression in the minds of residents that an ordinance had been proposed for advertising when it had not.

Even as so illegally passed, the reasonableness of the Zoning Amendment is not fairly debatable because it only increases density without promoting goals in the public interest such as affordability or homeownership by diverse families and incomes, or preservation of Arlington's tree canopy to mitigate the damage caused by the worsening climate emergency. It will, rather, increase housing type diversity and density without making housing affordable. It also provides housing types, such as one and two-bedroom units, which are readily available in the County. Its actual goal, as ultimately revealed, was only to increase density in low-density neighborhoods

but without any countervailing public benefit and to increase density for density's sake. As such, the Zoning Amendment will intensify gentrification and burden public infrastructure and services without a plan to improve public infrastructure to serve the increased density. And all these effects will occur without legally required study or review by the Board and without the Board complying with its enabling legislation. The effects of this unlawful and rushed Zoning Amendment will have far-reaching and long-term consequences that the Board did not investigate and that Arlington County (the "County") is ill-equipped to handle, including drastically increased density in formerly low-density-zoned neighborhoods.

NATURE OF ACTION

Pursuant to Virginia Code § 8.01-184, this action seeks declaratory judgment and preliminary and permanent injunctive relief against the Board for unlawfully amending Arlington County's Zoning Ordinance when it enacted EHO Development through the Zoning Amendment. Specifically, Residents request declaratory judgment that the Board acted *ultra vires* in approving the Zoning Amendment because the Board did not comply with statutory notice and initiation requirements, acted outside the scope of its statutorily granted powers, failed to consider factors its enabling authority mandated it consider, unlawfully delegated its legislative authority, acted arbitrarily and capriciously in amending the Zoning Ordinance, and failed to comply with Virginia's Freedom of Information Act ("VFOIA"). In its haste to approve the Zoning Amendment, the Board disregarded the statutory and procedural safeguards the General Assembly mandated localities follow to protect residents, as recently reaffirmed by the Virginia Supreme Court in *Berry Bd. of Sup'rs of Fairfax Cnty.*, Rec. No. 211143 (Va. Mar. 23, 2023). As a result, the Board's Zoning Amendment is void *ab initio*, and the Residents should be granted declaratory and injunctive relief.

PARTIES

1. Marcia L. Nordgren (“Nordgren”) owns real property located at 3818 Military Road, Arlington, Virginia 22207.
2. Norman Tyler (“Tyler”) owns real property located at 3618 North Monroe Street Arlington, Virginia 22207.
3. Alexander MacKenzie (“MacKenzie”) owns real property located at 1800 North Wayne Street, Arlington, Virginia 22201.
4. Robert P. and Mona C. Parker (the “Parkers”) own real property located at 4507 North 35th Street, Arlington, Virginia 22207.
5. Katherine Pernia (“Pernia”) owns real property located at 2026 South Randolph Street, Arlington, Virginia 22204.
6. Margaret P. Fibel (“Fibel”) owns real property located at 3123 2nd Road North, Arlington, Virginia 22201.
7. Ricardo J. Rozada (“Rozada”) owns real property located at 1807 North Hollister Street, Arlington, Virginia 22205.
8. Mabel Gabig (“Gabig”) owns real property located at 113 North Granada Street, Arlington, Virginia 22203.
9. Eric Ackerman (“Ackerman”) owns real property located at 3677 North Harrison Street, Arlington, Virginia 22207.
10. The County Board of Arlington County, Virginia is the governing body of the County. Its powers to review, amend, and enact County Zoning Ordinances are conferred and restricted by the General Assembly of the Commonwealth of Virginia.

11. The Arlington County Planning Commission (the “Planning Commission”) advises the Board and was created according to Virginia Code § 15.2-2210 “to promote the orderly development of [the County] and its environs.”

OPERATIVE FACTS

Zoning District Characteristics Prior to Zoning Amendment

12. In Arlington, low-density neighborhoods are R-5, R-6, R-8, R-10, and R-20 zoning districts (“Residential Districts”), long-consisting of 1-10 units per acre according to the County’s Comprehensive Plan.

13. Residential Districts contain mostly single-family homes, with an ability to add an accessory dwelling, and also contain some multiplexes in each district either due to special exception permits or nonconforming uses.

14. Residents purchased homes in these Residential Districts due to their locations in quiet, low-density neighborhoods suitable for young children with low traffic volumes, adequate public facilities and parking, and denser tree canopies, and in reliance on low-density zoning that for decades honored the County’s Comprehensive Plan’s commitment to a diversity of density in districts and the preservation low-density areas.

15. In recent years, lots in these Residential Districts have experienced severe flooding, stormwater management system and sanitary sewer back up issues, and other problems caused by climate change and aging infrastructure. These Residential Districts have also suffered the steady erosion of their tree canopies.

The Board’s Missing Middle Housing Proposal Process

16. In 2019 and 2020, the Board began discussing and publicizing plans to conduct the Missing Middle Housing study (now EHO Development) to identify gaps in the County’s housing availability and to determine what types of studies and considerations it

would have to conduct, commission, and review to increase housing availability for housing types the Board felt were missing.

17. The Board sold EHO Development to the public as a consequential change to the County that would create affordable housing and would promote diversity and homeownership. On December 18, 2019, the County issued a press release announcing the commencement of the “Missing Middle Housing Study” as a program to determine “if and how missing middle housing could help address Arlington’s limited housing supply and inadequate housing choices.”² The press release said that the Board would be “[s]tarting from a blank slate,” and promised that “a County-led team w[ould] use inclusive public engagement, a cross-disciplinary team of experts, extensive data collection and analysis, and an iterative design process to create study recommendations for the Board to consider.” The Board and its members repeatedly claimed that the proposal was designed to provide needed “affordable housing,” that it would be limited in scope, that it would address racial inequity, and that significant study and analysis would be done before a proposal was drafted and enacted.

18. In the very first presentation of the EHO Development plan, the County Manager stated that the purpose of EHO Development was to implement three objectives of the County’s Affordable Housing Master Plan which were to:

“produce and preserve a sufficient supply of affordable homeownership housing to meet future needs;

[i]ncentivize the production of moderately-priced ownership housing through land use and zoning policy; [and]

² <https://www.arlingtonva.us/About-Arlington/Newsroom/Articles/2019/Arlington-County-to-Begin-Missing-Middle-Housing-Study-in-2020>.

[e]ncourage the production and preservation of family-sized (e.g. 3+ bedroom) moderately-priced ownership units.”³

19. County staff and the Board and its members also repeatedly stated that the primary purpose of the study was to provide affordable housing for middle- and lower-income households in the County. *See e.g.* County Manager’s Report, *An Expanded Approach to an Equitable, Stable, Adaptive Community*, Dec. 17, 2019 (“There is a need for affordable options and a diversification of housing types”)⁴; County Board Work Session, Sept. 2020 (“Why Conduct the Missing Middle Housing Study?...[to] preserve or increase the supply of affordable housing units.”)⁵; Board Member Matt de Ferranti, Jan. 4, 2021 (“Missing Middle ... can help make the costs of homeownership in Arlington more affordable”)⁶; Board Member Takis Karantonis, Jan. 4, 2021 (I “support...approaches to housing affordability...such as the missing middle study.”)⁷.

20. In presenting the Missing Middle Housing plan to the Board, Arlington’s Housing Coordinator, Richard Tucker added that, “We want to be clear that *the study is not going to lead to an across-the-board rezoning of all single-family areas. This will not eliminate single-family zoning. . . . This will be an honest conversation.*”⁸ The County Manager also

³ https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2019/12/HousingArlington_PresentationtoCounty-Board_121719.pdf.

⁴ https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2019/12/HousingArlington_PresentationtoCounty-Board_121719.pdf.

⁵ <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2020/09/Presentation-CB-Work-Session-Sept-22-1.pdf>.

⁶ <https://www.youtube.com/watch?v=Lgt6BZAP9g4>.

⁷ https://www.arlingtonva.us/files/sharedassets/public/county-board/documents/210104_org.-mtg.-remarks-tk-final.pdf.

⁸ <https://www.youtube.com/watch?v=NOX43RWs9sU>. (Emphasis added).

issued a report in December 2019 at the inception of the program stating that the Missing Middle Housing proposal is not:

- “An across-the-board rezoning of all single-family areas
- A process to eliminate single-family zoning in Arlington
- A process to codify decisions that have already been made
- A process that will lead to incompatible housing types (e.g. high rises) being built in single-family areas.”⁹

21. Board Chair Christian Dorsey stated in December 2019, “Let me be clear—the Board’s direction to the County Manager has not included anything constituting a Countywide up-zoning or blanket change to the zoning ordinance at this time.” As it turned out, however, the Zoning Amendment did, indeed, constitute a Countywide up-zoning that eliminated low-density zoning (generally, 1-10 units per acre) in the County.

22. These representations were later contradicted by the very core of the Zoning Amendment adopted.

23. Yet the county’s own data show that only high-income individuals and families will benefit from these changes as the anticipated units, while more dense than single-family homes, will be priced well above what is affordable to residents earning the average incomes in this region. And among the high-income Arlingtonians who can afford the new units, they are less diverse than the areas the County rezoned.

24. In addition, neither the Board nor the Planning Commission initiated the County’s Zoning Amendment by resolution or motion.

⁹ https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2019/12/HousingArlington_PresentationtoCounty-Board_121719.pdf.

25. After the Board's Phase 1, which would develop the understanding of the need for EHO Development and preliminary ideas and considerations, the Board informed residents that it would conduct "focused study" in Phase 2 before moving on to Phase 3.

26. The Board also informed the residents that in Phase 3 the Board would implement the recommendations for new EHO Development zoning that came out of the studies in Phase 2.

27. The Board proposed to inform its decisions with detailed studies of key considerations including locational factors, such as access to transit, jobs, shopping, and recreational activities, impacts of EHO Development on environmentally sensitive areas, tree canopy, natural resources, stormwater management, energy, parks and public space, and parking, and how to mitigate impacts on tree canopy loss and stormwater management.

28. Throughout the process, Board members spoke about how the plan was designed to remove racially exclusionary zoning policies to increase diversity and affordable housing options.

29. Board member Katie Cristol suggested homeownership would be within reach for medium income Arlingtonians.

30. However, the Zoning Amendment will not promote diversity or affordable housing as Board members had earlier suggested.

31. During Phase 2, the Board commissioned one study, but it did not concern factors such as access to transit, jobs, shopping, and recreational activities, impacts of EHO Development on environmentally sensitive areas, tree canopy, natural resources, stormwater management, energy, parks and public space, and parking, or how to mitigate impacts on tree canopy loss and stormwater management. Rather, it addressed only whether EHO

Development would be attractive to developers with respect to feasible housing types based on lot size, restrictions, and developer preference for constructing various housing types mostly based on potential developer profits.

32. This was the only study commissioned by the Board.

33. The Board did not commission any studies about the impact of the Zoning Amendment on stormwater management, energy, natural resources, tree canopy, parking, traffic and transportation, or sanitary sewer systems.

34. The Board did not itself, nor through County staff, study the impact of the Zoning Amendment on stormwater management, sanitary sewer, energy, natural resources, tree canopy, parking, traffic and transportation, or sanitary sewer systems.

35. The Board informed the public that in Phase 3 the Board would determine whether and what kind of EHO Development policies it wanted to implement before promulgating the policies to the public.

36. However, when the Board released a draft of the Zoning Amendment, it contained optional provisions that may or may not be included in the final draft of the Zoning Amendment, rather than a comprehensive explanation of the Board's proposed EHO Development policies.

37. At the same time, the Board released a draft amendment of one element of the County's Comprehensive Plan ("Comprehensive Plan"): the General Land Use Plan ("GLUP").

38. Yet, the Board did not amend any other element of the Comprehensive Plan to address the dramatic impacts which can be expected from the Board's Zoning Amendment. Specifically, the Board did not investigate needed changes to the County's Stormwater

Master Plan, Master Transportation Plan, Sanitary Sewer System Master Plan, Recycling Program Implementation Plan, Public Spaces Master Plan, Community Energy Plan, Water Distribution Master Plan, and Chesapeake Bay Preservation Plan.

39. Instead, the Board summarily concluded without the benefit of studies that, despite the increased density permitted by the proposed Zoning Amendment, it would have minimal effects on the surrounding properties, neighborhoods, utilities, and services in the Residential Districts.

40. Although the Board was required to consider the Comprehensive Plan under Virginia Code § 15.2-2284, the Board did not and could not have considered all the elements of the Comprehensive Plan because no studies regarding these other elements were conducted, and the other elements were not updated to incorporate the intense population density increase permitted by-right by the Zoning Amendment's EHO Development in the Residential Districts.

41. The Board did not conduct sufficient studies for reasonable consideration of "the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies" and the community's transportation, schooling, recreational areas, and public services requirements, and flood plain preservation per Virginia Code § 15.2-2284.

42. The Board did not consider Arlington's Neighborhood Plans, which seek to maintain the low-density character of their neighborhoods in Residential Districts, although the Board states in the GLUP it considers Neighborhood Plans when considering proposals for GLUP amendments.

The Board's EHO Development Zoning and GLUP Amendment Process

43. Despite its failure to conduct relevant studies on the substantial effects of its EHO Development policy, the Board continued to push for the Zoning Amendment in Phase 3.

44. The Planning Commission conducted public hearings in December 2022 to discuss the potential advertisement of the various options of the draft Zoning and GLUP Amendments.

45. The Board conducted public hearings in January 2023 to discuss advertising the draft text of the various options of the draft Zoning and GLUP Amendments.

46. The Board made available for public inspection only four letters from the public that were furnished to the Board's members. Three of those letters were from County commissions.

47. Instead of one completed draft highlighting the Board's proposed Zoning Amendment, the Board released a draft that contained multiple options for proposed amended language in various article sections and vague directives.

48. At least nine subsections in Article 10.4 of the proposed Zoning Amendment had more than one option that the Board could choose between later. For example:

a. The draft contained five (5) options for language defining different density and dimensional standards for each lot in each Residential District.

b. The draft contained four (4) options of amended language for parking requirements.

c. The draft contained proposed language that the Zoning Amendment could (1) exclude all planning districts, (2) include all planning districts, or (3) exclude only some planning districts.

49. The draft Zoning Amendment also stated that a cap could be imposed but did not provide any method of distribution nor notify residents that the Board could and would impose a method of distribution.

50. The Board did not indicate which optional language it would select and instead framed the proposed language as available options from which it could select to create a final Zoning Amendment no sooner than at the Board's public hearing.

51. The draft GLUP amendment detailed Arlington's history of racially exclusionary zoning and the Board's vision to reshape Arlington's low-density neighborhoods by allowing by-right multiplex housing while maintaining their existing low-density character.

52. The draft GLUP amendment also included an update to the GLUP map key to show the various housing types that would be permitted in low-density districts, encompassing the Residential Districts.

53. In the Residential Districts, low density is defined as a density of 1 to 10 units per acre.

54. The draft GLUP amendment did not change the density of low-density Residential Districts and did not change which districts are marked as low density on the map.

55. On January 25, 2023, the Board voted to advertise drafts of the Zoning and GLUP Amendments for public hearings pursuant to Virginia Code § 15.2-2204.

56. Though the Board updated the draft to reflect some changes made during the public hearing discussing the advertisement, the draft Zoning Amendment still contained multiple and confusing options of proposed amended language for many aspects of the

amendment without any indication of which options the Board recommended or proposed for adoption at the advertised public hearings.

57. During the Board’s discussion, but after its vote to advertise, Chair Dorsey stated, “this is really the first step to just authorize really what’s on the agenda for the actions that we’re going to be taking in March.”

58. Dorsey also stated, “The board can always decide to take this [the EHO Development Zoning Amendment] up at any point in time” and indicated the Board could review how EHO Development was working after it was passed.

59. As confirmed by Chair Dorsey’s comments following the January 25, 2023 vote to advertise drafts of the Zoning and GLUP Amendments, none of the various and confusing options for the Zoning Amendment had been recommended or proposed for adoption at the advertised public hearings.

60. A version of the proposed advertisement for the draft Zoning and GLUP Amendments was posted online in February 2023.

61. The Board published the advertisement in the *Washington Times* on February 21, 2023, and February 28, 2023, giving notice of its March public hearing regarding the amendments.

62. The advertisement read, in relevant part, as follows:

GP-357-23-1 GLUP Amendment to establish land use goals and policies to support a wider range of housing options in lower density residential neighborhoods, to update the description of planning history in Arlington County, and to amend the description of typical uses in areas designated “Low” Residential on the GLUP map to include a range of housing types.

ZOA-2023-02 An ordinance to amend, reenact, and recodify the ACZO, including Articles 3, 10, 12, 13, 14, 15, 16, and 18, to establish regulations for Expanded Housing Option Development

(EHO), which would allow for up to 6 dwelling units in a building, for properties zoned R-20, R-10, R-8, R-6, or R-5, including standards for applicability, uses, bulk, coverage, placement, site and lot area and width, building height, gross floor area, accessory uses, site development standards, parking, and signs, provisions to restrict the Board of Zoning Appeals from granting use permits that allow modification of placement requirements, provisions for an annual limit on EHO permits, special exception standards for sites with an area of one acre or greater, provisions for nonconformities for EHO development, provisions for nonconforming two-family dwellings zoned R-5 or R-6, dimensional requirements for required parking areas for one-family, two-family, and EHO development, and revisions to the definition of a duplex.

63. A copy of the advertisement is attached hereto as Exhibit A.

64. The advertisement and the draft Zoning Amendment released with the advertisement did not provide any summary of how permits would be distributed if the Board chose at the advertised public hearing to impose a permit cap, nor did it provide the proposed density range or GLUP density range.

65. The advertisement summary failed to meet the statutory notice requirements in Virginia Code §§ 15.2-2204 and 15.2-2285(B)-(C) and failed to allow residents to be informed to meaningfully participate in the Zoning and GLUP Amendment process.

66. Advertisements of public hearings must “contain a descriptive summary of the proposed action” per Virginia Code § 15.2-2204(A).

67. Virginia Code § 15.2-2204 required the Board to advertise a proposed action.

68. The Board did not recommend a proposed Zoning Amendment until after the conclusion of the advertised public hearings.

69. Virginia Code § 15.2-2285(B) similarly required the Board to refer a proposed amendment to the Planning Commission.

70. Virginia Code § 15.2-2285(C) required that an advertisement of an amendment to the zoning map list the density range of the proposed amendment and the density range listed in the municipality's comprehensive plan. Va. Code Ann. § 15.2-2285(C).

71. The Board's authorization for advertising on January 25, 2023, did not comply with Virginia Code §§ 15.2-2285 and 15.2-2204 because the Board had not yet recommended or proposed any of the various and confusing options. As such, it could not advertise a *proposed action* to the public or refer a *proposed amendment* to the Planning Commission.

72. The advertisement's summary insufficiently described what the Board had authorized for advertisement on January 25, 2023 because the summary did not describe the multiple and confusing options still undecided by the Board, what planning areas may or may not be affected, whether there would be parking standards, and how permits would be distributed.

73. Further, because it purported to increase the density for the various Residential Districts through EHO Development, the Zoning Amendment included an amendment to the County's zoning map.

74. As a result, the advertisement failed to comply with the requirement in Virginia Code § 15.2-2285(C) because it did not state the general usage and density range under the various options.

75. To further compound the confusing advertisement, while the options were being advertised, staff released a February 27, 2023 staff report for the Planning Commission's March 6 and 8, 2023 hearings ("February 27 Staff Report"). The February 27 Staff Report proposed for the first time publicly a geographic distribution method if the Board chose to

legislate a cap on the number of EHO Development permits it issued each year and noted that the Board could provide a method of distribution for the permits upon approval of the Zoning Amendment.

76. This updated draft option contained no indication of what method of distribution was proposed or that the method would be determined by the Board following the closure of public hearings upon the adoption of the Zoning Amendment.

77. During this same time, the Planning Commission conducted public hearings on March 6 and 8, 2023, to discuss recommendations to the Board regarding the final Zoning and GLUP Amendments.

78. The Planning Commission did not make available for public inspection at least one comment from the public that was furnished to the Planning Commission's members.

79. Additionally, in advance of the Board's final public hearings on the Zoning and GLUP Amendments, the Board made available for public inspection only ten letters from the public that were furnished to Board members. Five of those letters were from County commissions.

80. On March 22, 2023, after three days of public hearing and discussion, and after the public hearing was closed, Chair Dorsey presented for the first time publicly a proposed, completed ordinance, which was a combination of the County Manager's recommendations first outlined in the February 27 Staff Report and Chair Dorsey's recommendations on the options for which the County Manager had not provided a recommendation (the "Chair's Mark").

81. The Chair's Mark also proposed a method for distributing the permits that was similar to the February 27 Staff Report's distribution method ("Chair's Distribution") if a yearly cap was adopted from among the various options.

82. The Board did not advertise the County Manager's recommendations, and those recommendations were only released through the February 27 Staff Report.

83. Persons residing in the Residential Districts had no notice of Chair Dorsey's recommendations or the Chair's Distribution before Chair Dorsey produced them following closure of the public hearings.

84. Pursuant to Virginia Code §§ 15.2-2285(B) and 15.2-2204(A), the Chair's Mark—a proposed or recommended ordinance—should have been referred to the Planning Commission and advertised for deliberation at the public hearings before the Planning Commission and the Board, instead of the various confusing options.

85. The Chair's Mark, and with it, the Chair's Distribution, were not advertised for deliberation at the public hearings before the Planning Commission and the Board.

86. The failure to advertise the Chair's Mark, and with it, the Chair's Distribution, violated Virginia Code §§ 15.2-2285(B) and 15.2-2204 and deprived the Residents of substantive and procedural due process because they could not know which of the various and confusing options would be recommended by the Board as of the time the public hearings were advertised.

87. The Board's failure to make available for public inspection the Chair's Mark also violated VFOIA Code § 2.2-3707(F).

Enacted Amended Zoning Ordinance

88. Following closure of the public hearings, the Board deliberated from the Chair's Mark and Distribution to produce a final Zoning Amendment from amongst the various options.

89. The Board discussed the studies which staff or the Planning Commission were currently conducting or planned to conduct after the Zoning Amendment's passage that would help the Board assess EHO Development; however this discussion and those studies came too late.

90. The Board adopted the newly finalized Zoning and GLUP Amendments on March 22, 2023.

91. The finalized Zoning Amendment permitted the following:

- a. By-right development of up to six units on site areas 7,000 square feet or larger, provided nonconforming lots meet certain ownership requirements, in R-8, R-10, and R-20 districts, and by-right development of up to six units on site areas 6,000 square feet or larger in the R-5 and R-6 districts.
- b. By-right development of up to four units on all site areas under one acre, including nonconforming lots that meet certain ownership requirements.
- c. A fifty-eight-permit annual cap on EHO Development permits for five years before a self-executing sunset provision will allow unrestricted EHO Development. The Board substantially adopted the Chair's Distribution, with some amendments, which allocated twenty-one permits between R-8, R-10, and R-20 districts, thirty permits in R-6 districts, and seven permits in R-5 districts.

- d. Minimums of 0.5 on-site parking spaces per unit for multiplexes within a three-quarter mile radius of a metro station or within a half mile radius of a Premium Transit Network stop, except lots fronting a cul-de-sac, which require one space per unit, and one on-site space per unit for all other locations.**
- e. Maximum lot coverage that largely mirrors single-family dwellings except with a five-percent-increased coverage allowance regardless of whether a detached parking garage is built.**
- f. Maximum gross floor areas based on the number of units.**
- g. Minimum shade tree requirements depending on the number of units.**
- h. EHO Development for certain accessory dwellings.**
- i. The requirement that lots over one acre undergo the special exception process to develop EHO Development units.**
- j. The exclusion of planning districts from developing EHO Development units.**
- k. The exemption of nonconforming dwellings from the special exception use permit process if such dwellings are converted to condominiums or cooperatives for EHO Development.**

92. The key amendment in the draft Zoning Amendment was the addition of Article 10.4 to include the section for “Expanded Housing Option Development.”

93. The proposed EHO Development language in Article 10.4 provided a by-right option for lot owners to erect multiplex dwelling units in the Residential Districts.

94. Generally, Article 10 contains exceptions to various general regulations in certain zoning districts to permit Unified Residential Developments (Article 10.1), Unified

Commercial/Mixed Use Development (Article 10.2), and Residential Cluster Development (Article 10.3).

95. Except for the Expanded Housing Option Development (Article 10.4), all other development in Article 10 requires either a special use permit or site plan to develop these options in certain zoning districts.

96. The Zoning Amendment did not amend Article 5, which contains the general regulations of the Residential Districts.

Particularized Harm to Plaintiffs

97. Nordgren purchased her property due to its location in a leafy, low-density neighborhood.

98. Nordgren's property is located in residential district R-10, in which the Zoning Amendment allows by-right up to four units on any size lot under one acre and five-to-six-unit apartments on lots that are 7,000 square feet or larger, with certain restrictions.

99. Nordgren has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will result in higher tax assessments to Nordgren's property due to the higher multiplex use authorized.

100. Under the Zoning Amendment, Nordgren's immediate neighbor will be able to build a large multiplex by-right, while that same neighbor will be insulated from EHO Development next to the neighbor's property because the adjacent lot will need a special exception permit to build EHO Development units. Also, EHO Development units can be built on Nordgren's side of the street while her neighbors across the street will not have multiplexes built because of covenants restricting development to single-family dwellings.

101. The EHO Development will cause Nordgren to experience a disparate impact compared to her next-door neighbors who can develop on their property by-right up to six units unchallenged by Nordgren while those neighbors will be insulated from by-right EHO Development and may challenge their neighbor's request for EHO Development because that other neighbor owns a lot larger than one acre.

102. The direct, pecuniary, and substantial harm to Nordgren set forth hereinabove is different than that suffered by other residents in the County and the R-10 District because of the Zoning Amendment.

103. Tyler purchased his property due to its location in a low-density neighborhood.

104. Tyler's property is located in residential district R-10, in which the Zoning Amendment will allow up to four units on any size lot under one acre and five-to-six-unit apartments on lots that are 7,000 square feet or larger, with certain restrictions.

105. Tyler has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will intensify stormwater runoff and sanitary sewer system use and volume resulting in flooding and sanitary sewer backup on Tyler's property.

106. Part of Tyler's lot is part of a resource protection area and is near a flood zone. Further, part of a stormwater main runs underneath Tyler's property. EHO Development in lots surrounding Tyler's property that are not burdened by a resource protection area will augment flooding risks to and impacts on Tyler's property.

