

TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 26, 2021

Ordinance, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units

Sec. 78-71.1. - Residential use category.

- (a) *Characteristics.* The residential use category is characterized by the residential occupancy of a dwelling or residential facility by an individual or a household meeting the definition of a family. Tenancy is arranged on a month-to-month or longer basis.
- (b) *Examples.* Example use types include single-family detached dwellings, duplex dwellings, multi-family dwellings, assisted living for the elderly or persons with disabilities, or townhouse dwellings. Group homes are also included as described in the Code of Virginia, § 15.2-2291.
- (c) *Similar use types, accessory uses and prohibited use types.*
 - (1) *Transient lodging.* Transient lodging is not permitted in the residential use category. Transient lodging, including, hotels, motels, inns, conference centers, boarding houses and lodging houses, are in the lodging businesses category.
 - (2) *Convalescent home.* Convalescent home is in the institutional and community services use category.
 - (3) *Home-based businesses.* Home-based businesses, including childcare in the home, are permitted as accessory uses that are subject to additional standards. (See section 78-80.5).
 - (4) *Bed and breakfast and short-term rentals.* Bed and breakfast establishments are permitted as accessory uses subject to additional standards in 78-80.4(d), bed and breakfast establishment *and 78-80.4(u), short-term rentals.*
 - (5) *Accessory dwelling.* Accessory dwelling units are permitted as accessory uses subject to additional standards. ~~See Article VIII, Accessory Uses and Structures.~~ *As listed in Section 78-80.4(a).*
- (d) *Residential use category specific use standards.* All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply, unless, in the judgment of the reviewing authority, exceptional circumstances warrant adjustment:

- (3) *Establishment of unauthorized dwelling units prohibited.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is prohibited ~~and subject to the following~~ *except when legally established as an accessory use pursuant to Section 78-80.4(a).*

- ~~a. *Change in use or special exception.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is not permitted except in accordance with procedures for a change in use as authorized by the town or unless an accessory dwelling unit has been approved through a special exception.~~
- ~~ba. *Conditions constituting an unauthorized dwelling unit.* An unauthorized dwelling unit within a building shall be presumed to have been created when contiguous areas for living, sleeping, eating, cooking, and sanitation are designed in such a manner as to establish a distinct, separate, and self-contained living or housekeeping unit. The existence of any one of the following conditions shall be considered to be an unauthorized dwelling unit, *when established absent approval of a legally established accessory dwelling pursuant to 78-80.4(a).*~~
 - 1. A secured internal access/connection is maintained that prevents full access to all of the common living areas (exclusive of private bedroom/bath areas) to all occupants of the dwelling unit.
 - 2. More than one assigned address or more than one electric, water or gas meter serving the building.
 - 3. Use of part of a previously approved dwelling unit for an additional dwelling unit providing complete, independent living facilities for a single-family dwelling including provisions for living, sleeping, eating, or sanitation.
- ~~e. *Additional procedures.* The building official and the zoning administrator may request additional administrative steps, such as the recording of a "declaration of use", when such steps are determined to be warranted by specific conditions, such as a separate exterior entry. The creation of a dwelling unit shall comply with all rules, regulations, ordinances and other requirements of the town of Herndon. Building permits, inspections, and approvals are required for all building, electrical, mechanical, or plumbing work performed. Where a conflict arises between these standards and other requirements, the most restrictive shall govern.~~

Section 78-80.1. – Accessory uses and structures.

- (a) *Purpose and intent.* Sections 78-80.1 through 78-80.5 authorize the establishment of accessory uses and structures that are incidental and customarily subordinate to principal uses. The town's intent is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding properties. Some accessory uses are required (such as parking), some are permitted by right (such as signs), some are permitted as special exceptions (~~such as accessory dwelling units~~) and many are allowed in planned development districts.

