

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

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Meeting Summary  
Accessory Dwelling Unit Workgroup  
Virginia Housing Commission  
Monday, May 20, 2024, at 10:00 a.m.  
Senate Room 3, Virginia Capitol Building Annex

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### **Introduction**

Delegate Carrie E. Coyner, Chair, called the meeting to order at 10:00 a.m.

Members present: Delegate Briana D. Sewell, Laura Lafayette, gubernatorial appointee, Joshua Goldsmith, gubernatorial appointee, Andrew Clark, Jessica Dennis, Michelle Gowdy, Paul Grossman, Randy Grumbine, Mindy Hall-Sexton, Kristen Kanaskie, Erin Kormann, Joe Lerch, Stephanie Showalter, Pia Trigiani, Kevin Vonck, and David C. Wescott Jr.

Members absent: Delegate Adele Y. McClure, Senator Ghazala F. Hashmi, Robert Bradshaw, Ilana Creinin, Brian Koziol, Natalie Spillman and Sarah G. Taylor

The meeting began with introductions and opening remarks followed by presentations and discussion of potential legislative drafts.

### **Opening Remarks**

*Elizabeth A. Palen, Executive Director, Virginia Housing Commission*

Elizabeth Palen gave an overview of housing being built in the United States. Key facts included:

- Five million homes have been added in the U.S. since 2020; this is the most housing built since 2007 and is at a rate of over one million built annually.
- A 2022 to 2023 census study on construction indicates apartments are being built at the highest rate since 1987.
- A Harvard University's Joint Center of Housing Study states that housing should continue to be built at a strong pace nationally, although not necessarily for low- and moderate-income people.

## **Presentations**

### ***Policy Brief, Literature Review, and Exploration of Regulations in State Laws Concerning ADUs***

*Jesseca Hoff, Research and Policy Analyst, Virginia Housing Commission*

Reports and references are available at <https://vhc.virginia.gov/reports.asp>

**Jesseca Hoff** gave a two-part presentation to provide members and workgroup participants with information gathered and analyzed to facilitate this discussion.

#### **I. Definitions: Accessory Dwelling Unit vs. Affordable Dwelling Unit**

An accessory dwelling unit (ADU) does not have to be affordable; it is a smaller housing unit that is an accessory to a primary single-family dwelling unit. They can be an internal ADU attached to the primary dwelling unit or detached from the primary dwelling unit and are most often considered a separate living space.

- States that have passed legislation broadly allowing ADUs have not included any required affordability parameters or definitions within their ADU code sections.
- In SB 305, ADU is defined as an independent dwelling unit on a residential dwelling lot with its own living, bathroom, and kitchen spaces.
- Evidence shows ADUs increase housing stock in neighborhoods with fewer rental options. ADUs have not been proven to rent at below-market rates or be affordable for households at or below area median income (AMI).
- The rental cost of an ADU is unpredictable but mostly determined by the owner's relationship with the tenant, location, and size of the ADU. Affordable rent is usually provided to acquaintances and family members.
- Many localities and research groups find additional intervention may be necessary to generate affordable ADUs.
- ADUs generate wealth for the homeowner but are commonly built in more affluent communities with more financing options compared to low- or moderate-income communities.
- ADUs can be used for a variety of purposes outside of housing, but most are used for that purpose.
- ADUs have less of a negative environmental impact compared to standard single-family homes.
- Insurance requirements could serve as an additional barrier to using a detached ADU to provide housing to a non-family member.
- Results of statewide ADU permitting vary across both states and localities.

#### **II. Exploring Statewide ADU Regulation**

ADUs are defined differently throughout the United States. The relevant state laws concerning ADUs vary widely.

- Nine states have passed statewide legislation broadly allowing ADUs use.
- Several other states are considering ADU legislation during their pending 2024 legislative sessions. VHC's research on ADUs will be updated to include any passed legislation.