107. The Zoning Amendment will also increase tax assessments on Tyler's property due to the higher multiplex use authorized.

108. The direct, pecuniary, and substantial harm to Tyler set forth hereinabove is different from that suffered by other residents in the County and the R-10 District because of the Zoning Amendment.

109. MacKenzie purchased his property due to its location in a low-density neighborhood with proximity to the city but also because the property had and was surrounded by old-growth trees and was a nature habitat.

110. MacKenzie's property is located in residential district R-6 in which the Zoning Amendment will allow up to four units on any size lot under one acre and five-to-six-unit apartments on lots 6,000 square feet or larger, with certain restrictions.

111. MacKenzie lives within a one-half mile radius of the Courthouse Metro Station, where each EHO Development unit built on a lot only requires 0.5 on-site parking spaces per unit.

112. MacKenzie has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will increase traffic and parking density in MacKenzie's otherwise quiet neighborhood.

113. It will also result in a higher tax assessment due to the higher multiplex use authorized.

114. MacKenzie and several of his neighbors own lots that are smaller than the minimum lot size in the R-6 District, but nevertheless are allowed to construct up to four units per lot under the Zoning Amendment, provided they meet certain ownership requirements. EHO Development on these smaller lots produces an even greater negative impact on MacKenzie's property because it substantially increases the density range to up to thirty-two units per acre.

115. MacKenzie's street is unusually narrow and at times barely passable as emergency and waste-disposal vehicles struggle to access the road.

116. EHO Development in MacKenzie's neighborhood will impose an augmented impact on parking and traffic congestion, crowding his narrow street and making it difficult for emergency and waste management vehicles to provide necessary services to him and his neighbors, especially because of the sheer number of nonconforming lots on which four units can be built by-right in his neighborhood.

117. EHO Development will burden on-street parking near MacKenzie's property and make it more difficult to locate parking on his permit-parking-restricted street because the Zoning Amendment only requires 0.5 on-site parking spaces per unit. This parking burden will be significantly increased considering the increased density resulting from MacKenzie's and his neighbors' non-conforming lots.

118. MacKenzie's proximity to a metro station augments the Zoning Amendment's negative impact on street parking above the impact on persons in the R-6 District living farther than three-quarters of a mile from a metro station.

119. The direct, pecuniary, and substantial harm to MacKenzie set forth hereinabove is different from that suffered by other residents in the County and the R-6 District because of the Zoning Amendment.

120. The Parkers purchased their property due to its location in a low-density neighborhood.

121. The Parkers' property is located in residential district R-10, in which the Zoning Amendment will allow by-right up to four units on any size lot under one acre and five-to-six-unit apartments on lots that are 7,000 square feet or larger, with certain restrictions.

122. The Parkers have a direct, pecuniary, and substantial interest in the Zoning Amendment because it will intensify stormwater runoff and sanitary sewer system use and volume resulting in flooding and sanitary sewer backup on the Parkers' property.

123. It will also result in a higher tax assessment due to the higher multiplex use authorized.

124. The Parkers live near a flood zone and resource protection area and are downhill from lots that are permitted to build EHO Development units. The Parkers also have three stormwater mains running underneath their property.

125. The Parkers suffered significant flood damage in 2019 and damage from a sanitary sewer backup in 2021 under the current, less dense development. EHO Development in the Parkers' neighborhood will increase stress on stormwater management systems surrounding the Parkers' property due to their home's proximity to a flood zone, resource protection area, and County stormwater mains. It will also tax sanitary sewer systems in the Parkers' neighborhood.

126. The direct, pecuniary, and substantial harm to the Parkers set forth hereinabove is different from that suffered by other residents in the County and the R-10 District because of the Zoning Amendment.

127. Pernia purchased her property due to its location in a low-density neighborhood and because of its affordability and the neighborhood's charm.

128. Pernia's property is located in residential district R-6, in which the Zoning Amendment will allow up to four units on any size lot under one acre and five-to-six-unit apartments on lots 6,000 square feet or larger, with certain restrictions.

129. Pernia has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will increase traffic and parking density and noise in Pernia's otherwise quiet neighborhood.

130. It will also result in a higher tax assessment due to the higher multiplex use authorized.

131. Pernia and several of her neighbors own lots that are smaller than the minimum lot size in the R-6 District, but nevertheless are allowed to construct up to four units per lot under the Zoning Amendment, provided they meet certain ownership requirements, which will increase the density range to at least twenty-eight units per acre.

132. EHO Development on these smaller lots will produce an even greater negative impact on parking on Pernia's street than in other areas because parking on Randolph Street is already overcrowded, parking will be further increased by the drastic density increase, and Randolph Street by Pernia's home is not located near a metro station or a Premium Transit Network.

133. Moreover, the Zoning Amendment does not provide many limits on what contractors can build as far as maintaining aesthetic continuity in Pernia's neighborhood nor does it provide for infrastructure improvements for sanitary sewer and flood control, as Pernia lives near Four Mile Run and the accompanying flood zone and resource protection area.

134. The direct, pecuniary, and substantial harm to Pernia set forth hereinabove is different than that suffered by other residents in the County and the R-6 District because of the Zoning Amendment.

135. Fibel purchased her property in 2000 due to its location in a quiet low-density neighborhood with adequate parking, proximity to the city, and an abundance of birds and trees, and because of its affordability.

136. Fibel found her home after a four-year search and twenty years of living in apartments and condominiums in Arlington where parking was difficult to find.

137. Fibel's property is located in residential district R-6, in which the Zoning Amendment will allow up to four units on any size lot under one acre and five-to-six-unit apartments on lots 6,000 square feet or larger, with certain restrictions.

138. Fibel lives within a three-quarter mile radius of two metro stations, where only 0.5 on-site parking spaces per unit are required by the Zoning Amendment.

139. Fibel has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will increase traffic and parking density in Fibel's otherwise quiet neighborhood and will also intensify stormwater runoff and sanitary sewer system use and volume resulting in flooding and sanitary sewer backup on Fibel's property.

140. It will also result in a higher tax assessment due to the higher multiplex use authorized.

141. Fibel and several of her neighbors own large lots on which up to six units can be built, while some of her other neighbors own lots that are smaller than the minimum lot size in the R-6 District, but nevertheless are allowed to construct up to four units per lot under the Zoning Amendment, provided they meet certain ownership requirements.

142. The impacts of EHO Development on the smaller lots, as well as the conforming lots, will increase the density range around Fibel's property to over 20 units per acre to produce an even greater negative impact on Fibel's property than on the property of other

persons in the R-6 District. Moreover, the housing density will dramatically increase in Fibel's neighborhood as real estate investors are already advertising plans to tear down an existing single-family dwelling and develop three \$1.2 million townhomes, even prior to the Zoning Amendment's passage.

143. EHO Development and the increased density permitted by the Zoning Amendment will increase street parking and noise pollution from the influx of cars in Fibel's formerly low-density neighborhood, especially considering the reduced number of on-site parking spaces required per unit due to her proximity to two metro stations. The Zoning Amendment thus augments the negative impact on street parking on Fibel above persons living more than a three-quarter-mile radius from a metro station.

144. Fibel will also experience an augmented impact from the Zoning Amendment on her sanitary sewer system, as she has already experienced sewage backup in her basement when the County performed sewer line maintenance on her street in September 2012.

145. The direct, pecuniary, and substantial harm to Fibel set forth hereinabove is different from that suffered by other residents in the County and the R-6 District because of the Zoning Amendment.

146. Rozada purchased his property due to its location in a low-density neighborhood.

147. Rozada's property is located in residential district R-8, in which the Zoning Amendment allows by-right up to four units on any size lot under one acre and five-to-six-unit apartments on lots that are 7,000 square feet or larger, with certain restrictions.

148. Rozada has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will result in a higher tax assessment due to the higher multiplex use authorized.

149. EHO Development will increase overcrowding in the County's public schools that serve Rozada's neighborhood, all of which are almost at capacity, and where one of Rozada's children currently attends. School overcrowding from EHO Development will increase the number of students per class and increase strain on the cafeteria, gym, library, bathrooms, and other facilities, resulting in negative impacts on education.

150. The direct, pecuniary, and substantial harm to Rozada set forth hereinabove is different from that suffered by other residents in the County and the R-8 District because of the Zoning Amendment.

151. Gabig purchased her property due to its location in a low-density neighborhood.

152. Gabig's property is located in residential district R-6, in which the Zoning Amendment will allow up to four units on any size lot under one acre and five-to-six-unit apartments on lots 6,000 square feet or larger, with certain restrictions.

153. Gabig has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will result in a higher tax assessment based on the higher multi-family use authorized.

154. EHO Development will increase overcrowding in the County's public schools that serve Gabig's neighborhood, several of which are already at or over capacity, as Gabig saw first-hand when she visited schools in her neighborhood to prepare for her son to enter the public school system this fall as a kindergartener.

155. EHO Development in Gabig's neighborhood will also increase overcrowding in the middle and high schools that serve her neighborhood and that her son may eventually attend, especially as those schools are approaching maximum capacity.

156. The direct, pecuniary, and substantial harm to Gabig set forth hereinabove is different from that suffered by other residents in the County and the R-6 District because of the Zoning Amendment.

157. Ackerman purchased his property due to its location on a wooded lot, in a neighborhood that was calm and healthful, owing to its extensive tree canopy.

158. Ackerman's property is located in residential district R-10, in which the Zoning Amendment will allow up to four units on any size lot under one acre and five-to-six-unit apartments on lots that are 7,000 square feet or larger, with certain restrictions.

159. Ackerman has a direct, pecuniary, and substantial interest in the Zoning Amendment because it will result in a higher tax assessment due to the higher multiplex use authorized.

160. EHO Development allowed by the Zoning Amendment will reduce the tree canopy and worsen erosion and flooding near Ackerman's property because Ackerman lives near a resource protection area and flood zone. The flooding impact on his property from EHO Development authorized by the Zoning Amendment is augmented over the impact on other properties in the R-10 District.

161. Under the Zoning Amendment, Ackerman's immediate neighbor and the next house down the street will be able to build large multiplexes by-right, while one of those neighbors will be insulated from EHO Development next to that neighbor's property because the adjacent lot will need a special exception permit to build EHO Development units.

162. EHO Development will cause Ackerman to experience a disparate impact compared to his next-door neighbors who can develop on their properties by-right up to six

units unchallenged by Ackerman while those neighbors will be insulated from by-right EHO Development and may challenge their neighbor's requests for EHO Development because that other neighbor owns a lot larger than one acre.

163. The direct, pecuniary, and substantial harm to Ackerman set forth hereinabove is different from that suffered by other residents in the County and the R-10 District because of the Zoning Amendment.

164. Residents are being harmed and will continue to be harmed by the Board's failure to consider necessary infrastructure improvements to address the increased density due to EHO Development.

165. Residents are being harmed and will continue to be harmed by the failure to include sufficient residential development requirements to address off and on-street parking and traffic congestion and density in otherwise quiet residential neighborhoods exacerbated by increased population and development density.

166. By singling out these Residential Districts without providing for adequate infrastructure and neighborhood-specific development, the Residents will suffer a particularized harm not applicable to the public generally in the form of increased traffic and parking, intensified stormwater runoff and sanitary sewer use and volume leading to flooding and sanitary sewer backups, tree canopy diminution, and prohibitively expensive tax assessments increases.

167. As a result, Residents' properties will suffer noise, safety, flooding, and sanitary sewer impacts as well as loss of residential quietude that will not be suffered by the public generally.

168. Thus, the Residents have been aggrieved by the Board's actions.

Effects of the Enacted Zoning and GLUP Amendments

169. Before amending the zoning ordinance, the Board determined that EHO Development's "stormwater runoff would be comparable to current impacts from single-detached redevelopment," despite EHO Development's permitted by-right increase to density and lot coverage.

170. The current stormwater management system is inadequate to address the County's current management needs as demonstrated by the County's search to purchase and tear down single-family dwellings and regrade the lots to manage flooding.

171. The County's current stormwater management system plan does not address the dramatic increase in population density in these low-density districts that is now allowed by-right because of the Zoning Amendment, despite the County's flooding problems.

172. The burden on already overburdened schools will be increased because of EHO Development, resulting in classroom crowding, overburdened bathrooms, overburdened cafeterias, the need for mobile classrooms and other common areas with resulting negative impacts on education.

173. The Board did not address the increased strain on the County's sanitary sewer, energy, and water distribution systems that will be caused by EHO Development. The Zoning Amendment's increase in by-right development of multiplexes will further stress the systems without requiring the necessary upgrades.

174. The Board did not address the increase in traffic and parking due to EHO Development, which will organize substantial community redevelopment away from high-capacity transit in contravention of the Master Transportation Plan.

175. As revealed from VFOIA requests, the Board has not requested any studies on transportation needs in suddenly denser low-density neighborhoods and whether those neighborhoods will be well-served by present public transportation provisions.

176. The Board did not commission nor conduct appropriate and requisite studies and planning to mitigate the Zoning Amendment's increased burden on already overburdened schools and other public facilities, parking and traffic congestion in residential, low-density neighborhoods, flooding and associated stormwater drainage issues, sanitary sewer overflow, and tree canopy degradation, among other things.

177. As of the Zoning Amendment's enactment, fifty-eight owners and developers can now by-right build multiplexes on their lots each year for five years.

178. The fifty-eight-permit cap will expire in five years and then by-right development will be open to all qualifying lots without limits on permits.

179. The Board did not consider EHO Development's increase in permitted density above the GLUP's low-density requirements (1-10 units per acre) in almost every district after the permit cap sunsets automatically in five years and by-right development of multiplexes is no longer capped.

180. Instead, the Board noted it could review the impacts of the permitted EHO Development during the five-year period and take up the amendment at any point.

181. Once owners and developers begin construction, the nature of these Residential Districts will be irreparably altered without the infrastructure and services necessary to support and improve the public health, safety, convenience, and welfare of residents in these districts.

182. The Zoning Amendment will exacerbate gentrification and force low and fixed-income residents out of Arlington, especially out of residential districts previously containing more affordable lots.

183. The Zoning Amendment will increase taxes due to the Virginia Constitution's requirement that taxation be assessed at 100% of the property's fair market value. Houses will invariably be valued at higher rates because of the higher multiplex use authorized, and these increased taxes will burden low and fixed-income homeowners closest to the margins.

184. Moreover, developers will purchase more affordable single-family dwellings to build expensive multiplexes, keeping them out of reach for many Arlingtonians.

185. Many EHO Development units will likely be rentals and have the highest number of permitted units to maximize developer profit, which will result in smaller one or two-bedroom units.

186. Other EHO Development units will be larger luxury units costing over \$ 1 million and thus, unaffordable for low or middle-income families.

187. EHO Development does not promote the original goals of homeownership and three-plus-bedroom units.

188. The units built as EHO Development will not be affordable.

189. EHO Development will not improve access to homeownership for persons of diverse ethnicities.

190. Moreover, EHO Development does not address housing that is actually missing from the County.

191. The County's Affordable Housing Master Plan noted that "the County's current rental stock sufficiently serves both families and single-person households who have incomes above 80 percent of area median income."

192. In fact, Anne Venezia, the housing director for the County, claimed before the EHO Development Zoning Amendment was passed that the County "[could] confidently say we do have enough capacity within our current plans to enable the [housing] production that [the Metropolitan Washington Council of Governments ("COG")] has for Arlington targets." But the Affordable Housing Master Plan determined that the County needs 16,000 affordable units for residents with incomes sixty percent or less of the average median income. EHO Development will not address this need.

COUNT I - The Board and Planning Commission failed to promulgate an initiating resolution or motion for the Zoning Amendment in accordance with Virginia Law.

193. The foregoing paragraphs are incorporated herein by this reference.

194. Virginia Code Annotated § 15.2-2286(A)(7) requires amendments to regulations be initiated "(i) by resolution of the governing body [or] (ii) by motion of the local planning commission"

195. This initiating resolution by a governing body or commission proposing the amendments to regulations shall state the public purposes of "public necessity, convenience, general welfare, or [as] good zoning practice requires." Va. Code Ann. § 15.2-2286(A)(7).

196. "A failure to comply with any step in the [zoning amendment] process" including Virginia Code § 15.2-2286(A)(7) "renders the action of the Board void *ab initio* and of no legal efficacy." *In re Zoning Ordinance Amendments*, 67 Va. Cir. 462, 2004 WL 1158678, at *6-7 (Loudoun Cnty. 2004).

197. The Board did not pass a resolution and the Planning Commission did not pass a motion that initiated the Zoning Amendment.

198. According to a VFOIA request and response, the only resolution the Board promulgated before the Board approved the Zoning Amendment was a resolution to authorize advertising the public hearing for the Zoning Amendment and GLUP Amendments. *See Exhibit B.*

199. Upon information and belief, including a diligent search, the only motion passed by the Planning Commission before the Board approved the Zoning Amendment was that recommending that the Board pass a resolution advertising the the various options for public hearings.

200. Advertising of public hearings pursuant to Virginia Code § 15.2-2204 is a distinct and subsequent step in the process for adopting zoning ordinance or map amendments from the initiation of a zoning or map amendment pursuant to Virginia Code § 15.2-2286(7).

201. Because the Board did not promulgate an initiating resolution, and because the Planning Commission failed to pass an initiating motion, both also failed to state a public purpose for amending the zoning ordinance and map.

202. The Board and the Planning Commission failed to comply with Virginia Code § 15.2-2286(A)(7) and did not pass a resolution or motion initiating the Zoning Amendment.

203. The Zoning Amendment is “void *ab initio* and of no legal efficacy.” *See In re Zoning Ordinance Amendments*, 2004 WL 1158678, at *6-7.

WHEREFORE, Residents respectfully request this Court find that the Board failed to comply with Virginia Code § 15.2-2286(A)(7), and as such, further find and declare that the

Board's approval of the Zoning Amendment which permits EHO Development in formerly low-density zoning districts was *ultra vires* and thus, the Zoning Amendment is void *ab initio*.

COUNT II - The Board failed to advertise the Zoning Amendment per Virginia law.

204. The foregoing paragraphs are incorporated herein by this reference.

205. Virginia Code § 15.2-2204(A) requires that advertisements of public hearings regarding plans, ordinances, or amendments “shall contain a descriptive summary of the proposed action.”

206. Virginia Code § 15.2-2204's intent “is to generate informed public participation by providing citizens with information about the content of the proposed amendments.”

Glazebrook v. Bd. of Sup'rs of Spotsylvania Cnty., 266 Va. 550, 555, 587 S.E.2d 589, 592 (2003).

207. For a notice to be adequate, a citizen must be able to “reasonably determine, from the notice, whether he or she was affected by the proposed amendments” and not solely “in the most general sense of being located in a particular type of zoning district.” *Id.* at 556, 587 S.E.2d at 592.

208. Code § 15.2-2285(C) requires that an advertisement to amend a zoning map include the proposed density range of the amendment and the comprehensive plan's density range for that district.

209. The summary advertised by the Board failed to contain a descriptive summary, generate informed public participation, or allow citizens to reasonably determine if they were affected by the proposal.

210. The draft Zoning Amendment advertised for public hearing contained options without any indication of which option the Board recommended or proposed for deliberation at the advertised public hearings.

211. The draft Zoning Amendment authorized for public hearing contained twelve different sections with anywhere from two to five options or variations to the proposed text for each section.

212. By way of example, the draft Zoning Amendment authorized for public hearing contained five Option 2s, of which some contradicted each other or contained differences based on proximity to transit hubs, while others were hybrids of some options, and none of which provided a clear picture of which option the Board proposed for adoption.

213. Option 10A and 10B stated that properties within planning districts may all be excepted, included, or partially excepted and included from EHO Development.

214. Option 3A would either require properties over one acre to file a special exception to build EHO Development units or allow them to build by-right.

215. Persons residing in these planning districts or owners of lots greater than one acre had no way of knowing whether this Zoning Amendment would affect them despite the Board purporting to advertise a final draft of the Zoning Amendment.

216. Similarly, persons residing in the Residential Districts had no way of knowing which of the Option 2s was recommended for adoption and, therefore, how they would be impacted.

217. Virginia Code § 15.2-2285(B) required the Board to refer a proposed amendment to the Planning Commission.

218. Virginia Code § 15.2-2204 similarly required the Board to advertise a proposed action.

219. The draft amendment released by the Board in conjunction with the request for advertisement in January 2023 contained numerous options that could have resulted in any number of combinations and resulting outcomes and was not, therefore, a proposed amendment or proposed action.

220. The draft released by the Board did not contain the final proposed text of the Zoning Amendment.

221. The draft released by the Board did not contain the proposed method of distribution if the Board capped the number of permits issued each year.

222. Based on the advertisement and the draft, the public had no way of knowing that the Board could or would impose a method of distribution if it imposed a permit cap.

223. The staff report accompanying the request to advertise suggested that permit distribution based on a geographic component, such as by neighborhood, would lack a rational basis and was not recommended for advertisement.

224. After the amendment had been advertised for one week, the February 27 Staff Report suggested a geographic approach to permit distribution that more closely resembled the final Zoning Amendment. It also noted that “[t]he method of distribution for the permits shall be determined by the County Board upon adoption of the ordinance.” The public had no advertised notice of this proposed distribution.

225. The advertisement generally summarized possible amendments and standards for development but did not indicate that each amendment or standard contained multiple options.

226. The advertisement did not adequately describe the uncertainty of the proposed Zoning Amendment options or the uncertainty it created for residents in supporting or challenging the amendments.

227. The advertisement did not inform residents in the Residential Districts living within a three-quarter mile radius from a metro station or one-half mile from a Premium Transit Network that the number of on-site parking spaces required per unit could and would be reduced to 0.5 parking spaces per unit.

228. The advertisement did not inform residents living on a cul-de-sac in Residential Districts that on-site parking spaces per unit could and would be reduced to one space per unit, rather than two.

229. The advertisement did not describe the method the Board would employ to distribute permits.

230. The advertisement did not include the density range permitted by the Zoning Amendment or the GLUP's current density range for the Residential Districts.

231. Density is a quantitative description and means "the quantity per unit of . . . area." Density, *Merriam Webster's Dictionary*, available at <https://www.merriam-webster.com/dictionary/density> (last visited Apr. 18, 2023). The County describes density in terms of "units per acre." See GLUP Map Legend Amendment attached as Exhibit C.

232. The Board's GLUP Amendment does not change the stated density of the Residential Districts on the GLUP map, which states the density range is 1-10 units per acre, nor did the Board amend the zoning district map.

233. Under the Zoning Amendment, if even one conforming lot in the R-6 district builds a six-unit EHO Development, the density increases over the density range listed on the GLUP map.

234. Staff and the Board tacitly admitted that the Zoning Amendment increased density over the range listed in the GLUP map when discussing tree canopy requirements, noting that the tree canopy requirements for EHO Development were equivalent to residential sites zoned for more than ten units per acre, rather than the higher tree canopy requirements for the areas formerly zoned at less than 10 units per acre.

235. The Zoning Amendment allows significant increases in density above the GLUP map range even while the permit cap is in effect. Once the permit cap automatically sunsets, the density allowed increases up to forty-two units per acre.

236. Because a zoning ordinance's legality is reviewed by what may be done under it, *see Bd. of Sup'rs of James City Cnty. v. Rowe*, 216 Va. 128, 132, 216 S.E.2d 199, 205 (1975), the relevant proposed density range is up to forty-two units per acre, not the average density of what the County thinks might happen.

237. The advertisement failed to comply with Virginia Code § 15.2-2285(C) because it did not include the proposed density range and GLUP density range.

238. The advertisement failed to comply with Virginia Code § 15.2-2204 because it did not "contain a descriptive summary of the proposed action" of the multiple options available or of the method of distribution if a cap was implemented.

239. The advertisement failed to comply with Virginia Code § 15.2-2285(B) because it did not refer a proposed amendment to the Planning Commission, and instead, referred various confusing options to the Planning Commission.

240. Further, the advertisement did not generate informed participation of residents because they could not know which options the Board recommended for adoption until after the advertised public hearings were closed.

241. Persons residing in planning districts in the Residential Districts were not reasonably able to determine if the Zoning Amendment would apply to them. *See Gas Mart Corp. v. Bd. of Sup'rs of Loudoun Cnty.*, 269 Va. 334, 346-47, 611 S.E.2d 340, 346-47 (2005).

242. Persons residing in each of the Residential Districts did not know what options may affect them because some options applied to every district, while others only applied to districts near transit hubs.

243. The advertisement ultimately left residents in the Residential Districts uninformed and unable to meaningfully engage with the Zoning Amendment because they could not know which of the various and confusing options the Board proposed for adoption at the advertised public hearings.

244. Given the lack of clarity in the draft amendment and the lack of required information, the advertisement's summary insufficiently described the proposed action.

245. By failing to meet the notice requirements of Virginia Code §§ 15.2-2204, 15.2-2285(B), and 15.2-2285(C), the Board "acted outside the authority granted by the General Assembly" and its approval of the Zoning Amendment is, therefore, void *ab initio*. *Glazebrook v. Bd. of Sup'rs of Spotsylvania Cnty.*, 266 Va. 550, 554, 587 S.E.2d 589, 591 (2003).

WHEREFORE, Residents respectfully request this Court find that the Board failed to comply with Virginia Code §§ 15.2-2204(A), 15.2-2285(B), and 15.2-2285(C), and as such,

further find and declare that the Board's approval of the Zoning Amendment which permits EHO Development in formerly low-density zoning districts was *ultra vires* and thus, the Zoning Amendment is void *ab initio*.

COUNT III - The Zoning Amendment is void *ab initio* because the Board acted *ultra vires* by failing to reasonably consider many Virginia Code § 15.2-2284 factors.

246. The foregoing paragraphs are incorporated herein by this reference.

247. Local municipalities may exercise only powers that are "expressly or impliedly granted to them." *Town of Jonesville v. Powell Valley Village Ltd. P'ship*, 254 Va. 70, 74, 487 S.E.2d 207, 210 (1997).

248. Municipal action not authorized by statute is *ultra vires* and void *ab initio*. *See id.*

249. Virginia Code § 15.2-2284 provides, in relevant part, that:

Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality.

250. The Board failed to consider the Comprehensive Plan, which includes the Stormwater Master Plan, the Master Transportation Plan, the Sanitary Sewer System Master Plan, Recycling Program Implementation Plan, Public Spaces Master Plan, the Community Energy Plan, and the Water Distribution Master Plan, among others.

