Planning Commission Response to Mayor Girtz's Inclusionary Development Charge

EXECUTIVE SUMMARY

I. INTRODUCTION

A. Project Purpose & Scope

The purpose of this planning study is to present topical research findings and recommendations that respond to Mayor Girtz's Planning Commission Inclusionary Development Charge. The Mayor's charge called upon the Athens-Clarke County Planning Commission to explore issues and recommend practices that would encourage mixed-income development across various residential zones, including some specifically identified issues which could serve as either impediments or accelerants in developing an affordable housing initiative in Athens-Clarke County

B. Background / Overview

The Mayor's Charge was initially developed in the Fall of 2019, and was presented to the Planning Commission by Mayor Girtz at the Planning Commission's meeting held on January 9, 2020. Provided below is the text from the "Planning Commission Inclusionary Development Charge" as discussed with Mayor Girtz at the January Planning Commission meeting.

> ***Planning Commission Inclusionary Development Charge***
>
> *Develop policies and practices that will encourage mixed-income development across zones allowing for single family and multi-family residential units. This should include:*
>
> 1. *Examination of current impediments to site development and related solutions that provide the underlying framework for residential development (e.g. grading schedule, road interconnectivity, application of single-family height restrictions in greenfield development, minimum lot and home sizes, development of Accessory Dwelling Units on owner-occupied lots), while maintaining strong environmental protections*
> 2. *By-right density increases for inclusion of permanently affordable units, while maintaining appropriate setbacks and buffers to support existing developments*
> 3. *Public infrastructure cost participation with inclusion of affordable units, along with identified sources of funding, such as SPLOST, Tax Allocation Districts, and other funds*
> 4. *A partnership framework with local affordable housing providers to ensure permanent or long-term status of affordable units*
>
> *The Planning Commission (potentially including designation of a sub-committee, or through joint Work Sessions with the Mayor and Commission) shall work with staff to explore examples from peer communities, seek input from development professionals and affordability advocates, and present draft ordinance language to the Mayor and Commission by November 2020.*

As explained by the Mayor at the January PC meeting, Items #1 and #2 of the Charge include action items for the Planning Commission to undertake and "present draft ordinance language to the Mayor and Commission by November 2020." Items #3 and #4 involve work efforts that are presently being investigated in other ongoing efforts, and the progress associated with these efforts will periodically be presented to the Planning Commission in work session format meetings for coordination and feedback.

II. PROJECT OVERVIEW

A. Research Process

To meet this Charge, two sub-committees of the Planning Commission were established: the Housing Sub-Committee and the Land Use Sub-Committee. The study topics included in the Mayor's Charge were divided between the two sub-committees based on each sub-committee's area of focus, with both sub-committees committing to the exploration of issues specifically related to housing, and the other to explore issues related to land-use – both working with the purpose of examining each topic's ability to positively impact the availability of affordable housing as per the Mayor's Charge.

Each Planning Commissioner was assigned to one of the sub-committees. The sub-committees researched examples of progress reported in topical literature, cross-referenced findings with those of Envision Athens and the Georgia Initiative for Community Housing Committee (GICH), and learned from progress being made in other communities. We actively sought input from development professionals in the Athens area, and also consulted with staff from development-related departments in the Athens-Clarke County government.

On numerous occasions throughout the process, the entire membership of the Planning Commission met to hear from each sub-committee about the work that had been accomplished, and to question and affirm or redirect the ideas and information shared. In the end, this report of findings and recommendations is unanimously supported by the whole Planning Commission.

B. Areas of Focus

The topical areas identified for sub-committee research include the following:

1. Accessory Dwelling Units
2. Reduction of Minimum Floor Area Requirements
3. Inclusionary Zoning
4. Missing Middle Housing
5. RS and RM Zone Minimum Lot Size and Associated Density Standards
6. Variable setbacks in "Greenfield" subdivision development
7. Single-Family Subdivision Grading Regulations (Mass Grading)
8. Road Interconnectivity

C. Summary Descriptions of Each Focus Area

The following annotated list presents summary descriptions of the findings for each Focus Area as developed by each Sub-Committee and ultimately endorsed by the Planning Commission as a whole.

1. Accessory Dwelling Units

Accessory Dwelling Units (ADU) are recommended to be allowed in all RS zones and standards should be established for the development of ADUs in these areas. ADU's are a step toward gentle density development that allow more efficient use of residential lots, human scale development in existing neighborhoods, a way for families to grow in place and a means for evolving living arrangements. The new ADU standards will govern size, parking, ownership, placement and utilities.

2. **Reduction of Minimum Floor Area Requirements**
   Regarding minimum residential dwelling size, it is recommended that the existing restrictions on residential square footage be removed to allow the market to guide new construction. Allowing flexibility in new residential construction will help the industry respond to changing household sizes, help the community provide incremental density and provide affordable scale production that was employed for decades prior to suburban expansion.

3. **Inclusionary Zoning**
   It is recommended that the Mayor and Commission consider adopting a voluntary Inclusionary Zoning program for new or renovated developments. Voluntary Inclusionary Zoning relies on incentives such as density bonuses, reductions in parking, or other benefits to have affordable units included in a development or fees paid into a fund for affordable construction throughout the county. The attached memorandum presents a variety of stimuli as well as thresholds to be met, but further guidance is requested from the M&C on the details that should be included in an Inclusionary Zoning program.

4. **Missing Middle Housing**
   Regarding "Missing Middle Housing," it is recommended that the legal impediments that prevent construction of duplexes and cottage courts be removed in at least a subset of Athens' single-family zoned neighborhoods. We believe that these changes are achievable with relatively minor amendments to the zoning ordinance, and the Sub-Committee's research suggests that these amendments can significantly affect the availability of affordable units that are the right size for work-force housing and smaller households, including single people, young families, and retirees.

5. **RS and RM Zone Minimum Lot Size and Associated Density Standards**
   The current RS zone minimum lot sizes and density calculations are appropriate for supporting standard market-rate single-family residential development. However, additional density could be provided through density bonus incentives that are related to the provision of affordable housing. It is suggested that the code be amended to accommodate an Affordable Housing Unit Density Bonus once an inclusionary zoning provision or related Athens-Clarke County affordable housing program is been developed and adopted.

   Also, the current RM provision in footnote #1 following Table 9-8-3 allows more bedroom density than should be possible to ensure compatibility with existing development conditions in established residential areas with single-family uses that are zoned RM. Revisions to this code section are proposed that would no longer allow 3 bedroom units by-right on existing lots with less calculated density. Instead, lots of record that meet the minimum lot size of 5,000 sq. ft. would be eligible to contain a maximum of 3 bedrooms, and lots less than 5,000 sq. ft. would be allowed a maximum of 2 bedrooms by-right.

   A related recommendation calls for the current Accessory Dwelling Unit development standards associated with the RM zone to be revisited in an effort to add appropriate density without changing development character.

6. **Variable setbacks in "Greenfield" subdivision development**
   The variable setback standards found in Table 9-7-3 that apply to single-family residential subdivisions created from parent parcels totaling 2 acres or more and included as part of subdivisions of five lots or more are recommended to be removed. The current minimum setbacks established for each RS zone are believed to be sufficient to accomplish the purposes of managing the adverse effects of building height and placement, as well as separation distance from structures on adjacent properties, when developing new residential subdivisions. No change is proposed to the variable setback requirements associated with infill development (e.g. new construction on lots that existed prior to December 21, 2000 or new parcels created through the subdivision of less than 2 acres resulting in four new lots or less).

7. **Single-Family Subdivision Grading Regulations (Mass Grading)**
   The current code section 9-26-2(A)(6) regarding the grading of new subdivisions has the potential to negatively impact development cost and results in unnecessary construction inefficiencies. The purposes for the current regulations can be appropriately achieved by revising the code to require (1) development phasing with a maximum amount of graded/disturbed area per phase; (2) removal of storm water exemption on steep slopes; (3) Additional grading plan requirements for small lots; and (4) construction buffer standards and enhanced tree protection measures. In addition to these zoning code development standards, technical standard recommendations are suggested regarding (1) on-site soil preservation and restoration, and (2) storm water runoff reduction.

8. **Road Interconnectivity**
   The current code sections related to road interconnectivity adequately require interconnection between residential developments where appropriate, and also provide protection for existing residential areas from inappropriate roadway interconnectivity. Therefore, no changes are proposed.

III. FINDINGS AND RECOMMENDATIONS

Attached with this Executive Summary is a series or topical memoranda that provide additional information regarding each Area of Focus identified in the Mayor's Charge. Each attachment was developed by one of the sub-committees, vetted by the Planning Commission as a whole, and ultimately recommended by the Planning Commission to be forwarded to the Mayor and Commission for consideration.

The Planning Commission recommends that two initial text amendments resulting from the work of the Sub-Committees be forwarded to the Mayor and Commission for consideration and adoption. Those text amendments include the following items, and the proposed text is included with the related Focus Area memorandum.

> Focus Area #5: The current RM provision in footnote #1 following Table 9-8-3 allows more bedroom density than should be possible to ensure compatibility with existing development conditions in established residential areas with single-family uses that are zoned RM. Revisions to this code section are proposed that would no longer allow 3 bedroom units by-right on existing lots with less calculated density. Instead, lots of record that meet the minimum lot size of 5,000 sq. ft. would be eligible to contain a maximum of 3 bedrooms, and lots less than 5,000 sq. ft. would be allowed a maximum of 2 bedrooms by-right.

Focus Area #6: Remove the variable setback standards found in Table 9-7-3 that apply to single-family residential subdivisions created from parent parcels totaling 2 acres or more or included as part of subdivisions of five lots or more.

In addition to the topics addressed in the attached memoranda, there were several other issues which surfaced during each Sub-Committee's deliberations. In light of the timeline associated with the Mayor's Charge, these items were not researched further at this time. However, it is suggested that these topics warrant further study and could likely be connected to the development of a quality affordable housing initiative for Athens-Clarke County. The topics identified for future study include the following:

a. Accessory Dwelling Unit development standards in RM zones
b. Form-based Code approach to regulating development and re-development
c. Locations for new housing, whether "Greenfield" or infill
d. Access to current infrastructure, including transit, water, sewer

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: Accessory Dwelling Units

This summarizes our work to date on the issues that will need to be addressed in an ordinance authorizing Accessory Dwelling Units ("ADUs"). This summarizes and explains our tentative conclusions on these issues, which of course may evolve as we continue through this process, and hear input from other members of the Planning Commission as well as community input.

We have studied ADU ordinances from several peer cities such as Lexington, KY, Fayetteville AR, Gainesville, FL, and Ann Arbor, MI. This study has revealed a number of common issues that must be addressed in an ADU ordinance, and has also revealed that different cities have addressed them in different ways. In choosing among the different options, we were guided by the statement of purpose that we have proposed below.

Beneath each topic heading, we have provided suggested draft ordinance language (in italics), followed by a detailed summary of our discussions, including alternatives we considered and the reasons for our decisions. In addition, to assist in understanding our recommendations and some alternatives, we have included examples from other cities' ordinances in endnotes.

Purpose:

Suggested code language:

The purpose of this ordinance permitting accessory dwelling units is to:
1. Provide flexibility in meeting the diverse housing needs of the people of Athens-Clarke County, by adding moderately priced rental units to the housing stock to meet the needs of smaller households, and by increasing the supply of housing in Athens-Clarke County;
2. Make more efficient use of existing housing stock and infrastructure to provide sufficient housing for Athens-Clarke County's growing population;
3. Protect stability, property values, and the residential character of Athens neighborhoods; and
4. Give homeowners the opportunity to provide housing for their family members, to obtain rental income, or to obtain companionship, security, or other services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.

Definition of ADU:

Suggested code language:

> *Accessory Dwelling Unit (ADU). An independent self-contained dwelling unit with kitchen and bathroom facilities, on the same parcel as an associated primary use or structure, and subordinate to the primary dwelling unit on the property. An ADU may be detached from a primary structure or may be created by addition to, or alteration of, an existing primary structure.*

Scope:

Suggested code language:

a. *These regulations and standards shall apply to all uses or structures intended to be used for human habitation, whether temporary or permanently in a manner auxiliary to a primary use or structure operated as a unified development.*
b. *Accessory dwelling units are permitted in all RS- zoning districts, and in AR zoning districts. Only one accessory dwelling unit may be permitted per lot or parcel.*

We recommend legalizing ADUs in all RS-zones, with a limit of one ADU per parcel. ADUs permit the addition of relatively small dwellings in existing neighborhoods which serves all of the purposes identified above. Although some may fear that legalizing ADUs city-wide will lead to a large number of new ADUs in a short time, one national study found that cities that legalized ADUs saw, on average, one new ADU permitted per 1000 single family homes per year.[i] Thus, we would expect the annual number of ADU permits issued in Athens to be in the dozens, not the hundreds.

In addition to RS parcels, there is also a strong case to be made for legalizing ADUs on RM-1 zoned parcels, but that raises a host of other issues, so at this time the Committee suggests flagging that question for Mayor and Commission consideration. Many RM-1 zones in Athens have predominantly single-family homes, and excluding those areas from the ADU ordinance would reduce the benefits of the ordinance, while also raising equity issues. At the same time, including them may trigger gentrification concerns in those neighborhoods, so this is an issue that requires careful consideration. Moreover, ADUs are already permitted on about 22% of RM-1 parcels, albeit with significant limits.[2]

Size:

Suggested code language:

> *An ADU shall not exceed 800 square feet, except that an ADU created entirely within a single-family structure that existed on [the effective date of this ordinance] shall not exceed 50% of the square footage of that structure. For purposes of this section, the square footage of unconditioned garage or storage space on the parcel shall be disregarded.*

We discussed what limitations on ADU size were appropriate. Approaches used by other cities include setting a numerical square footage minimum and/or maximum, or defining maximum square footage as a percentage of the primary structure's size.

Regarding a *minimum* size, Georgia has recently enacted a statute that is permissive (i.e. cities may adopt it, but are not required to) that permits "tiny homes" of under 400 square feet. The building code, as a practical matter, would make it difficult to build a dwelling unit much below 300 square feet. Our inclination is not to set a minimum size by ordinance. This will permit homeowners wishing to build a very small ADU to do so, within the parameters of the building code. Available empirical data indicates that ADUs typically exceed minimum square footage requirements, so a "floor" has little practical effect. For those few homeowners who might be inclined to build a smaller ADU, a legislated minimum square footage requirement would increase their construction cost, which is at odds with the affordable housing goal of our purpose statement. Additionally, we may want to recommend to the Mayor and Commission that they consider adopting the state law permitting tiny homes, which permits greater design flexibility in some respects.

Regarding a maximum size, *our conclusion is that it would be preferable to simply define a uniform maximum square footage of 800 square feet*, which allows construction of a comfortable 2BR unit. This keeps things simple from a permitting and inspection standpoint, while also ensuring that owners of small primary residences – of which Athens has many – are not prevented from building ADUs (as they would be if we adopted a limit framed as a percentage of the primary residence's square footage). In any event, the square footage should be calculated based on heated/cooled square feet, and would not include square footage of garage space, sheds, or other accessory structures on the parcel, except that the existing Code's impervious surface limitations may restrict the size of ADUs on small parcels with large existing lot coverage.[3]

***Parking*:**

Suggested code language:

> *One parking space shall be provided on-site for the accessory dwelling unit, in addition to any required parking for the primary unit. This parking requirement shall be met by a dedicated [non-tandem] spot, unless impracticable due to unusual site conditions including the need to preserve significant trees. If the Planning Director determines that [this requirement would impose a hardship on the applicant], then at the Planning Director's discretion, the parking requirement may be satisfied by [a tandem spot on-site, or by] on-street parking where it is allowed in the public right of way [adjacent to] [within 100 feet of] the subject property.*

We have extensively considered whether the ordinance should require a dedicated parking spot for an ADU. Many cities do not require parking for ADUs at all, on the theory that ADUs are often occupied by family members or caregivers, who may not require their own vehicle. Other cities require a dedicated parking spot for all ADUs, to avoid burdening limited street parking. Other peer cities have required parking on site only for larger ADUs (2BR units or greater).

The argument *for* requiring on-site parking is largely that neighborhood concerns about potential parking problems may arouse opposition to an ADU ordinance. Although there is

strong evidence that ADUs do not cause parking problems, and that encouraging additional use of on-street parking has the effect of slowing traffic and making the street safer for all users, nonetheless, neighborhood concerns about possible parking problems have aroused significant opposition to ADU proposals in some other cities.[4] Accordingly, it is perhaps prudent to preempt those concerns by requiring parking on-site.

The argument *against* requiring a dedicated parking spot in all cases is twofold: First, an inflexible requirement of a dedicated parking spot would render ADUs infeasible on some parcels, particularly those with narrow street frontage such as Boulevard, Cobbham and the Hancock-Reese corridor. This could significantly reduce the number of ADUs constructed, particularly on small lots that would otherwise be well-suited for an ADU. Second, requiring additional off-street parking creates more impervious surface area, and attendant stormwater concerns, and will also – on some parcels, necessitate the removal of significant trees.

Balancing all of these considerations, *we determined that it would be best to start by requiring a dedicated parking spot for any ADU, while also allowing flexibility by waiver of this requirement (at either the staff level or hearing board level) in circumstances where (1) conditions of the parcel render it impossible or infeasible to provide a dedicated spot, and (2) either tandem parking is available, or at least one on-street parking spot exists [directly in front of] or [in close proximity to] the affected parcel.*[5]

The Planning Director expressed some concern about having discretion to waive the parking requirement, noting that such discretion is fairly rare in ACC's ordinances. Our Committee is sympathetic to these concerns, but also to the desirability of streamlining the approval process to facilitate and encourage the construction of new ADUs. The Hearings Board process will deter some applicants, and will increase costs for those who do go through the process, so if we decide not to recommend that the ordinance grant staff discretion for alternative parking arrangements, we may wish to permit tandem parking in the first instance, or eliminate the parking requirement for smaller ADUs, or for ADUs located within a certain distance (perhaps 1/4 mile) of a bus stop.

Owner-occupancy requirement:

Suggested code language:

> *ADUs are permitted on parcels that are owner-occupied, as shown by homestead exemption. ADUs are also permitted on non-owner-occupied parcels, provided that neither the ADU nor the primary dwelling unit may be offered for rent for periods of fewer than 30 days.*

Many cities have permitted ADUs only on owner-occupied parcels, while many others have not. The trend appears to be away from imposing this restriction (i.e. many cities that initially limited ADUs to owner-occupied parcels have later revised their ordinances to eliminate owner-occupancy requirements, after finding that the requirement complicated mortgage financing, and thus prevented many residents, *including some owner-occupants*, from building ADUs).

The choice on this matter involves tradeoffs – to the extent that our purpose is to increase the supply of smaller housing units, restricting ADUs to owner-occupied parcels runs counter to that purpose, by eliminating a large segment of the parcels in Athens. On the other hand, to the extent that neighbors may worry that ADUs will be built that are unattractive, or that adversely affect the neighborhood, an owner-occupancy requirement may partly address such concerns, by ensuring that property owners have an incentive to build only high-quality ADUs that maintain or enhance the appearance of their property. Of course, this incentive applies to all property owners, but more so to those who live on the parcel.