- In 2023 bills in Colorado, Arizona, and Rhode Island failed to pass.
- By-Right permitting: Should there be a discretionary review process for ADU construction, or should it be by-right?
  - California, Vermont\*, Montana, Oregon, and Connecticut each have some form of by-right permitting for ADU construction.
  - New Hampshire, Vermont\*, Maine, Utah, and Washington do not require by-right permitting of ADUs. New Hampshire, Maine, Utah and Washington allow localities the authority to decide ADU permitting processes.
- Environmental Concerns:
  - Should there be special environmental considerations or prohibitions?
  - Should owner occupancy be required?
  - What should be the minimum/maximum size of ADUs? Should there be lot size requirements? All state statutes studied contain size regulation for ADUs.
  - Short-Term Rentals: Should there be restrictions on short term rentals of ADUs? Every state studied gives localities the ability to restrict the use of ADUs for short term rentals.
  - Separate sale of ADU: Should the sale of an ADU separate from the primary dwelling be allowed?
- Additional studied state regulations include application fees, parking, CIC exemptions, fire sprinklers, occupancy restrictions, number of ADUs, separate water, sewer and septic systems, setbacks, utilities, and neighborhood aesthetics.

## **Brief Comments**

*Joe Lerch, Virginia Association of Counties (VACO), Director of Local Government Policy*

**Joe Lerch** commented that VACO, the Virginia Municipal League (VML) and others were part of a workgroup that worked with the Department of Housing and Community Development (DHCD) on a report about ADUs in 2021.

Items discussed by that workgroup included exploring grant opportunities for constructing and, or maintaining ADUs, and the importance of ADUs being utilized as an affordable housing resource.

*Lerch* also commented on a discussion he had with DHCD in Washington, D.C because they have a pilot program established to explore this topic.

- The D.C. pilot program was established in the spring of 2022 with \$2.5M in grant funds.
- They will fund the renovation or creation of an ADU for residents of all incomes. However, residents with incomes above 120% of the median family income or Area Median Income (AMI), must rent their ADU to households with incomes below 60% of the AMI.
- An individual who currently owns a property, and whose income is below 120% of the AMI, can obtain 100% grant funds for the hard cost of construction. The proposed renter must have a limited income.
- There have been 10 applications preliminarily approved; two have permits for construction and one is under construction.
- They are limiting to \$120,000 per grant application which is only for converting basements.
- The proposed renter must have a limited income.
- In order to create more ADUs, D.C. is looking to standardize the design process for ADUs.

*Lerch* added that in 2021 there were certain building code restrictions in place that raised the cost of adding internal units. Those have since been amended to include the firewall separation and allow for HVAC systems to be shared. DHCD can provide additional information on the building code restrictions.

### **Questions:**

*Laura Lafayette, Gubernatorial Appointee* inquired if the Washington, D.C. pilot program allows the owner of the primary dwelling whose income is over 120% of the AMI to build an ADU and rent to a tenant whose income is below 60% of the AMI.

*Joe Lerch* confirmed they can build an ADU, but if they wish to avail themselves of a 100% grant program, they must rent out to somebody at 60% of the AMI or lower.

*Lafayette* asked if grant money is available to cover renovating a basement, versus building a standalone ADU in a backyard.

The response was yes, and there is a sliding scale on what the D.C.'s program is willing to grant, but the average has been about \$89,000 per unit.

### ***Rockingham County Presentation: Locality Perspectives on Accessory Dwelling Units***

*Dylan Nicely, County Planner, Rockingham County*

Presentation is available at <https://vhc.virginia.gov/meetings.asp>

**Dylan Nicely** was accompanied by Stephen Kinger, County Administrator, Sally Wolf Garrison, Board Member and Rachel Salton, Deputy Director of Community Development.

Items discussed in the presentation included:

- The zoning ordinance definition of ADU is: “Accessory Dwelling: A complete, detached dwelling unit located on the same parcel as a primary single family detached dwelling”.
- The zoning ordinance definition for Duplex is: “Duplex: Two (2) dwelling units constructed as side-by-side units, which may be on separate lots, or upper and lower units. Each dwelling unit shall be occupied by one (1) family. Also known as two-unit attached dwellings”.
- The zoning ordinance definition for Single-Family with Independent Living Quarters is: “A separate living unit located within a single-family dwelling and having direct interior access to the primary living unit”.
- These local definitions are based on local conditions for Rockingham County.
- ADUs have an impact on infrastructure, property values and affordable housing.
- An example was given under the formerly proposed SB 304 in 2024.
- What financial considerations are there for the developer and what barriers are there for ADU construction?

*Nicely* said that affordable housing is a top priority for all localities and ADUs factor into this larger issue. Localities address affordable housing in many other ways that are in line with their unique needs and priorities. He added there are currently 860 ADUs in Rockingham County.