251. Under Code § 15.2-2284, the Board must reasonably consider the Comprehensive Plan when drawing and applying zoning ordinances.

252. “A comprehensive plan provides a guideline for future development and systematic change, reached after consultation with experts and the public. ‘[T]he Virginia statutes assure [landowners] that such a change will not be made suddenly, arbitrarily, or capriciously but only after a period of investigation and community planning.’” *Town of Jonesville*, 254 Va. at 76, 487 S.E.2d at 211 (quoting *Bd. of Supervisors of Fairfax Cnty. v. Snell Constr. Corp.*, 214 Va. 655, 658, 202 S.E.2d 889, 892 (1974)).

253. A comprehensive plan requires “careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants.” Va. Code Ann. § 15.2-2223(A).

254. Relevant surveys for comprehensive plans include “use of land, . . . existing public facilities, drainage, flood control and flood damage prevention measures, dam break inundation zones and potential impacts to downstream properties, . . . the transmission of electricity, . . . road improvements, . . . transportation facilities, transportation improvements, . . . [and] the need for affordable housing,” among other matters. Va. Code Ann. § 15.2-2224.

255. The Board did not consider the various elements of the Comprehensive Plan when drastically increasing density in Residential Districts by adopting the Zoning Amendment.

256. The Board amended the GLUP but did not amend any other elements of the Comprehensive Plan to address the changes wrought by the Zoning Amendment.

257. In amending the GLUP, the Board changed the GLUP Map Legend to reflect that low-density housing of 1-10 units per acre could include the newly permitted housing types;

however, the density authorized by the Zoning Amendment would result in up to 42 units per acre in the Residential Districts, more than four times that envisioned by the GLUP for Residential Districts.

258. In allowing density at a much higher rate than envisioned by the GLUP, the Board did not consider a part of the Comprehensive Plan, the GLUP, in enacting the Zoning Amendment.

259. The Board did not change any other part of the GLUP map, despite the fact that the density permitted under the Zoning Amendment now allows by-right density up to approximately 42 units per acre.

260. The Board could not have considered EHO Development's effects on the County's infrastructure and services addressed by the Comprehensive Plan's other elements because the other elements were drafted and updated before the Zoning Amendment was drafted and approved. Not even the amended GLUP forecasted the density increase permitted in the Residential Districts by-right under the Zoning Amendment.

261. The Board did not conduct necessary and relevant studies on the effects of EHO Development on Arlington's infrastructure and services addressed by the Comprehensive Plan's other elements, including the Stormwater Master Plan, the Master Transportation Plan, the Sanitary Sewer System Master Plan, Recycling Program Implementation Plan, Public Spaces Master Plan, the Community Energy Plan, and the Water Distribution Master Plan, among others. *See Exhibit D.*

262. The Board did not commission or conduct studies or investigations that would have "provide[d] a guideline for future development and systematic change, reached after

consultation with experts and the public.” *Town of Jonesville*, 254 Va. at 76, 487 S.E.2d at 211.

263. Instead, Board members told the public that the Board could check up on EHO Development to see how it was working once it had been in place for a few years.

264. Without adequate studies or investigations, the Comprehensive Plan could not be updated, and the Plan’s elements could not address what is otherwise a drastic increase in density in formerly low-density residential districts.

265. Without an amended Comprehensive Plan to address the Zoning Amendment’s effects, the Board could not have considered, let alone reasonably considered, the Comprehensive Plan in enacting the Zoning Amendment in compliance with Virginia Code § 15.2-2284.

266. The Board also failed to consider the community’s current and future requirements based on appropriate studies, and the community’s transportation, school, recreational facility, and public services requirements.

267. The Board did not commission or conduct studies, save one study addressing the feasibility and desirability of certain housing types to developers, to address these other factors outlined in Virginia Code § 15.2-2284.

268. The Board downplayed EHO Development’s effects, including the drastic increased density by-right in formerly low-density neighborhoods, to justify its lack of studies and review.

269. The Board not only failed to reasonably consider the Comprehensive Plan and other community requirements; it did not consider or investigate many of these aspects at all and only cursorily reviewed other aspects.

270. As a result, the Board failed to abide by and comply with its enabling legislation in enacting the Zoning Amendment.

271. The Board acted outside the scope of its express and implied power to amend zoning ordinances.

272. Because the Board enacted the Zoning Amendment *ultra vires*, the Zoning Amendment is void *ab initio*. See *Town of Jonesville*, 254 Va. at 74, 487 S.E.2d at 210.

WHEREFORE, Residents respectfully request this Court find that the Board violated Virginia Code § 15.2-2284, and as such, further find and declare that the Board's approval of the Zoning Amendment in contravention of its enabling authority *ultra vires*, and thus, the Zoning Amendment is void *ab initio*.

COUNT IV - The Board unlawfully delegated legislative authority in granting a special exception for EHO Development.

273. The foregoing paragraphs are incorporated herein by this reference.

274. A political subdivision may exercise legislative power "to regulate the use of land by zoning laws," including regulating special exceptions to the general regulations of a district. Va. Code § 15.2-2286(A)(1); *Bd. of Sup'rs of Fairfax Cnty. v. Southland Corp.*, 224 Va. 514, 521, 297 S.E.2d 718, 721 (1982).

275. A special exception is "a special use that is a use not permitted in a particular district except by a special use permit" under the relevant code section or zoning ordinance. Va. Code § 15.2-2201.

276. Special exceptions are exceptions "to the general regulations in any district". Va. Code § 15.2-2286(A)(1).

277. Such special exception and special use permits must be “submitted to governmental scrutiny in each case” to ensure that the proposed development complies with standards that “protect neighboring properties and the public.” *Southland Corp.*, 224 Va. at 521, 297 S.E.2d at 721-22.

278. The delegated power of Virginia localities to issue special use permits in each case is limited to legislative action. *Id.* at 522, 297 S.E.2d at 722.

279. A public official’s review in exercising this legislative power is “guided by standards set forth in the ordinance.” *Id.*

280. An official exercising such legislative power may grant the special exception permit “under suitable regulations and safeguards,” Va. Code § 15.2-2286(A)(3), and impose conditions and restrictions to “reduce the impact of the use upon neighboring properties and the public to the level which would be caused by those uses permitted as a matter of right.” *Southland Corp.*, 224 Va. at 522, 297 S.E.2d at 722.

281. EHO Development is a special exception to the general regulations of the Residential Districts that is lawfully limited to the exercise of legislative power in granting EHO Development permits.

282. The Zoning Amendment violates Virginia law by allowing by-right administrative exceptions to the general regulations for each affected Residential District without any legislative scrutiny whatsoever.

283. While the permit cap is in place for the next five years, EHO Development, albeit by-right, is a use that is not permitted unless the property owner is one of fifty-eight people who can obtain a permit.

284. Moreover, rather than amending the general regulations for the Residential Districts, which are located in Article 5, the Board amended Article 10.

285. Article 10 contains three other kinds of development, all of which are special exceptions to the general regulations of certain zoning districts and require either special exception or site plan approval.

286. Article 10.4 “Expanded Housing Option Development” with the permit cap creates an exception to the general regulations for Residential Districts outlined in Article 5 that requires a permit.

287. By creating a permit requirement for by-right development in Residential Districts through Article 10.4, and by limiting the number of permits for by-right development, the Board created a special exception to the general regulations for Residential Districts and transformed purportedly “by-right” development into special exception/use development that requires legislative scrutiny in each case.

288. In creating a special exception, the Board illegally delegated its legislative authority to staff members to grant special exceptions that are not submitted to governmental scrutiny in each case and transformed the special exception/use permit process into an illegal administrative action, rather than the required legislative process.

289. Under the guise of by-right development, the Board has enacted a special exception/use permit process that avoids the rigorous special exception/use process, which requires intensive studies, public participation, and negotiation with developers to ensure that neighboring residents, public facilities, and the public generally are protected from the excepted use.

290. By creating a special exception to the general regulations of the Residential Districts without requiring appropriate governmental scrutiny, the Board violated Virginia Code §§ 15.2-2286(A)(1) and (3) and 15.2-2288.1, unlawfully delegated legislative authority to staff members, and subverted the public process required for special exception and use permits.

WHEREFORE, Residents respectfully request this Court find that the Board acted *ultra vires* and violated Virginia Code §§ 15.2-2286(A) and 15.2-2288.1 by unlawfully delegating legislative power, permitting special exceptions without proper governmental scrutiny, and requiring special exception permits for allegedly by-right use where they were not authorized. As a result, this Court should further find and declare that the Zoning Amendment is void *ab initio*.

COUNT V - The Zoning Amendment is arbitrary and capricious and bears no reasonable relationship to public health, safety, morals, or general welfare.

291. The foregoing paragraphs are incorporated herein by this reference.

292. The Board may amend zoning ordinances so long as the amendment is reasonable, not arbitrary or capricious, and bears a “reasonable or substantial relation to the public health, safety, morals, or general welfare.” *Norton v. Bd. of Sup’rs of Fairfax Cnty.*, 299 Va. 749, 858 S.E.2d 170, 173 (2021) (quoting *Bd. of Cnty. Sup’rs of Fairfax Cnty. v. Carper*, 200 Va. 653, 660, 107 S.E.2d 390, 395 (1959)).

293. While the supporting documents outlined that EHO Development was to diversify housing types and provide more affordable housing options than the current single-family housing market, Board members sold the EHO Development Zoning Amendment as a policy to produce or preserve family-sized moderately-priced homes and provide access to

the market for ownership and emphasized it was not intended to be an across-the-board rezoning of all low-density neighborhoods.

294. The Board only commissioned one study produced in April 2022, which addressed what types of housing would fit within low-density neighborhood lot requirements and that developers would be incentivized to construct.

295. The Board concluded without the benefit of the required studies that the EHO Development Zoning Amendment would minimally affect surrounding properties, neighborhoods, utilities, services, and infrastructure despite drastically increasing population density in formerly low-density neighborhoods.

296. Moreover, a Board member called the amendment decision consequential while at the same time downplaying the effects of the Zoning Amendment.

297. Board members have suggested that they can adjust the EHO Development Zoning Amendment in the future if problems with EHO Development and its implementation arise, thereby revealing that the required studies to prevent such problems were not commissioned.

298. The Board neither commissioned nor conducted studies on stormwater management, sanitary sewer systems, school density, traffic volume and density, Chesapeake Bay Protection Area impact, public services and utilities impacts, such as water, electricity, and recreational facilities, tree canopy degradation, and flood area impacts. See Exhibit D.

299. Nor did it amend any portions of the County's Comprehensive Plan except for the GLUP.

300. In amending the GLUP, the Board changed the GLUP Map Legend to reflect that low-density housing of 1-10 units per acre could include the newly permitted housing types but did not change the density range in the GLUP consistent with the up to 42 units per acre authorized by the Zoning Amendment.

301. In allowing density at a ratio much greater than that envisioned by the GLUP, the Zoning Amendment was inconsistent with the GLUP and, therefore, arbitrary and capricious.

302. The Board eschewed the protections implemented and required by Virginia Code § 15.2-2223 by failing to amend the Comprehensive Plan after investigation, community planning, and consultation with experts and the public and thus, the Board's enactment of the amendment was arbitrary and capricious. See *Town of Jonesville v. Powell Valley Village Ltd. P'ship*, 254 Va. 70, 76, 487 S.E.2d 207, 211 (1997).

303. The Zoning Amendment does not serve the goals the Board championed because EHO Development will create small units the County already has sufficiently in-stock and will mostly be rented rather than purchased.

304. The Zoning Amendment exacerbates the precise problems Board members claimed they sought to address, such as racially exclusive policies, diversity, gentrification, housing affordability, and housing-type diversity.

305. The Board did not reasonably investigate the effects of its Zoning Amendment on Arlingtonians because it failed to reasonably consider the basic statutory requirements outlined in Virginia Code § 15.2-2284, such as transportation requirements, schools, recreation areas and parks, public services, natural resource conservation, flood plain preservation, and property conservation.

306. Similarly, the Board did not design the ordinance to give reasonable consideration to the factors outlined in Virginia Code § 15.2-2283.

307. The Board did not reasonably investigate the basic considerations of modern urban planning when population density is drastically increased by right, such as impacts on stormwater management, flooding, sanitary sewer and waste removal systems, water supply, traffic congestion, and tree canopy depletion.

308. Due to the lack of consideration, study, and planning, the Zoning Amendment is unreasonable, arbitrary and capricious, and bears no reasonable or substantial relation to public health, safety, morals, or general welfare.

309. Rather, the Zoning Amendment will worsen the health, safety, morals, and general welfare of the Residents in Residential Districts.

WHEREFORE, Residents respectfully request this Court find that the Board's Zoning Amendment was arbitrary and capricious and not reasonably related to public health, safety, morals, and general welfare and thus is void *ab initio*.

COUNT VI - The Zoning Amendment is void *ab initio* because the Board failed to comply with the Virginia Freedom of Information Act's requirements.

310. The foregoing paragraphs are incorporated herein by this reference.

311. Under Virginia Code § 2.2-3707(F), "all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body."

312. The General Assembly's purpose in enacting VFOIA is to "ensure[] the people of the Commonwealth *ready* access to public records . . ." and to prevent government affairs

from “be[ing] conducted in an atmosphere of secrecy.” Va. Code § 2.2-3700(B) (emphasis added).

313. “Any person . . . denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause.” Va. Code § 2.2-3713(A).

314. A failure to comply with VFOIA “potentially limit[s] public participation and input into the process” and renders a zoning ordinance amendment void *ab initio*. *Berry v. Bd. of Sup’rs of Fairfax Cnty.*, Rec. No. 211143, slip op. at *28-29 (Va. Mar. 23, 2023).

315. After the time for public comment closed, Chair Dorsey publicly introduced the Chair’s Mark, a memorandum dated March 20, 2023, and addressed to the Board members.

316. The Board did not furnish the Chair’s Mark to Residents at the same time the document was furnished to Board members, presumably March 20, 2023.

317. The Chair’s Mark did not appear in materials furnished to residents online prior to the March 21 or 22 meetings, nor was it available online after the meetings, as was County practice.

318. As demonstrated by the affidavit from Plaintiff Nordgren provided hereinafter as Exhibit E, at least one letter was furnished to the Planning Commission for its March 6 hearing and the Chair’s Mark was furnished to Board members for the Board’s March 21 and 22 hearings.

319. The Planning Commission did not make available for public inspection online nor provide ready access online to the comment from the public that was furnished to the Planning Commission members before the Planning Commission’s final vote to recommend the Zoning and GLUP Amendments.

320. For the request to advertise hearing, the Board provided twenty pages of letters regarding the Zoning and GLUP Amendments, consisting of letters from only four organizations, three of which were from County commissions.

321. For the final public hearing on the Zoning and GLUP Amendments, the Board provided thirty-five pages of letters from only ten organizations regarding the Zoning and GLUP Amendments, five of which were from County commissions.

322. There may be other materials furnished to the Board and Planning Commission for the Planning Commission Hearings on December 12 and 15 and March 6 and 8 and for the Board's January 21, 24 and 25 and March 18, 21, and 22 hearings that were not made available for inspection by the public online, as per County practice, and which are the subject of a pending VFOIA request. *See Exhibit F.*

323. Per the attached affidavit from Plaintiff Nordgren, the Planning Commission failed to make available for public online all materials furnished to it for its March 6, 2023 hearing, and Board failed to make available for public inspection or provide ready access online, as was County practice, all materials furnished to the Board members before the relevant hearings.

324. Residents have been denied the rights and privileges conferred by VFOIA.

325. As a result, the Planning Commission and the Board have violated Virginia Code § 2.2-3707(F), and the Zoning and GLUP Amendments are void *ab initio*.

WHEREFORE, Residents respectfully request this Court find that the Board and Planning Commission violated Virginia Code § 2.2-3707, and as such, further find and declare that the Board's approval of the Zoning and GLUP Amendments was *ultra vires* and that the

Zoning and GLUP Amendments are void *ab initio*. As a result, this Court should award reasonable costs and attorney fees pursuant to Virginia Code § 2.2-3713(D).

COUNT VII - The landscaping provision of the Zoning Amendment renders the Zoning Amendment void *ab initio* because the Board acted *ultra vires* by acting contrary to Virginia Code § 15.2-961.

326. The foregoing paragraphs are incorporated herein by this reference.

327. Virginia Code § 15.2-961(A) allows localities within the Chesapeake Bay Watershed, like Arlington County, to “adopt an ordinance providing for the planting and replacement of trees during the development process *pursuant to the provisions of this section.*” (Emphasis added).

328. Virginia Code Annotated § 15.2-961(B) effectively limits the number of trees a locality may require to be planted based on the density for which a property is zoned. Specifically, it requires that a local tree ordinance of the kind allowed by Code § 15.2-961(A),

shall require that the site plan for any subdivision or development include the planting or replacement of trees on site to the extent that, at 20 years, minimum tree canopies or covers will be provided in areas to be designated in the ordinance, as follows . . . (2) Ten percent tree canopy for a residential site zoned 20 or more units per acre; (3) Fifteen percent tree canopy for a residential site zoned more than 10 but less than 20 units per acre; and (4) Twenty percent tree canopy for a residential site zoned 10 units or less per acre.”

329. Virginia Code Annotated § 15.2-961(H) explains that “tree canopy,” as used in that section, “includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at 10- or 20-years maturity” based on “published reference texts.”

330. Virginia Code § 15.2-961(J) provides: “*In no event shall any local tree replacement or planting ordinance adopted pursuant to this section exceed the requirements set forth herein*” (emphasis added).

331. The County long ago enacted the type of tree canopy ordinance allowed by Virginia Code § 15.2-961 and enacted the maximum tree canopy requirements allowed by § 15.2-961(B) through its Chesapeake Bay Preservation Ordinance. *See* Arlington County Code § 61-10(C).

332. The Zoning Amendment for EHO Development allowed for a by-right optional increase in the density in R-5, R-6, R-8, and R-10 Districts from 9 units per acre, meaning a 20% replacement tree canopy, to greater than 20 or more units per acre, meaning a 10% replacement tree canopy; it allowed for a by-right optional increase in the density in zone R-20 from 2 units per acre to 13 units per acre, meaning a 15% replacement tree canopy.

333. In an attempt to compensate for the reduction of the tree canopy through the illegal density increases resulting from the Zoning Amendment, the Zoning Amendment included a “landscaping” provision (the “Landscaping Provision”) that mandates “a minimum of up to four shade trees for sites with 2-4 dwelling units, and a minimum of up to eight shade trees for sites [with] 5-6 dwelling units This requirement may be satisfied with existing trees and/or by planting trees on-site.”

334. As admitted by County staff in responding to citizen questions about the Landscaping Provision, the Landscaping Provision requirement for EHO Development is in addition to the tree canopy requirements enabled by Virginia Code § 15.2-961 and enacted by the County in Arlington County Code § 61-10(C) (the Chesapeake Bay Preservation Ordinance).

335. County staff stated: “the builder will have to meet both the Chesapeake Bay Preservation Ordinance (CBPO) tree canopy coverage standard (set by state code) and the proposed tree planting standard of the zoning ordinance. However, depending on the lot size, number of units, and tree species, in most cases the one tree per unit zoning requirement *would result in more shade trees than relying solely on the 10% or 15% CBPO standard.*” (Underline in original; italicized for emphasis).

336. The Board’s proposed Landscaping Provision’s shade tree requirement exceeds the maximum tree canopy allowed by the Virginia Code in violation of Virginia Code § 15.2-961(J).

337. In enacting the Landscaping Provision, the County Board understood that the General Assembly had prohibited the Board from exceeding the maximum tree canopy in Code § 15.2-961 but adopted the Landscaping provision anyway to make it appear that the tree canopy would not be negatively impacted by the Zoning Amendment when, in fact, it would be negatively impacted by optional by-right increases in density.

338. The Landscaping Provision was, therefore, an illegal and *ultra vires* attempt to compensate for reduction in tree canopy resulting from the illegal by-right optional density increase authorized by the Zoning Amendment.

339. The Board failed to comply with Virginia Code § 15.2-961 and acted contrary to the statute by exceeding the allowable tree canopy set by the Code.

340. The Zoning Amendment is “void *ab initio* and of no legal efficacy.” *See In re Zoning Ordinance Amendments*, 2004 WL 1158678, at *6-7.

WHEREFORE, Residents respectfully request this Court find that the Board failed to comply with Virginia Code § 15.2-961(A), -(B), and -(J), and as such, further find and declare

that the Board's approval of the landscaping provisions of the Zoning Amendment was *ultra vires*, and thus, the Zoning Amendment is void *ab initio*.

Request for Declaratory Judgment and Injunctive Relief

341. Residents incorporate the preceding paragraphs as if fully restated herein.

342. There is an existing and active dispute concerning the authority of the Board to amend the zoning ordinance without complying with its statutory enabling authority which affects the Residents' property rights, safety, health, morals, and general welfare.

WHEREFORE, for the foregoing reasons, Residents respectfully request this Court grant the foregoing and following relief:

- a. Declare the Zoning Amendment arbitrary and capricious and not bearing "reasonable or substantial relation to the public health, safety, morals, or general welfare."
- b. Declare the Board and Planning Commission failed to initiate by resolution or motion the Zoning Amendment under Virginia Code § 15.2-2286(A)(7).
- c. Declare the Board failed to properly advertise the Zoning Amendment under Virginia Code §§ 15.2-2204 and 15.2-2285.
- d. Declare that the Board failed to advertise a proposed action as required by Virginia Code § 15.2-2204.
- e. Declare the Board did not reasonably consider the factors under Virginia Code § 15.2-2284 when amending the zoning ordinance.
- f. Declare the Board improperly delegated legislative authority without suitable regulations and safeguards under Virginia Code § 15.2-2286.

- g. Declare the Board violated Virginia Code § 15.2-2288.1 by requiring a special exception to develop a by-right use.**
- h. Declare the Board violated Virginia Code § 15.2-961 by exceeding the maximum tree canopy percentage requirement.**
- i. Declare the Board and the Planning Commission violated Virginia Code § 2.2-3707 by failing to comply with VFOIA disclosure requirements.**
- j. Declare the Zoning Amendment in violation of Virginia law under Virginia Code §§ 15.2-2204, 15.2-2284, 15.2-2285, 15.2-2286, 15.2-2288.1, 15.2-961 and/or 2.2-3707.**
- k. Declare the Zoning Amendment void *ab initio* for the Board's failure to comply with Virginia Code §§ 15.2-2204, 15.2-2284, 15.2-2285, 15.2-2286, 15.2-2288.1, 15.2-961 and/or 2.2-3707.**
- l. Enjoin the Zoning Amendment from going into effect July 1, 2023, because it is void *ab initio*.**
- m. Enjoin the Board from implementing or taking any action under the Zoning Amendment until the Board complies with its enabling authority pursuant to Virginia Code §§ 15.2-2200-2316 and VFOIA requirements pursuant to Virginia Code § 2.2-3700-3714.**
- n. Enjoin the Board from issuing permits for or approving applications of EHO Development pursuant to the Zoning Amendment.**
- o. Award attorney fees for violations of Virginia Code § 2.2-3707 pursuant to Virginia Code § 2.2-3713(D).**

Respectfully Submitted,

MARCIA L. NORDGREN,
NORMAN TYLER, ALEXANDER
MACKENZIE, ROBERT P.
PARKER, MONA C. PARKER,
KATHERINE PERNIA,
MARGARET P. FIBEL, RICARDO
J. ROZADA, MABEL GABIG,
AND ERIC ACKERMAN
By Counsel

Date: April 20, 2023

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Norman Tyler, Alexander MacKenzie,

Robert P. Parker, Mona C. Parker,

Katherine Pernia, Margaret P. Fibel,

Ricardo J. Rozada, Mabel Gabig, and Eric Ackerman

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.



Name: Marcia L. Nordgren

Date: April 18, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Norman Tyler

Name: Norman Tyler

Date: April 18, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.




Name: Alexander MacKenzie

Date: April 18, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

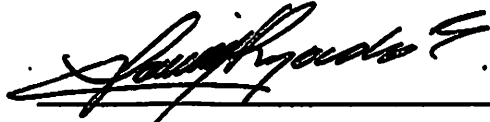
A handwritten signature in blue ink that reads "Katherine Pernia". The signature is written in a cursive style and is positioned above a horizontal line.

Name: Katherine Pernia

Date: April 19, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Ricardo J. Rozada", is written over a solid horizontal line.

Name: Ricardo J. Rozada

Date: April 18th, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Margaret P. Fibel

Name: Margaret P. Fibel

Date: April 19, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

A handwritten signature in black ink that reads "Eric Ackerman". The signature is written in a cursive style with a large, looping initial "E".

Name: Eric Ackerman

Date: April 19, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.



Name: Robert P. Parker

Date: April 19, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

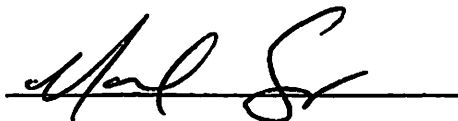
Mona Parker

Name: Mona C. Parker

Date: April 19, 2023

Verification

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Mabel Gabig", is written over a solid horizontal line.

Name: Mabel Gabig

Date: April 19, 2023

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ARLINGTON, VIRGINIA PUBLIC NOTICE

NOTICE IS HEREBY GIVEN THAT THE PLANNING COMMISSION OF ARLINGTON CO., VA, on March 6, 2023, at 2100 Clarendon Boulevard, Suite 307, Arlington, Virginia 22201 in a meeting at 7:00 P.M. or as soon thereafter as matters may be heard, will consider the following cases, after offering the public an opportunity to be heard in a public hearing. The public may attend the meeting in person or virtually via live stream at www.arlingtonva.us, YouTube and local cable stations on Comcast 25 & 1085 and Verizon FiOS 39 & 40. To sign-up to speak at the meeting either in person or virtually, visit <https://www.arlingtonva.us/Government/Commissions-and-Advisory-Groups/Planning-Commission/Speaker> or call 703-228-0095, for further assistance.



Speaker requests can be completed and submitted to the Clerk at least one week in advance of the meeting. To guarantee public testimony, registration must be completed at least 24 hours in advance of the meeting.

NOTICE IS HEREBY GIVEN THAT THE COUNTY BOARD OF ARLINGTON CO., VA, on March 18, 2023, at 2100 Clarendon Boulevard, Suite 307, Arlington Virginia 22201 in a meeting at 9:00 A.M. or as soon thereafter as matters may be heard, will consider the following cases, after offering the public an opportunity to be heard in a public hearing.