Perhaps the best argument for initially adopting an owner-occupancy requirement is that proceeding incrementally would allow ACC to ease into permitting ADUs and to evaluate both the number of ADU permits issued, and the effects, positive or negative, on neighborhoods before opening the door to broader development of ADUs. It may be that an owner-occupancy requirement will unduly restrict the development of ADUs, but it would be a simple matter to remove that requirement at a later date, opening the door to more widespread ADU development.

Conversely, the best arguments for *not* including an owner-occupancy requirement may be (1) it would severely limit the number of ADUs constructed, because real estate investors may be in the best financial position to quickly build ADUs, so permitting ADUs regardless of owner-occupancy will facilitate the speedy production of additional dwelling units, which will better serve the purpose of providing additional housing supply, and will thereby reduce upward pressure on rents by reducing the supply-demand imbalance, and (2) an owner-occupancy requirement may preclude many owner-occupants from securing financing for ADU construction, thus restricting ADUs to those able to pay cash for the construction.

Two decades of experience around the country reveals that cities that impose an owner-occupancy requirement often see very little ADU construction, with the result that many cities have eliminated those requirements. Accordingly, if the choice were simply binary – i.e. permit ADUs only on owner-occupied parcels, or permit them on all parcels – we would recommend the latter.

But there are other available options. Some cities have permitted ADUs in some circumstances on all parcels, and in more flexible circumstances on owner-occupied parcels. For instance, Lexington KY requires owner-occupancy if either the ADU or the primary dwelling will be used for short-term rental (defined as rental for 30 days or less), but does not require owner-occupancy if both units will be used for long-term rental. This gives greater flexibility to homeowners wishing to add an ADU, while also enlisting real estate investors to help address the supply/demand imbalance for long-term rentals.

ADUs are primarily intended to serve as a long-term housing option, and as such, *we determined that Lexington's approach – requiring owner-occupancy for any property where either the ADU or principal structure will be used as a short-term rental – would best serve the purposes of the ADU ordinance. Accordingly, our inclination is to recommend this approach to*

the Mayor and Commission.[6] *Our second choice would be to not include an owner-occupancy requirement, for the reasons stated above, principally the difficulty in securing financing.*

Finally, if an owner-occupancy requirement is included, it will be necessary to address enforcement and duration. At the permitting stage, it is a simple matter to determine whether a permit applicant claims a homestead exemption on their taxes, but we would have to decide whether or not to require a deed-restriction, as some cities have done, which provides that the ADU may only be occupied so long as the property remains owner-occupied. And if we followed Lexington's approach mentioned above, we would need to determine an enforcement mechanism for the prohibition on short-term rentals on non-owner-occupied parcels (which could be addressed later, as part of a broader program of short-term rental registration).

Placement/Massing/Scale:

Suggested code language:

> *Except as provided herein, each accessory dwelling unit shall comply with required setbacks, building height limits, and lot coverage requirements applicable within the zoning district. The front plane of an ADU structure must be farther from the street than the front plane of the principal structure [note: corner lots may need to be treated differently in this respect]. [The overall building height of an ADU structure shall not exceed 20 feet.]*

We discussed the question of placement and size of ADUs, with particular attention to the purposes of preserving neighborhood character and privacy of neighbors. The overall vision here is to ensure that ADUs are "subordinate" to the primary structure,[7] and that, to the extent possible, they are designed, placed, and oriented in such a way as to avoid unduly burdening neighbor privacy.[8]

As a general matter, we believe that subordinacy and preserving neighborhood character entails that ADUs should be built farther back from the street than the primary structure. Some cities require ADUs, particularly detached ADUs, to be built fully in back yards, while others require only that they not be built in front yards. Given the popularity of ADUs with an apartment over garage format, and the fact that garages are often built in side yards, *we concluded that it would be preferable to simply state that the front plane of a new ADU structure must be farther from the street than the front plane of the primary structure.*

Some cities require ADUs to orient windows and porches inward, and away from the nearest property line, in order to protect privacy of neighboring parcels; others impose greater side property line setback requirements for ADUs. Athens has already considered many of these issues in creating the infill housing standards, and our strong inclination as a committee is to keep it simple by incorporating those standards, in terms of lot-line setbacks, height, and other characteristics. This means that, just like a new house on an infill parcel, an ADU would have to comply with the setback, height, and other requirements of ACC Ordinances section 9-7-3. A similar approach is followed by Gainesville, FL.[9]

In some respects, ADUs may present special issues or concerns that require departure from those standards, however. For instance, the infill standards are premised on construction of a primary residence; ADUs are inherently subordinate in nature, and thus perhaps ought to have smaller size limitations. By way of example, the existing development standards impose a soft building height limit of 20 feet, but permit an additional foot of height for each one-foot increase in lot-line setback. With respect to ADUs, we think it might be appropriate to make the 20-foot height limit a hard limit with no exception. The most popular ADU designs are either single-story structures or apartments over garages, either of which can easily be built below the 20-foot height limit.

Some cities impose detailed architectural design standards on ADUs. To the extent that this slows construction and increases costs, it runs counter to our goal of promoting new housing supply to increase availability of affordable housing.

Some cities require that an ADU's architecture be "consistent" with that of the primary structure, which struck us as undesirable for several reasons: (1) it requires a design-review process that would be costly and time-consuming, and thus would increase the cost of ADU housing; (2) it is vague and subjective; and (3) it may unduly restrict property owners' freedom to adopt well-designed prefabricated ADUs, which are increasingly available in the national marketplace and provide attractive designs at an affordable price. Apart from historic districts, which already have design standards, we see no reason to impose city-wide architectural design restrictions on ADUs, except as noted below.

Some cities provide design standards that are narrowly tailored to protect neighborhood interests, including privacy of neighboring parcels, or protection of significant trees. These may be enforced by administrative discretion, leaving staff some leeway to protect these interests and encourage thoughtful design by, for instance, stating that, prior to approving a zoning permit, staff shall find that the design, e.g., "protects privacy of neighboring parcels to extent possible."[10] Planning Department staff expressed concerns about ordinance language granting such discretion to staff. Although some cities do employ an "administrative variance" procedure, Athens at this time does not do so. Accordingly, unless we are prepared to move in that direction, it may be simpler to refer matters requiring variances to the Hearings Board.

Utilities:

Suggested code language:

> *Utilities. An ADU may share existing utility infrastructure, including sewer or septic connections, with the primary unit provided that the existing infrastructure meets code standards applicable to an expansion of the principal dwelling.*
> *Subdivision. An ADU may not be sold separately or as a condominium unless properly subdivided in accordance with this chapter.*

Staff mentioned that Utility department policy may currently require separate sewer hookups for any separate structure or unit. This entails a cost of approximately $5,700 – which may increase total project costs by 5 to 10%. This disserves the purpose of affordability, and with little or no rational basis, given that a single unit may have any number of bedrooms and

bathrooms – and thus may generate significantly more sewer usage – without requirement of multiple sewer connections. So a 10 bedroom house would require one sewer hookup, while a 2 bedroom house with a 1 bedroom ADU might be required to pay for two sewer hookups.

Moreover, the Public Utility Department informed us that their policy of requiring separate sewer hookups for separate structures is not based on infrastructural limitations, but rather on the possibility that the property might later be subdivided and the separate structures might come under separate ownership. This concern is inapplicable for ADUs, and can be addressed by stating that ADUs may not be sold separately from the primary structure.

In sum, we concluded that it best serves the purposes of affordability and of facilitating ADU construction, *to state clearly in the ordinance that an ADU may share water and sewer connections with the principal structure*, and that the ADU cannot be subdivided and separately owned.[11] Another reason for this recommendation relates to financing. Fannie Mae's appraisal guidelines indicate that separate utility connections are a factor that makes it more likely that a property will be appraised as a two-family property, rather than a single family property with an ADU. This may affect appraised value, and thus make it harder to obtain financing.

Similar considerations arise for ADUs constructed on parcels using septic systems. Current Health Department regulations require a separate septic system for each dwelling unit, which seems unnecessary in the context of an ADU, at least where the principal dwelling's septic system is adequate to handle the additional usage. Accordingly, we propose that ADUs should not require a separate septic system, so long as the existing system is sufficient to permit an expansion of the primary dwelling.

All of the goals stated in the "Purposes" section – most notably encouraging ADUs, maintaining affordability, and creating more housing by more efficiently using existing infrastructure – point in the same direction here, and guide our recommendation. The principle we arrived at is that ADUs should not be treated less favorably than a similarly-sized addition to the primary dwelling unit. Thus, if existing sewer, septic, or other utility infrastructure is sufficient to accommodate an addition to the primary dwelling unit, it should also accommodate an ADU.

Variances:

Suggested code language:

> *Variance. An applicant may request approval of a variance pursuant to chapter ___ from the requirements of this chapter where the variance is necessary to make feasible the addition of an ADU. The variance shall not be granted unless the ADU is designed to minimize adverse effects, including loss of privacy, on adjoining or neighboring property owners.*

Many of the requirements imposed by a new ADU ordinance might be suitable for waiver under certain circumstances. In order to permit context-sensitive variances, it may be advisable to state that the requirements of the ordinance may be waived or varied, either at the staff level or by application to the hearings board. Any variance request provides an opportunity to hear

input from neighboring property owners, and ensure that the ADU does not unduly affect their privacy or other legitimate interests.

Ideas for further consideration:

(1) Pre-approved plans: to facilitate affordable development of well-designed ADUs, we may wish to adopt pre-approved plans, perhaps by holding a design contest. This would reduce homeowners' architecture and construction costs, while ensuring attractive, well-designed ADUs. Athens has already done this with infill housing, and other communities have had success with this approach for ADUs.[12] Indeed, given the large number of well-designed prefab ADUs available in the national marketplace, some cities have worked with the manufacturers of those units to grant pre-approval for those designs, which can expedite the process and reduce the cost of ADUs for homeonwners.

(2) Local Financing program: The principal constraint on ADU adoption will be access to financing. Older homeowners wishing to build ADUs to house a caregiver or family member may be retired – and thus have difficulty qualifying for mortgage financing due to limited income – even though they may own their home outright or have a relatively small mortgage balance. To address this problem, some cities have partnered with local banks or credit unions to offer a streamlined process for residents to access home equity to finance the construction of an ADU.

ENDNOTES

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[i] Municipal Research and Services Center of Washington, "Accessory Dwelling Units", Oct. 1995, available at http://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/Accessory-Dwelling-Units.pdf.aspx?ext=.pdf

[2] ACC Ordinances section 9-8-2 permits only *detached* ADUs in RM-1 zones, and only if the lot is more than twice the minimum lot size, and the ADU is located entirely in the rear yard, and has a gross square footage of 50% or less of the primary structure. Fewer than 22% of the RM-1 parcels in Athens meet the "twice the minimum lot size" requirement. Moreover, the ACC code's density limitations, as a practical matter, preclude additional bedrooms on many or most RM-1 parcels. The code currently limits density on RM-1 parcels to 16 bedrooms per acre, with a minimum lot size of 5000 square feet, which equates to a 2BR house on each 5000 sq ft lot. Other cities' ADU ordinances often address this problem by exempting ADUs from the calculation of density, which would be our recommendation, if the Mayor and Commission decide to permit ADUs on owner-occupied RM-1 parcels.

[3] For comparison, Lexington, KY limits ADUs to 800 square feet, while Gainesville, FL limits them to 850 square feet. One exception that some cities have to their ADU size limits is that *existing* accessory structures that exceed the size limitation may be converted to ADUs. For example, Gainesville, FL's ordinance states: "Existing structures exceeding 850 sq. ft. can be converted

into ADUs." This may be worth considering for Athens, as the effects on the neighborhood are minimal where the accessory structure already exists.

[4] https://accessorydwellings.org/2014/07/16/do-adus-cause-neighborhood-parking-problems/

[5] Fayetteville, AR's ordinance, for example, states that:

> "For accessory dwelling unit(s) with individual or combined habitable space greater than 800 square feet, one (1) parking space shall be provided on-site. Required parking for the accessory dwelling unit is in addition to the required parking for the principal dwelling unit. *On-street parking may be counted towards the total parking requirement where it is allowed in the public right-of-way adjacent to the subject property.*"

[6] Gainesville's ordinance states:

> "Property owner residency, as shown by a homestead exemption is required, in either the primary or accessory dwelling unit is required."

Lexington, KY's ordinance states:

> "(j) Short-Term Rentals (as defined in the Code of Ordinances)
> (1) The use of an ADU as a short-term rental shall only be allowed as a conditional use.
> (2) If either dwelling unit is used as a short-term rental, as defined in the Code of Ordinances, the property owner is required to occupy one of the dwelling units."

[7] Gainesville Florida's ordinance states:

> "D. Standards: 1. Style. a. The accessory dwelling unit shall be designed as a subordinate structure to the primary structure on the lot in terms of its mass, size and architectural character."

It also states:

> "b. New detached ADUs or ADUs extending from existing structures shall not comprise more than 50% of total visible façade area parallel to the front property line."

[8] For example, Gainesville, FL's ordinance states:

> "where an ADU exceeds a single story; applicant shall take measures to ensure privacy of neighbors including but not limited to orienting windows and outdoor balconies to face internally into the lot and away from neighboring residences."

Similarly, Fayetteville, AR's ordinance states:

> "A two (2) story accessory dwelling unit shall limit the major access stairs, decks, entry doors, and major windows to the walls facing the principal dwelling, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard shall be minimized."

[9] For example, Gainesville's ordinance states:

> "3. Setback

a. Each accessory dwelling unit shall comply with all standards applicable within the zoning district, including required setbacks and building height limits. Accessory dwelling units are exempt from residential density calculations."

[10] Fayetteville, AR's ordinance, for instance, states that

"The orientation and location of buildings, structures, open spaces and other features of the site should protect and maintain natural resources including significant trees and shrubs to the extent feasible and minimize alteration of natural land forms. Building profiles, location and orientation should relate to natural land forms."

It also provides for administrative enforcement of various requirements, stating that

"(D) Administrative Design Review and Approval. All accessory dwelling units shall meet the following standards for administrative approval by the Zoning and Development Administrator. Prior to approval of an accessory dwelling unit, the Zoning and Development Administrator shall find that: ...[list of requirements]"

[11] Gainesville's ordinance states:

"F. Public Utilities a. ADUs may share existing utility and service infrastructure with the primary unit subject to compliance with GRU standards."

It goes on to state that

"G. Subdivision.

An accessory unit may not be sold separately or as a condominium unless properly subdivided in accordance with this chapter."

[12] http://mrsc.org/Home/Stay-Informed/MRSC-Insight/July-2014/What%E2%80%99s-Not-to-Like-%E2%80%93-Pre-Approved-Plans-Offer-Fast.aspx

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: Reduction of Minimum Floor Area Requirements

As part of the response to the Mayor Girtz's "Planning Commission Inclusionary Development Charge," the Housing sub-committee explored the impact of single-family home size restrictions and the impact of those standards on local housing affordability. The following information has been prepared for consideration by the Planning Commission as a whole.

The code requirements related to minimum floor area requirements are found within ACC Code Section 9-15-15. Attached below is a copy of this code with the proposed alterations.

The Housing Subcommittee has been tasked with examining the current code regulations as they relate to minimum home size within parcels which are zoned for single-family residences (AR, RS-5, -8, -15, -25, and -40). Currently any new single-family structure built within one of these zoning districts must adhere to a minimum home size of at least 1,000 square feet; unless the parcel is zoned as RS-5, which allows for a minimum home size of only 600 square feet.

The Sub-Committee believes that relaxing the minimum home size requirements will increase design flexibility and decrease construction costs, in hopes of contributing to a larger portfolio of housing stock with Athens-Clarke County. Through research and conversations with the Chief Building Inspector, the Housing Subcommittee has recommended that the minimum home size within single-family zoning districts be abolished across all residential single-family zoning districts. While the differing zoning districts have variable minimum lot sizes/dimensions, it is of the opinion of the Sub-Committee that both the development context of the surrounding area, as well as prevailing market forces, will drive appropriately-sized construction (e.g. building a 600 square foot home on a lot which is 40,000 square feet is unlikely and economically unwise).

While the Sub-Committee believes that there should be no required minimum floor area for new construction within single-family residential districts, all new development would still need to adhere to associated Building and Residential codes. Talks with the Chief Building Inspector revealed that it would be difficult to calculate a true minimum home size, according to the IRC (International Residential Code). The Code has certain

specifications regarding things like minimum ceiling heights and minimum habitable room size, but no set limitation on the smallest habitable dwelling unit.

In order to accommodate this change in code, Athens-Clarke County would need to adopt amendments to the IBC and the IRC (International Residential Code), which would allow for the construction of smaller units. These amendments create allowances for smaller dwelling, as well as specifying standards which allow for these to be constructed in a manner consistent with public safety standards. It is of note that these code changes will not apply to tiny homes on wheels or manufactured/mobile homes, which are managed through differing code requirements handled outside of the IRC.

Sec. 9-15-15. - Minimum floor area requirements.

~~The minimum heated floor area requirement for single-family dwellings, including modular homes, or any Class "A" manufactured home in any zoning district is 1,000 square feet per unit. Class "B" manufactured homes, single-family dwellings in the RS-5 and~~ RM districts must have at least 600 square feet of floor area per unit. Multifamily dwellings must have at least 450 square feet or floor space per unit. The minimum floor area required is not to include porches, patios, garages, or carports.

MEMORANDUM

TO: Mayor & Commission
FROM: Planning Commission
DATE: October 8, 2020
RE: Inclusionary Zoning

Pursuant to the Mayor's charge, we have studied the problem of how to craft an inclusionary zoning ordinance for Athens Clarke County. "Inclusionary zoning" ("IZ") refers to ordinances that incentivize or require private developers to include affordable housing units (that is, units offered at below market rates) in development projects. It was first developed in the 1970s as a response to exclusionary zoning – that is, zoning that sought to exclude based on race and/or economic class. It has been used in many cities around the country to get the private market to subsidize affordable housing.

Our work on this subject has included reviewing what other cities have done in this regard, soliciting input from developers and architects, and meeting with Sherrie Hines from the county attorney's office regarding legal constraints, and with Haylee Bannerjee from the ACC Department of Housing and Community Development regarding a variety of related issues. What follows is a summary of our recommendations, including flagging issues for discussion by the full Planning Commission.

Preliminary observations:

(1) Mandatory Inclusionary Zoning may be illegal under state law.

The majority of IZ programs are mandatory – they require developers of projects above a specified size to include a certain percentage of affordable units. But Ms. Hines advised us that Georgia's law forbidding rent control of any kind (OCGA 44-7-19) makes it doubtful that a city can lawfully force developers to include affordable units in developments. The question remains open – at least two cities in Georgia have adopted mandatory IZ ordinances, and those have yet to be litigated, but Ms. Hines' view is that the legality of such ordinances is doubtful, and that the costs of defending such an ordinance make it preferable to pursue a voluntary ordinance.