### **Questions:**

*Delegate Coyner, Chair* asked what made Rockingham County make the decision in 2014 to allow detached ADUs.

*Nicely* replied it was in response to the presence of ADUs in the marketplace. Rockingham County in response to developer and homeowner concerns, defined ADU parameters.

*Erin Kormann, Virginia Association of Realtors* asked the speaker to clarify the definitions of ADUs used by Rockingham County and inquired whether the definition included both attached and detached ADUs.

The response was that a basement conversion into a separate dwelling can be called a duplex if it's in a by-right zoning district and it has the Health Department's approval.

A discussion took place concerning what data the Department of Housing and Community Development (DHCD) tracks for ADUs.

*Delegate Coyner* asked if based on the 860 detached ADUs in the county there is any data on the increase in duplexes.

*Nicely* responded that he did not have the information available, but he could provide it to her.

*Andrew Clark, Home Builders Association of Virginia (HBAV)* commented that what other localities are doing would be important data for DHCD to track since they have the statutory authority to do so.

*Lerch* said that DHCD is already tracking this data.

*Chase Sawyer, DHCD* confirmed DHCD completed gathering permit fee revenue data in the spring of this year. The data is being finalized and DHCD is going back to localities to collect the different iterations of information on ADUs. A second-round survey including policy implications is in progress. DHCD will include each locality's local housing policy changes including information from last year's housing surveys. DHCD would welcome comments from localities.

*Elizabeth Palen, Director, Virginia Housing Commission* asked if the survey would be finished by early summer and available to present to the Commission at the July 15<sup>th</sup> meeting.

*Sawyer* replied that DHCD will have it ready by this summer and will present it at the meeting.

*Stephanie Showalter, Macauley Jamerson Satterlund & Sessa, PC* asked about legislation addressing septic and stormwater usage based on Section 28, subsection D.6 in the engrossed SB 304 bill, and whether that was something Rockingham County had considered.

The response was that the language in section D.6 of SB 304 (Salim, S., 2024) was good, but additional language along with requirements and regulations addressing the overall impact on infrastructure such as roads and school capacity might be better than site specific regulations.

*Showalter* asked about manufactured home parks and if Rockingham County thinks there is an availability in those districts for ADUs.

The response was it would be very difficult to build an attached accessory dwelling in a manufactured home park based on lot lines, etc.

*Delegate Coyner* asked if the county is looking at the potential impact on infrastructure or capacity to new housing developments since they are allowing by-right ADUs.

*Nicely* replied that for recent newer development, the district plan for multi-family units didn't allow ADUs. A planning district that does allow ADUs needs to obtain a proffered maximum density or capacity on a given development. The idea is to ensure those proffered density caps limiting the number of units built are maintained.

*Delegate Coyner's* follow-up was to confirm that the density cap for a new zoning case would be considered regardless of the type of dwelling unit.

The response was, yes, they have density requirements that are flexible in which a builder can request as many units as desired. Builders usually proffer a development not to exceed a specific number of units.

*Coyner* asked if there is data on the percentage of new projects and new construction of single-family homes and what was incorporated as existing primary dwelling units built since passing the district plan.

*Nicely* replied there is little data, but most of those dwellings are in the more rural and agricultural areas. He said more than 50% are in those districts rather than in suburban residential areas.

### ***Chesterfield County Presentation: Locality Perspectives on Accessory Dwelling Units***

*Jesse Smith, Deputy County Administrator, Chesterfield County*

Presentation is available at <https://vhc.virginia.gov/meetings.asp>

Topics discussed in presentation included:

- Chesterfield County's definitions of the categories "Accessory Dwelling Units", "Accessory Structure permitted By-Right" and "Accessory Dwelling for Conditional Use" and whether are permitted.
- The general guidelines for family ADUs, infrastructure, zoning conditions and the nexus with affordability were discussed.

*Smith* said that allowing by-right ADU development could present some infrastructure challenges. Chesterfield County has approximately 25,000 homes on septic systems. If they were to convert all 25,000 of those homes to the county's wastewater system, it would require approximately half a billion dollars in upgrades, both to the lines and the treatment plant. From an affordability standpoint the county does not view this as a viable solution to this problem. The ADUs are being built on very large homes with pools and other outdoor buildings.