Sign up to speak in advance at <https://www.arlingtonva.us/Government/County-Board> or call 703-228-3130 between 8am and 5pm starting the week before the meeting. Members of the public may participate virtually and in person. Speakers sign up will also be available in-person on the day of the meeting. The meeting will be available via live stream at www.arlingtonva.us and local cable stations on Comcast 25 & 1085 and Verizon FiOS 39 & 40. For reasonable accommodation requests, contact the County Board office at countyboard@arlingtonva.us or 703-228-3130.

NOTE: Copies of proposed plans, ordinances, amendments and applications, and related planning case materials may be examined by appointment in the Planning Division Office, Suite 700 , 2100 Clarendon Blvd., Arlington, VA. Appointments may be scheduled by contacting the Planning Division at (703) 228-3525 or cphd@arlingtonva.us; or text of proposed County Code amendments may be examined in the County Board Clerk's Office, Suite 300; 2100 Clarendon Blvd., Arlington, VA by contacting staff at (703) 228-3130 Mon. – Fri. 8am-5pm. The term Site Plan in this notice refers to a Special Exception Site Plan as defined in the Arlington County Zoning Ordinance and is not the same as an engineering site plan or construction plans submitted in satisfaction of other codes or ordinances. The terms ACZO and GLUP means Arlington County Zoning Ordinance and General Land Use Plan, respectively.

THE FOLLOWING CASE TO BE HEARD BY THE PLANNING COMMISSION ONLY:

SUBJECT: Proposed resolution pursuant to Code of Virginia §15.2-2286 for consideration to amend Department of Community Planning, Housing and Development (DCPHD) fees in the Zoning Fee Schedule to include a 5.2% inflationary increase, a 6%

increase to the indirect cost surcharge associated with Inspection Services fees, the establishment of a 21% indirect cost surcharge associated with Zoning fees, and to address technical corrections associated with plumbing fees and a fee exemption.

THE FOLLOWING CASES TO BE HEARD BY PLANNING COMMISSION AND COUNTY BOARD:

Adoption of amendments to the General Land Use Plan and Arlington County Zoning Ordinance to support expanded housing options resulting from the Missing Middle Housing Study.

GP-357-23-1 GLUP Amendment to establish land use goals and policies to support a wider range of housing options in lower density residential neighborhoods, to update the description of planning history in Arlington County, and to amend the description of typical uses in areas designated "Low" Residential on the GLUP map to include a range of housing types.

ZOA-2023-02 An ordinance to amend, reenact, and recodify the ACZO, including Articles 3, 10, 12, 13, 14, 15, 16, and 18, to establish regulations for Expanded Housing Option Development (EHO), which would allow for up to 6 dwelling units in a building, for properties zoned R-20, R-10, R-8, R-6, or R-5, including standards for applicability, uses, bulk, coverage, placement, site and lot area and width, building height, gross floor area, accessory uses, site development standards, parking, and signs, provisions to restrict the Board of Zoning Appeals from granting use permits that allow modification of placement requirements, provisions for an annual limit on EHO permits, special exception standards for sites with an area of one acre or greater, provisions for nonconformities for EHO development, provisions for nonconforming two-family dwellings zoned R-5 or R-6, dimensional requirements for required parking areas for one-family, two-family, and EHO development, and revisions to the definition of a duplex.

ZOA-2023-03 An ordinance to amend, reenact, and recodify ACZO Articles 3, 4, 5, 6, 7, 8, 11, 12, and 18 as follows:

- To permit stormwater management (SWM) facilities and other types of minor utilities in the S-3A, S-D, and P-S zoning districts;
- To allow SWM facilities to be located within required setbacks;
- To increase the maximum height of fencing for SWM facilities and for publicly operated parks and open spaces to 8 feet;

- To establish a maximum height of 14 feet for flood walls;
- To allow certain types of accessory structures to be located within required setbacks from any street in parks and similar public spaces;
- To permit fencing associated with SWM facilities and parks and similar public spaces greater than 4 feet in height to encroach into a required street setback;
- To establish use standards for fences and walls associated with publicly operated parks and open spaces, including locations proximate to sidewalks that are less than 5 feet wide, the use of open mesh type materials for fences up to 8 feet in height, and a maximum height of 8 feet for retaining walls.
- To exclude handrails and guardrails from the calculations for maximum height for a wall;
- To establish use standards for the location and enclosure of pumps and backup generators for SWM facilities;
- To list stormwater pumping stations and flood walls as examples of minor utilities in the Utilities use category (§12.2.4.K);
- To enable County Board modification through use permit approval for the aforementioned use standards and for the maximum height of a flood wall;
- To incorporate references to use standards for utilities referenced in §12.4.9 in the ACZO's use tables;
- To establish a definition for flood walls; and,
- To make additional editorial changes for improved clarity.

THE FOLLOWING CASES TO BE HEARD BY COUNTY BOARD ONLY:

SITE PLAN AMENDMENTS:

SPLA22-00039 ML Century I LLC and ML Century II LLC to convert office space to retail use, in the C-O zoning district under ACZO §7.13, & §15.5. Property is approximately 87,120 sq. ft.; located at 2450 Crystal Drive & 2461 S. Clark Drive (RPC# 34-020-034, -035, -287). Modifications of zoning ordinance requirements include: parking and other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP "High" Office-Apartment-Hotel, Crystal City Coordinated Redevelopment District (GLUP Note #1); Crystal City Sector Plan.

SPLA21-00042/UPER21-00042 ASC-Arlington Real Estate, LLC for a site plan amendment to SP #72 and a use permit to permit permanent vehicle sales and service use in the C-O-2.5 zoning district under ACZO §7.12 & §15.5. Property is approximately 35,598 sq. ft.; located at 585 N. Glebe Road (RPC# 14-061-074). Modifications of zoning ordinance requirements include: permit on-site improvements as shown, and allow tree preservation with no screening wall or fence along N. Quincy Street; other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP “Medium” Office-Apartment-Hotel and “North Quincy Street Coordinated Mixed-Use District” (Note 14); North Quincy Street Plan Addendum.

SPLA22-00061 South Eads VA Partners, LLC for a site plan amendment to SP #337 to amend conditions associated with the renovation of the existing residential building, streetscape and landscaping in the RA-H-3.2 zoning district under ACZO §7.5 & §15.5. Property is approximately 44,182 square feet; located at 1331 S. Eads Street (RPC# 35-001-374). Applicable Policies: GLUP: “High” Office-Apartment-Hotel and Crystal City Coordinated Redevelopment District (Note #1); Crystal City Sector Plan.

SPLA22-00062 South Eads VA Partners, LLC for a site plan amendment to SP #160 to amend conditions associated with the renovation of the existing residential building and landscaping in the RA-H-3.2 zoning district under ACZO §7.5 & §15.5. Property is approximately 67,106 square feet; located at 1221 S. Eads Street (RPC# 35-001-376). Modifications of zoning ordinance requirements include: other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP: “High” Office- Apartment-Hotel and Crystal City Coordinated Redevelopment District (Note #1); Crystal City Sector Plan.

SPLA22-00064 Paris Associates Limited Partnership for a site plan amendment to SP #26 to modify the parking ratio for the below-grade parking garage in the C-O-Rosslyn zoning district under ACZO §7.15 & §15.5. Property is approximately 128,578 sq. ft.; located at 1601, 1611, and 1621 N. Kent St. (RPC# 16-039-033). Modifications of zoning ordinance requirements include: parking and other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP “High” Office-Apartment-Hotel; Rosslyn Coordinated Redevelopment District (Note #15); Rosslyn Sector Plan.

SPLA23-00002 Brookfield Properties for a site plan amendment to SP #105 to allow a vehicle rental establishment in the C-O-2.5 zoning district under ACZO §7.12 & §15.5. Property is approximately 107,063 sq. ft.; located at 601 12th Street South (RPC# 35-004-006). Modifications of zoning ordinance requirements include: required office parking and other modifications as necessary to achieve the proposed development plan. Applicable Policies: "High" Office-Apartment-Hotel; Pentagon City Coordinated Redevelopment District (Note #4); Pentagon City Sector Plan.

SPLA23-00003 Brookfield Properties for a site plan amendment to SP #105 to allow a vehicle rental establishment in the C-O-2.5 zoning district under ACZO §7.12 & §15.5. Property is approximately 105,422 sq. ft.; located at 701 12th Street South (RPC# 35-004-004). Modifications of zoning ordinance requirements include: required office parking and other modifications as necessary to achieve the proposed development plan. Applicable Policies: "High" Office-Apartment-Hotel; Pentagon City Coordinated Redevelopment District (Note #4); Pentagon City Sector Plan.

SPLA23-00004 2000-2001 S. Bell, L.L.C. for a phased development site plan amendment to SP#454 in the C-O Crystal City zoning district under ACZO §7.16 & §15.5. Located at 2050 and 2051 S. Bell Street (RPC# 34-020-283, -284, 34-020-281 part, and 34-020-268 part). Modifications of zoning ordinance requirements include: other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP "High" Office-Apartment-Hotel and Crystal City Coordinated Redevelopment District (Note 1); Crystal City Sector Plan.

SPLA23-00006 2000-2001 S. Bell, L.L.C. for a site plan amendment to SP#458 in the C-O Crystal City zoning district under ACZO §7.16 & §15.5. Property is approximately 99,904 sq. ft.; located at 2050 and 2051 S. Bell Street (RPC# 34-020-283, -284, 34-020-281 part, and 34-020-268 part). Modifications of zoning ordinance requirements include: other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP "High" Office-Apartment-Hotel and Crystal City Coordinated Redevelopment District (Note 1); Crystal City Sector Plan.

SPECIAL EXCEPTION USE PERMITS:

UPER23-00001 Steven Kameny and Jennifer Hanely for a use permit amendment to U-3039-02-1 for a deck replacement and expansion on Lot 2 of a Unified Residential Development in the R-5 zoning district under ACZO §5.7 & §15.4. Property is approximately 4,051 sq. ft.; located at 2007 N. Pollard St. (RPC# 06-026-024).

Modifications of zoning ordinance requirements include: setbacks, and other modifications as necessary to achieve the proposed development plan. Applicable Policies: GLUP: "Low" Residential; Lee Highway-Cherrydale Special Revitalization District (Note 8); Cherrydale Neighborhood Conservation Plan (2005).

UPER23-00002 Brookfield Properties for a use permit for a vehicle rental establishment in the C-O-2.5 zoning district under ACZO §7.12 & §15.4. Property is approximately 107,063 sq. ft.; located at 601 12th Street South (RPC# 35-004-006). Applicable Policies: "High" Office-Apartment-Hotel; Pentagon City Coordinated Redevelopment District (Note #4); Pentagon City Sector Plan.

UPER23-00003 Brookfield Properties for a use permit for a vehicle rental establishment in the C-O-2.5 zoning district under ACZO §7.17 & §15.4. Property is approximately 105,422 sq. ft.; located at 701 12th Street South (RPC# 35-004-004). Applicable Policies: "High" Office-Apartment-Hotel; Pentagon City Coordinated Redevelopment District (Note #4); Pentagon City Sector Plan.

UPER23-00004 McDonald's USA LLC for a use permit for a drive-through window at a restaurant in the C-2 zoning district under ACZO §7.12 & §15.4. Property is approximately 33,229 sq. ft.; located at 4834 Langston Boulevard (RPC# 07-006-002, -003, -004). Applicable Policies: GLUP "Low" Residential.

THE FOLLOWING ARE USE PERMIT AND SITE PLAN REVIEWS:

FOR ONE YEAR:

SP220-U-21-1 Ladybug Academy, LLC for a use permit for a childcare center for up to 76 children under ACZO §7.11 and §15.4. Property is approximately 5,486 sq. ft.; located at 2500, 2514, 2522, 2530 Wilson Boulevard (RPC #18-007-006, -008, -009, -010, -011, -012, -021, -022, -029, and -030). Applicable Polices: GLUP "Low" Office-Apartment-Hotel.

SP122-U-21-1 Northeastern University for a use permit for a college/university use in the C-O zoning district under ACZO §7.13, and §15.4. Property is approximately 411,679 square feet; located at 1300 17th St. N. (RPC# 17-003-031, 17-003-032). Applicable policies: GLUP "High" Office-Apartment-Hotel; Rosslyn Coordinated Redevelopment District (Note #15); and Rosslyn Sector Plan.

U-3327-12-1 Field to Table, Inc. for use permit for an open-air market in the S-3A zoning district under ACZO §12.5.17 and §15.4. Property is approximately 473,932 sq. ft.; located at 1644 McKinley Rd. (RPC# 10-022-030). Applicable Policies: GLUP "Public".

U-3606-21-1 Clarendon Alliance for a use permit for an open-air market in the C-O zoning district under ACZO §7.13 and §15.4. Property is approximately 77,000 sq. ft.; located at 2100 Clarendon Boulevard (RPC# 18-004-065, -067). Applicable Policies: GLUP “Public”, “High” Residential and “High” Office-Apartment-Hotel; and Courthouse Square Special District (Note #26); Courthouse Sector Plan Addendum.

U-3607-21-1 Veritas Collegiate Academy for use permit for a private school with up to 25 students in the R-5 zoning district under ACZO §5.7 and §15.4. Property is approximately 33,600 sq. ft.; located at 935 23rd Street S. (RPC# 36-032-001, -013, and 023). Applicable Policies: GLUP “Low” Residential.

Kendra Jacobs,

Clerk to the County Board

Publication Dates: February 21st, 2023

February 28th, 2023

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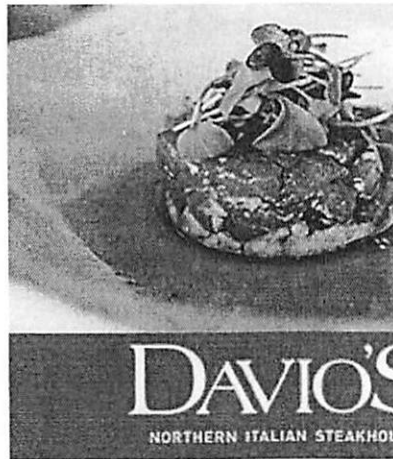
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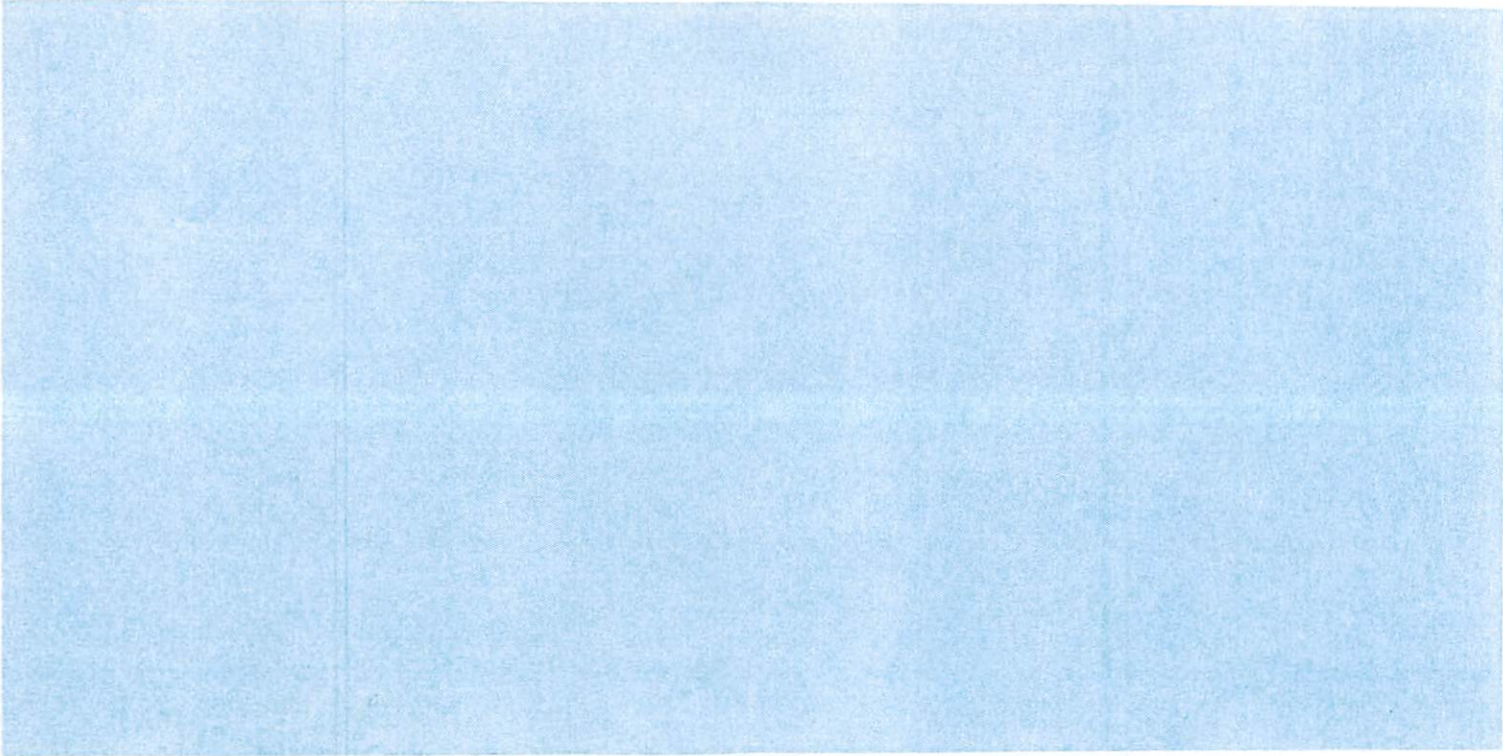
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From: Arlington County FOIA Center <arlingtoncountyva@govqa.us>
Sent: Wednesday, March 1, 2023 1:00 PM
To: mnordlaw@aol.com
Subject: [Records Center] County Records Request :: C001939-022223

--- Please respond above this line ---



RE: County Records Request of February 22, 2023, Reference # C001939-022223

Dear Marcia Nordgren,

The Arlington County received a public records request from you on February 22, 2023. Your request mentioned:

All public documents related to the County Board's 2019 initiating resolution for the 'Missing Middle' Zoning Amendments or the 'Missing Middle Housing Study'



Arlington County has reviewed its files and has located responsive records to your request. Please log in to the FOIA Center at the following link to retrieve the responsive records. Per Staff, Zoning Ordinance amendments have not yet been passed or adopted -and have only been advertised for a March hearing.

[County Records Request - C001939-022223](#)

For questions or additional information, please reply to this email.

Sincerely,

Rachel Healy, FOIA Officer
Arlington County - Office of the County Attorney
2100 Clarendon Blvd., Suite 403 Arlington, VA 22201
(C) 703.843.0687 (T) 703.228.3100

To monitor the progress or update this request please log into the [FOIA Center](#)



A Regular Meeting of the County Board of Arlington County, Virginia, held in Room 307 of 2100 Clarendon Blvd. thereof on December 17, 2019 at 3:00 PM.

PRESENT: Christian Dorsey, Chair
Libby Garvey, Vice Chair
Katie Cristol, Member
Erik Gutshall, Member
Matt de Ferranti, Member

ABSENT: None.

ALSO PRESENT: Mark Schwartz, County Manager
Stephen MacIsaac, County Attorney
Kendra Jacobs, County Clerk

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COUNTY BOARD RECESSED MEETING

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I. COUNTY BOARD BUSINESS AND REPORTS

• County Board Reports

Christian Dorsey presented the 2019 DESIGN Arlington Awards.

Christian Dorsey presented the Biophilic City Resolution.

Following a motion by CHRISTIAN DORSEY, Chair, seconded by KATIE CRISTOL, Member, the County Board adopted the Biophilic Cities Resolution.

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

Christian Dorsey issued a proclamation in recognition of World Aids Day.

Christian Dorsey issued a proclamation in recognition of Sharon Bulova.

Christian Dorsey issued a proclamation in recognition of Kojo Nnamdi.

Christian Dorsey gave a presentation of the National League of Cities Conference.

• Appointments

On a motion by CHRISTIAN DORSEY, Chair, the Board made the following appointments:

Commission on Aging
Appoint Chloe Burke for a term ending December 31, 2022

Commission for the Arts
Appoint Jordan Lewis for a term ending December 31, 2022

Partnership for Children, Youth and Families
Appoint Megan Mack for a term ending December 31, 2021

Human Rights Commission
Appoint Daniel Githens for a term ending December 31, 2022

Teen Network Board

- Appoint Stephanie Achugamonu for a term ending June 30, 2020
- Appoint Jimmy Carcamo Campos for a term ending June 30, 2020
- Appoint Peyton Fern for a term ending June 30, 2020
- Appoint Anna Trainum for a term ending June 30, 2020
- Appoint Georgia Dean for a term ending June 30, 2020
- Reappoint Jason Ho for a term ending June 30, 2020
- Reappoint Yasmina Mansour for a term ending June 30, 2020
- Reappoint William McLennan for a term ending June 30, 2020
- Reappoint Gillian Wagner for a term ending June 30, 2020
- Reappoint Aden Selassie for a term ending June 30, 2020
- Reappoint Ava Boston for a term ending June 30, 2020
- Reappoint Kate Allen for a term ending June 30, 2020
- Reappoint Philip Wince for a term ending June 30, 2020
- Reappoint Marshal Maguire for a term ending June 30, 2020
- Reappoint Paul Cuento for a term ending June 30, 2020
- Reappoint Sophie Snider for a term ending June 30, 2020
- Reappoint Jacke Kabiri for a term ending June 30, 2020

Urban Forestry Commission

- Appoint Noreen Hannigan for a term ending December 31, 2022
- Reappoint Patricia Norland for a term ending December 31, 2022

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows:
CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

• Regional Reports

Libby Garvey shared a report on the Council of Governments Emergency Preparedness Council's Table Top exercise on emergency preparedness.

Christian Dorsey shared an update on the proposed WMATA budget.

Christian Dorsey discussed the Council of Governments Award recognizing Victor Hoskins.

• County Manager Reports

Presentation on Census 2020 outreach and impacts

Presentation of the Comprehensive Annual Financial Report

Presentation of the Annual Report

Update on the Arlington Racial Equity Program

Presentation on the ART Operator Transition

Presentation on the Four Mile Run Valley Arts & Industry District

Presentation on the Missing Middle Housing Initiative

Presentation of the annual End of Year Video

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CLOSED MEETING

On a motion by CHRISTIAN DORSEY, Chair, seconded by Erik Gutshall, Member, the County Board convened a closed meeting, as authorized by Virginia Code 2.2-3711.A.3, 7 and 8 for the following purposes:

A personnel matter concerning candidates for appointment by the County Board;

Two matters involving the acquisition of real property for public purposes, where, if discussed in an open meeting, the Board's negotiating strategy and bargaining position would be adversely affected;

Consultation with the County Attorney and necessary staff concerning the terms and conditions of a grant of donated services from the Annie E. Casey Foundation;

Consultation with the County Attorney and necessary staff concerning the legal bases for the use of public, education, and government funds obtained from cable tv franchises, and the County's support of Arlington Independent Media; and

Consultation with the County Attorney concerning the legal basis for and enforceability of Executive Order 13880.

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

CERTIFICATION OF CLOSED MEETING DISCUSSIONS

A motion was made by CHRISTIAN DORSEY, Chair, seconded by KATIE CRISTOL, Member, by a vote of 5 to 0 by roll call, the voting recorded as follows:

<u>MEMBER</u>	<u>VOTE</u>
Mr. Dorsey	Aye
Ms. Garvey	Aye
Ms. Cristol	Aye
Mr. Gutshall	Aye
Mr. De Ferranti	Aye

the Board certified that, at the just concluded closed session: (1) only public business matters lawfully exempted from open meeting requirements under Chapter 37, Title 2.2 of the Code of Virginia; and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered by the Board.

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II. CONSENT ITEMS (Items removed from the Consent Agenda on Saturday, December 14, 2019).

- 12. U-3515-18-1 Use Permit Amendment to amend Conditions #5 and #7 to modify the approved plans and eliminate the off-site parking requirement for a child care center for up to 235 children (The Children's School); located at 4770 Lee Highway (RPC #07-006-248).

Following a duly advertised public hearing, at which there were speakers, a motion was made by LIBBY GARVEY, Vice Chair, seconded by ERIK GUTSHALL, Member, to approve the use permit amendment to amend conditions #5 and #7 to modify the approved plans and eliminate the off-site parking requirement for a child care center for up to 235 children (The Children's School) located at 4770 Lee Highway (RPC #07-006-248).

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

The amended conditions read as follows:

- 5. The applicant agrees to submit a traffic management plan (TMP) and obtain the review and approval of such plan by the Zoning Administrator. This plan shall demonstrate how drop-off and pick-up procedures will be managed at the site to mitigate potential queuing on Lee Highway or cause a hazard to pedestrians. The applicant agrees that the plan shall be approved only if it includes:
 - a. The number and location of parking spaces within the on-site underground parking garage dedicated for staff of The Children’s School;
 - b. ~~Written agreement that the applicant has the right to use the requisite number of parking spaces required for child care staff in the off-site surface parking lot located at 4822 Lee Highway (RPC #07-006-005). The applicant further agrees that the off-site parking spaces will be available for staff persons of the child care center between the hours of operation specified for the facility.~~
 - c. The number and location of parking spaces within the on-site underground parking garage dedicated for parent drop-off and pick-up procedures.
 - d. Operational procedures for drop-off and pick-up of children attending The Children’s School.

The parking spaces within the on-site underground parking garage shall comply with all requirements set forth in all applicable ordinances and regulations, including, by way of illustration and not limitation, those administered by Section 14 of the Arlington County Zoning Ordinance. The TMP shall demonstrate that the child care center meets the parking requirements of the Arlington County Zoning Ordinance (1 parking space/employee). The Zoning Administrator’s approval of the TMP shall be obtained prior to issuance of a certificate of occupancy for the child care use.

- 7. The applicant agrees that the design and layout of The Children’s School shall substantially conform with the conceptual drawings submitted as part of this application and dated May 17, 2018 December 2, 2019, with the exception that the outdoor children’s garden on the eastern side of the building along Lee Highway may be replaced with a planted area enclosed by a seat wall or other enclosure not including a fenced treatment. Other minor modifications of the approved drawings may be made through administrative change approved by the Zoning Administrator.