- (c) *Standards for all accessory uses and structures.* The following standards apply to all accessory uses and structures:
 - (1) *Relation to principal use.* Any accessory use or structure shall directly serve the principal use or structure.
 - (2) *Incidental to primary use.* Any accessory use or structure be customarily accessory and clearly incidental to the principal use.
 - (3) *Subordinate in nature.* Any accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure. An accessory use may not exceed

25 percent of the floor area shared with the principal use, and any combination of more than two accessory uses may not exceed 50 percent of the floor area shared with the principal use, *unless otherwise specified in this section.*

- (4) *Ownership.* Any accessory use or structure shall be owned or operated by the same entity owning the principal use or structure.
- (5) *Location.* Any accessory use or structure shall be located on the same lot as the principal use or structure ~~or on a contiguous lot.~~
- (6) *Compliance.* Together with the principal use or structure, any accessory use or structure shall not violate the bulk, density, parking, landscaping, or open space standards of this chapter. Therefore, all accessory uses and structures shall conform to the applicable requirements of this chapter, including the use regulations in Article VII, Use Regulations, and the dimensional standards in individual zoning districts.

Sec. 78-80.2. - Table of permitted and allowed accessory uses and structures.

(c) *Table of permitted and allowed accessory uses and structures.* The Table of Permitted and Allowed Accessory Uses and Structures, Table 78-80.2. C. identifies the uses permitted within base districts. (See also section 78-70.2(d): Table of Principal Permitted and Allowed Uses, and Table 78-90.1(b), Allowed Temporary Uses and Structures; See also use specific standards in section 78-80.4)

Table 78-80.2(c): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES

**KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
Z=Use Allowed Subject to Zoning Map Amendment Approval**

Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column.

** For Permitted Accessory Uses in PD-TOC see section 78-50.8; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.9

ACCESSORY USE	Residential Districts				Business Districts				Planned Development District				Suppl Req.	
	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-UR	PD-TOC PD-W	See Section
Accessory Dwelling Unit <i>-Internal or</i>	S <i>P</i>	S <i>P</i>	S						Z <i>P</i>		<i>P</i>	<i>P</i>	**	§78-80.4(a)

<i>Attached</i>														
<i>Accessory Dwelling Unit - Detached</i>	<i>P</i>	<i>P</i>						<i>P</i>		<i>P</i>	<i>P</i>			<i>§78-80.4(a)</i>
Accessory Food Preparation Area - Secondary Kitchen	<i>S</i>	<i>S</i>	<i>S</i>					<i>S</i>		<i>S</i>	<i>S</i>	**		<i>§78-80.4(b)</i>
Accessory Food Preparation - Wet Bar	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	**	<i>§78-80.4(b)</i>

Sec. 78-80.3. - Accessory structure standards.

Accessory structures and features shall comply with the following zoning-district specific standards.

- (a) *Accessory structures in residential districts.* Accessory structures in residential district shall meet the following standards, *unless otherwise specified in this section*:
 - (1) *Location.* Accessory structures, except fences and walls, shall not be located within a required setback or required side yard, except accessory buildings on corner lots may be located within the side yard. Accessory structures except fences and walls shall be located so the structure is not closer than:
 - a. Five feet to any alley line;
 - b. Two feet to any side or rear lot line, except for a townhouse dwelling lot, where the accessory structure may be located on the side or rear lot line.
 - c. Ten feet to the principal dwelling for any single-family detached or duplex dwelling.
 - (2) *Maximum height.* The height of an accessory structure shall not exceed ~~the lesser of the height of the principal structure on the site, or~~ 15 feet.
 - (3) *Maximum floor area.* On any lot, the combined floor area of all detached accessory structures shall not be greater than 50 percent of the floor area of the principal structure, unless otherwise specified in this chapter.
 - (4) *Residential occupancy.* Residential occupancy shall not be allowed in any accessory structure except under the provisions of section 78-80.4, accessory dwelling unit.
 - (5) *Temporary accessory structures.* Temporary accessory structures shall be governed by the procedures and standards of section 78-155.6(e)(4), temporary use site plan, and Article IX, Temporary Uses and Structures.