The state statute expressly permits voluntary agreements between municipalities and developers, so a voluntary IZ program, whereby developers are given incentives to "opt in" to an IZ program, is very likely legal under state law.[1] Accordingly, we believe that any IZ ordinance

[1] We were advised by the County Attorney's office that a voluntary inclusionary zoning ordinance would likely be permissible, and other cities around the state have adopted them without challenge. Just to flag one issue, however, the state statute on point has a strange syntax (it appears to be missing an "or"), and it is at least possible to read it as limiting inclusionary zoning to parcels *owned* by the County. We agree with Ms. Hines that that is not the best or most likely interpretation (we also note that a developer who chooses to enter into

here will likely have to be voluntary, meaning it will have to provide sufficient incentives for developers to "opt in" to the program.

(2) How voluntary inclusionary zoning programs work.

Simply put, they give developers something in exchange for their agreement to build or fund affordable units. By way of illustration, a developer who has the right to build 200 bedrooms per acre might be given a density bonus – that is, the chance to build 20% or 30% (some cities have gone as high as 50% or 100%) more bedrooms per acre in exchange for entering into an agreement to make something like half of the additional units permanently affordable.

> *To illustrate this example, using the 30% number: a 1 acre downtown development (C-D zoning) that can build 200 bedrooms by right would be offered the opportunity to build an extra 60 bedrooms in exchange for including 30 bedrooms of affordable housing in the project (or making a payment to fund construction of those 30 bedrooms off-site).*

IZ thus creates value out of thin air – giving developers a right they did not previously have that may be quite valuable – and it then captures a portion of that value to create affordable housing units.

As discussed below, the challenge appears to be getting the numbers right – crafting a policy that makes it profitable for private developers to participate, while also capturing significant value for the community. Voluntary IZ only works if the value to the developer of the incentives granted by the city exceeds the construction costs of the additional space plus the net cost of funding the affordable units.

(3) Inclusionary zoning serves multiple goals.

Needless to say, an IZ policy is just one tool in a city's toolbox of approaches to affordable housing. But it can be a powerful tool, and it serves multiple housing-related goals. Most obviously, it creates additional units of affordable housing. Secondly, to the extent that resulting affordable units are constructed in desirable locations, it serves as a tool of desegregation – both racial and economic – by creating additional housing units, many of them affordable in perpetuity, in desirable neighborhoods. And third, by facilitating construction of additional units – both affordable and market rate units – an IZ program reduces pressure on housing prices caused by a growing population.

(4) There are lessons for us in other cities' experiences.

IZ policies have been adopted in over 900 cities nationwide, in 25 states. They have been more effective in some places than in others. The decades of experimentation by other cities with different approaches provide some lessons about what works and what does not. Some of

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a voluntary inclusionary zoning agreement would presumably lack standing to challenge the ordinance that authorized that agreement) but it may be worthwhile to suggest to our local representatives that they revise the statute to fix its awkward syntax and clarify its meaning.

these findings are discussed below, and more extensive information is available in the resources linked at the end.

Issues to consider and decide:

(1) What sort of "affordable housing units" are we seeking? Affordable to whom?

"Affordable" in this context generally refers to a housing payment no greater than 30% of the household's income. The question is whether our IZ program should focus on generating housing units affordable to households earning the area median income (AMI) or households earning some fraction – such as 80% or 60% – of the AMI.

There are two ways to think about this question: First, when we met with Haylee Bannerjee ACC's Director of Housing and Community Development, she noted that there are a whole host of programs funded by federal, state, and local dollars that address housing for the very poor (families earning in the range of 30% to 50% of AMI). She encouraged us to think of IZ as filling a gap above that level – namely, households that earn too much to qualify for those other programs, but too little to afford market rate housing in Athens. Accordingly, she suggested focusing on households earning 60 to 100% of the AMI, with the middle of that zone – 80% AMI – being the sweet spot for affordable rental units, and an area of great need in Athens. It is common for IZ programs to aim affordable *rental* units at the 80% AMI level, and affordable *owner-occupied* units at the 100 to 150% AMI level.

Second, Ms. Banerjee noted that the subsidy required to make a unit affordable to a 60% AMI household is significantly greater than that required to make it affordable to an 80% household. In a nutshell, units affordable at 60% of AMI "cost more" than units affordable at 80% AMI, because the former require a significantly greater subsidy. Thus, an incentive package that enables a developer to profitably provide 20 units affordable to 80% AMI households might only enable that developer to provide 10 or 12 units affordable to 60% AMI households. This is part of why Ms. Bannerjee suggested focusing on the 80% AMI figure initially.

This sort of choice – between fewer units affordable to a lower-income segment of the population or more units affordable to a slightly higher-income segment – is an unavoidable part of crafting an IZ program, and one that many cities have addressed before. Rather than choosing to focus on the 80% AMI number, an alternative approach that some cities employ is to give the developer the choice – for instance Ann Arbor's program offers a certain package of incentives in exchange for the developer agreeing to provide *either* 20% of the units at a rate affordable to 80% AMI households *or* 10% of the units at a rate affordable to 60% AMI households.

Whatever the initial income qualification threshold, it is important to allow for income growth among tenants so that we don't disincentivize tenants from increasing their income. Some cities have an initial qualification level (e.g. 80% AMI) and then provide that once a tenant is in

the door, they remain eligible until their income exceeds some higher figure, such as 100% or 120% AMI.

(2) What should we ask of developers. (i.e. should we require that affordable units be developed on-site (in the subject development) or should we permit the developer to make a "payment in lieu," in which they pay the cost of building those units into an affordable housing fund, to be used to develop the units off site?

Of course, other cities have wrestled with this question. The lessons from their experience are that developers are often resistant to including affordable units in the development, perhaps because of biases against affordable housing tenants. Many cities require on-site units nonetheless, because they prioritize mixed-income neighborhoods. We feel that this is an important priority, and we want to be sure not to let the affordable units all be pushed to the outskirts where land is cheaper. The affordable units should, in all events, be constructed in desirable, amenity-rich mixed-income developments.

On the other hand, much of the development of rental housing in Athens recently has consisted of large student-centered apartment buildings – locations that *might not be desirable for families* living in affordable units. Thus, in a college town, requiring on-site development of affordable units may not be the best approach. We also do not recommend allowing developers to build the required affordable units off-site. The likely result of that approach (confirmed by the experiences of other cities) is low-quality units built on cheap land away from the most desirable areas.

We discussed these issues extensively, and our preliminary conclusion was that "Payment in lieu" represents an attractive middle option – whereby the developer can choose either to build the affordable units on site, or to pay into a housing trust fund the cost of any affordable units that are not constructed on-site. The City (perhaps via the Department of Housing and Community Development) would manage that affordable housing trust fund and determine how and where to deploy those funds to finance the construction of affordable units. This gives the city the ability to ensure that the affordable units are of high quality and are built in desirable areas.

Apart from our suspicion that families may not want to live in student housing, another consideration also points toward the desirability of allowing "payments in lieu": When IZ programs are voluntary, developers have the final choice of whether to participate. So a requirement that the affordable units be on-site may cause some developers to simply opt out, thereby frustrating the goals of the program, and producing less housing overall. This is particularly salient because the largest developments in Athens in recent times have been multifamily structures aimed at the UGA student market. The size of those projects gives them the potential to have quite significant impact in funding affordable housing through IZ. Thus, we believe we should structure the program in such a way as to make it attractive to the developers of those projects, in order to maximize the impact of our IZ program.

(3) Should our inclusionary zoning ordinance focus on providing rental housing, owner-occupied housing, or both?

It goes without saying that Athens badly needs both high quality affordable rental housing, and high quality affordable owner-occupied housing. We thus agreed that our IZ program should attempt to incentivize affordable units of both types.

Pressures on the rental housing market created by UGA's growing student population have created a significant imbalance between the supply of quality affordable rental units and the demand for such units – particularly in the neighborhoods close to campus. We would recommend that our inclusionary zoning program prioritize meeting that need.

At the same time, the price of owner-occupied housing, particularly in the neighborhoods close to downtown and UGA, has been growing much faster than incomes, in part due to high land costs that are directly related to zoning decisions made decades ago. Accordingly, we also recommend crafting an IZ program to facilitate and incentivize development of more dwelling units on smaller lots in predominantly single family neighborhoods. This may involve very different incentives for different types of projects, as discussed below. It also requires development of a formula to govern the appreciation permitted to the owner occupant upon resale, and a process to ensure that new buyers are income-qualified.

(4) What incentives should we offer? I.e. What's in it for the developer?

No inclusionary zoning program will work if developers do not opt in. Accordingly, we need to ensure that the program represents a win-win for the city and the developer. In this regard, it is worth noting that inclusionary zoning programs in some cities have failed to generate a significant number of affordable units, due to limited developer interest. It is important to avoid their mistakes.

We discussed a number of possible incentives, researched what other cities have done in this regard, and solicited input from local developers. Among the incentives that this work leads us to recommend are:

(A) For larger scale development

(1) density bonuses, whereby a development is allowed to include more units than would otherwise be permitted. (For instance, in the C-D zone, we might offer a 30% density bonus in exchange for 15% of the units being affordable to families at the 80% AMI level, or a 50% density bonus in exchange for 25% of the units being affordable).

(2) reduced parking requirements. Parking is one of the most significant expenses for many developments, so reducing parking requirements may be an attractive incentive for developers. This may take the form of reduced parking requirements for the entire development, or simply of not requiring additional parking for the additional units permitted by virtue of a density bonus. Market demand for parking will determine whether developers find this incentive attractive.

(3) reduced ground floor commercial requirements. Developers of large multifamily buildings in commercial zones routinely seek relief from the code's ground floor commercial space requirements. To the extent that they are building in a downtown area, or an otherwise walkable commercial area, that may not be appropriate. But the fact that we see so many requests of this nature indicates that it is perceived to be of value to developers.

(4) expedited processes for permitting, plans review, inspection, etc. The more that can be allowed as of right by ordinance, the better. (Some of the developer feedback we received indicated that *"PDs are expensive, time consuming and always uncertain. Finding ways to grant allowances by-right to affordable type projects is certainly one way to lower the burden."*)

(B) For smaller scale development

(1) relief from street frontage or minimum lot size requirements, or other allowances for flexible use of space on parcels. (e.g. Flag lots, cottage courts and courtyard apartments, and other forms that efficiently use land by permitting housing units to not face the street).

(2) increased density (developers commented that density bonuses are a must to combat high land costs by spreading the expense over more units. This might be achieved by permitting more units per acre, allowing tri- or four-plexes or cottage courts in areas where they are not otherwise allowed, or by various other means.)

(3) reduced parking requirements. Affordable units are often said to require less parking, because families living in those units are more likely to use transit and – if they own a car, are far less likely to own more than one car. Our ordinances currently make no allowance for these facts.

(4) greater allowance for "private drives" to permit more efficient development of lots with ample space but limited street frontage (a designer who works with developers suggested this, and noted that "private drives" are much cheaper to construct than "private roads").

(5) setting clear targets that, if met, allow development as of right was mentioned by more than one developer. The PD and SUP processes are costly, time-consuming, and uncertain.

(5) How can we ensure that developers are sufficiently incentivized to participate?

The essence of an IZ program is that by granting a developer additional density, or other incentives, ACC creates economic value. The program seeks to capture some of that value and direct it toward the community's affordable housing needs; but if developers are not assured that they will also realize sufficient value to make it worth their while, they will not opt in, and the program will not be successful.

The challenge here is picking the right numbers – a roughly 1:2 ratio of affordable units to bonus units seems to be the predominant approach (so a development that would otherwise include a certain number of bedrooms would be allowed X additional bedrooms, of which X/2 (half) of them would be affordable). The risk of setting the incentives slightly too low to be

attractive to developers is that the developers will opt out and build their projects as of right with no affordable units. Each such project represents a missed opportunity to direct significant resources into affordable housing.

On the other hand, the risk of setting the incentive slightly too high (so that developers opt in and get more profit than would have been necessary to induce them to opt in) is less troubling, as it still serves our goal of capturing significant funding for affordable housing.

Our recommendation is to follow the roughly 50/50 split that has been employed by many other cities, whereby for every 2 bonus units permitted, 1 will be affordable at the 80% AMI level. We also need to pick a number for the payment in lieu option, which will likely need to be adjusted annually by the Mayor and Commission based on changes in construction costs, AMI, and market rate rents. The formula for the payment in lieu amount is typically based on either a portion of the expected profits from the additional units, or simply on the construction costs of the affordable units.

One idea that we discussed, which has been employed by at least one jurisdiction was to set the bonus density to affordable unit ratio at the level that we think is the correct level, but then offer a small additional incentive – sort of an early sign on bonus – for the first 2 or 3 developments to participate in the program. This has the effect of accelerating developer acceptance of the inclusionary zoning program, by overcoming inertia and resistance to change. (Many inclusionary zoning ordinances don't hit their stride in terms of unit production until year 2 or 3 after adoption, so this is a method to accelerate the impact of the ordinance). It also gives us immediate feedback to assess whether the incentives are correctly calibrated to stimulate developer interest.

(6) How to make the affordable units permanently affordable/selection of a third-party partner to administer aspects of the program.

Any IZ program needs to include a legally-binding mechanism for maintaining and administering affordability of the affordable units generated by the program.

When units are constructed off-site through a payment-in-lieu program, cities typically contract with a nonprofit partner to manage the program. And when units are constructed on-site, cities also contract with a third party to administer the affordability component of the program. Typically, this involves partnering with a community land trust or other nonprofit, who may be involved in screening and selecting tenants for affordable rental units, and monitoring and enforcing the agreement concerning affordable rents. Staff has had preliminary discussions with Heather Benham from the Athens Land Trust concerning this sort of program, and ALT has expressed interest in possibly being involved.

A non-profit partner is also needed with respect to owner-occupied affordable units, and that may or may not be the same partner as for the rental units. Both the Athens Land Trust and

Habitat for Humanity have experience in providing opportunities for home ownership and equity accrual, while also maintaining long-term affordability. We recommend further discussions with both organizations concerning the possibility of partnership here.

The key in maintaining affordability of owner-occupied units is limiting resale price, and giving the non-profit partner the power to select the next purchaser, screening for income eligibility. There are various legal structures that can accomplish these goals.

We also need to decide for what duration we would require affordability to be maintained. Some cities have selected a limited term – ranging from 20 to 40 years – with the property allowed to return to market rate at that point; others have required affordability in perpetuity. Our inclination is to require affordability be maintained in perpetuity.

(7) What zones and development types should the IZ program apply to?

The biggest return on the effort invested in setting up an IZ program will apply with larger developments, where the density bonuses, parking reductions, and other incentives have the greatest economic value. Other cities have had success with voluntary IZ programs even with smaller developments of fewer than 10 units. We thus favor including all residential development in the IZ program.

With mandatory IZ programs, there is typically a size threshold, below which a development is not subject to the IZ mandate, simply because small projects may not be able to subsidize any affordable units. With a voluntary program, there is no need to set a size threshold, as developers can opt out if the economics of their project do not make it feasible to take advantage of IZ.

(8) Resources for further reading

Here are a few useful resources:

Urban institute paper summarizing research on effectiveness of IZ programs:
https://www.urban.org/sites/default/files/publication/99647/inclusionary_zoning._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_2.pdf

The National Housing Conference's IZ Primer:
https://www.nhc.org/policy-guide/inclusionary-housing-the-basics/

A summary of Atlanta's program:
https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community-development/inclusionary-zoning-policy

And Atlanta's ordinance:
https://www.atlantaga.gov/home/showdocument?id=38770

Information about Seattle's program:
https://www.seattle.gov/Documents/Departments/HALA/Policy/How_MHA_Works.pdf

In closing, we include here a graphic created by the Grounded Solutions Network (inclusionaryhousing.org) summarizing factors to be considered in designing an inclusionary zoning program.

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: "Missing Middle" Housing

Pursuant to the Mayor's request that we "develop policies and practices that will encourage mixed-income development across zones allowing for single family and multi-family residential units," we have studied one of the gaps in Athens' housing market – namely, what is often referred to as "Missing Middle housing" – that is, mid-sized units for middle-income occupants (both rental and owner-occupied).

Peer cities around the country are grappling with a gap in this segment of the market similar to that in Athens. As explained more fully below, a primary cause of this gap is Athens' adoption of single-family zoning across nearly all of its residential land. There exist a variety of possible solutions to this problem, some involving simple tweaks to our existing code, and others involving more significant changes. This memo focuses on two of the former – relatively small proposed changes to the zoning code that would begin to address this problem and allow property owners to build units that will address Athens' significant need for Missing Middle housing units. In the final section, we also briefly address possible larger changes that would require additional work, but would begin to remove some of the antiquated features from Athens' zoning ordinance and bring our approach to zoning in line with best practices, so that the private market can produce more of the affordably-priced smaller units that Athens needs.

Background:

Fewer than half of the households in Athens live in owner-occupied homes. But over 93% of Athens' residential land is zoned for exclusively single-family residential use, with large minimum lot sizes, and a number of regulations and restrictions that maintain suburban, car-dependent streetscapes in nearly all residential areas. There is, thus, a significant disconnect between Athenians' need for a variety of different housing forms and unit sizes, and the very limited forms and sizes permitted by our zoning code.

Exclusively single-family zoning is often defended as a way to maintain "neighborhood character." But the overwhelming predominance of single-family zoning in Athens is a quite recent innovation: Athens' older neighborhoods were built before 1958, when Athens first adopted a zoning code, and a walk around parts of Boulevard, Cobbham, Five Points, and other older residential neighborhoods will confirm that they contain numerous parcels with duplexes, triplexes, or multiple small homes on a single parcel. Thus, the neighborhood character of many Athens neighborhoods includes small, house-scale 2 and 3 family dwellings. Since the Civil

Rights era, however, our zoning ordinance has been gradually revised to prohibit new duplexes and triplexes from being built in all RS zones. Our zoning code now excludes these formerly permitted uses, and permits only single family homes, on large lots, over the vast majority of Athens' residential land.

As part of our work, we have learned about recent historical scholarship that reveals the racially-exclusionary origins of single-family zoning in the United States.[1] Many of us attended a workshop featuring Richard Rothstein, author of The Color of Law, and some of us have read his book and other writing on the topic. Of particular relevance to this project, we have learned the following:

- Federal housing policy beginning after World War II required developers participating in FHA or VA financing to refuse to sell homes to black buyers, and to include racially-restrictive covenants in deeds, to ensure that this initial racial exclusion would be perpetuated.
- After the Supreme Court outlawed judicial enforcement of racially-restrictive covenants, cities and towns around the country shifted tactics, adopting restrictive zoning requirements to exclude smaller houses, duplexes and triplexes, and other housing forms that had until then been common in most neighborhoods.
- Although these zoning provisions do not reference race explicitly, they had the effect, and in many cases the explicit intent, of maintaining and increasing the segregation of America's residential areas by race and class, by preventing construction of smaller and less expensive units, and thereby excluding minorities and working class whites from many neighborhoods.