[#12-Staff Presentation](#)

[Board Report #12](#)

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The following items to be heard no earlier than at 6:45 p.m.

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III. REGULAR HEARING ITEMS

- 44. ZOA-2019-11. Amendments to Articles, 4, 6, 7, 12, 14, and 18 of the Arlington County Zoning Ordinance (ACZO) to permit the establishment of assisted living facilities, independent living facilities, nursing homes, and continuing care retirement communities in 18 zoning districts; to establish new definitions for undefined terms and revise existing definitions; to establish new minimum parking standards for elder care uses; to add site plan criteria and findings for elder care uses to the Residential Use Standards; to revise and update the terminology used in the household living and group living residential use categories; and to make other editorial changes for purposes of clarity.

Following a duly advertised public hearing, at which there were speakers, a motion was made by KATIE CRISTOL, Member, seconded by LIBBY GARVEY, Vice Chair, to adopt the attached ordinance to amend, reenact, and recodify Articles 4, 6, 7, 12, 14, and 18 of the Arlington County Zoning Ordinance (ACZO) to permit the establishment of assisted living facilities, independent living facilities, nursing homes, and continuing care retirement communities in 14 zoning districts; to establish new definitions for undefined

terms and revise existing definitions; to establish new minimum parking standards for elder care uses; to add site plan criteria and findings for elder care uses to the Residential Use Standards; to revise and update the terminology used in the household living and group living residential use categories; and to make other editorial changes for purposes of clarity as shown in Attachment 1; and to adopt the attached resolution to authorize advertisement of public hearings by the Planning Commission on January 13, 2020 and by the County Board on January 25, 2020 to consider proposed amendments to Articles 7 and 12 of the ACZO, as shown in Attachment 4, to permit elder care uses in the C-3 zoning district on lots within the Clarendon Revitalization District as designated on the General Land Use Plan.

In addition, as part of the motion, the Board directed the County Manager to undertake an interdepartmental review of elder care affordability, with a report on the projected timeline in February/March. Preliminarily, the County Board expects that the project's scope will include a needs assessment, policy review, and analysis of economic factors, such as housing, residential and healthcare services costs related to long-term elder care, consultations with elder care providers and nearby jurisdictions already implementing elder care affordability standards, and identification of tools to facilitate and incentivize affordability in elder care (e.g. assisted living, nursing homes, etc.) site plan projects.

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

[#44-Staff Presentation](#)

[Board Report #44](#)

[#44-Letter from the Planning Commission \(Posted 12-12-2019\)](#)

[#44-Letters from the Public \(Updated 12-16-2019\)](#)

[Addendum – Ordinances, Amendments, Attachments 1 and 2](#)

- 45. Increase the authorization for Contract No. 18-020 to Fort Myer Construction Corporation for construction of the Columbia Pike Street Improvement and Utility Undergrounding Project between the Four Mile Run Bridge and South Jefferson Street.

Following a duly advertised public hearing, at which there were speakers, a motion was made by MATT DE FERRANTI, Member, seconded by CHRISTIAN DORSEY, Chair, to authorize an increase to Contract No. 18-020 from \$17,501,280 to \$23,001,280 which is a \$5,500,000 increase to the original contract amount. The original contract amount was of \$14,584,400 and the original contingency was \$2,916,880. The new total contract authorization recommended is \$23,001,280, including the previously authorized contingency of \$2,916,880.

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

[#45-Staff Presentation](#)

[Board Report #45 \(Posted 12-13-2019\)](#)

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IV. ADDITIONAL ITEMS

- A. Deed of easement from Basil M. DeLashmutt, Jr., et al., to the County Board of Arlington County, Virginia conveying a permanent easement on a portion of the property located at 4200 Columbia Pike, Arlington, VA (RPC# 27-002-004).

- B. Deed of easement from Barcroft Number 6 Limited Partnership to the County Board of Arlington County, Virginia conveying a permanent easement on a portion of the property located at 4202 12th Road S., Arlington, VA (RPC# 27-002-005).

Following a duly advertised public hearing, at which there were speakers, a motion was made by LIBBY GARVEY, Vice Chair, seconded by ERIK GUTSHALL, Member, to:

- A. Accept the Deed of Easement ("Deed of Easement"), attached as Attachment 1, from Basil M. Delashmutt, Jr., et al. (the "Owner"), granting to the County Board of Arlington County, Virginia a permanent easement for public sanitary sewer purposes on a portion of the property located at 4200 Columbia Pike, Arlington, VA (RPC# 27-002-004), to authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to accept the Deed of Easement, on behalf of the County Board, subject to approval as to form of the Deed of Easement by the County Attorney, and to accept the sum of Thirty Thousand Dollars (\$30,000.00) from Pillars Barcroft, LLC for maintenance and relocation of the public sanitary sewer, and authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute a Sanitary Sewer Line Maintenance and Relocation Agreement, providing for deposit and use of such funds, subject to approval as to form of said agreement by the County Attorney.
- B. Accept the Deed of Easement (the "Deed of Easement"), attached as Attachment 1, from Barcroft Number 6 Limited Partnership (the "Owner"), granting to the County Board of Arlington County, Virginia a permanent easement for public sanitary sewer purposes on a portion of the property located at 4202 12th Road S., Arlington, VA (RPC# 27-002-005), and to authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to accept the Deed of Easement, on behalf of the County Board, subject to approval as to form of the Deed of Easement by the County Attorney.

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

[Additional Item-A \(Posted 12-16-2019\)](#)

[Additional Item-B \(Posted 12-16-2019\)](#)

- C. Memorandum of Agreement between the County Board and the Annie E. Casey Foundation

On a motion by CHRISTIAN DORSEY, Chair, seconded by LIBBY GARVEY, Vice Chair, the County Board approved the Memorandum of Agreement between the County Board of Arlington County and the Annie E. Casey foundation for the donation of services by the foundation relating to the introduction of Restorative Justice practices in the County, and authorized the County manager or his designee to execute the Memorandum of Agreement on behalf of the County Board.

The motion was adopted and carried by a vote of 5 to 0, the voting recorded as follows: CHRISTIAN DORSEY, Chair - Aye, LIBBY GARVEY, Vice Chair - Aye, KATIE CRISTOL, Member - Aye, ERIK GUTSHALL, Member - Aye, MATT DE FERRANTI, Member - Aye.

[Addendum - Memorandum of Agreement](#)

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Without objection, at 9:06 PM, the County Board Meeting of December 17, 2019 was adjourned.

ATTEST:

Christian Dorsey, Chairman

Kendra Jacobs, Clerk
Approved: January 25, 2020

January 25th, 2023

A Carryover Meeting of the County Board of Arlington County, Virginia, held in Room 307 of the Bozman Government Center thereof on Wednesday, January 25th, 2023, at 4:00 PM.

PRESENT: Christian Dorsey, Chair
Libby Garvey, Vice-Chair
Takis Karantonis, Member
Matt de Ferranti, Member
Katie Cristol, Member

ALSO PRESENT: Mark Schwartz, County Manager
MinhChau Corr, County Attorney
Kendra Jacobs, County Board Clerk

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COUNTY BOARD CARRYOVER MEETING

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I. REGULAR HEARING ITEMS

33. Request to advertise public hearings by the Planning Commission and County Board to consider the following actions to support expanded housing choice resulting from the Missing Middle Housing Study:

- A. Amendments to the General Land Use Plan (GLUP) Booklet and Map to establish land use goals and policies to support a wider range of housing options in lower density residential areas (Attachment 2 of the staff report); and
- B. An ordinance to amend, reenact, and recodify the Arlington County Zoning Ordinance (ACZO), including Articles 3, 10, 12, 13, 14, 15, 16, and 18, to establish regulations for Expanded Housing Option Development for properties zoned R-20, R-10, R-8, R-6, or R-5 (Attachment 3 of the staff report).

After a duly advertised public hearing, at which there were speakers a motion was made by KATIE CRISTOL, Member, seconded by CHRISTIAN DORSEY, Member, to Adopt the resolution authorizing advertisement of public hearings by the Planning Commission on March 6, 2023, and the County Board on March 18, 2023, to consider the following GLUP and ACZO amendments to implement policies and regulations relating to the Missing Middle Housing Study, in furtherance of the goals of the Affordable Housing Master Plan:

- A. Amendments to the General Land Use Plan (GLUP) Booklet and Map to establish land use goals and policies to support a wider range of housing options in lower density residential areas; and
- B. An ordinance to amend, reenact, and recodify the Arlington County Zoning Ordinance (ACZO), including Articles 3, 10, 12, 13, 14, 15, 16, and 18, to establish regulations for Expanded Housing Option Development for properties zoned R-20, R-10, R-8, R-6, or R-5, inclusive of options 1A, 2 A-E, 3A, 4A and B, 5A,B,C and E, 6A, 7 A-C, 8 A and B, 9 A and B, 10 A and B, 11 A and B, and 12 A and B.

A motion to amend was then made by MATT DE FERRANTI, Member, seconded by LIBBY GARVEY, Member, to add the following option 2E to §10.4.4. Density and dimensional standards, relating to minimum site area:

OPTION 2E

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
<i>Transit-Proximate Sites</i>					
2 - 4 dwellings	<u>20,000</u>	<u>10,000</u>	<u>8,000</u>	<u>6,000</u>	<u>5,000</u>
<i>All Other Sites</i>					
2-4 dwellings	<u>20,000</u>	<u>10,000</u>	<u>8,000</u>	<u>6,000</u>	<u>5,000</u>
5 dwellings	<u>20,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>
6 dwellings	<u>20,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	<u>100</u>	<u>80</u>	<u>70</u>	<u>60</u>	<u>50</u>
Semi-detached	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>
Townhouses	<u>16</u>	<u>16</u>	<u>16</u>	<u>16</u>	<u>16</u>
Height, maximum (feet)	35				

1. Any expanded housing option use that is located entirely within the following distances to transit options shall be eligible for the minimum site areas indicated for Transit-Proximate Sites:
 - (a) 1/2 mile radius of a Metrorail station entrance.
 - (b) 1/4 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan.
2. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.
3. **Nonconforming Lots**
 - (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
 - (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to a minimum site area requirement of 12,000 square feet. Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, that are or located entirely within the transit distances set forth in §10.4.4.A.1 may be occupied by expanded housing option uses with up to 6 dwellings.

January 25th, 2023

The motion was adopted and carried by a vote of 3-2, the voting recorded as follows: Christian Dorsey, Chair – Nay; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Nay.

A motion to amend was then made by LIBBY GARVEY, Vice-Chair, seconded by CHRISTIAN DORSEY, Chair, to amend Option 6A of §10.4.6.F Site development standards concerning Landscaping to provide a range of up to 4 shade trees for sites with 2-4 units and a range of up to 8 shade trees for sites with 5-8 units.

The motion was adopted and carried by a vote of 5-0, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

A motion to amend was then made by KATIE CRISTOL, Member, seconded by CHRISTIAN DORSEY, Chair, to:

Amend option 7A of §10.4.7. Annual Limit on Permits, to read "The zoning administrator may approve not more than 58 permits for expanded housing option development in one calendar year."

Add new option 7C to §10.4.7. Annual Limit on Permits, that establishes a 3-year limit, and

Add a note to follow options 7A, 7B and 7C of §10.4.7. Annual Limit on Permits, to read "The method of distribution for the permits shall be determined by the County Board upon adoption of the ordinance."

The motion was adopted and carried by a vote of 4-1, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Nay; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

A substitute motion was then made by TAKIS KARANTONIS, Member, seconded by LIBBY GARVEY, Vice-Chair, to Amend new option 7C of §10.4.7. Annual Limit on Permits, to read "During calendar years 2023-2028, the zoning administrator may approve not more than 58 permits for expanded housing option development in one calendar year. The method of distribution for the 58 permits shall be approved by the County Board."

The substitute motion was adopted and carried by a vote of 3-2, the voting recorded as follows: Christian Dorsey, Chair – Nay; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Nay.

A motion to amend was then made by LIBBY GARVEY, Vice-Chair, seconded by TAKIS KARANTONIS, Member, to strike option 7B of §10.4.7. Annual Limit on Permits.

The motion failed by a vote of 2-3, the voting recorded as follows: Christian Dorsey, Chair – Nay; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Nay; Katie Cristol, Member – Nay.

A motion to amend was then made by MATT DE FERRANTI, Member, seconded by LIBBY GARVEY, Vice-Chair, to strike option 1B from §10.4.3. Uses.

The motion was adopted and carried by a vote of 3-2, the voting recorded as follows: Christian Dorsey, Chair – Nay; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Nay.

A motion to amend was then made by KATIE CRISTOL, Member seconded by LIBBY GARVEY, Member, to strike option 3B from §10.4.4. Density and dimensional standards concerning sites prohibiting expanded housing option development on any lot with an area of one acre or greater.

January 25th, 2023

The motion was adopted and carried by a vote of 5-0, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

A motion to amend was then made by TAKIS KARANTONIS, Member, seconded by MATT DE FERRANTI, Member, to strike option 5D from §10.4.6. Site development standards.

The motion was adopted and carried by a vote of 5-0, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

A motion to amend was then made by KATIE CRISTOL, Member, seconded by CHRISTIAN DORSEY, Chair, to strike option 6B from §10.4.6. Site development standards.

The motion was adopted and carried by a vote of 5-0, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

A motion to amend was then made by MATT DE FERRANTI, Member, seconded by TAKIS KARANTONIS, Member, to strike option 11C from §10.4.4. Density and dimensional standards, regarding maximum gross floor area.

The motion was adopted and carried by a vote of 3-2, the voting recorded as follows: Christian Dorsey, Chair – Nay; Libby Garvey, Vice-Chair – Nay; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

The main motion was then adopted and carried by a vote of 5-0, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

The proposed Ordinance reads as follows:

Draft Zoning Ordinance Amendment – Missing Middle Housing Study

...

- Proposed amendments are shown with bold underline to denote new text, and ~~bold strikethrough~~ to denote deleted text.
- Where multiple options for amendments are proposed for advertisement, these options are indicated in **red text**.
 - Option numbers from the January 13, 2023, RTA Draft have been retained. Due to the iterative nature of the draft review process, option numbers are not sequential and omit options that were not authorized for advertisement.
 - Notes in **red text** are explanatory and are not intended to be adopted as zoning text.
- New subsection §10.4 is shown with underline only, rather than bold underline, because all of the text is new.
- Where paragraphs are added or deleted, all subsequent paragraphs are renumbered accordingly, and all references throughout the Zoning Ordinance are updated accordingly.

...

1 **Article 3. Density and Dimensional Standards**

2 **§3.2. Bulk, Coverage and Placement Requirements**

3 **§3.2.6. Placement**

4 The following regulations shall govern the placement on a lot of any building or structure, or
5 addition thereto, hereafter erected, except as may be allowed by site plan approval or as
6 otherwise specifically provided in this Zoning Ordinance:

7 **A. Setbacks (required yards)**

8 **1. Setbacks from any street**

9 No structure shall be located closer to the centerline of any street or officially
10 designated street right-of-way (as defined in this zoning ordinance) than 50 percent of
11 the height of the building. For the purpose of determining setbacks, a limited access
12 highway shall be considered as an abutting lot and not as a street or street right-of-
13 way. Structures shall be set back from streets no less than as follows:

14 (a) ...

15 (e) For all one- and two-family dwellings, all expanded housing option
16 development subject to §10.4, and their accessory structures

17 No structure shall be located less than 25 feet from any street right-of-way line,
18 except that the distance between any street or officially designated street right-
19 of-way line and the front wall of a structure, with the exception of stoops and
20 covered or uncovered but unenclosed porches, may be reduced as follows:

- 21 (1) The distance shall be at least the average of the distances between the
- 22 street right-of-way line, and the edges of the front walls of existing
- 23 structures located on the frontage where the structure is proposed to be
- 24 located, subject to approval by the Zoning Administrator, of a plat showing
- 25 all existing structures located on the subject frontage;
- 26 (2) The distance shall be at least 15 feet, provided, however, that no parking
- 27 garage shall be located closer than 18 feet from the street right-of-way line;
- 28 and
- 29 (3) No structure located within 25 feet of a street right-of-way line shall exceed
- 30 2 ½ stories..

31 **2. Side and rear yards**

32 No structure shall be located closer to side or rear lot lines than as follows:

- 33 (a) ...
- 34 (b) **For all one-family dwellings, all expanded housing option development**
- 35 **subject to §10.4, and their accessory structures**
- 36 **10 feet, provided that one side yard may be reduced to eight feet. The aggregate**
- 37 **width of both side yards on any lot shall not be less than 30 percent of the required**
- 38 **width of the lot, provided that on interior lots no structure shall be located closer**
- 39 **than 25 feet from a rear lot line.**
- 40 (c) ...
- 41 (g) **Side yards for expanded housing option development**
- 42 **For the purpose of side yard regulations, a group of semidetached or townhouse**
- 43 **dwellings, subject to §10.4, shall be considered as one building occupying one lot.**
- 44

45 **Article 10. Unified, Cluster, and Housing Option**
46 **Developments**

47 **§10.1 Unified Residential Developments**

48 **§10.1.3. Minimum requirements**

49 Any unified residential development shall comply with the zoning requirements applicable to
50 the site and the following requirements, unless the County Board, after it finds that such
51 modifications will better accomplish the purposes and intent of §10.1.1, modifies some of
52 those requirements by use permit, as permitted in §10.1.5:

53 **A. Density**

54 The maximum number of dwelling units shall be determined by the County Board,
55 depending on the design and configuration of the development, up to a maximum
56 number arrived at by dividing the site area, together with the area of any part of the site
57 to be dedicated for public right-of-way, by the required minimum lot area of the district
58 applicable to the site, as specified in Article 5.

59 **§10.3 Residential Cluster Development**

60 **§10.3.5. Density**

61 The maximum number of dwelling units shall be determined by the County Board, depending
62 on the design and configuration of the development, up to a maximum number arrived at by
63 dividing the site area, together with the area of any parts of the site that have been dedicated
64 for public right-of-way, by the required minimum lot area of the district applicable to the site,
65 as specified in Article 5.

66 **§10.4. Expanded Housing Option Development**

67 **§10.4.1. Purpose**

68 The purposes of this §10.4 are to:

- 69 **A. Promote the creation of housing options suitable for meeting the current and future needs**
70 **of Arlington;**
- 71 **B. Provide opportunities to increase housing supply and the range of housing options, at**
72 **variety of price levels and sizes, available throughout Arlington;**
- 73 **C. Support environmental goals by encouraging more compact housing options, tree**
74 **conservation and planting, options for reduced on-site parking requirements, and housing**
75 **that can make use of existing infrastructure; and**
- 76 **D. Preserve and enhance valued neighborhood features, including walkability, opportunities**
77 **for connections to nature, and a low-rise pattern of development.**

78 **§10.4.2. Applicability**

79 Expanded housing option development is allowed within the R-20, R-10, R-8, R-6, and R-5
80 districts, subject to the issuance of a permit by the zoning administrator, and subject to the
81 provisions of this subsection.

82 **OPTION 10A**

83 **A. Exception**

84 Properties located entirely or partially within a planning district as identified on the
85 General Land Use Plan Map are not eligible for expanded housing option development.

86 **OPTION 10B**

This option would remove §10.4.2.A, so that R-5 to R-20 zoned sites within GLUP planning districts would be eligible for expanded housing option development. The County Board could also choose to designate specific planning districts that would be eligible or not eligible.

87

88 **§10.4.3. Uses**

89 Expanded housing option development shall include the following uses:

- 90 **A. Duplexes**
- 91 **B. Semidetached**
- 92 **C. Townhouses (maximum of 3 units)**
- 93 **OPTION 1A**
- 94 **D. Multiple-family (maximum of 6 units)**

95

96 **§10.4.4. Density and dimensional standards**

97 **A. By-right**

98 By-right development in accordance with §10.4 shall comply with the following standards,
 99 except as otherwise expressly allowed or stated in this ordinance.

100 **OPTION 2A**

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)	20,000	10,000	8,000	6,000	5,000
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)	35				

- 101 1. Semidetached dwelling and townhouse lots may be subdivided into individual
 102 dwelling lots of no less than 1,300 square feet each, provided that the deed of
 103 dedication shall commit sufficient common land to satisfy the total site area
 104 requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right
 105 to use the common land for:
- 106 (a) Parking, when not located on individual dwelling lots;
 - 107 (b) The right to use land dedicated to other common uses; and
 - 108 (c) for easements for access to public streets and other common area.
- 109 2. Nonconforming lots that were recorded under one ownership at the time of the
 110 adoption of this ordinance, as set forth in §16.1.1, may be occupied by any use
 111 allowed in §10.4.3.

112

OPTION 2B

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
2 - 4 dwellings	20,000	10,000	8,000	6,000	5,000
5 dwellings	20,000	10,000	9,000	9,000	9,000
6 dwellings	20,000	10,000	10,000	10,000	10,000
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)	35				

1. Semidetached dwelling and townhouse lots may be subdivided into individual
dwelling lots of no less than 1,300 square feet each, provided that the deed of
dedication shall commit sufficient common land to satisfy the total site area
requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right
to use the common land for:
- (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.

2. Nonconforming Lots

- (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
- (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to the following minimum site area requirements: 9,000 square feet for 5 units, 10,000 square feet for 6 units.

113

OPTION 2C

This option is a hybrid of Options 2A and 2B, which would set higher minimum site area standards only for sites located outside specified distances to transit options.

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
2 - 4 dwellings	20,000	10,000	8,000	6,000	5,000
5 dwellings	20,000	10,000	9,000	9,000	9,000
6 dwellings	20,000	10,000	10,000	10,000	10,000
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)	35				

- 1. Any expanded housing option use with 5 to 6 dwellings that is located entirely within the following distances to transit options shall be subject to the minimum site area for 2 to 4 dwellings:
 - (a) 3/4 mile radius of a Metrorail station entrance.
 - (b) 1/2 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan, or
 - (c) 1/4 mile radius of a transit stop along the Primary Transit Network, as indicated on the Master Transportation Plan.
- 2. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide to each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.

3. Nonconforming Lots

- (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
- (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to the following minimum site area requirements: 9,000 square feet for 5 units, 10,000 square feet for 6 units.
- (c) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, that are or located entirely within the transit distances set forth in §10.4.4.A.1 may be occupied by expanded housing option uses with up to 6 dwellings.

Option 2D

Option 2D is a transit-oriented approach that would restrict 5-6 dwellings to sites of 6,000 square feet or larger.

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
2 - 4 dwellings	20,000	10,000	8,000	6,000	5,000
5 - 6 dwellings	20,000	10,000	8,000	6,000	6,000
Site area, maximum (sq. ft.)			43,560		
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)			35		

1. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide to each lot the right to use the common land for:

- (a) Parking, when not located on individual dwelling lots;
- (b) The right to use land dedicated to other common uses; and
- (c) For easements for access to public streets and other common area.

2. Nonconforming Lots

- (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
- (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to the

following minimum site area requirements: 6,000 square feet for 5 or 6 units.

OPTION 2E

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
<i>Transit-Proximate Sites</i>					
2 - 6 dwellings	20,000	10,000	8,000	6,000	5,000
<i>All Other Sites</i>					
2-4 dwellings	20,000	10,000	8,000	6,000	5,000
5 dwellings	20,000	12,000	12,000	12,000	12,000
6 dwellings	20,000	12,000	12,000	12,000	12,000
Site area, maximum (sq. ft.)			43,560		
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)			35		

1. Any expanded housing option use that is located entirely within the following distances to transit options shall be eligible for the minimum site areas indicated for Transit-Proximate Sites:
 - (a) 1/2 mile radius of a Metrorail station entrance.
 - (b) 1/4 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan.
2. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.
3. Nonconforming Lots
 - (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
 - (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to a minimum site area requirement of 12,000 square feet. Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, that are or located entirely within the

transit distances set forth in §10.4.4.A.1 may be occupied by expanded housing option uses with up to 6 dwellings.

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Option 11A

<u>Main building gross floor area, maximum (sq. ft.)</u>	2 units: 4,800 3 units: 6,000 4 units: 7,200 5-6 units: 8,000
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<u>Main building gross floor area, maximum (sq. ft.)</u>	Semidetached (2 units): 5,000 Townhouse (3 Units): 7,500 All other expanded housing option uses: no maximum
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Option 3A

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B. Special exception

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1. The purpose and intent of special exception approvals of expanded housing option development on larger sites is to:

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(a) Promote flexible, sustainable design that is in harmony with surrounding neighborhoods by coordinating building forms, the bulk, scale and placement of new buildings, and the relationship between buildings and structures within the development and surrounding properties;

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(b) Support the goals of the Master Transportation Plan, Community Energy Plan, Stormwater Master Plan, and/or the Affordable Housing Master Plan; and

130

131

2. Development with more than one main building including expanded housing option uses on any lot with an area of one acre or greater on [EFFECTIVE DATE] shall require use permit approval as provided in §15.4. All expanded housing option development allowed by use permit shall comply with the following standards and all other by-right standards of §10.4, except as otherwise approved by the County Board.

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Type of Standard	R-20	R-10	R-8	R-6	R-5
<u>Site area, minimum (sq. ft.)</u>	43,560				
<u>Lot area, minimum (sq. ft.)</u>					
Duplexes or multiple-family	20,000	10,000	8,000	6,000	5,000
Semi-detached or townhouses	1,300	1,300	1,300	1,300	1,300
<u>Lot width, minimum (feet)</u>					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
<u>Height, maximum (feet)</u>	35				

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C. Bulk, coverage, and placement

1. Maximum lot coverage shall be as follows:

Option 4A

This option duplicates the current lot coverage standards for one-family dwellings, including allowances for increased lot coverage for development that provides a street-facing porch and/or a rear detached garage.

MAXIMUM LOT COVERAGE

Categories	R-5	R-6	R-8	R-10	R-20
Maximum lot coverage (%)	45	40	35	32	25
Maximum lot coverage with one or more porches of at least 60 square feet (exclusive of any wrap-around or side portion) facing a street (%)	48	43	38	35	28
Maximum lot coverage with detached garage in the rear yard (%)	50	45	40	37	30
Maximum lot coverage with detached garage in the rear yard and porch of at least 60 square feet (exclusive of any wrap around or side portion) on the front elevation (%)	53	48	43	40	33

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Option 4B

Compared to Option 4A, Option 4B removes the ability to achieve a 5% increase in lot coverage for providing a rear detached garage. This 5% is reallocated to the "base" coverage amount in the first row.