- (6) ~~Required approvals.~~ On lots with single family detached or duplex dwellings, the construction, replacement or enlargement of an accessory building when the alteration is:
- a. ~~Less than 750 square feet may require a building permit and a building location survey in accordance with section 78-155.6(c)(1).~~
 - b. ~~Seven hundred fifty square feet of floor area or more must be approved through a single lot development plan in accordance with section 78-155.6(c)(2).~~

Sec. 78-80.4. - Standards for specific accessory uses and structures by use type.

Accessory uses and structures listed below shall comply with the following specific standards.

- (a) *Accessory dwelling unit.* An accessory dwelling unit *is permitted in the zoning districts specified in Table 78-80.2(c) and* shall comply with the following standards:
- (1) ~~Special exception required.~~ An accessory dwelling unit shall be permitted by special exception in accordance with section 78-155.3 and Article VIII, Accessory Use Regulations. *—A special exception shall be required when an internal accessory dwelling unit is proposed in a single family attached townhouse.*
 - (2) ~~Compliance with building code and zoning standards.~~ An accessory dwelling unit shall comply with all applicable building *code* and development standards for dwelling units in the zoning district in which the accessory dwelling unit will be located. An accessory dwelling unit shall also comply with all applicable standards for the principal dwelling.
 - (3) ~~No mobile homes or recreational vehicles as accessory dwellings.~~ Mobile homes, recreational vehicles, travel trailers, *manufactured homes*, and the like shall not be used as accessory dwelling units.
 - (4) ~~One accessory unit per lot.~~ There shall be no more than one accessory dwelling unit on a lot in addition to the principal dwelling.
 - (5) *Size limit.*
 - a. *Internal or attached.* The floor area of an *internal or attached* accessory dwelling unit shall not exceed ~~35~~ *40* percent of the gross floor area of the principal dwelling, or 1,200 square feet, whichever is less.
 - b. *Detached.* *The maximum gross floor area of a detached accessory dwelling unit shall not exceed 900 square feet.*
 1. *Covered or screened porches do not count towards the maximum floor area. Porches otherwise enclosed do not count towards the maximum floor area unless the space is conditioned.*
 2. *Detached accessory dwelling units and any associated porches count towards the minimum lot coverage allowed in the underlying district.*
 - (6) *Location.*
 - a. *Detached accessory dwelling units are limited to the rear yard. A detached accessory dwelling unit shall have a minimum setback of 10 feet from the rear and side property lines and 10 feet from the principal structure.*
 1. *Existing accessory structures. A detached accessory dwelling may be incorporated into a detached accessory structure that does not meet the*

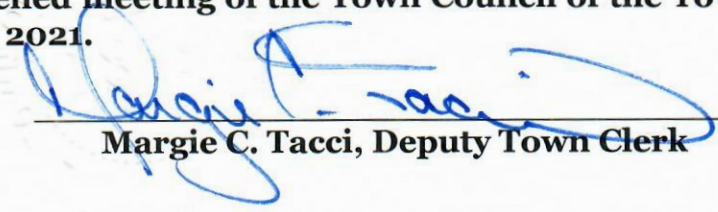
above setbacks provided the detached accessory structure legally existed on or before October 26, 2021.