Sadly, Athens is no exception to this nationwide pattern. Racially-restrictive covenants are a well-known feature on deeds on many older Athens homes. And single-family zoning was introduced and expanded here to eventually cover 93% of Athens' residential land after the Civil Rights era and passage of the Fair Housing Act. Dr. Rothstein's book makes clear that, once a racially-segregated housing pattern is established by law, even "race-neutral" zoning policies will tend to maintain that pattern. And the racial and economic segregation of Athens' neighborhoods has been maintained in recent decades by single-family zoning, and other ostensibly race-neutral features of Athens' zoning code. These include:

- large minimum lot sizes for residential land;
- large minimum square footage requirements for houses;
- zoning 93% of Athens' residential land for single-family use, despite the fact that the majority of Athens' households do not own their home;
- outlawing, in single-family zoned areas, the construction of duplexes, triplexes, fourplexes, cottage courts, and other housing forms that enable construction of smaller, relatively inexpensive housing units;

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[1] See Richard Rothstein, The Color Of Law: A Forgotten History Of How Our Government Segregated America (W.W. Norton, 2017).

- zoning Athens' predominantly white neighborhoods for only "single family" use, while zoning many of Athens' predominantly black neighborhoods for multifamily use – effectively excluding construction of new rental housing from 93% of ACC residential land, and from all of its predominantly white neighborhoods.

The problems of an artificially-constrained housing supply, and government-maintained racial and economic segregation in Athens are thus inextricably related. Our present work pursuant to the Mayor's charge on affordable housing led us to focus on several proposals that can be quickly accomplished with relatively minor tweaks to the ordinances, and which can provide many additional units of housing at a considerably lower cost than current zoning allows. These proposals will also promote economic diversity by encouraging smaller units, which facilitate mixed-income neighborhoods, with renter and owner-occupied housing at a variety of different price-points.

Our top two recommendations are discussed below under "Recommended Solutions." These are the "low-hanging fruit" – changes that can enable private market actors to meet Athens' need for significant numbers of smaller housing units, with lower square footage and lower land costs per unit, and correspondingly lower prices.

Our work has also led us to conclude that there are deeper and farther-reaching possible changes to our ordinances that could, and perhaps should, be pursued. We identify a few of these in the section titled "Suggestions for further work." We are ready to assist with these farther-reaching changes if the Mayor and Commission would like us to do so.

Recommended Solutions:

Our research on the problem of affordable housing led to the conclusion that many zoning requirements in Athens artificially increase the *cost of land per housing unit* as well as the square footage (and thus, *construction costs*) of housing units. We have studied the experience of other cities facing similar problems, and the solutions that some of them have implemented in recent years.

Many have legalized "Accessory Dwelling Units," as we propose doing here in a separate memorandum. Quite a few have eliminated legal barriers to construction of duplexes and triplexes in some or all residential zones. Some have re-legalized "cottage courts" – small cottages oriented around a central courtyard – a housing type popular throughout much of the 20th century that promotes cooperative living in smaller houses with shared outdoor space.

Based on our research, we recommend removing legal impediments that prevent construction of duplexes and cottage courts in at least a subset of Athens' single-family zoned neighborhoods. We believe that these changes are achievable with minor amendments to our zoning ordinance, and our research suggests that they can significantly affect the availability of affordable units that are the right size for smaller households, including single people, young families, and retirees.

(A) Duplexes.

Recommendation: We recommend legalizing duplexes on all parcels in areas currently zoned RS-5, RS-8 and RS-15, and adopting design criteria to ensure that new duplexes will be designed to look like single-family homes, and will enhance the character of their neighborhoods.

Athens already has a great many duplexes in its older neighborhoods, so well-designed duplexes are consistent with the existing character of Athens' older neighborhoods. And duplexes can easily be designed to look like single-family homes, ensuring that they can be subtly integrated into any of Athens' neighborhoods. The benefit in terms of housing affordability is that by splitting the cost of land over two dwelling units, they can significantly reduce the cost of housing. Additionally, well-designed duplexes typically contain fewer square feet per unit than single-family homes, which reduces the construction cost component of housing cost (on a per-unit basis).

Duplexes have a bad name in some peoples' minds, based on the proliferation in the 1970s and 80s of featureless "shoebox" duplexes, such as those along parts of Epps Bridge Pkwy, and Gaines School Road. Thus, an important part of our recommendation is to adopt design criteria, together with a simple administrative review process, featuring clear criteria to ensure that new duplexes are compatible with their neighborhoods, and contribute to neighborhood character.

Based on our research into what other cities have done, the best practice appears to be to adopt detailed design criteria to guide builders and designers, and to implement them at the "plans review" stage. Staff then may identify any problem areas in an applicant's design, and either: approve the proposed design outright, conditionally approve it with specified changes, or (if the applicant is unwilling to make the requested design changes) refer it to the appropriate Board (which could be the Hearings Board or the Planning Commission) for consideration. This streamlined process enables staff to guide applicants toward attractive designs that will enhance their neighborhoods, while leaving discretionary determinations to the appropriate Board.

> **How to do it**: There are at least two alternatives for implementing this recommendation: One would be to simply amend the use table that currently forbids duplexes as a use in single family zones, to permit them in zones RS-5, RS-8, and RS-15. Parking requirements and lot coverage requirements would not have to be changed, but design criteria would need to be adopted.
>
> The other approach would be to focus on "single family attached" dwelling units, which our ordinance currently defines as a separate category from duplex. Single-family attached units are typically designed for separate ownership, whereas duplexes may or may not be. Under our existing ordinance, "single-family attached" units entail division of the parcel into two separate parcels, along the common wall, whereas duplexes remain on a single parcel (and may be owned separately in a condominium form, or owned by one individual).

To achieve the goals of this recommendation using the "single family attached" model, our recommendation would be to amend the ordinance to permit single-family attached dwellings to be built on any parcel that exceeds the minimum lot size requirement for the zone (and to permit subdividing the parcel into two parcels, each comprising an area at least 50% of the minimum lot size in the zone.)

In either case, design criteria, and a design review process would need to be codified. Additionally, we recommend restricting the square footage of duplex units permitted under this provision to promote affordability and protect neighborhood character by ensuring that builders do not simply build two large luxury dwelling units on a parcel that previously would have supported only one.

Design criteria and review process: We attach to this memo, as **Exhibit A**, a document from the Orlando Florida Planning Commission that summarizes their design review criteria and process. We think it describes a model process and we recommend something similar for Athens. (We particularly like the modern, graphical, nature of the document, which makes it more easily understandable for property owners and builders, and the simplicity of the process, which makes it relatively economical both for developers and in terms of Planning Department staff time). We strongly support creating a document such as this to facilitate implementation of a duplex plans review ordinance in Athens.

We also note that Athens has been considering adopting a design review process for single family homes for years now. If the Mayor and Commission are ready to pursue that now (or in the future) duplex design review could be folded in that process.

(B) Cottage Courts.

What are cottage courts? Cottage courts are U-shaped clusters of relatively small houses – typically between 1000 and 1200 square feet, and sometimes as small as 700 to 800 – oriented around a central courtyard, rather than facing the street (the cottages nearest the street often feature wrap-around porches and a dual orientation). The cottages typically have 2 or 3 bedrooms, and are 1 or 1.5 stories. Cottage courts are particularly attractive to people seeking close neighborly relations, with shared amenities.

Cottage courts exist all over the country, and have recently enjoyed a resurgence of popularity, for several reasons:

- They meet a significant and growing demand among some homeowners – single people, young couples, and downsizing older people – for homes with smaller footprints and smaller overall square footage;
- They enable deeper lots – of which Athens has many – to be used very efficiently and can significantly reduce housing costs both by spreading the cost of land over a larger

number of dwelling units, and by making homes with less square footage economically feasible, even in areas with relatively high land costs;[2]

- They facilitate "gentle density" – that is, an increase in the number of permissible dwelling units on a parcel, in a way that does not increase perceived density, blends in with the existing streetscape, and uses existing water, sewer, and road infrastructure efficiently;
- They are "green" – smaller homes have far lower utility costs, and homes that are built closer to the center of town reduce commute times and facilitate walking to neighborhood businesses rather than driving;
- By introducing homes at a lower price point into desirable neighborhoods, they promote mixed-income neighborhoods.

Recommendation: We recommend legalizing cottage courts on any parcel with 90 or more feet of street frontage and an area exceeding 10,000 square feet, in areas currently zoned RS-5, RS-8 and RS-15. We also recommend adopting simple design criteria to ensure that new cottage courts enhance the character of their neighborhoods.

Parameters and design criteria:

Parcel size: A cottage court development may range from 4 to 12 cottages on a single parcel, depending on the size of the parcel. They thus require a relatively large lot.[3] We recommend allowing cottage courts on lots of at least 10,000 square feet, with at least 90 feet of street frontage. We also recommend limiting the number of cottages in a cottage court development to no more than 1 per 2500 square feet of lot area. We recommend allowing them on all lots that meet these spatial requirements in RS-5, RS-8, and RS-15 zones. Of the roughly 16,000 parcels in those three zones, a small minority satisfy these dimensional requirements.

Cottage size: to promote affordability, it is critical to limit the size of cottages, so that developers do not simply build a larger number of expensive homes on each parcel. Our research reveals that 1200 to 1500 square feet is at the upper end of what most cottage court ordinances allow, and some encourage cottages under 1000 square feet. We recommend 1200 square feet as a limit. This is sufficient to build a comfortable 3-bedroom, 2 bath home. To

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[2] ***As an illustration***: our research revealed that developers budget approximately 20% of the eventual sale price of a single-family home for the cost of the land. So, if a buildable lot costs $150,000, the home built on that land will need to sell for approx. $750,000 to make the project profitable. This drives homes toward ever-larger square footage and bedroom counts to justify the high prices. If the zoning code allowed the same parcel to hold a 4-cottage "cottage court," the land cost for each cottage would be only $37,500, and the cottages could be profitably built and sold for approximately $200,000. Thus, the same parcel could provide affordable housing for four households instead of luxury housing for one.

[3] The single best resource on this topic (https://missingmiddlehousing.com) says that the ideal lot for a cottage court is ~ 100 feet wide (street frontage) and 110 to 220 feet deep (totaling ~1/4 to 1/2 acre). Smaller cottage courts, with only 4 cottages, may be built on smaller parcels.

ensure that cottage courts blend in with their neighboring homes, it is important to limit their height. The best practice appears to be to limit them to 1.5 stories, and that is our recommendation.

Other requirements:

- Parking. Parking requirements are typically slightly reduced for cottage courts, as the demographic that is most attracted to them (single people, young couples, retirees) is likely to have fewer cars than the average household. Many cities have a sliding scale of parking requirements, whereby the smallest cottages require 1 parking spot and larger cottages require 1.5 or 2 parking spots. Parking should, to the extent possible, be clustered and hidden from public view, ideally toward the rear of the lot. We recommend requiring 1.5 spots per cottage larger than 850 square feet, and 1 spot for each smaller cottage, in addition to a small number of guest spaces (0.33 to 0.5 guest parking spaces per cottage is typical). In addition, we recommend requiring parking to be screened from public view in accordance with the commercial standards (36-inch shrubs or comparable).
- Shared open space. Cottage courts are oriented around shared open space for recreation and/or gardening. We recommend a requirement of at least 400 square feet of shared open space per cottage, or 2500 square feet per cluster, whichever is greater. This may be satisfied by aggregating multiple spaces on the parcel, but to ensure that the shared space is usable, we recommend only counting areas with dimensions of at least 20 feet per side.
- Ownership. The best practice appears to be to allow ownership to be held either in condominium form or in separate parcels with fee simple ownership of land. In the latter case, the individually-owned parcels would be quite small – equal in size to the footprint of each house plus a few feet of setback on all sides. Regardless, the common areas would be owned, insured, and maintained by an HOA or condominium association.
- Fire safety. The best practice appears to be to require that all parts of every cottage on the parcel be located within 150 feet of the public right of way. We are waiting to hear back from the Fire Marshall as to whether this is satisfactory.
- Private drive. Cottage courts typically have a shared drive along one edge of the property, leading to screened shared parking toward the rear of the parcel. The best practice appears to be to specify that this drive be built to "private drive" standards, rather than "private road" standards, because private road standards impose significant additional costs, which undermines our goal of facilitating affordable housing.

How to do it. Based on our research, cottage courts require a number of ordinance modifications, so the most common approach is to simply enact an ordinance section dedicated to cottage courts, setting out all of the standards that they must meet, and exempting them from contrary provisions elsewhere in the Code. We have reviewed some examples of these, and were particularly impressed by the Lehigh Valley (Pennsylvania) Planning Commission's

"Model Ordinance" on cottage housing development. [Attached as **Exhibit B**]. We recommend following that approach.

(C) Why not go further with respect to these recommendations? There was some interest on our committee in going further – legalizing duplexes and cottage courts city-wide, or legalizing triplexes and fourplexes as well, on corner lots or other large lots. We also discussed permitting fourplexes as part of an inclusionary zoning program (under which a developer is permitted to build additional units in exchange for making some of those units permanently affordable).

Ultimately, we decided not to make such a recommendation at this time, preferring to proceed incrementally – starting with duplexes and cottage courts, and limiting both to areas zoned RS-5, RS-8, and RS-15. Broader changes might arouse greater concern among neighbors about affecting neighborhood character, which counsels in favor of starting small, and learning from the market's response before considering whether to allow triplexes and fourplexes on some parcels, or to include RS-25 and RS-40 and A-R zones. It would be simple to take those additional steps later, and we stand ready to investigate those options further if the Mayor and Commission would like us to do so.

Suggestions for Further Work

Two other topics that we've talked about, but upon which we are not quite ready to make comprehensive recommendations, are the following. We would suggest to the Mayor and Commission that they consider further study on these, and we stand ready to assist with that work if asked to do so.

Density bonuses or other incentives – We've discussed how to incentivize affordable units in new developments, and have recommended doing that in another memo, through adoption of an inclusionary zoning policy. That approach may work well with cottage courts, or with development of duplexes in greenfield developments with numerous lots. The challenge would be determining what incentives to offer, and how to calibrate them for maximum effectiveness. This would require additional meetings with developers and designers as well as other work.

Moving toward Form-based zoning – One of our primary takeaways from our study of Missing Middle housing is that many cities are moving away from "density-based" zoning, and toward what is called "form-based" zoning.

Form-based zoning facilitates development of more affordable housing while also doing a better job at protecting neighborhood character. It does this by regulating *mass* and *scale* of new structures, rather than use and density. This ensures that new construction is compatible with the existing neighborhood character, while reducing per-unit development costs significantly.

We think form-based zoning is worth further study for Athens. As the recent proliferation of inappropriately large "McMansions" in infill lots demonstrates, our existing (use and density-

based) zoning not only ensures that infill development is extremely expensive, it also does a very poor job of protecting the character of our neighborhoods, leading to haphazard efforts to fight demolitions and impose block-by-block historic districts, rather than a citywide solution to the problem.

Form-based zoning offers the best of both worlds – setting clear standards to ensure new construction is compatible with its neighborhood context, while also lowering the per-unit cost of constructing new housing units by regulating mass and scale rather than use and density of residential developments. It thus offers the potential *to better serve both our affordable housing goals and our goal of preserving neighborhood character*. And it has the additional benefits of providing a mixture of housing types, including smaller (1 and 2BR) rental units, that Athens so badly needs, as well as promoting walkable and bikeable neighborhoods.

We have not yet had time to fully research this topic, or arrive at recommendations, but based on our research and discussions so far, we recommend that the Mayor and Commission consider assigning us to do further work in that vein.

Attachments:
Exhibit A: Orlando Florida Ordinance on Duplex Design Review
Exhibit B: Lehigh Valley Planning Commission Model Ordinance

CITY OF ORLANDO

Duplex and Tandem

Development & Design Standards

Standards & Review Guidebook

CITY OF ORLANDO

PURPOSE

As “The City Beautiful”, Orlando’s vision is defined by a focus on its amenities. One of the key elements of that vision is strong urban design. Attention to building design encourages an aesthetically appealing and safe place to live. Traditional residential features such as porches, gable roofs, bay windows, color, texture and materials provide human scale that contribute to a sense of ownership and comfort.

The purpose of this document is to provide design guidance for duplex and tandem development undertaken in the City of Orlando. There are existing residences within city limits that do not conform to some of the guidance provided in this document. However, the guidelines are for new construction and renovations to existing structures.

PROCESS & REVIEW

While not required, the following are recommended by staff:

1. Pre-application meeting with City staff. Applicant should bring preliminary sketch of site plan, proposed lot lines, and elevations, if available. Staff will provide preliminary comments and an application for appearance review.
2. After submittal of the appearance review application ($275 fee), staff will prepare a Letter of Determination identifying conditions of approval.
3. Applicant can submit revised plans that meet the conditions of approval.
4. Applicant prepares full set of building permit plans.

Applicants have the option to submit directly for building permit review. However, any changes requested as part of the building permit appearance review may impact other aspects of the permit application, such as drainage calculations or structural design. This can delay approvals, so obtaining appearance review first can save time overall.

Design solutions and schematic drawings included in the document are intended to illustrate the text and are not design examples to be copied or imitated. There may be other design solutions not shown in the Guidelines that will also result in a successful project. The Guidelines do not mandate specific architectural styles.

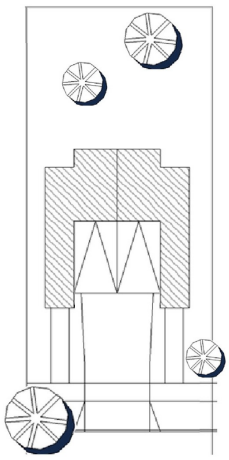
Duplex and Tandem Development

Disclaimer: This document is a summary of Orlando City Code requirements for duplex and tandem development. It is not intended as a substitute for reading the City code. If there are conflicts between this summary and City code, the code requirement applies. Code citations are provided in parentheses. City code is available at www.municode.com.

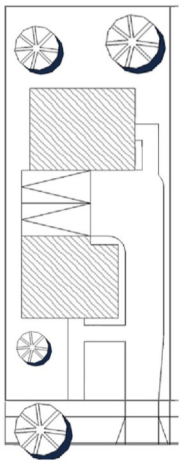
DEFINITIONS (66.200)

Dwelling, Two Family (or Duplex) A single structure on a single lot or building site containing two dwelling units, each of which is totally separated from the other by a wall or ceiling, and the space on either side of this wall shall contain heated living space and/or a garage.