MAXIMUM LOT COVERAGE

Categories	R-5	R-6	R-8	R-10	R-20
Maximum lot coverage (%)	50	45	40	37	30
Maximum lot coverage with one or more porches of at least 60 square feet (exclusive of any wrap-around or side portion) facing a street (%)	53	48	43	40	33

147

2. Maximum main building footprint shall be as follows:

MAXIMUM MAIN BUILDING FOOTPRINT COVERAGE AND CAP

Categories	R-5	R-6	R-8	R-10	R-20
Maximum main building footprint coverage (%)	34	30	25	25	16
Maximum main building footprint coverage one or more porches of at least 60 square feet (exclusive of any wrap-around or side portion) facing a street (%)	37	33	28	28	19
Maximum main building footprint (sq. ft.)	2,380	2,520	2,800	3,500	4,480
Maximum main building footprint with front porch (sq. ft.)	2,590	2,772	3,136	3,920	5,320

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- 149 (a) Maximum main building footprint coverage on undersized lots in a zoning
150 district shall be the same square footage as permitted on a standard sized lot
151 (e.g., 6000 square feet in R-6) in the zoning district, subject to all applicable
152 setback requirements.
153 (b) There shall be no more than one main building within a development's site area.
154

OPTION 3A ONLY

- (1) §10.4.C.1.b shall not apply to expanded housing option development
approved by special exception as set forth in §10.4.B.

- 155 (c) For the purposes of coverage regulations, a group of semidetached or
156 townhouse dwellings shall be considered a single main building and maximum
157 coverage requirements shall be calculated using the entire site area, rather than
158 individual lots within a subdivision.
159 3. For bulk, coverage and placement requirements not listed in this section, see §3.2.

160 §10.4.5. Use standards

161 **A. Accessory Uses**

162 For sites which have established expanded housing option development in accordance
163 with §10.4, accessory uses shall be permitted as specified in §5.1.4.

164 **OPTION 12A**

165 **B. Accessory dwellings**

166 Notwithstanding the provisions of §10.4.5.A, accessory dwellings shall not be permitted
167 on sites which are subject to the provisions of §10.4.
168

OPTION 12B

This option would allow accessory dwellings in combination with expanded housing option
development only for townhouse and semidetached dwellings or for sites with a detached
accessory dwelling that was permitted prior to the effective date of this provision.

B. Accessory dwellings

1. Accessory dwellings, subject to the provisions of §12.9.2, shall be permitted within or
attached to semidetached or townhouse dwellings permitted under §10.4.
 2. Notwithstanding the provisions of §10.4.5.A, accessory dwellings shall not be
permitted on lots containing duplex or multi-family dwellings which are subject to
the provisions of §10.4.
- (a) Properties with a permitted detached accessory dwelling as of [EFFECTIVE DATE]
shall be permitted to establish a duplex within the main building, subject to the
provisions of §10.4 and the provisions of §12.9.2

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§10.4.6. Site development standards

The site development standards of Article 13 and Article 14 apply to all development, except as otherwise specified below.

OPTIONS 5A AND 5C

A. Parking

1. Parking for expanded housing option development subject to the provisions of §10.4 shall be provided in accordance with the following standards:

Site Location	Minimum Parking Requirement (spaces)	Additional Requirements
Sites located entirely within a 3/4 mile radius of a Metrorail station entrance	OPTION 5A: 0.5 per dwelling unit OPTION 5C: No minimum requirement	OPTION 5A ONLY: Sites fronting on a cul-de-sac shall provide a minimum of 1 space per dwelling unit.
Sites located entirely within a 1/2 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan		
Sites located entirely within a 1/4 mile radius of a transit stop along the Primary Transit Network, as indicated on the Master Transportation Plan		
All other sites	1 space per dwelling unit	

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2. The Zoning Administrator shall approve a reduction in the required number of parking spaces to no fewer than 0.5 spaces per dwelling unit, subject to the following:

- (a) A parking survey determines that the occupancy of on-street parking spaces on the block on which the site area is located is less than 65%;
- (b) The number of reduced spaces, if added to the on-street parking spaces occupied in the parking survey, shall not result in parking occupancy that exceeds 85%; and
- (c) Exception: Sites fronting on a cul-de-sac are not eligible for a parking reduction under the provisions of §10.4.6.A.2.

Option 5B
This option is a variation on Options 5A and 5C that would remove the provision to reduce the parking requirement with a parking survey (§10.4.6.A.2).

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Option 5E
Option 5E is an additional provision that may be applied to Options 5A or 5C.

3. Exception: If an expanded housing option development would result in a loss of on-street parking spaces equal to or greater than the number of required off-street parking spaces, due to the creation or expansion of a curb cut, no off-street parking spaces shall be required.

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- 3. Additional parking standards and exceptions for expanded housing option development are set forth in §14.3.3.**
- B. Location of parking spaces**
- 1. Sites zoned R-5, R-6 or R-8**
- Up to two surface parking spaces shall be allowed between a building's street-facing facade and the street. For corner lots, up to four surface parking spaces shall be allowed between a building's street-facing facade and the streets on which the site has frontage, with no more than two spaces on a single street frontage.**
- 2. Sites zoned R-10 or R-20**
- Up to three surface parking spaces shall be allowed between a building's street-facing facade and the street. For corner lots, up to four surface parking spaces shall be allowed between a building's street-facing facade and the streets on which the site has frontage, with no more than three spaces on a single street frontage.**
- 3. Alley access**
- If a lot abuts an alley improved to county standards, vehicle access to parking spaces shall be provided from the alley, and parking spaces shall not be allowed between a building's street-facing facade and the street.**
- 4. Enclosure**
- Any parking spaces that are located within the main building footprint and face a street or side yard shall be enclosed within a garage.**
- 5. Curb cuts**
- Curb cuts shall not exceed 17 feet in width measured at the edge of the street easement or right-of-way.**
- C. Garage wall width**
- 1. If an attached garage entrance faces a street, the width of the garage wall facing the street, measured as the horizontal distance between the interior side walls of the garage, shall be no more than 50% of the building facade along that street. If there are multiple attached garages within a building, this standard shall apply to the sum of all garage walls with entrances facing a street. For the purposes of this calculation, a group of semidetached or townhouse dwellings shall be considered a single building.**
- D. Building entrances and orientation**
- 1. Duplex and multiple-family dwellings**

- 222 (a) At least one exterior entrance shall face a street or open onto a front porch that
- 223 faces a street.
- 224 (b) On interior lots, there shall be no more than one exterior entrance facing each
- 225 side yard.
- 226 (c) On corner lots, there shall be no more than one exterior entrance facing each
- 227 adjacent property line.
- 228 (d) No more than one exterior entrance to a building lobby or common area shall face
- 229 a street.

230 **2. Semidetached and townhouse dwellings**

231 Each unit shall have an exterior entrance facing a street or that opens onto a front

232 porch that faces a street.

233 **E. Upper Story Stairs**

- 234 **1. All stairs used to access dwellings located entirely above the ground story shall be**
- 235 **enclosed within the building.**
- 236 **2. Exception: The provisions of §10.4.6.E.1 shall not apply to stairs facing a rear yard.**

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238 **OPTION 6A**

239 **F. Landscaping**

- 240 **1. There shall be a minimum of up to four shade trees for sites with 2-4 dwelling units,**
- 241 **and a minimum of up to eight shade trees for sites 5-6 dwelling units prior to issuance**
- 242 **of a certificate of occupancy. This requirement may be satisfied with existing trees**
- 243 **and/or by planting trees on-site.**

244

245 ***** NOTE: Section F.1 was corrected on 2-16-23 to reflect a minimum of 8 shade trees for sites with 5-6**

246 **dwelling units. This section had previously stated a minimum of 6 shade trees.**

247 **±**

- 248 **(a) Trees planted to satisfy the requirements of §10.4.6.E.1 shall be species listed in**
- 249 **the Arlington County Recommended Shade Tree List.**
- 250 **(b) Trees planted to satisfy the requirements of §10.4.6.E.1 shall conform to the**
- 251 **standards set forth in §14.2.2.D.**

252 **G. Screening**

- 253 **1. Heating, air conditioning units and other similar equipment shall be screened from**
- 254 **view of street rights-of-way by fences, walls, or landscaping. Equipment mounted on a**
- 255 **roof shall be sited in a location that is not visible from street rights-of-way. This**
- 256 **provision shall not apply to equipment related to the generation of solar energy.**
- 257 **2. Exterior trash collection and storage areas shall be screened from view of street**
- 258 **rights-of-way and adjacent properties by fences, walls, landscaping, or other**
- 259 **structures.**

260

261 §10.4.7. Annual Limit on Permits

262 **OPTION 7A**

263 The zoning administrator may approve not more than 58 permits for expanded housing option
264 development in any one calendar year.

265 Note: The method of distribution for the permits shall be determined by the County Board
266 upon adoption of the ordinance.

267

OPTION 7B

Do not limit the number of permits issued annually for expanded housing option
development. Remove §10.4.7.

268

OPTION 7C

During the calendar years 2023-2028, the zoning administrator may approve not more than
58 permits for expanded housing option development in any one calendar year.

Note: The method of distribution for the permits shall be determined by the County Board
upon adoption of the ordinance.

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Article 12. Use Standards

§12.3 Residential Use Standards

§12.3.11. Two-family (duplexes and semidetached) abutting RA, C or M districts or located on a principal or minor arterial street

- A. Two-family dwellings (semidetached and duplex dwellings), on sites that share a lot line with RA, C, or M districts, shall be located no more than 100 feet from the shared lot line, or on sites that are located on principal or minor arterial streets as designated on the Arlington County Master Transportation Plan provided that the dwellings front on the principal or minor arterial street, exception corner lots where no more than one unit may front on the local street.
- B. §12.3.11.A shall not apply to two-family dwellings permitted under the provisions of §10.4.

Option 12B (See §10.4.5.B)

§12.9. Accessory Use Standards

§12.9.2. Accessory dwellings

Accessory dwellings are allowed in R districts, subject to issuance of a permit by the zoning administrator and subject to the following:

- A. Standards
 - 1. Accessory dwellings may be within or attached to one-family dwellings, ~~or~~ in detached accessory buildings on lots containing one-family dwellings, or within or attached to semidetached or townhouse dwellings permitted under the provisions of §10.4, subject to the following limitations:
 - (a) An accessory dwelling shall not be permitted on a lot with a family/caregiver suite.
 - (b) Not more than one accessory dwelling shall be permitted on a lot.

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284	Article 13. Signs
285	§13.5 Signs in R Districts and for One- and Two-Family Dwellings
286	in All Districts
287	§13.5.1. General
288	A. Signs allowed
289	The sign types listed and described in this §13.5 are allowed on private property in one-
290	family-R districts (excluding R-C districts), <u>for expanded housing option development</u>
291	<u>subject to the provisions of §10.4,</u> and for one- and two-family uses in all districts,
292	subject to all permit requirements, standards and conditions set forth for each sign type.
293	§13.6. Signs in RA Districts and for Townhouses in any Zoning
294	District
295	§13.6.1. General
296	A. Signs allowed
297	The sign types listed and described in this §13.6 are allowed on private property in the
298	RA14-26, RA8-18, RA7-16, and RA6-15 districts, and on townhouse properties in all
299	districts <u>(excluding expanded housing option development subject to §10.4)</u> subject to
300	all permit requirements, standards and conditions set forth for each sign type.
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Article 14. Site Development Standards

§14.3 Parking and Loading

§14.3.3. General requirements

The requirements set forth in this article with respect to the location or improvement of parking, standing and loading space shall apply to all such space that is provided for any use, whether said space is provided in accordance with the requirements of this zoning ordinance, or said space is voluntarily provided. Parking, standing and loading space shall comply with the following regulations:

A. ...

C. Dimensional requirements

1. Off-street parking spaces and off-street parking aisles

In calculating any required parking area, ~~other than for one- and two-family dwellings,~~ the following minimum dimensions shall be required:

Parking Angle (degrees)	Stall Width (feet)	Depth of Stalls Perpendicular to Aisle (feet)	One-way Aisle Width (feet)	Two-way Aisle Width (feet)
Full Size Automobile Spaces				
45	8.5	17.5	12.0	Not permitted
60	8.5	19.5	16.0	Not permitted
90	8.5	18.0	23.0	23.0
Parallel	22.0	8.0	12.0	23.0
Compact Car Spaces				
45	8	16.0	12.0	Not permitted
60	8	16.7	15.0	Not permitted
90	8	15.0	21.0	21.0
Parallel	20.0	8.0	10.0	20.0

NOTE: In the event of a row of nine foot wide stalls is opposite to a row of seven and one-half-foot wide stalls, the aisle size required for nine-foot stalls shall apply.

2. Exception

One- and two-family dwellings and expanded housing option development subject to §10.4 shall not be subject to the aisle width requirements set forth in §14.3.3.C.1.

3. ...

D. ...

E. Parking in setbacks

In all R, RA, C-1 and C-1-O districts, except for one- and two-family dwellings and townhouses in R districts and expanded housing option development subject to §10.4, no parking or required curb or wall shall encroach on the exterior 10 feet of a setback area and such area shall be landscaped and properly maintained at all times.

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H. Access to parking spaces

1. Except for one- and two-family dwellings and townhouses in R districts and expanded housing option development subject to §10.4, street rights-of-way shall not be used for maneuvering or direct ingress, or egress to off-street parking spaces.
2. Alleys which are improved to county standards may be used for maneuvering or direct ingress and egress to off-street parking spaces if the required aisle width is provided.

I. Location of parking spaces

1. In any districts, parking spaces for one- and two-family dwellings, and townhouses, and expanded housing option development subject to §10.4 may encroach on the exterior 10 feet of a setback area, provided that they are located on a driveway with an existing or approved curb cut, and they have the minimum dimensions for full size automobile spaces as are required in §14.3.3.C. Parking spaces shall be designed and used so that the automobiles parked on driveways shall not encroach into the public rights-of-way. The setback area used for parking shall be landscaped and properly maintained at all times. The ground surface of the parking space shall be paved with a durable, dust-free and hard material, such as bituminous hot mix or Portland cement concrete or some comparable material, or shall be surfaced with an alternate material, suitable for passage by automobiles, which does not result in excessively dusty or muddy conditions at or around the parking area, as approved by the zoning administrator.
2. Tandem parking spaces may be allowed for off-street parking spaces for one- or two-family dwellings or townhouses, provided that they comply with ~~§14.3.3.J~~ §14.3.3.1.1. Tandem parking spaces shall count as one space for the purposes of complying with off-street parking requirements for expanded housing option development subject to §10.4.

352	Article 15. Administration and Procedures
353	§15.6 BOARD OF ZONING APPEALS; APPEALS AND VARIANCES
354	§15.6.6. Use permits
355	A. Authority
356	The Board of Zoning Appeals may approve use permits that allow modifications of
357	placement requirement for structures on lots in the R-20, R-10, R-8, R-6, R-5, and R2-7
358	district where there is no option in this zoning ordinance to allow modification of
359	requirements by the County Board, such as special exception use permits described in
360	§15.4 or site plans described in §15.5. <u>The Board of Zoning Appeals shall not grant use</u>
361	<u>permits to modify requirements for expanded housing option development as set forth</u>
362	<u>in §10.4.</u>
363	B. ...
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366 **Article 16. Nonconformities**

367 **§16.2. Nonconforming Buildings and Structures**

368 **§16.2.3. Repairs, alterations**

- 369 A. Repairs and alterations may be made to a nonconforming building or structure; provided,
370 that no structural alteration shall be made except those required by law or ordinance, or
371 as provided in §16.2. Repairs and alterations to a nonconforming dwelling, building or
372 structure not otherwise permitted under this Zoning Ordinance are prohibited, unless
373 approved under a use permit or variance pursuant to sections §15.6.4 and §15.6.6
- 374 B. Notwithstanding any provision to the contrary in this Ordinance, existing nonconforming
375 one- and two-family dwellings, and nonconforming accessory buildings and structures
376 located in the R and RA districts shall be permitted to make interior repairs and
377 alterations, whether structural or non-structural, provided the repair or alteration is
378 wholly contained within the existing exterior walls of the dwelling, building or structure.
- 379 1. Expanded housing option development is permitted to make interior repairs and
380 alterations wholly contained within the existing exterior walls of the building for the
381 purpose of maintaining or adding dwelling units to an existing building under §10.4.

382 **§16.2.4. Additions, enlargements, moving**

- 383 A. A nonconforming building or structure shall not be added to or expanded in any manner
384 unless such building or structure, including such additions and expansions, is made to
385 conform to all the regulations of the district in which it is located.
- 386 B. A building or structure which does not comply with the height or lot area regulations shall
387 not be added to or expanded in any manner unless such addition or expansion conforms to
388 all the regulations of the district in which it is located; provided, that the total aggregate
389 floor area included in all such separate additions and expansions does not exceed 50
390 percent of the floor area contained in the existing building or structure, as of July 15, 1950
- 391 C. A building or structure lacking sufficient automobile parking space in connection therewith
392 as required in §14.3 may be altered or expanded, provided additional automobile parking
393 space is supplied to meet, for the entire building, requirements of §14.3.
- 394 D. No nonconforming building or structure shall be moved in whole or in part to any other
395 location on the lot unless every portion of such building or structure is made to conform to
396 all the regulations of the district in which it is located.
- 397 E. Exceptions
- 398 1. The provisions of §16.2.4.A, §16.2.4.B, §16.2.4.C, and §16.2.4.D do not apply to existing
399 nonconforming one-family dwellings and nonconforming buildings or structures
400 accessory to one-family dwellings located in the R-5, R-6, R-8, R-10, R-20, and R2-7
401 districts.
- 402 2. The provisions of §16.2.4.A do not apply to existing nonconforming two-family
403 dwellings and/or nonconforming buildings or structures accessory to two-family

- 404 dwellings located in the R2-7 district and/or RA14-26, RA8-18, RA7-16, ~~and RA6-15, R-~~
 405 ~~5, and R-6~~ districts.
- 406 **3. The provisions of §16.2.4.A and §16.2.4.B do not apply to existing nonconforming**
 407 **dwellings subject to §10.4, including for the purpose of adding dwellings.**
- 408 (a) **A building or structure lacking sufficient parking space as required in**
 409 **§10.4.6.A may be altered or expanded, provided that sufficient parking space**
 410 **is supplied to meet, for the entire building, the requirements of §10.4.6.A.**
- 411 **4. The additions or expansions permitted through ~~§1.1.1.D~~§16.2.4.E shall comply with all**
 412 **current provisions of this zoning ordinance, except as provided in**
 413 **~~§1.1.1.A.4(a)~~§16.2.4.E-1 §16.2.4.E.4.a.**
- 414 (a) **Nonconforming one-family dwellings, and two-family dwellings, and expanded**
 415 **housing option development subject to §10.4 permitted to add on to or expand**
 416 **pursuant to ~~§1.1.1.D~~§16.2.4.E may construct, within applicable height limits, an**
 417 **addition over an existing one-family or two-family dwelling encroaching on a**
 418 **required setback or yard area provided there is no more of an encroachment**
 419 **into the required setback or yard than that of the existing wall below it, and**
 420 **providing that new construction may not take place over encroaching garages or**
 421 **porches.**

422 **§16.6. Condominium and Cooperative Conversion**

423 **§16.6.1. Nonconforming land, buildings or structures**

424 **A.** Whenever any land, buildings or structures or the use thereof are proposed to be
 425 converted to condominiums or cooperatives and such land, buildings or structures do not
 426 conform to the regulations of this zoning ordinance, then before such proposed
 427 conversion may take place, a special exception use permit pursuant to §15.4 shall be
 428 obtained unless a variance of the requirements of zoning or land use regulations which
 429 may be granted by the Board of Zoning Appeals pursuant to Chapter 22 of Title 15.2 of the
 430 Code of Virginia is, in fact, granted.

431 **OPTION 8A**

432 **B.** **Condominium and cooperative conversions of nonconforming dwellings to expanded**
 433 **housing option uses pursuant to the provisions in §10.4 are not subject to the provisions**
 434 **of §16.6.1.**

435 **OPTION 8B**
 This option would remove new §16.6.1.B. Nonconforming dwellings converted to
 condominium or cooperative dwellings would require approval of a County Board use permit
 or Board of Zoning Appeals variance.

Note: In addition to a proposed new definition of “expanded housing option uses,” key terms used in this draft Zoning Ordinance amendment are provided for reference. Except for an option that would amend the “duplex” definition (Option 9B), there are no proposed changes to these definitions.

437 **Article 18. Definitions**

438 **§18.2. General Terms Defined**

439

440 **Option 9A: Retain current duplex definition.**

441 Duplex. Two attached dwelling units in a single structure on a single lot with dwelling units situated
442 either wholly or partially over or under the other dwelling unit. The building has all exterior
443 characteristics of a one-family attached dwelling, having a single front entrance or one front and
444 one side entrance on the first floor; provided an outside, enclosed stairway located parallel and
445 abutting the rear of the dwelling shall be permitted for direct access to the second floor level.

Option 9B
Duplex. Two attached dwelling units in a single structure on a single lot with dwelling units situated either wholly or partially over or under the other dwelling unit. The building has ~~all exterior characteristics of a one-family attached dwelling, having a single front entrance, two front entrances,~~ or one front and one side entrance on the first floor; provided an outside, enclosed stairway located parallel and abutting the rear of the dwelling shall be permitted for direct access to the second floor level.

446 ...

447 Dwelling or dwelling unit. A building or portion thereof designed exclusively for residential occupancy by
448 one family, which includes provisions for living, sleeping, eating, cooking and sanitation,
449 including One-family detached; Semidetached; Duplex; Townhouse; Multiple-family building.

450 ...

451 Dwelling, two-family. Two-family dwellings include semidetached and duplex dwellings.

452 ...

453 Expanded housing option uses. Two-family dwellings, townhouses with three attached dwelling units,
454 and multiple-family buildings with up to six dwelling units, as permitted and set forth in
455 §10.4.

456 ...

457 Multiple-family. A building or portion thereof, designed for occupancy by three or more families living
458 independently of each other.

459 ...

460 Nonconforming building. A building or structure or portion thereof lawfully existing at the time this
461 zoning ordinance became effective, that was designed, erected or structurally altered such that
462 it does not conform to the regulations of the district in which it is located.

463 ...

January 25th, 2023

- 464 One-family detached. A residential building containing one dwelling unit designed for one family and
465 located on a single lot with required yards on all four sides.
- 466 ...
- 467 Semidetached. A residential building with two attached dwelling units located on two lots that share a
468 common wall along the lot line and where each dwelling unit has its own external entrance.
- 469 ...
- 470 Townhouse. One of a series of three or more attached similar dwelling units, located on separately-
471 owned lots or on a single lot, separated by common party walls without openings extending
472 from basement to roof, and where each unit has its own external entrance.

[Board Report #33](#)

[#33-Letter from the Planning Commission](#)

January 25th, 2023

#33-Letters from the Public

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IV. ADDITIONAL ITEMS

County Attorney Review of Item #33

On a motion by CHRISTIAN DORSEY, Chair, seconded by LIBBY GARVEY, Vice-Chair, the County Board authorized the County Attorney to review all motions passed today and make any necessary and appropriate changes to the zoning text to be advertised to correct scrivener's errors, ensure internal consistency, and update cross-references, as needed.

The main motion was then adopted and carried by a vote of 5-0, the voting recorded as follows: Christian Dorsey, Chair – Aye; Libby Garvey, Vice-Chair – Aye; Takis Karantonis, Member – Aye; Matt de Ferranti, Member – Aye; Katie Cristol, Member – Aye.

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Without objection, at 7:00 PM, the January 25th Carryover County Board Meeting was adjourned.

CHRISTIAN DORSEY, Chair

ATTEST:

KENDRA JACOBS, Clerk
Approved: February 18, 2023

Draft Zoning Ordinance Amendment – Missing Middle Housing Study

- Proposed amendments are shown with **bold underline** to denote new text, and ~~bold strikethrough~~ to denote deleted text.
- Where multiple options for amendments are proposed for advertisement, these options are indicated in **red text**.
 - Option numbers from the January 13, 2023, RTA Draft have been retained. Due to the iterative nature of the draft review process, option numbers are not sequential and omit options that were not authorized for advertisement.
 - Notes in **red text** are explanatory and are not intended to be adopted as zoning text.
- New subsection §10.4 is shown with underline only, rather than **bold underline**, because all of the text is new.
- Where paragraphs are added or deleted, all subsequent paragraphs are renumbered accordingly, and all references throughout the Zoning Ordinance are updated accordingly.

1 **Article 3. Density and Dimensional Standards**

2 **§3.2. Bulk, Coverage and Placement Requirements**

3 **§3.2.6. Placement**

4 The following regulations shall govern the placement on a lot of any building or structure, or
5 addition thereto, hereafter erected, except as may be allowed by site plan approval or as
6 otherwise specifically provided in this Zoning Ordinance:

7 **A. Setbacks (required yards)**

8 **1. Setbacks from any street**

9 No structure shall be located closer to the centerline of any street or officially
10 designated street right-of-way (as defined in this zoning ordinance) than 50 percent of
11 the height of the building. For the purpose of determining setbacks, a limited access
12 highway shall be considered as an abutting lot and not as a street or street right-of-
13 way. Structures shall be set back from streets no less than as follows:

14 (a) ...

15 (e) **For all one- and two-family dwellings, all expanded housing option**
16 **development subject to §10.4, and their accessory structures**

17 No structure shall be located less than 25 feet from any street right-of-way line,
18 except that the distance between any street or officially designated street right-
19 of-way line and the front wall of a structure, with the exception of stoops and
20 covered or uncovered but unenclosed porches, may be reduced as follows:

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- (1) The distance shall be at least the average of the distances between the street right-of-way line, and the edges of the front walls of existing structures located on the frontage where the structure is proposed to be located, subject to approval by the Zoning Administrator, of a plat showing all existing structures located on the subject frontage;
- (2) The distance shall be at least 15 feet, provided, however, that no parking garage shall be located closer than 18 feet from the street right-of-way line; and
- (3) No structure located within 25 feet of a street right-of-way line shall exceed 2 ½ stories.

2. Side and rear yards

No structure shall be located closer to side or rear lot lines than as follows:

- (a) ...
- (b) **For all one-family dwellings, all expanded housing option development subject to §10.4, and their accessory structures**
10 feet, provided that one side yard may be reduced to eight feet. The aggregate width of both side yards on any lot shall not be less than 30 percent of the required width of the lot, provided that on interior lots no structure shall be located closer than 25 feet from a rear lot line.
- (c) ...
- (g) **Side yards for expanded housing option development**
For the purpose of side yard regulations, a group of semidetached or townhouse dwellings, subject to §10.4, shall be considered as one building occupying one lot.