2. *Encroachments. Encroachments into the setback are limited to the following features and must comply with the provisions of Table 78-21(f): Chimney, eaves, trim, fascia boards, sills, cornices, bay windows, patios, retaining walls, terraces, and similar features (other than decks located more than two feet above grade).*
 - b. *Attached accessory dwelling units shall meet the setback requirements of the underlying zoning district.*
- (67) *Entrance location. If the accessory dwelling unit is a part of the principal structure on the lot, any external entrance for the accessory dwelling unit shall be located on the side or rear of the structure.*
- a. *The external entrance for internal or attached accessory dwelling units shall be located on the side or the rear of the structure. On corner lots, the entrance may face the secondary front setback.*
 - b. *A sliding door is not permitted as the main exterior entrance to the accessory dwelling unit.*
- (78) *Limit on bedrooms. and occupancy. An accessory dwelling unit shall not contain more than two bedrooms or be occupied by more than two three persons.*
- (89) *Occupancy standards. An accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling as their primary residence. If the owner of the principal dwelling ceases to occupy one of the dwelling units as their primary residence, the entire property is limited to one family as defined in Section 78-180. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:*
- a. *The person is at least 62 years of age; or*
 - b. *The person has a physical, mental, or cognitive disability:*
 1. *As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or*
 2. *As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.*
 3. *This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.*
- (910) *Parking. There shall be a minimum of one off-street parking space with convenient access to a street for the accessory dwelling unit. The off-street parking shall be in addition to the requirements specified for the principal dwelling. the off-street spaces required in Article X – Parking, Loading, and Circulation, for the principal dwelling.*
- (1011) *Not to be sold separately. Accessory dwelling units shall not be sold apart from the principal dwelling upon the same lot where they are located.*
- (112) *Utilities. Water and sewer service shall be provided from the principal structure and not from new taps to the main lines.*

- ~~(1112)~~ *Compliance with health, safety, sanitation and building code regulations.* Any accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours upon prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.
- ~~(1213)~~ *Zoning permit and special exception time limits.* A zoning inspection permit is required for an accessory dwelling unit. The ~~special exception and zoning inspection permit for the accessory dwelling unit shall expire~~ *at any time the use does not comply with any of the conditions of approval or the terms of this chapter.* :
- ~~a. Ninety days from the date on which the owner no longer occupies the property. The owner shall notify the zoning administrator at such time as the owner no longer occupies the property.~~
 - ~~b. Two years from the date of approval of the special exception if required improvements have not been completed.~~
 - ~~c. One year from the date the use ceased.~~
 - ~~d. At any time the use does not comply with any of the conditions of approval or the terms of this chapter.~~
- ~~(1314)~~ *Conflicting provisions.* In the case of any conflict between the accessory dwelling unit standards of this section and any other requirement of this chapter or the subdivision ordinance, the standards of this section shall control.
- (b) *Accessory food preparation area.* Accessory food preparation areas include secondary kitchens and wet bars.
- (1) *Secondary kitchens.* Secondary kitchens, as defined in Article XVIII, are permitted by ~~special exception in residential dwellings~~ *in the zoning districts specified in Table 78-80.2(c), and* in accordance with all of the following provisions
- ~~a. A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.~~
 - ~~ba.~~ *The location of the secondary kitchen is located on the same floor as the primary kitchen and the secondary kitchen* is not separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition. *A second kitchen within an accessory dwelling unit is regulated under Section 78-80.4(a).*
 - ~~c.~~ *A unique and compelling need is demonstrated by the applicant.*
 - ~~db.~~ *A zoning inspection permit is applied for and approved.*
 - ~~e.~~ *The proposed activity meets the standards of section 78-155.3(e), review standards for special exceptions.*
 - ~~f.~~ *Secondary kitchens shall not be permitted in accessory structures except under the provisions of section 78-80.4, accessory dwelling unit.*
- (2) *Wet bars.* Wet bars, as defined in Article XVIII, are permitted by-right in accordance with all of the following provisions:
- a. A wet bar shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.

- b. The location of the wet bar, when in the same structure as the primary kitchen, shall not be separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition.
- c. A wet bar shall not contain any oven exceeding 2.2 cubic feet, a stove, range, stovetop, grill, 240-volt electrical outlet(s) or any gas lines, a sink having a waste line drain in excess of one and one-half inches in diameter, a rough in for any of the above items, portable burner(s) and/or portable cooktops.
- d. Wet bars located outside of any building and associated with patio areas may have grills, cooktops and gas lines, but shall not be enclosed on more than two sides.
- e. *No more than one wet bar is permitted per dwelling unit.*

This is certified to be a true and accurate copy of Ordinance 21-O-22 at a legally convened meeting of the Town Council of the Town of Herndon on November 16, 2021.



Margie C. Tacci, Deputy Town Clerk