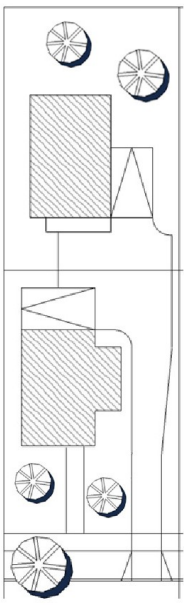
Side-by-side Duplex: Any building site with one unit adjacent to the other.



Front-to-Back Duplex: Any building site with one unit behind the other.

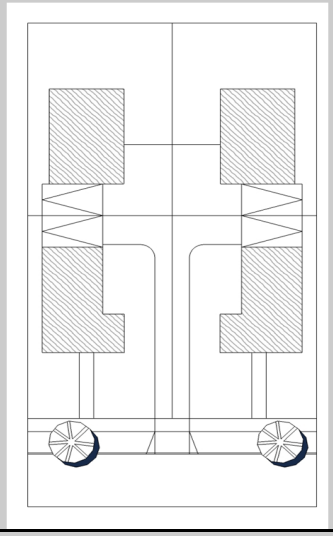


Tandem Single Family Development: Two detached single family units located on a conventional single family building site that has been split into two fee simple lots.



DEFINITIONS (66.200)

Court Home Development: Two abutting duplex and/or tandem building sites are designed with a shared driveway.



Floor Area Ratio **(FAR)** is the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

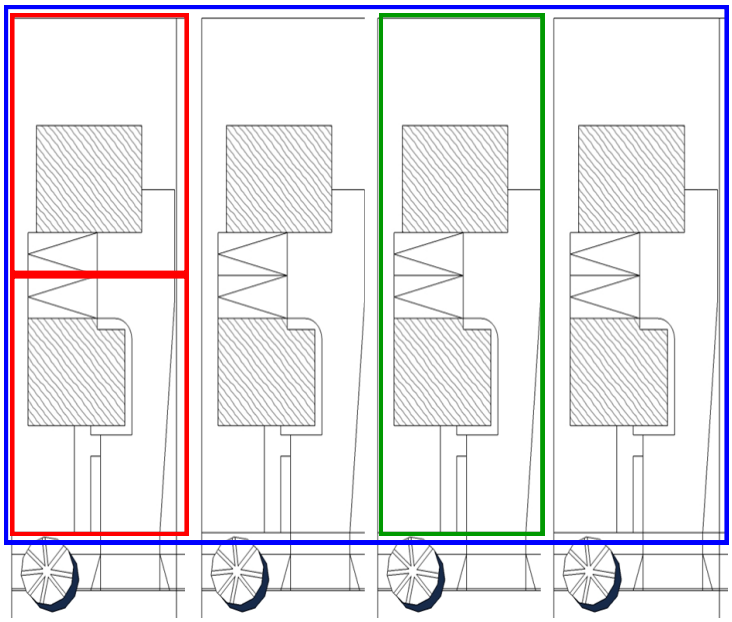
As a formula: Floor area ratio = (total covered area on all floors of all buildings on a certain plot, gross floor area) / (area of the plot)

Included within such calculation shall be the attic spaces providing structural head room of at least 5.5 feet; interior balconies or mezzanines; and any other space reasonably usable for any purpose except parking, no matter where located within a building.

Lot: An area of land with specific boundaries that has an assigned parcel ID number. This term includes tract and parcel. (Red lots below)

Building Site: Any group of one or more lot(s) or parcel(s) occupied or intended for development as a unit. (Green building site below)

Development Site: The property under consideration for a development, which may contain one or more Building Sites and shall be under single ownership at the time of application. (Blue development site below)



BUILDING STANDARDS

Requirement (58.110 Fig. 1A)	R-2A	R-2B
Max. floor area ratio (FAR)	0.50 (0.40 in CSP*)	
Min. lot area	5500 sq. ft.	5000 sq. ft.
Min. lot width	50 ft. (57.5 ft. on corner lot platted after 2/4/59)	
Min. lot depth	110 ft.	100 ft.
Min. building site frontage	25 ft.	
Max. number of units per lot	2 units	Up to 16 units per acre
Min. front setback	25 ft.	20 ft.
Min. side setback	5 ft.	
Min. street side setback	15 ft. (20 ft. for a garage (61.302(f)(3)))	
Min. rear setback	25 ft. (May reduce to 20 ft. for certain front-to-back duplexes and tandems. (58.515(f)))	
Max. impervious surface ratio (ISR)	0.55 total and 0.40 in the front yard (61.302(f)(2))	0.60 total and 0.40 in the front yard
Max. height	30 ft. max. (35 ft. outside Traditional City)	
Corner Lots	Duplex Prohibited	Duplex Allowed

R-2A 1—2 Family District.
The R-2A district is intended to conserve the general character of established neighborhoods which have developed over time as a mixture of single family homes, duplexes and houses with garage apartments and accessory apartments. New development in this district is encouraged to maintain the prevailing bulk, height, setbacks and general design of the surrounding neighborhood. (58.231)

R-2B 1—5 Family District.
The R-2B district is intended to conserve the general character of established neighborhoods which have developed over time as a mixture of single family homes, duplexes, small apartment buildings of 3—5 units, garage apartments and accessory apartments. New development in this district is encouraged to maintain the prevailing bulk, height, setbacks and general design of the surrounding neighborhood. (58.231)

Duplex and tandems are typically located in R-2A or R-2B districts and are also allowed in R-3A, R-3B, O-1 and other districts. Refer to the City code for standards in these districts.

Duplex setbacks are measured from the perimeter of the building site.
See page 7 for tandem setbacks

Overlay Districts
- Traditional City (TC)
- Historic Preservation (HP)
- Airport Noise (AN)

Porches
- Inside the Traditional City, a porch may extend up to 8 feet (6 feet in CSP*) into the front setback and up to 5 feet into the street side yard setback. (62.600)
- A second story porch may also encroach, except in CSP.

* CSP = Colonialtown Special Plan area (62.497)

PARKING AND DRIVEWAYS

Required Parking

- Units less than 1500 sq. ft.: One legal parking space required behind the front setback (61.240, Figure 26)
- Units greater than or equal to 1500 sq. ft.: Two legal parking spaces required behind the front setback. (61.240, Figure 26)
- Spaces accessed from the street side lot line must be set back at least 20 feet (61.302(f)(3))
- Each space must be a minimum of 9 ft. wide by 18'6" deep (61.309, Figure 17). If a wall is adjacent to the space (side of house or interior of garage), space must be one foot wider for each adjacent wall (LDC2016-00377).
- Improved surface required (no grass or gravel) (61.303(a))
- If adjacent to the front façade of the house, must be separated by a two-foot wide landscaping buffer (61.302(g)).

***Open-Air Parking Spaces** in the Traditional City*

- May not have living space above. If living space is above, it is regulated as a carport (62.600(e)(2)).
- May have an open air balcony up to 8 feet deep above (62.600(e)(2)). See p.#, ex.#

***Garages and Carports** in the Traditional City*

- Must not occupy more than 50% of the linear front façade (62.600(e)(1)).
- Front-facing structures must be recessed 5 feet from the front façade (62.600(e)(5)).

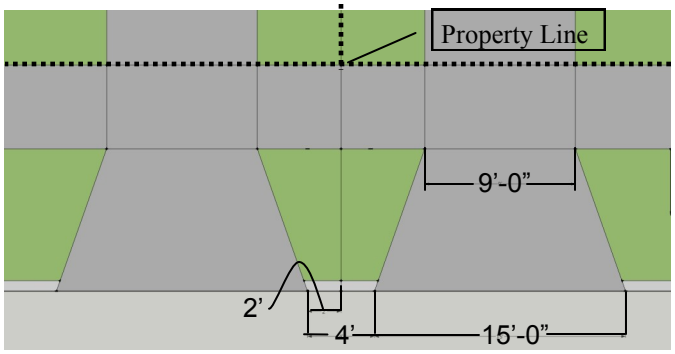
Driveways

- At the property line, the minimum driveway width is 7 ft. and the maximum is 18 ft. (61.240)
- The average driveway width, measured at the front setback and again at the point 5 feet from the front property line, varies by lot width and must not exceed (61.302(f)(1)):

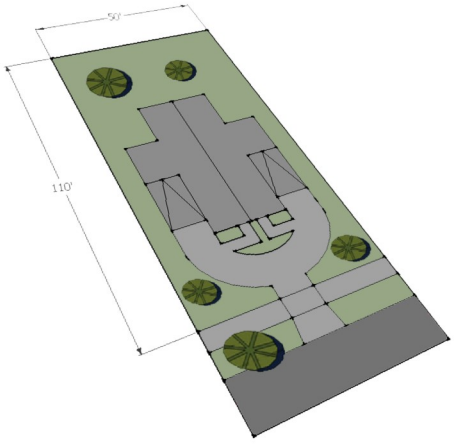
Lot Width	Driveway width
< 40 feet	12 feet
40.01 to 46.67 feet	14 feet
46.68 to 53.33 feet	16 feet
53.34 to 60.00 feet	18 feet
60.01 to 66.67 feet	20 feet
66.68 to 73.33 feet	22 feet
> 73.34 feet	24 feet

- Driveway must be minimum 2 feet from the side property lines (61.302(g)).
- Driveways must not be shaped like a tuning fork (see below) (61.240).
- Maximum impervious surface in the front yard is 0.40 (61.302(f)(2)).
- One curbcut is allowed, minimum of 13 feet wide including flares (61.240)
- A second curbcut is allowed with a minimum on-site separation of 42 feet (61.240)
- On a major thoroughfare, additional restrictions may apply (see Chapter 61, Part 1).

Driveway Separation



Tuning fork not allowed



LOT SPLITS

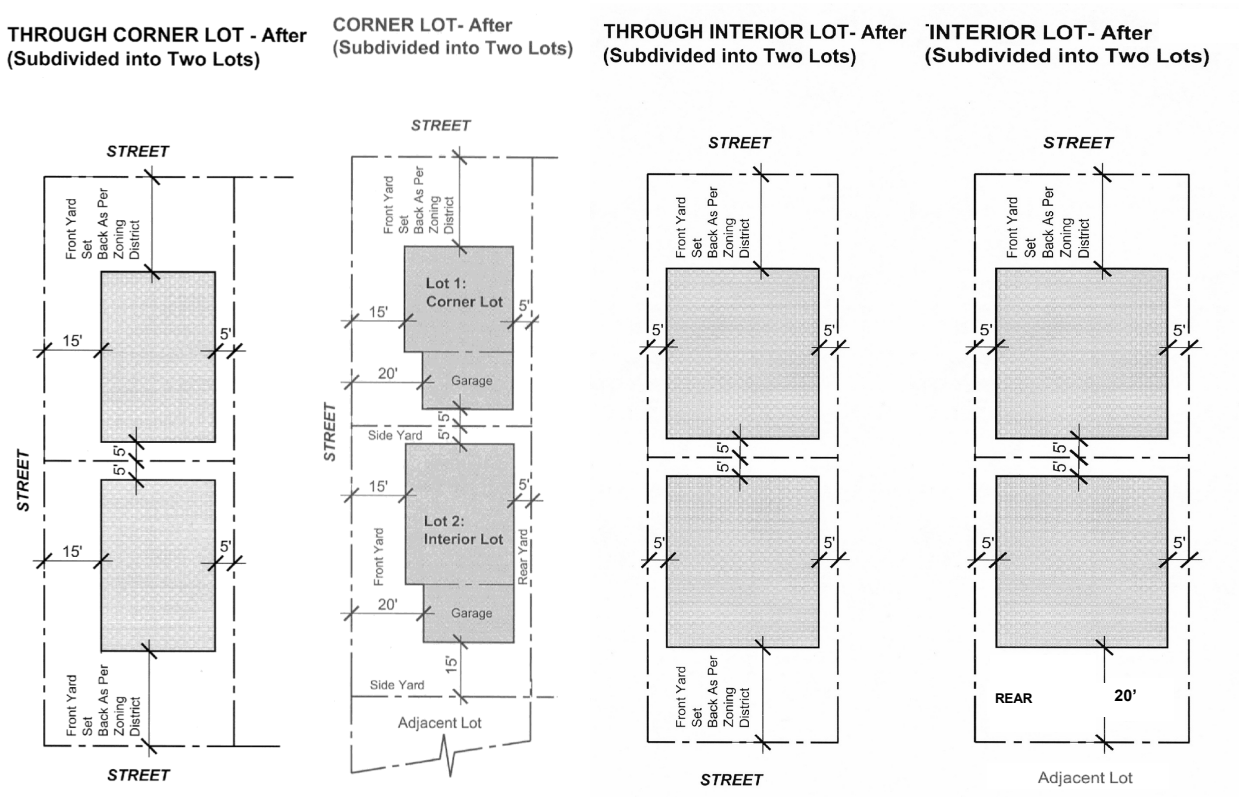
A typical 50' by 110' lot may be split into two separate fee simple lots for duplex or tandem development (58.518).

- Lot split may occur before or after development.
- Minimum size for each new lot is 2000 sq. ft.
- Lot lines must be drawn such that existing and new development meet code for setbacks, ISR, FAR and other standards.
- A cross-access easement is required for a shared driveway or a driveway that crosses over a lot line.
- An ownership and maintenance agreement is required for common areas and structures such as party walls, driveways or roofs.

Process for creating two lots

- Pre-application meeting is required.
- City surveyor will determine if the site is eligible for a lot split (shorter process) or if a subdivision plat is required (longer process).

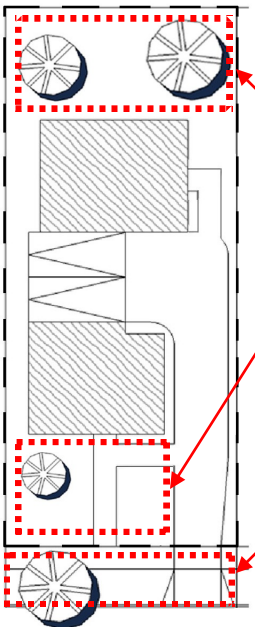
TANDEM SETBACKS(58.516 Figure 8)



LANDSCAPING AND STREET TREES

Canopy Tree: Typically grows taller than the house and provides the majority of shade in residential areas. Examples include magnolia, oak, maple and elm. *Laurel Oaks are strongly discouraged.

Understory Tree: Typically smaller than a canopy tree. May be ornamental or seasonally flowering. Examples include crepe myrtle, holly, and certain palm trees.



Street Trees

- Canopy street trees must be planted approximately 50 feet on center (61.226 and 60.216).
- If power lines or other restrictions mean that canopy trees cannot be planted, understory trees must be planted instead at a spacing of 30 to 45 feet on center (60.216).
- For each canopy street tree that is replaced by understory street trees, an onsite canopy tree is required (58.515 (g)).

On-site Landscaping

- For lots less than 6,001 sq. ft., 2 canopy trees are required, of which 1 must be in the front yard (60.223(c)).
- For lots 6,001 sq. ft. to 10,000 sq. ft., 3 canopy trees are required, of which 1 must be in the front yard (60.223(c)).
- For lots 10,001 sq. ft. to 14,000 sq. ft., 4 canopy trees are required, of which 2 must be in the front yard (60.223(c)).
- See section 60.223(c) for lots greater than 14,000 sq. ft.
- All other landscaping requirements in Chapter 60, Part 2F must be met.

Trees should be planted in the front and rear of properties to encourage tree canopy to soften the built environment and to encourage the continuity of the landscape pattern.

Designing for private and communal open space provides residents with quality usable private outdoor living areas for recreational and outdoor activities.

The sequence of open space provides a clear but subtle transition from the public realm to the private realm. The architecture and landscape design also provide “eyes on the street.”

APPEARANCE REVIEW

New residential construction and substantial enlargement/improvement remodeling projects must conform with the duplex and tandem development standards. To ensure that each duplex and tandem dwelling is harmonious and architecturally compatible with existing residential structures in the surrounding neighborhood, an appearance review is required.

A number of factors will contribute to a successful Appearance Review process. These include:

Variety in Design

The building styles and trends in the city of Orlando have evolved over time. Some new development has suffered from a stripped down look with little or poorly designed architectural detail. The intent of these guidelines is to enrich the visual quality of the city's neighborhoods by encourage interesting architectural detail.

In order to qualify as a different façade elevation, dwellings must have different roofline configurations and at a minimum of four other architectural elements listed on the next page (Anti-Monotony Standard).

Compatibility

In some neighborhoods, the architectural style is more defined than in others and on some buildings it is more apparent than others. New development should respect the features that contribute to the developed form. The intent is not to mimic the architecture of any area but to reflect the features that provide dominant architectural character on the block face.

Architectural Style

Each building must have consistent architectural elements that create a recognizable architectural style. All architectural elements, details, features, and finishes on the exterior of the building must be both consistent and compatible with the architectural style employed. Architectural elements and variations shall not be restricted to a single façade.

ANTI-MONOTONY STANDARDS (58.717(A))

Duplexes or tandem dwellings with identical front elevations must not be located on adjacent building sites. Simple reverse configurations of the same elevation on adjacent building sites are not sufficient. In order to qualify as a different façade elevation, dwellings must have different roofline configurations. In addition, at least four of the following architectural elements must be different from the adjacent building site(s):

- Architectural banding, trim, or cornice detail
- Window trim, the number of mullions or muntins, or shutters
- Window size and placement
- A covered entryway or front porch design
- Building projections and recesses
- Decorative roofline elements such as brackets or chimneys
- Façade articulation such as bay windows or dormers
- Exterior color and material
- One and two-story units
- Other generally accepted architectural elements, as determined appropriate by the Appearance Review Officer

NO

Architectural elements that differ:

- Rooflines
- Distinctive paint schemes
- Window size and placement
- Building materials
- Window trim and shutters
- Decorative roof & façade elements

YES

MIRROR IMAGE STANDARDS (58.517(B))

Side-by-side duplexes must not be mirror images. The left side and right side of the building must be designed to include a variety of architectural features. The intent is to ensure each duplex development is harmonious and architecturally compatible with the existing residential structures in the surrounding neighborhood. The left and right side of the building must include variety in at least three of the following elements:

- Roof style
- Architectural banding, trim, or cornice detail
- Window trim, the number of mullions or muntins, or shutters
- Window size and placement
- A covered entryway or front porch design
- Balconies or juliette balconies
- Building projections and recesses
- Decorative roofline elements such as brackets or chimneys
- Façade articulation such as bay windows or dormers
- One and two- story units
- Other generally accepted architectural elements, as determined appropriate by the Appearance Review Officer

Architectural elements that differ:

- Rooflines
- Covered front porch
- Building projections and recesses
- Window size and placement is different
- Window trim, the number of mullions or muntins, or shutters
- Façade articulation

NO

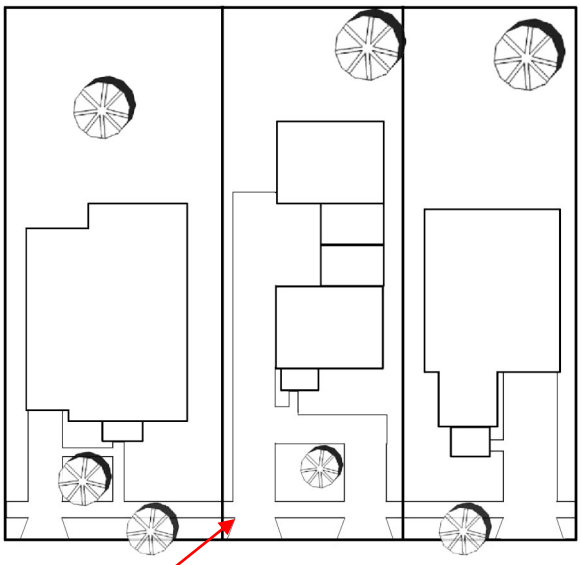
YES

SITE COMPATIBILITY (58.517(C))

Duplex and tandem development should be compatible with the surrounding neighborhood. The following factors will be considered:

- Logic of overall design
- Site plan
- Landscaping and pervious surface
- Driveway design, circulation and parking
- Environmental features and tree preservation
- Alignment of curb cut(s) to maximize ability to plant street trees and preserve on-street parking
- Compliance with the Traditional City standards and requirements for residential development in section 62.600, of this Code.
- Compatibility with adjacent land uses
- Features of existing development and neighborhood form

NO



- Front yard setback is not compatible
- Parking in front w/ dual driveway
- No street tree

Front-to-Back Duplex

YES

Year built: 2004 1924 2011 1926

New development should respect the features that contribute to the developed form. The architectural elements that create a harmonious block are:

- Similar rhythm of setbacks
- Porches are similar height
- Windows have similar proportions
- Driveways on the side lead to rear garages

The intent is not to mimic the architecture of any area, but to reflect the features that provide dominate architectural character on the block face.