45 **Article 10. Unified, Cluster, and Housing Option**
46 **Developments**

47 **§10.1 Unified Residential Developments**

48 **§10.1.3. Minimum requirements**

49 Any unified residential development shall comply with the zoning requirements applicable to
50 the site and the following requirements, unless the County Board, after it finds that such
51 modifications will better accomplish the purposes and intent of §10.1.1, modifies some of
52 those requirements by use permit, as permitted in §10.1.5:

53 **A. Density**

54 The maximum number of dwelling units shall be determined by the County Board,
55 depending on the design and configuration of the development, up to a maximum
56 number arrived at by dividing the site area, together with the area of any part of the site
57 to be dedicated for public right-of-way, by the required minimum lot area of the district
58 applicable to the site, as specified in Article 5.

59 **§10.3 Residential Cluster Development**

60 **§10.3.5. Density**

61 The maximum number of dwelling units shall be determined by the County Board, depending
62 on the design and configuration of the development, up to a maximum number arrived at by
63 dividing the site area, together with the area of any parts of the site that have been dedicated
64 for public right-of-way, by the required minimum lot area of the district applicable to the site,
65 as specified in Article 5.

66 **§10.4. Expanded Housing Option Development**

67 **§10.4.1. Purpose**

68 The purposes of this §10.4 are to:

- 69 **A.** Promote the creation of housing options suitable for meeting the current and future needs
70 of Arlington;
- 71 **B.** Provide opportunities to increase housing supply and the range of housing options, at
72 variety of price levels and sizes, available throughout Arlington;
- 73 **C.** Support environmental goals by encouraging more compact housing options, tree
74 conservation and planting, options for reduced on-site parking requirements, and housing
75 that can make use of existing infrastructure; and
- 76 **D.** Preserve and enhance valued neighborhood features, including walkability, opportunities
77 for connections to nature, and a low-rise pattern of development.

78 **§10.4.2. Applicability**

79 Expanded housing option development is allowed within the R-20, R-10, R-8, R-6, and R-5
80 districts, subject to the issuance of a permit by the zoning administrator, and subject to the
81 provisions of this subsection.

82 **OPTION 10A**

83 **A.** Exception

84 Properties located entirely or partially within a planning district as identified on the
85 General Land Use Plan Map are not eligible for expanded housing option development.

86 **OPTION 10B**

This option would remove §10.4.2.A, so that R-5 to R-20 zoned sites within GLUP planning districts would be eligible for expanded housing option development. The County Board could also choose to designate specific planning districts that would be eligible or not eligible.

87
88 **§10.4.3. Uses**

89 Expanded housing option development shall include the following uses:

- 90 **A.** Duplexes
- 91 **B.** Semidetached
- 92 **C.** Townhouses (maximum of 3 units)
- 93 **OPTION 1A**
- 94 **D.** Multiple-family (maximum of 6 units)

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96 **§10.4.4. Density and dimensional standards**

- 97 **A.** By-right

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By-right development in accordance with §10.4 shall comply with the following standards, except as otherwise expressly allowed or stated in this ordinance.

OPTION 2A

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)	20,000	10,000	8,000	6,000	5,000
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)	35				

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1. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) for easements for access to public streets and other common area.
2. Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by any use allowed in §10.4.3.

OPTION 2B

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
2 - 4 dwellings	20,000	10,000	8,000	6,000	5,000
5 dwellings	20,000	10,000	9,000	9,000	9,000
6 dwellings	20,000	10,000	10,000	10,000	10,000
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)	35				

1. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.

2. Nonconforming Lots

- (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
- (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to the following minimum site area requirements: 9,000 square feet for 5 units, 10,000 square feet for 6 units.

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OPTION 2C

This option is a hybrid of Options 2A and 2B, which would set higher minimum site area standards only for sites located outside specified distances to transit options.

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
2 - 4 dwellings	20,000	10,000	8,000	6,000	5,000
5 dwellings	20,000	10,000	9,000	9,000	9,000
6 dwellings	20,000	10,000	10,000	10,000	10,000
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
Height, maximum (feet)	35				

- 1. Any expanded housing option use with 5 to 6 dwellings that is located entirely within the following distances to transit options shall be subject to the minimum site area for 2 to 4 dwellings:
 - (a) 3/4 mile radius of a Metrorail station entrance,
 - (b) 1/2 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan, or
 - (c) 1/4 mile radius of a transit stop along the Primary Transit Network, as indicated on the Master Transportation Plan.
- 2. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide to each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.

3. Nonconforming Lots

- (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
- (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to the following minimum site area requirements: 9,000 square feet for 5 units, 10,000 square feet for 6 units.
- (c) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, that are or located entirely within the transit distances set forth in §10.4.4.A.1 may be occupied by expanded housing option uses with up to 6 dwellings.

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Option 2D

Option 2D is a transit-oriented approach that would restrict 5-6 dwellings to sites of 6,000 square feet or larger.

Type of Standard	R-20	R-10	R-8	R-6	R-5
<u>Site area, minimum (sq. ft.)</u>					
2 - 4 dwellings	20,000	10,000	8,000	6,000	5,000
5 - 6 dwellings	20,000	10,000	8,000	6,000	6,000
<u>Site area, maximum (sq. ft.)</u>	43,560				
<u>Lot width, minimum (feet)</u>					
Duplexes or multiple-family	100	80	70	60	50
Semi-detached	24	24	24	24	24
Townhouses	16	16	16	16	16
<u>Height, maximum (feet)</u>	35				

1. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide to each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.

2. Nonconforming Lots

- (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
- (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to the

following minimum site area requirements: 6,000 square feet for 5 or 6 units.

OPTION 2E

Type of Standard	R-20	R-10	R-8	R-6	R-5
Site area, minimum (sq. ft.)					
<i>Transit-Proximate Sites</i>					
<u>2 - 6 dwellings</u>	<u>20,000</u>	<u>10,000</u>	<u>8,000</u>	<u>6,000</u>	<u>5,000</u>
<i>All Other Sites</i>					
<u>2-4 dwellings</u>	<u>20,000</u>	<u>10,000</u>	<u>8,000</u>	<u>6,000</u>	<u>5,000</u>
<u>5 dwellings</u>	<u>20,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>
<u>6 dwellings</u>	<u>20,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>
Site area, maximum (sq. ft.)	43,560				
Lot width, minimum (feet)					
<u>Duplexes or multiple-family</u>	<u>100</u>	<u>80</u>	<u>70</u>	<u>60</u>	<u>50</u>
<u>Semi-detached</u>	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>
<u>Townhouses</u>	<u>16</u>	<u>16</u>	<u>16</u>	<u>16</u>	<u>16</u>
Height, maximum (feet)	35				

1. Any expanded housing option use that is located entirely within the following distances to transit options shall be eligible for the minimum site areas indicated for Transit-Proximate Sites:
 - (a) 1/2 mile radius of a Metrorail station entrance.
 - (b) 1/4 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan.
2. Semidetached dwelling and townhouse lots may be subdivided into individual dwelling lots of no less than 1,300 square feet each, provided that the deed of dedication shall commit sufficient common land to satisfy the total site area requirements, per §10.4.4.A. The deed of dedication shall provide each lot the right to use the common land for:
 - (a) Parking, when not located on individual dwelling lots;
 - (b) The right to use land dedicated to other common uses; and
 - (c) For easements for access to public streets and other common area.
3. Nonconforming Lots
 - (a) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with up to 4 dwelling units.
 - (b) Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, may be occupied by expanded housing option uses with 5 to 6 dwelling units, subject to a minimum site area requirement of 12,000 square feet. Nonconforming lots that were recorded under one ownership at the time of the adoption of this ordinance, as set forth in §16.1.1, that are or located entirely within the

transit distances set forth in §10.4.4.A.1 may be occupied by expanded housing option uses with up to 6 dwellings.

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117

Option 11A

<u>Main building gross floor area, maximum (sq. ft.)</u>	<u>2 units: 4,800</u>
	<u>3 units: 6,000</u>
	<u>4 units: 7,200</u>
	<u>5-6 units: 8,000</u>

118

Option 11B

<u>Main building gross floor area, maximum (sq. ft.)</u>	<u>Semidetached (2 units): 5,000</u>
	<u>Townhouse (3 Units): 7,500</u>
	<u>All other expanded housing option uses: no maximum</u>

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Option 3A

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B. Special exception

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1. The purpose and intent of special exception approvals of expanded housing option development on larger sites is to:

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(a) Promote flexible, sustainable design that is in harmony with surrounding neighborhoods by coordinating building forms, the bulk, scale and placement of new buildings, and the relationship between buildings and structures within the development and surrounding properties;

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(b) Support the goals of the Master Transportation Plan, Community Energy Plan, Stormwater Master Plan, and/or the Affordable Housing Master Plan; and

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(c) Preserve natural land forms and significant trees and foliage.

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2. Development with more than one main building including expanded housing option uses on any lot with an area of one acre or greater on [EFFECTIVE DATE] shall require use permit approval as provided in §15.4. All expanded housing option development allowed by use permit shall comply with the following standards and all other by-right standards of §10.4, except as otherwise approved by the County Board.

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Type of Standard	R-20	R-10	R-8	R-6	R-5
<u>Site area, minimum (sq. ft.)</u>	<u>43,560</u>				
<u>Lot area, minimum (sq. ft.)</u>					
<u>Duplexes or multiple-family</u>	<u>20,000</u>	<u>10,000</u>	<u>8,000</u>	<u>6,000</u>	<u>5,000</u>
<u>Semi-detached or townhouses</u>	<u>1,300</u>	<u>1,300</u>	<u>1,300</u>	<u>1,300</u>	<u>1,300</u>
<u>Lot width, minimum (feet)</u>					
<u>Duplexes or multiple-family</u>	<u>100</u>	<u>80</u>	<u>70</u>	<u>60</u>	<u>50</u>
<u>Semi-detached</u>	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>
<u>Townhouses</u>	<u>16</u>	<u>16</u>	<u>16</u>	<u>16</u>	<u>16</u>
<u>Height, maximum (feet)</u>	<u>35</u>				

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C. Bulk, coverage, and placement

1. Maximum lot coverage shall be as follows:

Option 4A

This option duplicates the current lot coverage standards for one-family dwellings, including allowances for increased lot coverage for development that provides a street-facing porch and/or a rear detached garage.

MAXIMUM LOT COVERAGE					
Categories	R-5	R-6	R-8	R-10	R-20
Maximum lot coverage (%)	45	40	35	32	25
Maximum lot coverage with one or more porches of at least 60 square feet (exclusive of any wrap-around or side portion) facing a street (%)	48	43	38	35	28
Maximum lot coverage with detached garage in the rear yard (%)	50	45	40	37	30
Maximum lot coverage with detached garage in the rear yard and porch of at least 60 square feet (exclusive of any wrap around or side portion) on the front elevation (%)	53	48	43	40	33

146

Option 4B

Compared to Option 4A, Option 4B removes the ability to achieve a 5% increase in lot coverage for providing a rear detached garage. This 5% is reallocated to the "base" coverage amount in the first row.

MAXIMUM LOT COVERAGE					
Categories	R-5	R-6	R-8	R-10	R-20
Maximum lot coverage (%)	50	45	40	37	30
Maximum lot coverage with one or more porches of at least 60 square feet (exclusive of any wrap-around or side portion) facing a street (%)	53	48	43	40	33

147

2. Maximum main building footprint shall be as follows:

MAXIMUM MAIN BUILDING FOOTPRINT COVERAGE AND CAP					
Categories	R-5	R-6	R-8	R-10	R-20
Maximum main building footprint coverage (%)	34	30	25	25	16
Maximum main building footprint coverage one or more porches of at least 60 square feet (exclusive of any wrap-around or side portion) facing a street (%)	37	33	28	28	19
Maximum main building footprint (sq. ft.)	2,380	2,520	2,800	3,500	4,480
Maximum main building footprint with front porch (sq. ft.)	2,590	2,772	3,136	3,920	5,320

148

- 149 (a) Maximum main building footprint coverage on undersized lots in a zoning
150 district shall be the same square footage as permitted on a standard sized lot
151 (e.g., 6000 square feet in R-6) in the zoning district, subject to all applicable
152 setback requirements.
- 153 (b) There shall be no more than one main building within a development's site area.
154

OPTION 3A ONLY

- (1) §10.4.C.1.b shall not apply to expanded housing option development approved by special exception as set forth in §10.4.B.

- 155 (c) For the purposes of coverage regulations, a group of semidetached or
156 townhouse dwellings shall be considered a single main building and maximum
157 coverage requirements shall be calculated using the entire site area, rather than
158 individual lots within a subdivision.
- 159 3. For bulk, coverage and placement requirements not listed in this section, see §3.2.

160 §10.4.5. Use standards

161 A. Accessory Uses

162 For sites which have established expanded housing option development in accordance
163 with §10.4, accessory uses shall be permitted as specified in §5.1.4.

164 **OPTION 12A**

165 B. Accessory dwellings

166 Notwithstanding the provisions of §10.4.5.A, accessory dwellings shall not be permitted
167 on sites which are subject to the provisions of §10.4.
168

OPTION 12B

This option would allow accessory dwellings in combination with expanded housing option development only for townhouse and semidetached dwellings or for sites with a detached accessory dwelling that was permitted prior to the effective date of this provision.

B. Accessory dwellings

1. Accessory dwellings, subject to the provisions of §12.9.2, shall be permitted within or attached to semidetached or townhouse dwellings permitted under §10.4.
2. Notwithstanding the provisions of §10.4.5.A, accessory dwellings shall not be permitted on lots containing duplex or multi-family dwellings which are subject to the provisions of §10.4.
 - (a) Properties with a permitted detached accessory dwelling as of [EFFECTIVE DATE] shall be permitted to establish a duplex within the main building, subject to the provisions of §10.4 and the provisions of §12.9.2

169

170 §10.4.6. Site development standards

171 The site development standards of Article 13 and Article 14 apply to all development, except
172 as otherwise specified below.

173 **OPTIONS 5A AND 5C**

174 **A. Parking**

175 1. Parking for expanded housing option development subject to the provisions of §10.4
176 shall be provided in accordance with the following standards:

177

<u>Site Location</u>	<u>Minimum Parking Requirement (spaces)</u>	<u>Additional Requirements</u>
<u>Sites located entirely within a 3/4 mile radius of a Metrorail station entrance</u>	OPTION 5A: 0.5 per dwelling unit OPTION 5C: No minimum requirement	OPTION 5A ONLY: Sites fronting on a cul-de-sac shall provide a minimum of 1 space per dwelling unit.
<u>Sites located entirely within a 1/2 mile radius of a transit stop along the Premium Transit Network, as indicated on the Master Transportation Plan</u>		
<u>Sites located entirely within a 1/4 mile radius of a transit stop along the Primary Transit Network, as indicated on the Master Transportation Plan</u>		
<u>All other sites</u>	1 space per dwelling unit	

178 2. The Zoning Administrator shall approve a reduction in the required number of
179 parking spaces to no fewer than 0.5 spaces per dwelling unit, subject to the
180 following:

- 181 (a) A parking survey determines that the occupancy of on-street parking spaces
182 on the block on which the site area is located is less than 65%;
- 183 (b) The number of reduced spaces, if added to the on-street parking spaces
184 occupied in the parking survey, shall not result in parking occupancy that
185 exceeds 85%; and
- 186 (c) Exception: Sites fronting on a cul-de-sac are not eligible for a parking
187 reduction under the provisions of §10.4.6.A.2.

188

Option 5B

This option is a variation on Options 5A and 5C that would remove the provision to reduce the parking requirement with a parking survey (§10.4.6.A.2).

189

Option 5E

Option 5E is an additional provision that may be applied to Options 5A or 5C.

3. Exception: If an expanded housing option development would result in a loss of on-street parking spaces equal to or greater than the number of required off-street parking spaces, due to the creation or expansion of a curb cut, no off-street parking spaces shall be required.

3. Additional parking standards and exceptions for expanded housing option development are set forth in §14.3.3.

B. Location of parking spaces

1. Sites zoned R-5, R-6 or R-8

Up to two surface parking spaces shall be allowed between a building's street-facing facade and the street. For corner lots, up to four surface parking spaces shall be allowed between a building's street-facing facade and the streets on which the site has frontage, with no more than two spaces on a single street frontage.

2. Sites zoned R-10 or R-20

Up to three surface parking spaces shall be allowed between a building's street-facing facade and the street. For corner lots, up to four surface parking spaces shall be allowed between a building's street-facing facade and the streets on which the site has frontage, with no more than three spaces on a single street frontage.

3. Alley access

If a lot abuts an alley improved to county standards, vehicle access to parking spaces shall be provided from the alley, and parking spaces shall not be allowed between a building's street-facing facade and the street.

4. Enclosure

Any parking spaces that are located within the main building footprint and face a street or side yard shall be enclosed within a garage.

5. Curb cuts

Curb cuts shall not exceed 17 feet in width measured at the edge of the street easement or right-of-way.

C. Garage wall width

1. If an attached garage entrance faces a street, the width of the garage wall facing the street, measured as the horizontal distance between the interior side walls of the garage, shall be no more than 50% of the building facade along that street. If there are multiple attached garages within a building, this standard shall apply to the sum of all garage walls with entrances facing a street. For the purposes of this calculation, a group of semidetached or townhouse dwellings shall be considered a single building.

D. Building entrances and orientation

1. Duplex and multiple-family dwellings

- 222 (a) At least one exterior entrance shall face a street or open onto a front porch that
223 faces a street.
- 224 (b) On interior lots, there shall be no more than one exterior entrance facing each
225 side yard.
- 226 (c) On corner lots, there shall be no more than one exterior entrance facing each
227 adjacent property line.
- 228 (d) No more than one exterior entrance to a building lobby or common area shall face
229 a street.

230 **2. Semidetached and townhouse dwellings**

231 Each unit shall have an exterior entrance facing a street or that opens onto a front
232 porch that faces a street.

233 **E. Upper Story Stairs**

- 234 **1. All stairs used to access dwellings located entirely above the ground story shall be**
235 **enclosed within the building.**
- 236 **2. Exception: The provisions of §10.4.6.E.1 shall not apply to stairs facing a rear yard.**
237

238 **OPTION 6A**

239 **F. Landscaping**

- 240 **1. There shall be a minimum of up to four shade trees for sites with 2-4 dwelling units,**
241 **and a minimum of up to eight shade trees for sites 5-6 dwelling units prior to issuance**
242 **of a certificate of occupancy. This requirement may be satisfied with existing trees**
243 **and/or by planting trees on-site.**

244

245 ***** NOTE: Section F.1 was corrected on 2-16-23 to reflect a minimum of 8 shade trees for sites with 5-6**
246 **dwelling units. This section had previously stated a minimum of 6 shade trees.**

247 **1.**

248 **(a) Trees planted to satisfy the requirements of §10.4.6.E.1 shall be species listed in**
249 **the Arlington County Recommended Shade Tree List.**

250 **(b) Trees planted to satisfy the requirements of §10.4.6.E.1 shall conform to the**
251 **standards set forth in §14.2.2.D.**

252 **G. Screening**

- 253 **1. Heating, air conditioning units and other similar equipment shall be screened from**
254 **view of street rights-of-way by fences, walls, or landscaping. Equipment mounted on a**
255 **roof shall be sited in a location that is not visible from street rights-of-way. This**
256 **provision shall not apply to equipment related to the generation of solar energy.**
- 257 **2. Exterior trash collection and storage areas shall be screened from view of street**
258 **rights-of-way and adjacent properties by fences, walls, landscaping, or other**
259 **structures.**
- 260

261 §10.4.7. Annual Limit on Permits

262 **OPTION 7A**

263 The zoning administrator may approve not more than 58 permits for expanded housing option
264 development in any one calendar year.

265 Note: The method of distribution for the permits shall be determined by the County Board
266 upon adoption of the ordinance.

267

OPTION 7B

Do not limit the number of permits issued annually for expanded housing option development. Remove §10.4.7.

268

OPTION 7C

During the calendar years 2023-2028, the zoning administrator may approve not more than
58 permits for expanded housing option development in any one calendar year.

Note: The method of distribution for the permits shall be determined by the County Board
upon adoption of the ordinance.

269

Article 12. Use Standards

§12.3 Residential Use Standards

§12.3.11. Two-family (duplexes and semidetached) abutting RA, C or M districts or located on a principal or minor arterial street

- A. Two-family dwellings (semidetached and duplex dwellings), on sites that share a lot line with RA, C, or M districts, shall be located no more than 100 feet from the shared lot line, or on sites that are located on principal or minor arterial streets as designated on the Arlington County Master Transportation Plan provided that the dwellings front on the principal or minor arterial street, exception corner lots where no more than one unit may front on the local street.
- B. §12.3.11.A shall not apply to two-family dwellings permitted under the provisions of §10.4.

Option 12B (See §10.4.5.B)

§12.9. Accessory Use Standards

§12.9.2. Accessory dwellings

Accessory dwellings are allowed in R districts, subject to issuance of a permit by the zoning administrator and subject to the following:

A. Standards

1. Accessory dwellings may be within or attached to one-family dwellings, ~~or~~ in detached accessory buildings on lots containing one-family dwellings, or within or attached to semidetached or townhouse dwellings permitted under the provisions of §10.4, subject to the following limitations:
 - (a) An accessory dwelling shall not be permitted on a lot with a family/caregiver suite.
 - (b) Not more than one accessory dwelling shall be permitted on a lot.

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284 **Article 13. Signs**

285 **§13.5 Signs in R Districts and for One- and Two-Family Dwellings**
286 **in All Districts**

287 **§13.5.1. General**

288 **A. Signs allowed**

289 The sign types listed and described in this §13.5 are allowed on private property in ~~one-~~
290 ~~family-R districts (excluding R-C districts),~~ **for expanded housing option development**
291 **subject to the provisions of §10.4,** and for one- and two-family uses in all districts,
292 subject to all permit requirements, standards and conditions set forth for each sign type.

293 **§13.6. Signs in RA Districts and for Townhouses in any Zoning**
294 **District**

295 **§13.6.1. General**

296 **A. Signs allowed**

297 The sign types listed and described in this §13.6 are allowed on private property in the
298 RA14-26, RA8-18, RA7-16, and RA6-15 districts, and on townhouse properties in all
299 districts **(excluding expanded housing option development subject to §10.4)** subject to
300 all permit requirements, standards and conditions set forth for each sign type.

301

Article 14. Site Development Standards

§14.3 Parking and Loading

§14.3.3. General requirements

The requirements set forth in this article with respect to the location or improvement of parking, standing and loading space shall apply to all such space that is provided for any use, whether said space is provided in accordance with the requirements of this zoning ordinance, or said space is voluntarily provided. Parking, standing and loading space shall comply with the following regulations:

A. ...

C. Dimensional requirements

1. Off-street parking spaces and off-street parking aisles

In calculating any required parking area, ~~other than for one- and two-family dwellings,~~ the following minimum dimensions shall be required:

Parking Angle (degrees)	Stall Width (feet)	Depth of Stalls Perpendicular to Aisle (feet)	One-way Aisle Width (feet)	Two-way Aisle Width (feet)
Full Size Automobile Spaces				
45	8.5	17.5	12.0	Not permitted
60	8.5	19.5	16.0	Not permitted
90	8.5	18.0	23.0	23.0
Parallel	22.0	8.0	12.0	23.0
Compact Car Spaces				
45	8	16.0	12.0	Not permitted
60	8	16.7	15.0	Not permitted
90	8	15.0	21.0	21.0
Parallel	20.0	8.0	10.0	20.0

NOTE: In the event of a row of nine foot wide stalls is opposite to a row of seven and one-half-foot wide stalls, the aisle size required for nine-foot stalls shall apply.

2. Exception

One-and two-family dwellings and expanded housing option development subject to §10.4 shall not be subject to the aisle width requirements set forth in §14.3.3.C.1.

3. ...

D. ...

E. Parking in setbacks

In all R, RA, C-1 and C-1-O districts, except for one- and two-family dwellings and townhouses in R districts and expanded housing option development subject to §10.4, no parking or required curb or wall shall encroach on the exterior 10 feet of a setback area and such area shall be landscaped and properly maintained at all times.

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F. ...

H. Access to parking spaces

1. Except for one- and two-family dwellings and townhouses in R districts and expanded housing option development subject to §10.4, street rights-of-way shall not be used for maneuvering or direct ingress, or egress to off-street parking spaces.
2. Alleys which are improved to county standards may be used for maneuvering or direct ingress and egress to off-street parking spaces if the required aisle width is provided.

I. Location of parking spaces

1. In any districts, parking spaces for one- and two-family dwellings, and townhouses, and expanded housing option development subject to §10.4 may encroach on the exterior 10 feet of a setback area, provided that they are located on a driveway with an existing or approved curb cut, and they have the minimum dimensions for full size automobile spaces as are required in §14.3.3.C. Parking spaces shall be designed and used so that the automobiles parked on driveways shall not encroach into the public rights-of-way. The setback area used for parking shall be landscaped and properly maintained at all times. The ground surface of the parking space shall be paved with a durable, dust-free and hard material, such as bituminous hot mix or Portland cement concrete or some comparable material, or shall be surfaced with an alternate material, suitable for passage by automobiles, which does not result in excessively dusty or muddy conditions at or around the parking area, as approved by the zoning administrator.
2. Tandem parking spaces may be allowed for off-street parking spaces for one- or two-family dwellings or townhouses, provided that they comply with ~~§14.3.3.J~~ §14.3.3.I.1. Tandem parking spaces shall count as one space for the purposes of complying with off-street parking requirements for expanded housing option development subject to §10.4.

352 **Article 15. Administration and Procedures**

353 **§15.6 BOARD OF ZONING APPEALS; APPEALS AND VARIANCES**

354 **§15.6.6. Use permits**

355 **A. Authority**

356 The Board of Zoning Appeals may approve use permits that allow modifications of
357 placement requirement for structures on lots in the R-20, R-10, R-8, R-6, R-5, and R2-7
358 district where there is no option in this zoning ordinance to allow modification of
359 requirements by the County Board, such as special exception use permits described in
360 §15.4 or site plans described in §15.5. The Board of Zoning Appeals shall not grant use
361 permits to modify requirements for expanded housing option development as set forth
362 in §10.4.