*Laura Lafayette* asked if an aging parent were to move into their family's ADU, in a backyard, leaving a former home vacant, that then would create a solution for affordable housing. She added that it would be interesting to track the average cost of backyard ADUs and the census data to see who is living in these units as of today and 10 years from now.

*Smith* replied he would compile the information for the Virginia Housing Commission.

*Showalter* asked how Chesterfield County defines family.

*Smith* replied there is a legal definition for family and there are state code definitions. Family is defined by blood, marriage, adoption, etc.

*Kormann* requested clarification on how a unit is considered an ADU and at what point is a kitchen considered a full kitchen. She asked if items such as a stove, refrigerator, and sink need to be included to qualify as a kitchen.

The response was in Chesterfield County a full kitchen only needs to include a stove. There are ways to get around that regulation by adding a large countertop oven or appliance.

*Paul Grossman, Town of Cape Charles* asked if Chesterfield County has any restrictions on short-term rentals.

*Smith* said the county does not have ordinances related to short-term rentals. Such ordinances are required to go through a conditional use process.

*Delegate Coyner* asked the workgroup members to discuss what was heard during the meeting.

*Coyner* said that SB 304 did not pass; the goal of this workgroup is to come to a consensus on whether having an ADU bill is needed. She would like an ADU to be defined. She asked if the localities should decide their own definitions.

*Michelle Gowdy, Virginia Municipal League* stated localities prefer to create their own definitions of ADUs. Many localities have now permitted by-right allowances of ADUs in certain districts within their localities due to market demand.

*Kormann* asked how the workgroup would address this issue if the localities were defining ADUs themselves.

*Randy Grumbine, Virginia Manufactured & Modular Housing Association* commented that the bigger question is regarding the next section of the bill. The building code does not say you can or cannot build tiny homes. It just says if you're going to build a tiny home, which is really an ADU, then it must be built based on the building code for tiny homes. Whether a locality allows tiny homes or ADUs must be addressed.

*Kevin Vonck, City of Richmond* commented that within each of the sections of bill 304 referenced, the dwelling units are either attached or detached. The dwelling units are either run through the utilities' principal unit or there's a separate utilities connection. He added that an argument can be made that those that share utilities or run through a single point of water/sewer or electricity are, by definition, accessory. If the primary dwelling didn't exist, then you couldn't add an ADU. He suggested this is something that should also be taken into consideration aside from size and other potential regulations.

*Delegate Coyner* said it appeared everybody agreed that an ADU is not the only building on the lot and there must be a primary dwelling unit. However, there are some differences in what an ADU will contain such as a living space, bathroom, and kitchen, depending on how it is being treated and who it is serving. The current definition used in this proposed legislation is quite specific. She asked if there should be an overriding or umbrella definition of an ADU and requested suggestions on a way to determine a clear definition.

Suggestions offered by the workgroup included:

- Exploring the definition of a detached structure.
- Building a majority consensus to move the legislation forward based on localities' respective parameters.
- Outlining some of the challenges and differences between localities.

*Pia Trigiani, Common Interest Communities Attorney* commented that homeowners' associations (HOAs) are also impacted by this bill. There is a concern that walkout basements are becoming apartments not necessarily permitted either by the HOA or by the local zoning ordinances. This has created a compliance issue, and a component should be added to upcoming legislation to ensure the localities have the authority to enforce their requirements.

#### **Public comments:**

*Sally Wolf Garrison, Rockingham County Board of Supervisors* posed several questions: What is it you're trying to solve? Are you looking to solve a housing issue, an income issue, an affordable issue or a land-use issue? All these issues have a different answer and none of them can be solved universally across the board in the Commonwealth. She suggested the workgroup decide whether those questions are being addressed.

*Eldon James, Virginia Chapter of American Planning Association* agreed with the previous questions regarding the purpose of the bill and suggested that these issues be considered.

## **Conclusion:**

*Delegate Coyner* asked if everyone agreed that looking at ADU's inclusion in each locality's comprehensive plan rather than having an ordinance would be a good first step.

There was majority agreement.

A small workgroup comprised of volunteer members from this workgroup will meet at the Virginia Housing Commission to create language suggestions for ADU inclusion in each locality's comprehensive plan. *Stephanie Showalter, Andrew Clark, Michelle Gowdy, Randy Grumbine and Joe Lerch* volunteered to be part of the workgroup.

The meeting adjourned at 12:04 p.m.