ARCHITECTURAL STYLE (58.517 (D))

Each building must have consistent architectural elements that create a recognizable architectural style that is evident on the front and sides of the building. The following architectural elements must be both consistent and compatible with the architectural style employed:

- Roof type, pitch, form, material and overhang
- Exterior elevation, materials and finishes
- Window proportions, groupings, trim, muntins and details
- Column size, taper, base and moulding
- Balcony width and depth
- Porch width, depth, elevation and railings
- Chimney details
- Dormers/parapets
- Brackets, shutters, railings, rafter tails and decorative details
- Transparency
- Building projections and recesses
- Entryway and front door design
- Garage placement and door design
- Exterior lighting
- Incorporation of architectural features into any fire separation wall
- Other generally accepted architectural elements, as determined appropriate by the Appearance Review Officer

NO

NO

Interior Side Elevations—choose 1 (58.517(e)):

- Minimum of 10% transparency on each story below the roof line; or
- Moving the wall plane in or out by at least 2 feet according to the following requirements:
  - Must be on both floors of building.
  - Must be at least six feet long. A second is required if the building is longer than 36 feet.
  - Must meet setbacks.

YES

- Cohesive architectural style
- Detailing adds interest

ARCHITECTURAL STYLE—BEST PRACTICES

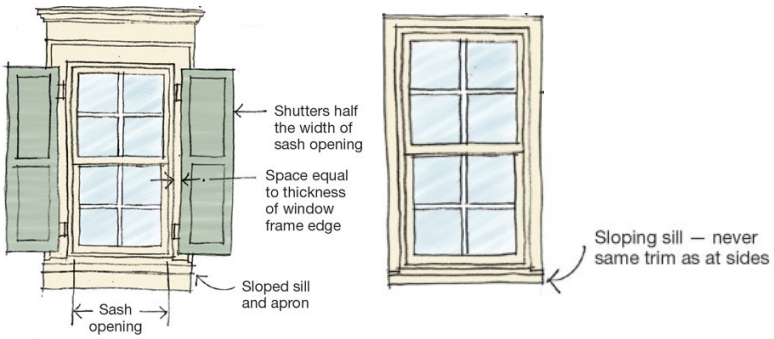
Garages

- Set back from front façade
- Lower roofline than main structure
- Roof overhang creates shadowlines
- Transparency adds interest

Porches

- Ground floor elevated at least 18” above grade
- Separate roofline
- Distinct columns
- Railing
- Minimum 6’ depth
- No living space above

Windows



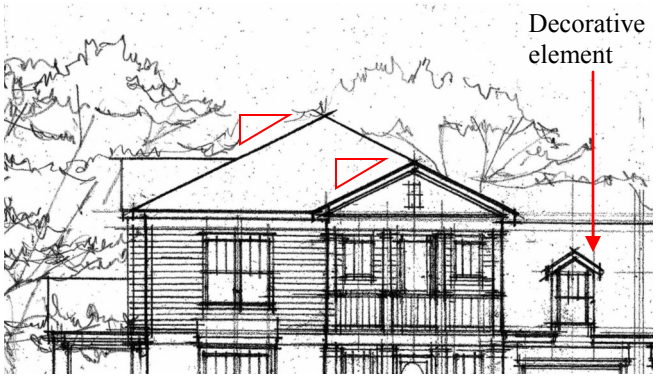
- Spacing is logical
- Proportions fit the architectural style
- Inset to create sills and shadow lines
- Trim from distinct materials, not carved into EIFS and painted
- Mullion pattern appropriate to architectural style
- Limited number of window shapes
- Shutters, if used, should be proportional so that they can appear functional

ARCHITECTURAL STYLE—BEST PRACTICES

Materials

- Should be durable and appropriate for the climate
- Should be appropriate for the style chosen
- EIFS should be minimized. Hardie board or true stucco is preferred. If EIFS is used, seams should be logical and incorporated into the architecture.
- Should wrap around the front and sides of the building and terminate at a logical stopping point, such as an architectural feature.

Roofs



- Pitch and materials should be appropriate for the style chosen
- Avoid massive hip or gable roofs on single story buildings.
- Create sheltering overhangs.

Entrances

- Should face the street
- Should be under a sheltering element such as a porch or awning
- Should be connected to a walkway that leads to the sidewalk
- Transparency preferred.
- If the front door is needed to meet minimum transparency, it must not be swapped out for a solid door.

ARCHITECTURAL STYLE—BEST PRACTICES

Side Elevations

Mass separation per unit

First and second floor transparency

The proportion and massing of the building must relate favorably to the form, proportions and massing of the existing building pattern on the street.

Architectural interest

Variation of roof heights and window details and material change

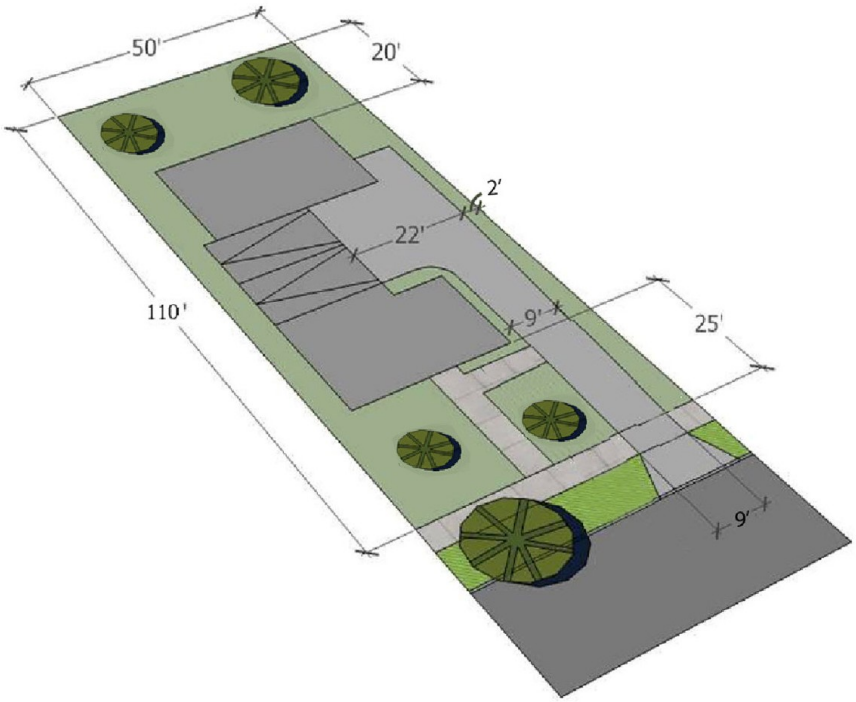
Architectural elements and variations must extend past the front façade and wrap to the side elevations. The front and both sides of a building must display similar levels of quality and architectural interest.

First and second floor transparency

Mass separation per unit

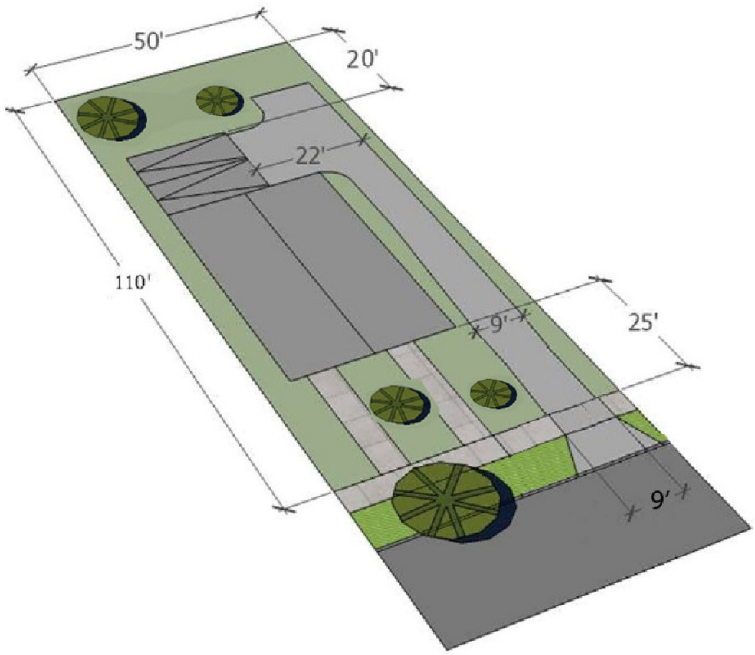
EXAMPLES: SMALL LOTS (50' X 110')

#1: FRONT-TO-BACK DUPLEX, SIDE GARAGES



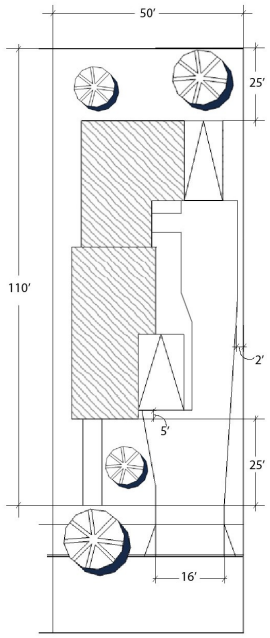
ISR = .55%
Front yard ISR = 40%
Living space = 2750 sq. ft.
FAR = 0.50

#2: SIDE-BY-SIDE DUPLEX, REAR GARAGES

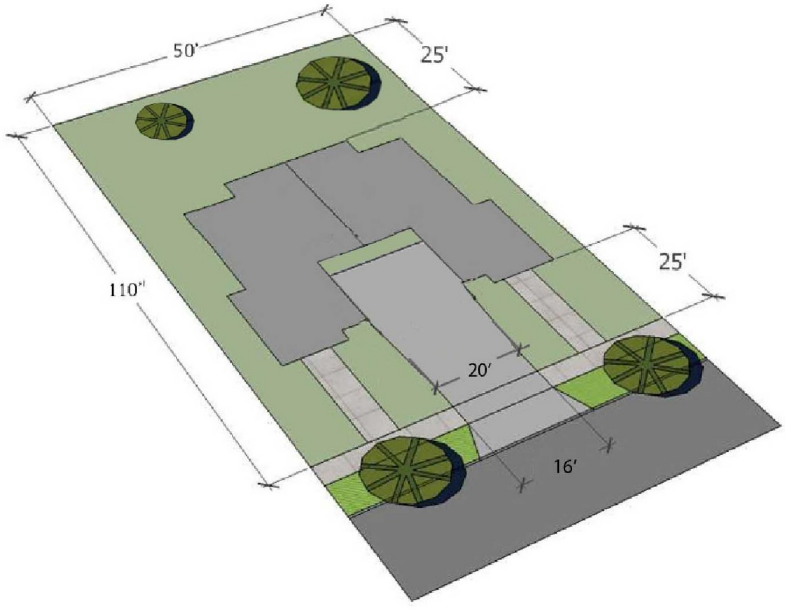


EXAMPLES: SMALL LOTS (50' X 110')

#3: FRONT-TO-BACK DUPLEX, SEPARATED GARAGES

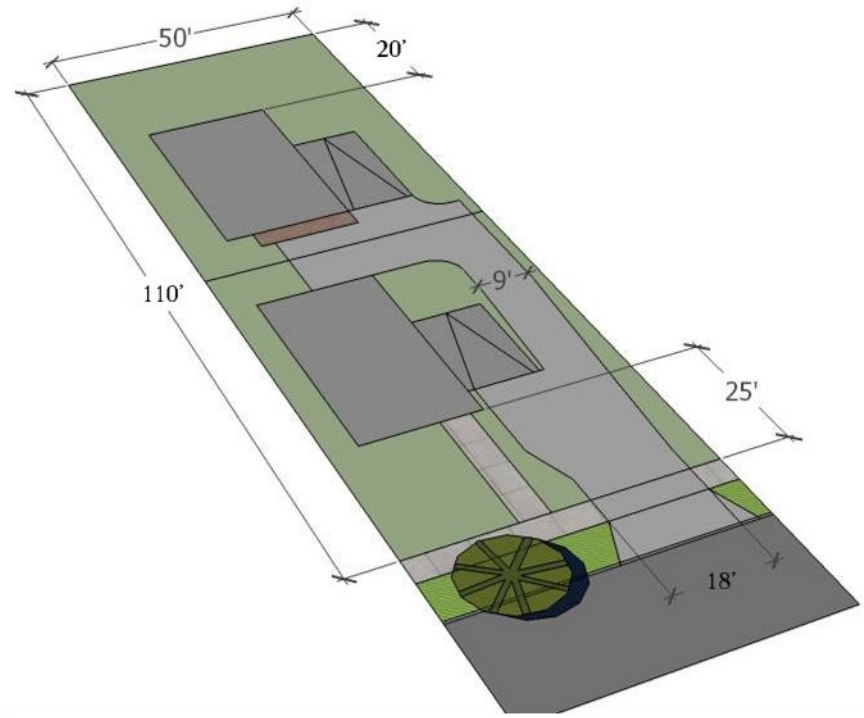


#4: SIDE-BY-SIDE DUPLEX, NO GARAGES



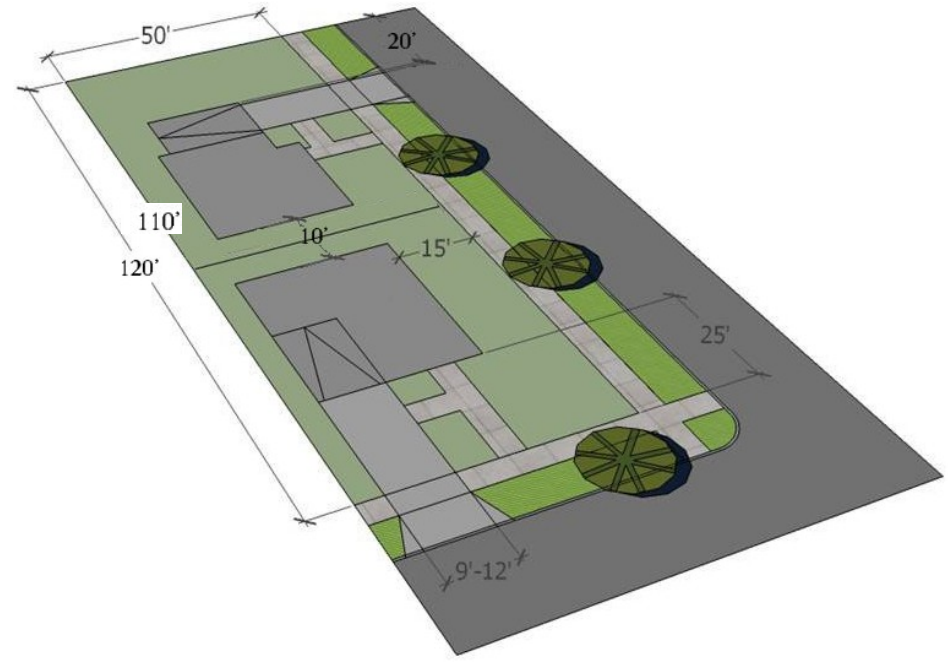
EXAMPLES: SMALL LOTS (50' X 110')

#5: FRONT-TO-BACK TANDEM, INTERIOR LOT



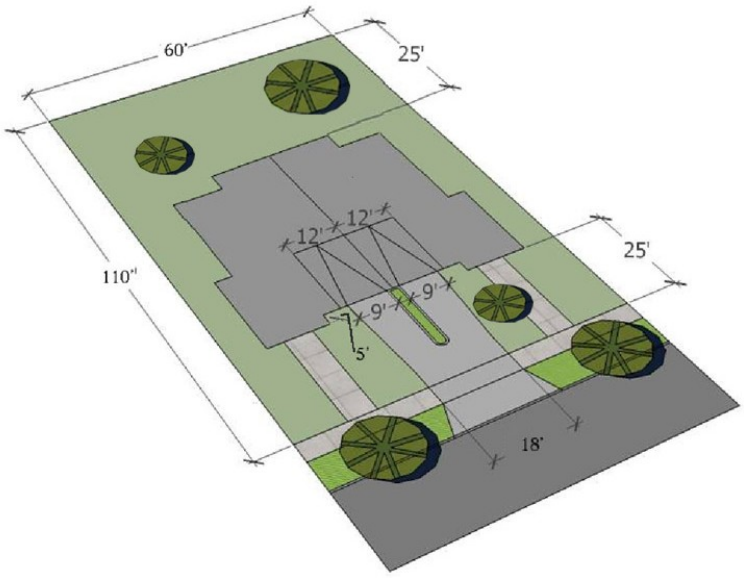
ISR = .55%
Front yard ISR = 40%
Living space = 2750sq. ft.
FAR = 0.50