363 **B. ...**

364
365

Article 16. Nonconformities

§16.2. Nonconforming Buildings and Structures

§16.2.3. Repairs, alterations

- A. Repairs and alterations may be made to a nonconforming building or structure; provided, that no structural alteration shall be made except those required by law or ordinance, or as provided in §16.2. Repairs and alterations to a nonconforming dwelling, building or structure not otherwise permitted under this Zoning Ordinance are prohibited, unless approved under a use permit or variance pursuant to sections §15.6.4 and §15.6.6
- B. Notwithstanding any provision to the contrary in this Ordinance, existing nonconforming one- and two-family dwellings, and nonconforming accessory buildings and structures located in the R and RA districts shall be permitted to make interior repairs and alterations, whether structural or non-structural, provided the repair or alteration is wholly contained within the existing exterior walls of the dwelling, building or structure.
1. Expanded housing option development is permitted to make interior repairs and alterations wholly contained within the existing exterior walls of the building for the purpose of maintaining or adding dwelling units to an existing building under §10.4.

§16.2.4. Additions, enlargements, moving

- A. A nonconforming building or structure shall not be added to or expanded in any manner unless such building or structure, including such additions and expansions, is made to conform to all the regulations of the district in which it is located.
- B. A building or structure which does not comply with the height or lot area regulations shall not be added to or expanded in any manner unless such addition or expansion conforms to all the regulations of the district in which it is located; provided, that the total aggregate floor area included in all such separate additions and expansions does not exceed 50 percent of the floor area contained in the existing building or structure, as of July 15, 1950
- C. A building or structure lacking sufficient automobile parking space in connection therewith as required in §14.3 may be altered or expanded, provided additional automobile parking space is supplied to meet, for the entire building, requirements of §14.3.
- D. No nonconforming building or structure shall be moved in whole or in part to any other location on the lot unless every portion of such building or structure is made to conform to all the regulations of the district in which it is located.
- E. Exceptions
1. The provisions of §16.2.4.A, §16.2.4.B, §16.2.4.C, and §16.2.4.D do not apply to existing nonconforming one-family dwellings and nonconforming buildings or structures accessory to one-family dwellings located in the R-5, R-6, R-8, R-10, R-20, and R2-7 districts.
2. The provisions of §16.2.4.A do not apply to existing nonconforming two-family dwellings and/or nonconforming buildings or structures accessory to two-family

404 dwellings located in the R2-7 district and/or RA14-26, RA8-18, RA7-16, ~~and RA6-15, R-~~
405 5, and R-6 districts.

406 3. The provisions of §16.2.4.A and §16.2.4.B do not apply to existing nonconforming
407 dwellings subject to §10.4, including for the purpose of adding dwellings.

408 (a) A building or structure lacking sufficient parking space as required in
409 §10.4.6.A may be altered or expanded, provided that sufficient parking space
410 is supplied to meet, for the entire building, the requirements of §10.4.6.A.

411 4. The additions or expansions permitted through §1.1.1.D~~§16.2.4.E~~ shall comply with all
412 current provisions of this zoning ordinance, except as provided in
413 §1.1.1.A.4(a)~~§16.2.4.E.1~~ §16.2.4.E.4.a.

414 (a) Nonconforming one-family dwellings, ~~and~~ two-family dwellings, and expanded
415 housing option development subject to §10.4 permitted to add on to or expand
416 pursuant to §1.1.1.D~~§16.2.4.E~~ may construct, within applicable height limits, an
417 addition over an existing one-family or two-family dwelling encroaching on a
418 required setback or yard area provided there is no more of an encroachment
419 into the required setback or yard than that of the existing wall below it, and
420 providing that new construction may not take place over encroaching garages or
421 porches.

422 §16.6. Condominium and Cooperative Conversion

423 §16.6.1. Nonconforming land, buildings or structures

424 A. Whenever any land, buildings or structures or the use thereof are proposed to be
425 converted to condominiums or cooperatives and such land, buildings or structures do not
426 conform to the regulations of this zoning ordinance, then before such proposed
427 conversion may take place, a special exception use permit pursuant to §15.4 shall be
428 obtained unless a variance of the requirements of zoning or land use regulations which
429 may be granted by the Board of Zoning Appeals pursuant to Chapter 22 of Title 15.2 of the
430 Code of Virginia is, in fact, granted.

431 **OPTION 8A**

432 B. Condominium and cooperative conversions of nonconforming dwellings to expanded
433 housing option uses pursuant to the provisions in §10.4 are not subject to the provisions
434 of §16.6.1.

435

OPTION 8B

This option would remove new §16.6.1.B. Nonconforming dwellings converted to
condominium or cooperative dwellings would require approval of a County Board use permit
or Board of Zoning Appeals variance.

436

Note: In addition to a proposed new definition of “expanded housing option uses,” key terms used in this draft Zoning Ordinance amendment are provided for reference. Except for an option that would amend the “duplex” definition (Option 9B), there are no proposed changes to these definitions.

Article 18. Definitions

§18.2. General Terms Defined

Option 9A: Retain current duplex definition.

Duplex. Two attached dwelling units in a single structure on a single lot with dwelling units situated either wholly or partially over or under the other dwelling unit. The building has all exterior characteristics of a one-family attached dwelling, having a single front entrance or one front and one side entrance on the first floor; provided an outside, enclosed stairway located parallel and abutting the rear of the dwelling shall be permitted for direct access to the second floor level.

Option 9B

Duplex. Two attached dwelling units in a single structure on a single lot with dwelling units situated either wholly or partially over or under the other dwelling unit. The building has ~~all exterior characteristics of a one-family attached dwelling, having~~ a single front entrance, two front entrances, or one front and one side entrance on the first floor; provided an outside, enclosed stairway located parallel and abutting the rear of the dwelling shall be permitted for direct access to the second floor level.

...

Dwelling or dwelling unit. A building or portion thereof designed exclusively for residential occupancy by one family, which includes provisions for living, sleeping, eating, cooking and sanitation, including One-family detached; Semidetached; Duplex; Townhouse; Multiple-family building.

...

Dwelling, two-family. Two-family dwellings include semidetached and duplex dwellings.

...

Expanded housing option uses. Two-family dwellings, townhouses with three attached dwelling units, and multiple-family buildings with up to six dwelling units, as permitted and set forth in §10.4.

...

Multiple-family. A building or portion thereof, designed for occupancy by three or more families living independently of each other.

...







Nonconforming building. A building or structure or portion thereof lawfully existing at the time this zoning ordinance became effective, that was designed, erected or structurally altered such that it does not conform to the regulations of the district in which it is located.

...

- 464 **One-family detached. A residential building containing one dwelling unit designed for one family and**
465 **located on a single lot with required yards on all four sides.**
- 466 ...
- 467 **Semidetached. A residential building with two attached dwelling units located on two lots that share a**
468 **common wall along the lot line and where each dwelling unit has its own external entrance.**
- 469 ...
- 470 **Townhouse. One of a series of three or more attached similar dwelling units, located on separately-**
471 **owned lots or on a single lot, separated by common party walls without openings extending**
472 **from basement to roof, and where each unit has its own external entrance.**

GLUP Map Legend Amendment

Land Use

<u>Land Use Designation*</u>	<u>Range of Density/Typical Use</u>	<u>Zoning**</u>
Residential		
 Low	1-10 units per acre, <u>including one-family dwellings, accessory dwellings, and expanded housing option uses</u>	R-20, R-10, R-10T, R-8, R-6, R-5
 Low	11-15 units per acre	R2-7, R15-30T
 Low-Medium	16-36 units per acre	R15-30T, RA14-26, RA8-18
 Medium	Up to 37-72 units per acre	RA7-16, RA6-15, RA-H
 High-Medium	Up to 3.24 F.A.R. (<i>Floor Area Ratio</i>) Residential	RA-4.8
 High	Up to 4.8 F.A.R. Residential Up to 3.8 F.A.R. Hotel	RA-H-3.2, C-O Rosslyn



From: Adrienne Fine <afine@arlingtonva.us>
Subject: RE: [Records Center] County Records Request :: C001631-120722
Date: January 20, 2023 at 7:48:36 AM EST
To: Wally Christensen <wchristensen@gmail.com>
Cc: FOIAOfficer <FOIAOfficer@arlingtonva.us>

Good morning,

Thank you for chatting with me yesterday about your FOIA requests and I hope the below will help us move forward in resolving your concerns.

Regarding request C001631, your concerns were two prong: i) the formal studies and ii) informal studies or analysis that may be captured in email or other correspondence. Our office has inquired with staff and the County's response to your FOIA request for formal studies related to the subject of your FOIA request completed from 9/1/22 to current date is that no responsive records exist.

As we further discussed, in order to respond to any requests for "informal" analysis or studies, the County must search email inboxes and the results must be reviewed to determine whether any responsive records are returned. In an effort to fulfill this FOIA, DTS performed the following search:

Search Terms:

- 1) ("Missing Middle" OR "MMH") AND ("environmental impact" OR "carbon neutral") – 745 emails
- 2) ("Missing Middle" OR "MMH") AND "tree canopy" – 4365 emails
- 3) ("Missing Middle" OR "MMH") AND "15.2-2283" – 57 emails
- 4) ("Missing Middle" OR "MMH") AND ("cost" OR "availability" OR "property value") AND ("single family") – 3045 emails
- 5) ("Missing Middle" OR "MMH") AND ("rent" OR "ownership" OR "owner-occupied" OR "for-sale" OR "condo") – 5224 emails

Searched parties:



Planning staff only.

Date range:

1/1/2019 to 12/7/2022

Please note that technically, this request would be subject to administrative closure pursuant to VA Code 2.2-3704(F) as there has not been any authorization of the estimate, but we are providing the above in an effort to work through these matters together. Please review the above and advise if you wish to open a new FOIA request. As stated, our goal is to ensure that we all have a clear understanding of the documents that are being provided and transparency in our operations.

You may contact Rachel or I to discuss further.

Best,

Adrienne

From: Adrienne Fine

Sent: Tuesday, January 17, 2023 9:20 AM

To: Wally Christensen <wchristensen@gmail.com>

Subject: RE: [Records Center] County Records Request :: C001631-120722

Good morning,

I am the attorney that handles FOIA and subpoena compliance for the County and I am reaching out about the below correspondence. Although I'm familiar with your FOIAs, I have some questions and think a phone call would be most helpful in getting on the same page about your concerns.

Please advise as to when would be the best time to discuss this matter further this week.

Best,

Adrienne

Adrienne Sakyi Fine

Assistant County Attorney

Arlington County

One Courthouse Plaza

2100 Clarendon Blvd., Suite 403

Arlington, VA 22201

703-233-0543 (Cellphone)

703-228-7106 (Facsimile)

afine@arlingtonva.us

This communication is confidential and is intended to be privileged pursuant to the attorney-client privilege and the work-product doctrine. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender at (703) 228-3100 by telephone and delete this email.

From: Wally Christensen <wchristensen@gmail.com>

Sent: Monday, January 16, 2023 11:01 AM

To: FOIAOfficer <FOIAOfficer@arlingtonva.us>

Subject: Re: [Records Center] County Records Request :: C001631-120722

EXTERNAL EMAIL

Dear Ms. Healy - your email below is directly contrary to what you told me during our telephone conversation last week. You specifically said, in response to my direct question, that your search revealed no "formal analyses or studies" other than what was previously produced in response to my County Records Request of September 8, 2022 (Reference # C001243-090822).

You also purposefully misquoted the definition of requested records set forth in my December 6 Records Request, apparently to justify your now admitted failure to search for any formal studies or analyses beyond those previously produced. You assert below that my December 6 Records Request defined "study or analysis" to mean "informal analyses and studies that may be contained in communications between County staff including "the back and forth between staff"". Your assertion is incorrect, and deliberately misleading. The definition of "analysis" set forth in the December 6 Request was, in fact, broader than your characterization, and it specifically included "formal" analyses. As set forth in the December 6 Request: "The term "analysis" means any review, examination (detailed or otherwise) or consideration of data or other information regarding the subject in question, whether formal or informal, and whether set forth in memoranda, graphs, note or emails or other documents, including but not limited to emails to or from members of the County Board and to or from staff of the Planning Commission."

The County initially was required to produce all records responsive to this Request by December 16, 2022. You requested an additional seven working days to respond, extending your deadline to December 28. Your response is now overdue. You may defer the production of emails until we discuss this further, but please produce any "formal studies or analyses" responsive to this Request (other than those previously produced in response to my September 8, 2022 Request) or confirm that there are no additional "formal studies or analyses" other than those previously produced, by no later than January 18, 2023.

Wally Christensen

On Jan 13, 2023, at 11:20 AM, FOIAOfficer <FOIAOfficer@arlingtonva.us> wrote:

Good morning Mr. Christensen,

Your request, Reference No. C001631, was for 5 distinct requests and also indicated:

Where "study or analysis" means informal analyses and studies that may be contained in communications between County staff including "the back and forth between staff"

The content of your request is at the end of this email.

Because of your specification that "study or analysis" means informal analysis and studies contained in communications, we searched all email communications between staff. Due to the nature of the request and your clarification, this means that all emails that populated back from our searches would need to be reviewed to determine if they are responsive to your request.

In response to your question regarding whether formal studies/analysis are included in the search for records responsive to this FOIA, please be advised that the definition that you provided for "studies or analysis" did not include these. Accordingly, any formal studies, if they exist, were not specifically search for, but could be found incidentally with the below search criteria. It may be helpful for you to reach out to staff working on the Missing Middle Housing Study to discuss some of the questions you may have regarding the process.

To obtain the estimate, we ran 5 searches for each of your sub-requests and de-duplicated the results against each other to weed out duplicate emails. Additionally we did not apply a date range because we understood your request to not have a date range. The following are the keyword searches run for each request as well as the results of emails identified as possibly responsive:

1. ("Missing Middle" OR "MMH") AND ("environmental impact" OR "carbon neutral") – 745 emails
2. ("Missing Middle" OR "MMH") AND "tree canopy" – 4365 emails
3. ("Missing Middle" OR "MMH") AND "15.2-2283" – 57 emails
4. ("Missing Middle" OR "MMH") AND ("cost" OR "availability" OR "property value") AND ("single family") – 3045 emails
5. ("Missing Middle" OR "MMH") AND ("rent" OR "ownership" OR "owner-occupied" OR "for-sale" OR "condo") – 5224 emails

Because of the nature of the request, reviewing records for "study or analysis" requires a close and, frankly, subjective review of the records. We run the email search to determine the realm of **possibly** responsive records to your request. It is very likely that not every email that was returned for the above five searches is actually responsive to your request.

To better help us more specifically identify the records that you are seeking, and possibly reduce the overall cost of your FOIA request, you could consider the following strategies:

- You can identify the specific keywords you would like us to use;
- Apply a date range to a more narrow time period;
- Specifically identify personnel or departments you would like for us to search for responsive records from;
- More specifically describe what it is you are requesting with more definitive language.

Additionally, there are a number of Missing Middle FOIA requests that we have responded to that have been posted to our public archive [here](#). It is possible that the records you are seeking have been previously provided.

Please let me know if you'd like to further discuss ways to possibly narrow your request or if you would like to discuss the records that you are seeking and how we can ensure that our research, review, and reproduction is more narrowly tailored to more accurately respond to your request.

Thank you,

Rachel Healy, FOIA Officer

Pronouns: she, her, hers

Office of the County Attorney

One Courthouse Plaza

2100 Clarendon Blvd., Suite 403

Arlington, VA 22201

(703) 843-0687

From: Wally Christensen <wchristensen@gmail.com>

Sent: Wednesday, January 11, 2023 11:57 AM

To: FOIAOfficer <FOIAOfficer@arlingtonva.us>

Subject: Re: [Records Center] County Records Request :: C001631-120722

EXTERNAL EMAIL

Dear Ms. Healy - thank you for taking the time to discuss this request with me yesterday. I had called to inquire about the estimated cost of making this production.

As you know, this request sought an update of records produced in response to my County Records Request of September 8, 2022 (Reference # C001243-090822), and thus excluded records previously produced in response to that Request. You stated, in our conversation, that the cost estimate for the current request was greater than the previous request because it included a broader definition of the term "analysis", to include not just 'formal studies and analyses', but also emails to and from members of the County Board and Planning Commission, among other things. I understood you to say that your current search found no additional 'formal studies and analyses' other than those that were produced in response to the September 8, 2022 Request, but that it did include a large number of intra-County emails that were responsive to the current Request. Would you please confirm that my understanding on this point is correct? Alternatively, if your search found new or different formal studies or analyses other than those produced in response to the September 8 Request, would you kindly identify them for me, and provide me with a cost estimate for the production of those records?

You also said that you were able to break down the aggregate cost estimate into the cost of producing records in response to each of the separate Requests contained herein. Would you please provide me with those Request-specific estimates?

Thanks for your assistance.

Wally Christensen

On Dec 13, 2022, at 7:17 AM, Arlington County FOIA Center
<arlingtoncountyva@govqa.us> wrote:

--- Please respond above this line ---

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RE: County Records Request of December 06, 2022, Reference #
C001631-120722

Dear Wallace Christensen,

Arlington County received a public records request from you on
December 06, 2022. Your request mentioned:

Request 1: Any study or analysis performed by, for, or on behalf of the County, or otherwise reviewed by the County, relating to the environmental impact of MMH, including whether MMH will, or will not, be carbon neutral.

• **Request 2: Any study or analysis performed by, for, or on behalf of the County, or otherwise reviewed by the County, relating to the impact of MMH on Arlington County's tree canopy, including compliance with Arlington County's Tree Preservation Ordinance, Section 67.2 ("There is hereby established a tree preservation ordinance to ensure that the tree cover within Arlington County's boundaries is maintained and improved in order to protect the health, safety, and welfare of County citizens and the general public, to safeguard the ecological and aesthetic environment necessary to a community, to preserve, protect, and enhance valuable natural resources, and to conserve properties and their values.")**

• **Request 3: Any study or analysis performed by, for, or on behalf of the County, or otherwise reviewed by the County, relating to whether MMH will satisfy or impede any of the following purposes for which zoning ordinances shall be designed, as specified in Code of Virginia § 15.2-2283:**

- o to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers;
- o to reduce or prevent congestion in the public streets;
- o to facilitate the creation of a convenient, attractive and harmonious community;
- o to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
- o to protect against destruction of or encroachment upon historic areas and working waterfront development areas;

o to protect against overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers;

o to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated;

o to protect surface water and ground water as defined in § 62.1-255.

• Request 4: Any study or analysis performed by, for, or on behalf of the County, or otherwise reviewed by the County, relating to the projected impact of MMH on the cost or availability of detached single family home ownership in Arlington County.

• Request 5: Any study or analysis performed by, for, or on behalf of the County, or otherwise reviewed by the County, relating to the projected extent to which MMH housing units will be owned by persons or entities other than the occupants of the housing units

Where “study or analysis” means informal analyses and studies that may be contained in communications between County staff including “the back and forth between staff”

Please be advised the County is requesting seven additional days to respond to your request due to research and reviewing of any potential responsive records. Therefore, the County is invoking subsection B 4 of § 2.2-3704 to provide us with seven (7) additional working days to respond to your request.

For questions or additional information, please reply to this email.

Sincerely,

Rachel Healy, FOIA Officer
Arlington County - Office of the County Attorney
2100 Clarendon Blvd., Suite 403 Arlington, VA 22201
(C) 703.843.0687 (T) 703.228.3100

To monitor the progress or update this request please log into the [FOIA Center](#)

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

MARCIA L. NORDGREN, NORMAN)
TYLER, ALEXANDER MACKENZIE,)
ROBERT P. PARKER, MONA C.)
PARKER, KATHERINE PERNIA,)
MARGARET FIBEL, RICARDO J.)
ROZADA, MABEL GABIG, AND ERIC)
ACKERMAN)

Plaintiffs,)

v.)

COUNTY BOARD OF ARLINGTON)
COUNTY, VIRGINIA AND ARLINGTON)
COUNTY PLANNING COMMISSION)

Defendants.)

Case No.:

AFFIDAVIT OF MARCIA L. NORDGREN

I, Marcia L. Nordgren, after being duly sworn, state the following facts from my personal knowledge under oath and subject to the penalty of perjury.

1. I am over the age of eighteen and am otherwise competent to testify to the matters herein stated.

2. On April 9, 2023, I became aware of a memorandum dated March 20, 2023, (the "March 20 Memorandum") that County Board of Arlington County ("Board") Chair Christian Dorsey presented at the Board's March 22, 2023 hearing to discuss the Expanded Housing Option Development zoning ordinance amendment ("EHO Development Zoning Amendment"). Chair Dorsey presented the March 20 Memorandum after the time for public comment had closed.

3. I have thereafter reviewed the March 20 Memorandum, also referred to by Board



members as the “Chair’s Mark,” from Chair Dorsey dated March 20, 2023.

4. The Chair’s Mark detailed Chair Dorsey’s recommendations on which options the Board should adopt at the March 22, 2023 hearing.

5. On information and belief, the Chair’s Mark was furnished to the Board on March 20, 2023.

6. To the best of my knowledge, the Chair’s Mark was not made available online for public inspection, as is County practice, at the same time that it was furnished to members of the Board, presumably, on March 20, 2023.

7. I have searched Arlington County’s website for the EHO Development Zoning Amendment, formerly known as the Missing Middle Housing proposal, including its documents and studies, the agenda posted online, and the letters from the public and the Planning Commission.

8. I have been unable to locate a copy of the Chair’s Mark available for public inspection online either before or after the March 20, 2023 hearing.

9. The Board was required to make the Chair’s Mark available for public inspection when it was furnished to the Board.

10. The Board’s failure to so make the Chair’s Mark available denied me the right and opportunity to review the materials furnished to the Board for its March 2023 hearings as the Virginia Freedom of Information Act (“VFOIA”) mandates.

11. I have also reviewed an email sent by a member of the public to members of the Planning Commission dated March 6, 2023 and timestamped at 11:09 a.m. (the “March 6 Email”).

12. The Planning Commission states on its website that written comments received by 12:00 p.m. on the day of any Planning Commission hearing will be provided to the Planning Commission in advance of such hearing.

13. On information and belief, the contents of the March 6 Email were provided to the Planning Commission via the Planning Commission's online form for the March 6 Planning Commission Meeting and via email, consistent with the representation on the Planning Commission website.

14. I have looked for the March 6 Email among the Planning Commission's posted documents online and have been unable to locate the March 6 Email.

15. On information and belief, the March 6 Email was not made available for public inspection online, despite being furnished to the Planning Commission.

16. Because the March 6 Email was furnished to the Planning Commission for the March 6 and March 8, 2023 Planning Commission hearings, the Planning Commission was required to make it available for public inspection online at the same time.

17. The Planning Commission's failure to make the March 6 Email available denied me the right and opportunity to review that document for the March 6 and 8, 2023 Planning Commission public hearing as required by the Virginia Freedom of Information Act.

18. Other residents of Arlington County have shared with me their concern, which mirrors mine, that these violations of the VFOIA warrant review by the Circuit Court for Arlington County and an appropriate order enjoining the Board and/or Planning Commission from violating the requirements of VFOIA, mandating that they comply with the VFOIA in the future, invalidating the EHO Development Zoning and GLUP Amendments, and enjoining the Board and staff from issuing permits for EHO Development.

19. I have submitted VFOIA requests for all materials furnished to the Planning Commission before its December 12 and 15, 2022 and March 6 and 8, 2023 hearings and for all material furnished to the Board before its January 21, 24, and 25, 2023 and March 18, 21, and 22,

2023 hearings. As of the time of executing this affidavit, I have not received responses to these VFOIA requests. As a result, I reserve the right to supplement this affidavit based on information discovered from those VFOIA requests.

20. The foregoing is true and correct to the best of my personal knowledge.

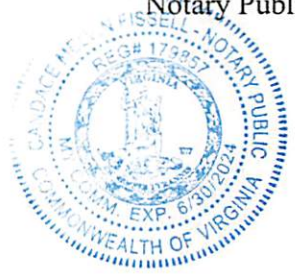
Marcia L. Nordgren 4/19/23
Marcia L. Nordgren Date

COMMONWEALTH OF Virginia :
City
COUNTY OF FAIRFAX : to-wit:

Subscribed and sworn to/affirmed before me on this 19th day of APRIL,
2023, by Marcia L. Nordgren.

Candace Nelson Fissell
Notary Public

My Commission Expires: 6/30/2024
My Registration No.: 179857

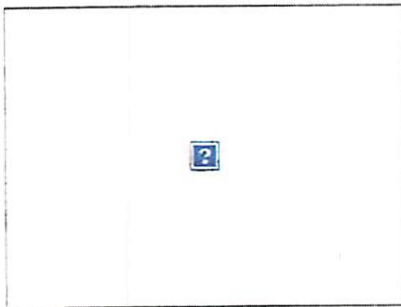


From: Arlington County FOIA Center <arlingtoncountyva@govqa.us>

Sent: Wednesday, April 5, 2023 4:19 PM

To: mnordlaw@aol.com

Subject: County Records Request :: C002133-040523



Dear Marcia Nordgren:

Your request has been received and is being processed. Your request was received in this office on 4/5/2023 and given the reference number C002133-040523 for tracking purposes.

Records Requested: 1. All emails, letters, reports and other materials furnished to County Board members (from any person whether given in hard copy, sent to Countyboard@arlingtonva.us, or sent to any of their individual email addresses) from January 25, 2023 through March 21, 2023 that mention "missing middle" or "enhanced housing options". 2. All emails, letters, reports and other materials furnished to County Board members (from any person whether given in hard copy, sent to Countyboard@arlingtonva.us, or sent to any of their individual email addresses) from January 1, 2023 through January 24, 2023 that mention "missing middle" or "enhanced housing options". 3. All emails, letters, reports and other materials furnished to members of Arlington's Planning Commission (from any person whether given in hard copy or sent to any of the commissioners' email addresses) from January 25, 2023 through March 7, 2023 that mention "missing middle" or "enhanced housing options". 4. All emails, letters, reports and other materials furnished to members of Arlington's Planning Commission (from any person whether given in hard copy or sent to any of the commissioners' email addresses) from November 13, 2023 through December 14, 2023 that mention "missing middle" or "enhanced housing options".

You will receive a response within five working days of your request.



You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed.

Arlington County

To monitor the progress or update this request please log into the [FOIA Center](#)