#6: FRONT-TO-BACK TANDEM, CORNER LOT

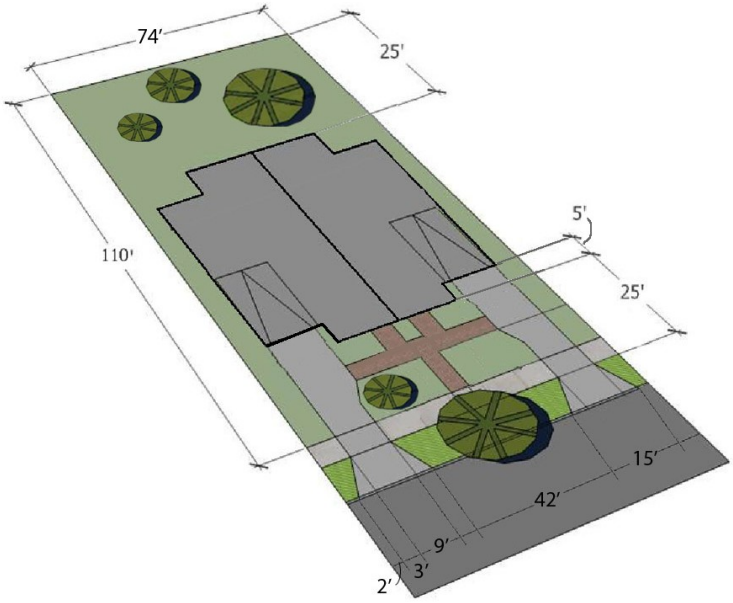


EXAMPLES: WIDE LOTS (60' X 110' OR MORE)

#7: SIDE-BY-SIDE DUPLEX, ONE DRIVEWAY

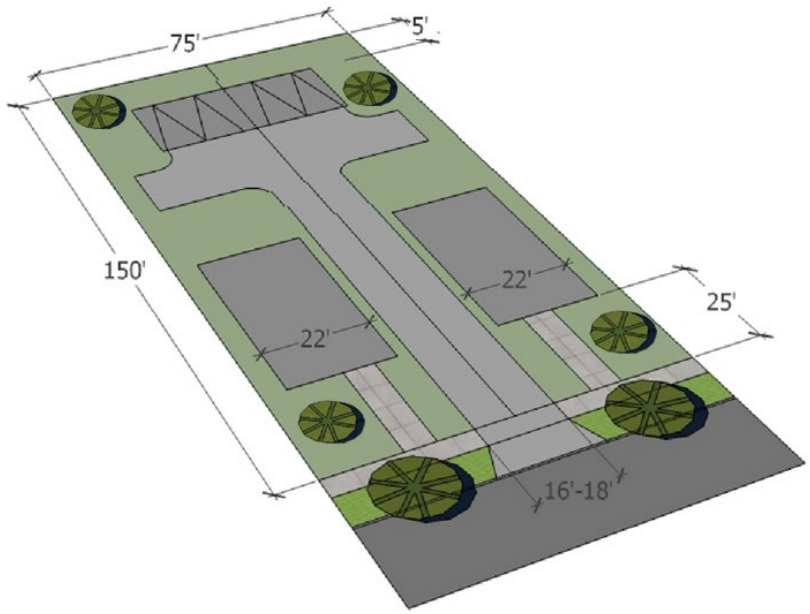


#8: SIDE-BY-SIDE DUPLEX, TWO DRIVEWAYS

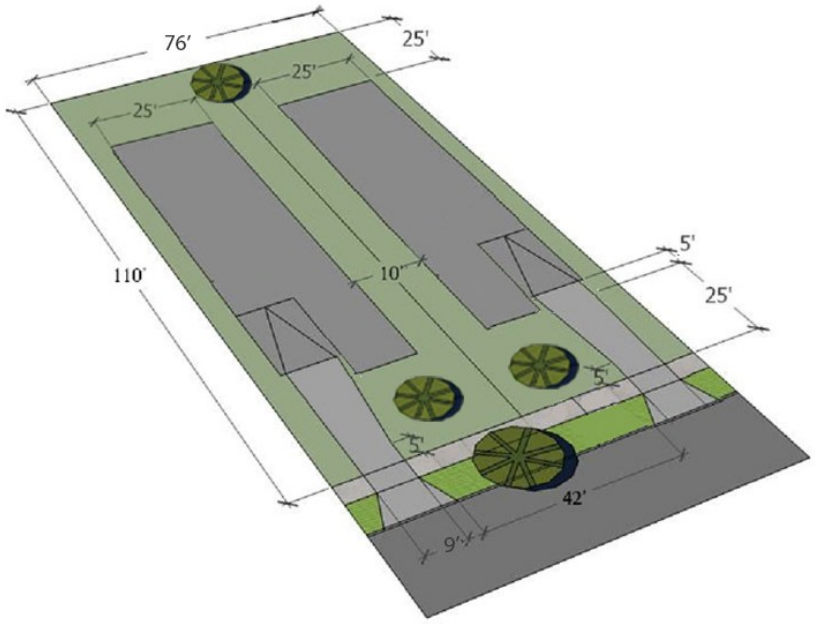


EXAMPLES: WIDE LOTS (60' X 110' OR MORE)

#9: SIDE-BY-SIDE TANDEM, ONE DRIVEWAY

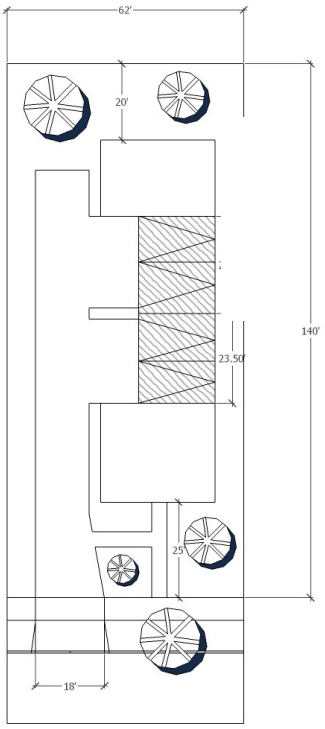


#10: SIDE-BY-SIDE TANDEM, TWO DRIVEWAYS

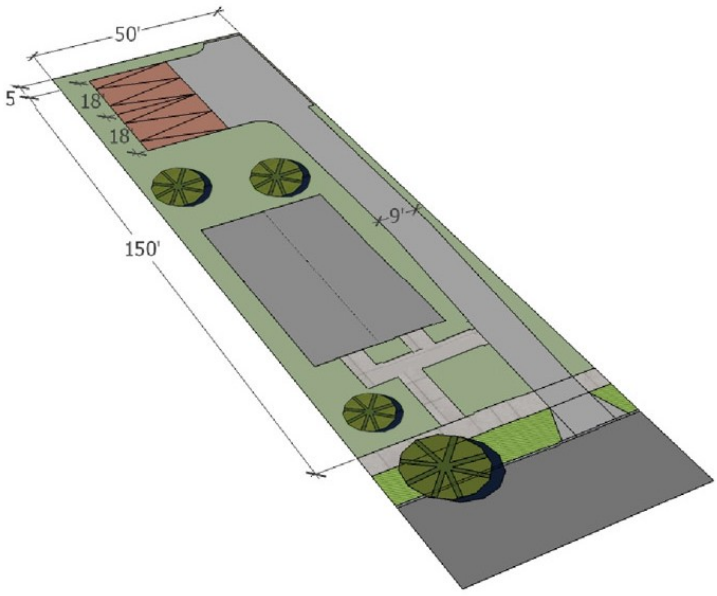


EXAMPLES: DEEP LOTS (50' X 150' OR MORE)

#11: FRONT-TO-BACK DUPLEX, 2 PARKING SPACES EACH

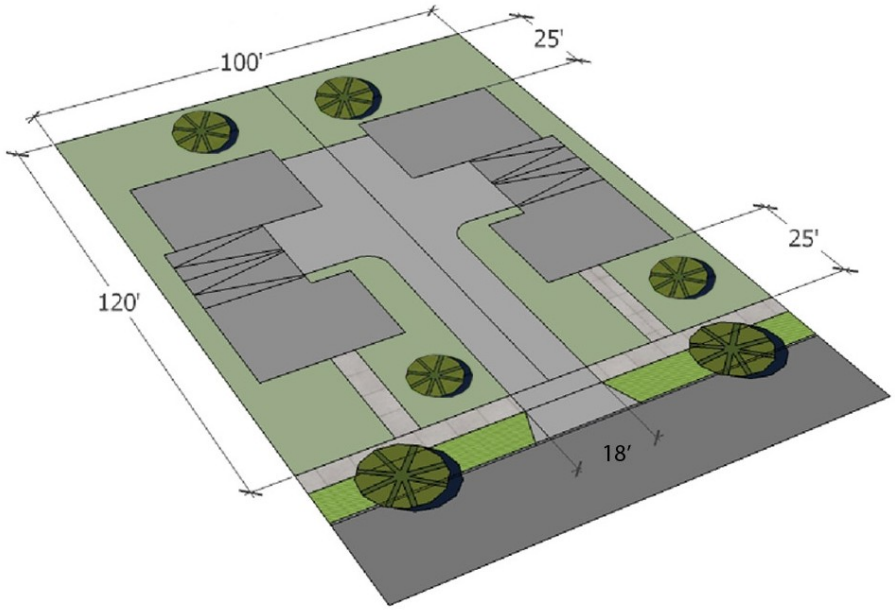


#12: SIDE-BY-SIDE DUPLEXES, 2 PARKING SPACES EACH

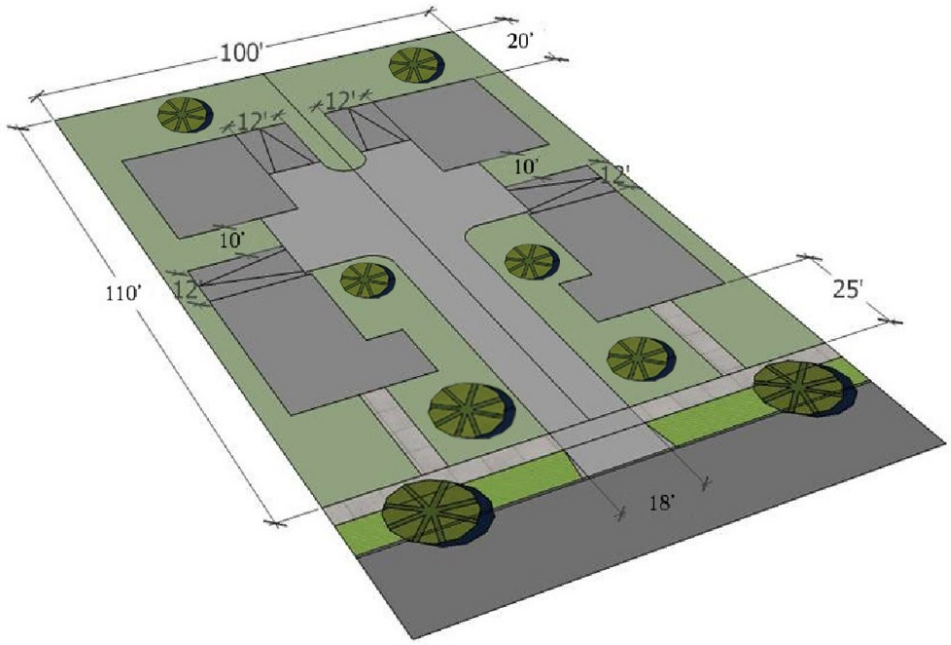


EXAMPLES: DOUBLE LOTS (100' X 110' OR MORE)

#13: COURT HOME DUPLEX

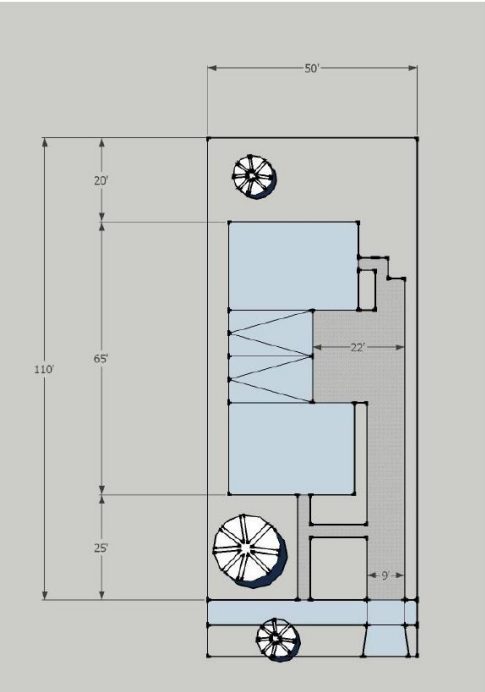


#14: COURT HOME TANDEM



CALCULATION EXAMPLES

#15: FRONT-TO-BACK DUPLEX, SMALL LOT



LAND DEVELOPMENT CALCULATIONS

SMALL LOTS
50' X 110'

FRONT TO BACK DUPLEX

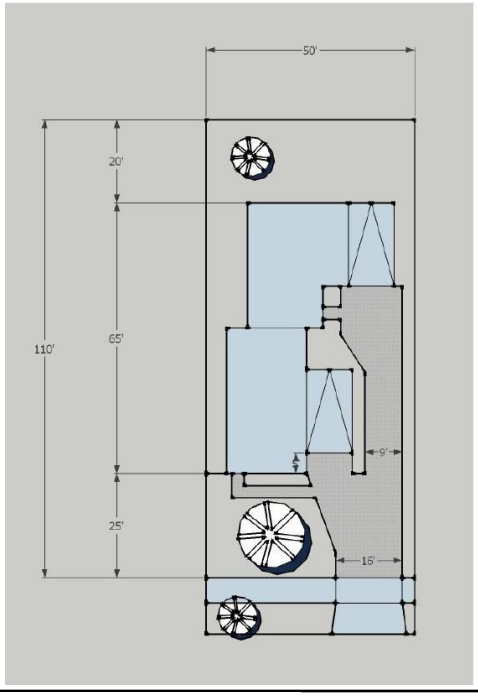
LOT SIZE : 5500 SQFT
UNIT 1: 1302 SQFT
UNIT 2: 1320 SQFT

FAR: .47 CODE .50 MAX

ISR: .46 CODE .55 MAX

* LIVING SPACE NOT ABOVE GARAGE IN EXAMPLE

#16: FRONT-TO-BACK DUPLEX,SMALL LOT



LAND DEVELOPMENT CALCULATIONS

SMALL LOTS
50' X 110'

FRONT TO BACK DUPLEX

LOT SIZE : 5500 SQFT
UNIT 1: 1320 SQFT
UNIT 2: 1320 SQFT

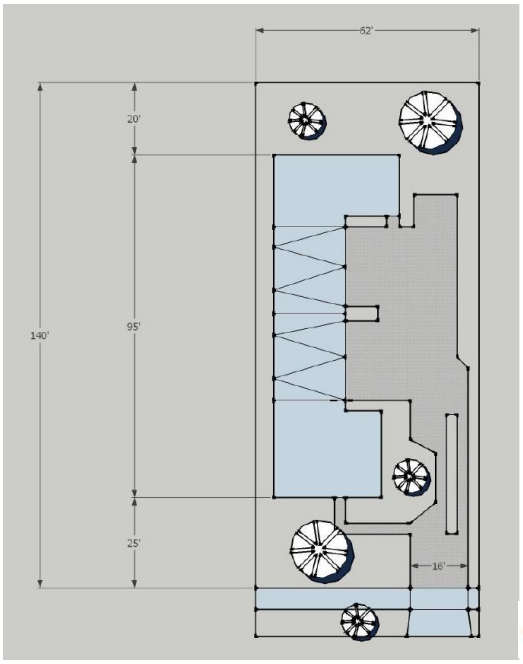
FAR: .48 CODE .50 MAX

ISR: .48 CODE .55 MAX

* LIVING SPACE NOT ABOVE GARAGE IN EXAMPLE

CALCULATION EXAMPLES

#17: FRONT-TO-BACK DUPLEX, LARGE LOT



LAND DEVELOPMENT CALCULATIONS

LARGE LOTS
62' X 140'

FRONT TO BACK DUPLEX
2 CAR GARAGE

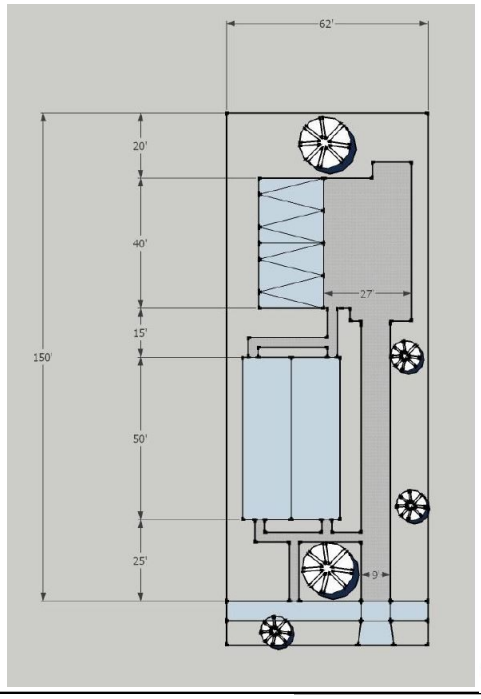
LOT SIZE : 8680 SQFT
UNIT 1: 2040 SQFT
UNIT 2: 1790 SQFT

FAR: .44 CODE .50 MAX

ISR: .53 CODE .55 MAX

* LIVING SPACE NOT ABOVE GARAGE IN EXAMPLE

#18: SIDE-BY-SIDE DUPLEX, LARGE LOT



LAND DEVELOPMENT CALCULATIONS

LARGE LOTS
62' X 150'

SIDE BY SIDE DUPLEX
2 CAR DETACHED GARAGE

LOT SIZE : 9300 SQFT
UNIT 1: 1500 SQFT
UNIT 2: 1500 SQFT

FAR: .32 CODE .50 MAX

ISR: .48 CODE .55 MAX

* LIVING SPACE NOT ABOVE GARAGE IN EXAMPLE

LVPC
Lehigh Valley Planning Commission
Planning for the Future of Lehigh + Northampton Counties

MODEL ORDINANCE

Cottage Housing Development

Updated December 2015

Lehigh Valley Planning Commission

COMMISSION

STAFF

Photos: Courtesy of Ross Chapin Architects (rosschapin.com)
Cover Icon: Noun Project/Jakob Vogel

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BACKGROUND AND GUIDELINES

Introduction

One way to address the region's environmental sustainability and housing affordability issues is to build smaller houses. Cottage housing is an innovative style of development based on the idea of "better, not bigger." Although it faces the same obstacles as other higher density development types, cottage housing's advantages could make it more acceptable to neighbors. This development type would be a useful option for developers, fitting between the detached single family house and the condo or townhouse. It makes more efficient use of the land, is more affordable and offers better energy efficiency than traditional single family detached housing, while providing more privacy than attached housing.

What Is A Cottage Housing Development?

A Cottage Housing Development (CHD) is a collection of small houses—usually less than 1,000 square feet in gross floor area. The cottages are arranged around a common open space, or courtyard, with parking screened from public view.

The first modern cottage developments occurred in the Pacific Northwest in the 1990s with the rehabbing of several 1916 rental cottages into single family homes. The same group of architects and developers built the first "pocket neighborhood" in Langley, Washington in 1995, following the city's adoption of the first CHD zoning ordinance. Since then, cottages have appeared all over the Northwest. They have been authorized by ordinance in Seattle and many of its suburbs. Other examples come from Anchorage and Juneau, Alaska, Boston, Cleveland and Nashville.

Developer Jim Soule, who built those first cottages in Washington, described a cottage housing development as "a group of homes that face and relate to one another around a landscaped common area—the old bungalow court approach" (Cottage Living, April 2008).

Smaller houses are not new to the Lehigh Valley. The post- World War II bungalows Soule mentioned are plentiful in the area. Many of these houses are 1,200-1,500 square feet. Some local neighborhoods huddle around a public park, similar to the clustering found in a cottage development. Recently, several age-restricted communities have used some of the elements of cottage housing, such as clustering or small unit size.

Cottages can be as comfortable to live in as a large house because they eliminate parts of a house that smaller households don't really use. For example, a cottage doesn't have a great room and a living room and a sitting room, or a casual dining room and a formal dining room and a breakfast nook. Cottage designers often find ways to make the most of the space, building shelving into walls and living space into lofts. Front porches extend the house outside.

Cottages gain their efficiency through higher densities, so they are usually permitted at double the normal density for single family detached homes. They can be built either on individual lots, or on a single lot, like condominiums. They can have attached garages or shared parking. This flexibility allows cottages to fill a number of roles in a community:

- Townhouses without shared walls (multi-family detached);
- Moderately priced housing;
- Urban infill—making use of smaller parcels;
- "Downsized" housing for empty-nest families looking for smaller units;
- Upscale housing, where floor space is traded for higher quality amenities;
- Energy efficiency.

TABLE 1
Cottage Housing vs. "Conventional" Housing

Characteristic	"Conventional" Housing	Cottage Housing
Density	Less than eight units per acre.	Double underlying zoned density.
Unit orientation	Facing out on a public access street or cul-de-sac.	Facing in on a common open space, in a cluster of 4-12 units.
Floor area	Typically, 2,500 sq. ft. and up.	No more than 1,200 sq. ft.
Common open space	Either provided on-site or a fee is paid to the municipality for improvements to parks off-site.	Per-unit common open space requirement. Cottages are required to be clustered around the open space.
Design restrictions	Few.	Design standards are needed to make cottages more acceptable to neighbors.
Ownership	Fee-simple.	Fee-simple or condominium association.
Parking	Garage facing the street; two spaces per unit.	Shared parking or individual garages permitted, but buffered from public view and accessed via alleys or private driveways. Parking requirements can be reduced for smaller cottages, to encourage singles and families without children to occupy them.
Zoning	Single Family.	Medium density single family to medium density multi-family.
Footprint	Maximum lot coverage.	850 sq. ft. maximum footprint.
Second floor	Typically, up to 35 ft. overall height.	Cottages limited to two stories. Living space directly under the roof is not uncommon. Height restricted to 25 feet.
Porches	Not required.	Required.

Advantages

The advantages of cottage housing are typically related to the efficient use of land. Cottages can make the most of a smaller piece of land through their compact size, making them an ideal choice for urban infill development. If cottages are permitted at higher than usual densities, they begin to show their qualities. CHDs are arranged in clusters of four to 12 units, built around a central open space. Parking is required to be hidden from view, either with garages that open onto alleys, or shared parking lots protected by landscaping or other features. If the cottages are clustered densely enough, the cost per unit will come down to below neighboring houses, even though the cost per square foot is typically somewhat higher.

This makes them a good starting point for workforce housing. Several recent affordable housing providers have taken advantage of the cottage concept (see the development case studies on page 5). In the past, housing was more affordable partly because the houses themselves were smaller. Cottage housing can recapture that strategy by scaling a house's size and amenities to fit the price requirements of different market segments.

On the other hand, cottages can also be built without affordability in mind. Upscale cottage developments are common in some of the most affluent communities in the Northwest. These projects have taken the cost savings that come with a CHD's higher density and put it into higher quality amenities—an approach of "better, not bigger," as highlighted in Sarah Susanka's "Not so Big House" series of books. In Kirkland, Washington, cottage housing was used to diversify a housing market that was being overrun with enormous mansions.

Cottages can be much more energy efficient than large houses. At least two affordable housing projects have used cottages to enhance the affordability of the units by reducing energy costs. These developments used new technologies and the small sizes of the structures to access support from power companies or environmental organizations. Small cottages are energy efficient because there is no excess space; owners do not have to pay to heat rooms that they rarely use.

Challenges

On a per-square-foot basis, cottages are more expensive to build than large houses. This poses a direct challenge to the goal of using cottage housing to make homes more affordable. Cottages contain all the same expensive parts of a conventional house—kitchen and bathrooms—but none of a builder's typical profit centers—sitting rooms, dining rooms or extra bedrooms that add to the price of a house but are cheap to build. Another factor in the higher cost of many CHDs is the innovative nature of the concept—builders are trying to showcase the idea. In order to be economically viable, CHDs need to be built at per-unit densities close to those found in multifamily developments. The two most common approaches to increasing cottage density are to either double the underlying zoned density if cottages are built, or to allow more than one cottage on each lot.

Allowing CHDs in single family districts with public sewer and water greatly increases the viability of cottage developments. However, the building of cottages close to larger homes can be the source of public resistance. Many of the arguments raised against smaller or denser housing have been aimed at cottages: they are ruining the "character" of the neighborhood; increased density will burden the school system; property values will fall; traffic will increase. While some neighbors in Shoreline, Washington complained about cottages being built next door, the Kirkland study found solid

public support for two well-designed developments. Also, it is unlikely that CHDs will add many children to the school district, despite the higher density, since these small units are designed for seniors, singles and couples with one child at most.

Cottage design has drawn opposition in some cases, with the look of the buildings becoming a focal point for neighbor resistance. While a focus group study of cottage residents and neighbors in Kirkland was positive, one resident told the City Council that "They look like they should come with a pair of Birkenstocks and an elf (Kirkland Reporter, 12/27/2007)." Brightly colored cottages in Shoreline and Anchorage, Alaska also drew fire for disrupting the neighborhood. However, one CHD in Seattle used a publicly viewable garden as a way to share its assets with the community and win neighbor support. Most municipalities have incorporated strict design requirements into their CHD ordinances as a way to address opposition to the cottages' aesthetics.

The included model regulations address some brief design requirements, however, each municipality should use its own local standards to ensure the cottages are compatible with the rest of the community. Some design criteria could include provisions such as:

- Limits on the pitch of a cottage's roof;
- A maximum ratio of height to width (to avoid tall, skinny houses);
- Requirements that each cottage look different from its neighbors;
- Restrictions on color schemes.

Development Case Studies

Shoreline, WA. Greenwood Avenue Cottages. The most successful of the seven CHDs in Shoreline, the Greenwood Avenue cottages sold quickly in 2002. Initial prices ranged from $250,000 to $285,000, although a recent resale was listed at $439,000. The eight units are all less than 1,000 sq. ft. in usable floor space (the second story is under the shallow pitched roof, so the square footage includes only the space with at least six feet between ceiling and floor). The units are clustered around a large common green space that also includes a 300 sq. ft. community building. Parking is clustered to either side. "Builder Online" praised the cottages for their use of "cheerful, but not overwhelming, colors," however, during the city's debate over CHDs, some residents complained that they were gaudy.

Suffolk County, NY. Cottages at Mattituck. This 22-unit subsidized CHD opened in October of 2007. The Community Development Corporation of Long Island developed the income-restricted, workforce housing project with county bonds, Federal HOME dollars and a subsidy from the Long Island Power Authority that reflected the high energy efficiency of the designs. The 1,100 sq. ft. units sold for $175,900 for buyers making less than 80% of the median income and $218,400 for buyers earning from 80-100% of the median. Deed restrictions will keep the units permanently affordable.

Cleveland, OH. The Green Cottages. Construction has recently begun on these Midwest cottages. This is another income-restricted, affordable housing project based on cottages. The Green Cottages combine demonstrations of energy efficiency technology, affordable housing subsidies and transit-oriented development. The units have two or three bedrooms and are sized from 1,150 to 1,350 sq. ft. All units have a full basement, a garage and ramp access to the rear entrance. The three bedroom model extends this accessibility with a first-floor bedroom. The units are designed to save residents 50% off the typical Cleveland utility costs. The two bedroom models will sell for $105,000 and the three bedrooms for $125,000. A deed restriction allows the Cuyahoga Community Land Trust to capture a portion of the home's equity on resale, preserving the public affordability investment.

Seattle, WA. Ravenna Cottages. Decidedly not targeting households with modest incomes, this demonstration project in the city of Seattle was designed to show the high quality that cottages can achieve. The development is a cluster of six cottages and three carriage houses just north of downtown. The units face inward, toward a garden that is visible from the street—a feature that helped win neighborhood acceptance. Each cottage has an 850 sq. ft. footprint. Even with a 1,500 sq. ft. courtyard, this development reaches a density of 31 units per acre. The units sold initially for $255,000 to $310,000 each. The CHD's land is owned jointly, with the owners paying fees to a condo association for maintenance.

Ordinance Case Studies

Kirkland, WA. This city, just a mile from the Microsoft campus in Redmond, WA, has some of the most expensive urban housing in the Northwest, with a median price over $900,000. Municipal officials looked to cottage housing as a way to bring price diversity to the market, allowing people from a range of income levels to live there, and so permitted the construction of two CHDs as an experiment. The units were sold initially for less than half the median price, although one recent resale listing was more than $800,000. A study commissioned by Kirkland determined that the cottages had been a success—neighbors had accepted the houses and were willing to accept more cottage development; CHD residents were happy with the developments and with the neighborhood. City officials built on the success, adopting a Cottage, Carriage and Multiplex Housing ordinance in 2007.

The ordinance allows cottages up to 1,500 sq. ft. and a density of twice the underlying zone with a maximum floor area ratio (FAR) of .35. A provision mandates the inclusion of cottages affordable to buyers earning less than median income. Affordable units and community buildings are not counted for the FAR. Also, the FAR is calculated for the entire site, not for each individual cottage.

Juneau, AK. Alaska's capital city has a built-out urban core centered on the waterfront and a newer suburban area several miles away. Lack of land and strong seasonal demand during the legislative sessions have driven up the cost of housing in Juneau. The City government approved a CHD ordinance in 2005 to address the need for smaller-sized housing for an aging demographic to increase density and promote urban in-fill.

TABLE 2
Per-unit minimum lot sizes, in square feet, for Juneau, AK.

HOUSING TYPE	ZONING DISTRICTS		
	D-3	D-5	D-10
Cottage housing	**4,500**	**3,600**	**3,000**
Single Family	24,000	—	—
Common Wall	—	7,000	3,600

Cottages are permitted at much higher densities than the usual use of the zoning. Juneau requires cottages to meet high design standards, employing a points system to ensure that the structures are up to the community's expectations. Points are awarded for design elements such as a wood shingle roof (4 points), a bay window (3 points) or a weathervane (1 point). Cottages may have no more than 1,200 sq. ft. in gross floor area. These high standards helped a cottage developer overcome neighbor resistance and win Planning Commission approval for Juneau's first CHD on February 11th, 2008.

Shoreline, WA. Shoreline's CHD ordinance allowed the construction of dozens of units before it was repealed in an anti-cottage backlash, based on the perception that density befitting a multi-family residential zone was getting constructed in a single-family residential area.[1] The stated purpose of the ordinance was to support the efficient use of urban residential land; increase the variety of housing types available for smaller households; encourage the creation of usable open space; and provide for development with less bulk and scale than standard sized single-family detached homes.

The ordinance encouraged smaller cottages, capping total floor space at 1,000 sq. ft. and first floor space at 800 sq. ft. Furthermore, the ordinance required that at least half of the units in a cluster have no more than 650 sq. ft. on the first floor and granted a density bonus if all units in a cluster had no more than 650 sq. ft. of first floor space: two units per parcel, versus 1.75 units if any unit had a larger first floor.

Recommended Standards

From these examples, it is possible to devise a set of standards that accomplish the goals of the Lehigh Valley, while also conforming to the region's unique characteristics and needs. Table 3 outlines the design guidelines that form the basis for a set of model regulations.

Authorization

The Pennsylvania Municipalities Planning Code says that zoning ordinances may contain "provisions to encourage innovation and to promote flexibility, economy and ingenuity in development…" (Section 603(c)(5)). Cottage housing is intended to address several Smart Growth goals articulated in *Comprehensive Plan The Lehigh Valley… 2030*:

- Generally, housing density and housing variety should be increased in urban development areas (p 38).

[1] Eskenazi, Stuart, "Shoreline Cottages: Too Close for Comfort?" *Seattle Times*, March 24, 2005, http://seattletimes.com/html/localnews/2002217948_cottage24m.html

- To provide an adequate supply of affordable housing which meets the needs of all income and social groups (p 61).
- Encourage the utilization of innovative residential development techniques… to provide high quality residential living environments and minimize the impact of development upon the natural environment of the site (p 65).

Conclusion

With new construction overwhelmingly focused on larger houses, affordability is slipping away from Lehigh Valley residents. Allowing a smaller style of housing is one approach to bring affordability back into the market. In order to be economically competitive with large houses, cottages need to be built at higher densities. The higher design standards found in these model regulations help to make those higher density developments more acceptable to some of the traditional opponents of density. At the time of this model ordinance's update, within the Lehigh Valley, both Allentown and the Borough of Portland had passed legislation supporting CHDs.

The following model regulations allow CHDs as a permitted use in single family zones served by public sewer and water.

TABLE 3
Cottage Housing Development Model Standards

Characteristic	Standard
Density	CHDs may be built at up to twice the allowed density for the underlying zone for single family detached housing. This could be achieved three ways, depending on the municipality's zoning system: • Double the allowed units per acre; • Halve the minimum lot size requirement; • Allow two cottages on each single family lot.
Scale	A CHD is made up of one or two clusters of cottages. Developments are capped at two clusters (24 cottages) to keep CHDs small. In Shoreline, Washington, and Boston, large numbers of cottages overwhelmed neighbors and led to anti-cottage backlashes. Each CHD either requires a separate land development plan, or it must be one part of a larger development plan.
Clusters	Clusters must have at least four and no more than 12 cottages. Each cluster must have its own open space and parking.
Unit orientation	Clustered around common open space.
Setbacks and separation	Cottages must be within 25 feet of the common open space. Additionally, no part of any building in the CHD can be more than 150 feet from fire department vehicle access, as measured by a clear path along the ground. All buildings in the CHD must be at least 10 feet apart.
Parking	Clustered and hidden from public view, either off of an alley or a private driveway. Garages are permitted, however they must have a design similar to or compatible with the cottages, so a maximum size is advisable. No more than five contiguous parking spaces.
Common open space	An area improved for passive recreation or gardening and open to the residents. At least 400 sq. ft. per unit, and at least 3,000 sq. ft. per cluster. Divided into no more than two pieces. Each piece counting toward the requirement must be at least 20 ft. on each side. It must be bordered on at least two sides by cottages.
Community building	A community building is encouraged. Many community buildings are around 300 sq. ft. Community buildings must be owned and maintained by a homeowners'/condominium association or similar collective.
Cottage size	Cottages may have no more than 1,200 sq. ft. of gross floor area, not including interior spaces with less than six ft. of overhead room, architectural projections (such as bay windows), basements, detached garages/carports and unenclosed porches. No unit may have more than 850 sq. ft. on its ground floor. The maximum height of a cottage is 25 feet.
Other characteristics	Depending on a community's tastes, more control of the look of the cottages could be important to make sure the designs blend well with the neighborhood. In areas where cottages have drawn controversy, much of the opposition has been based on the aesthetics of the units.

FIGURE 1
Example Cottage Housing Development

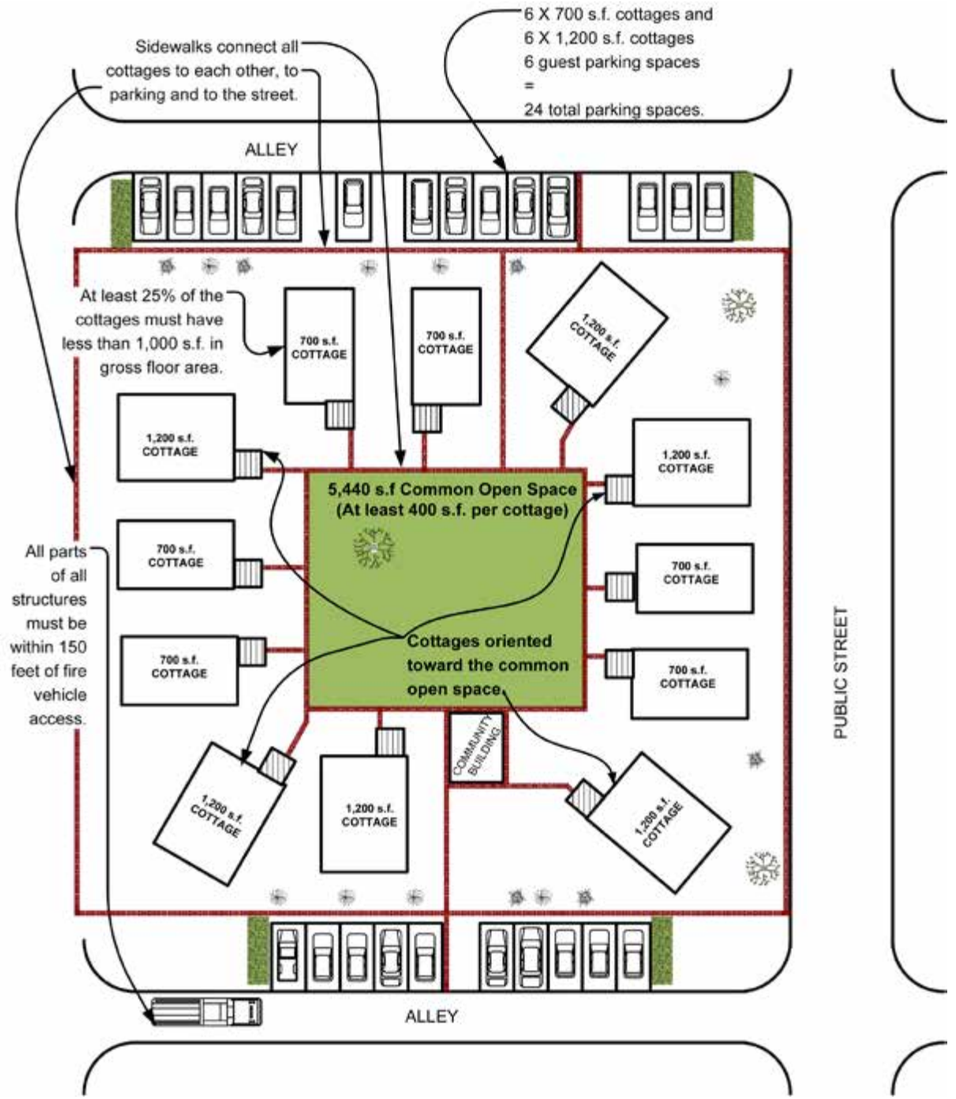


FIGURE 2
CHD Parking and Setback Details

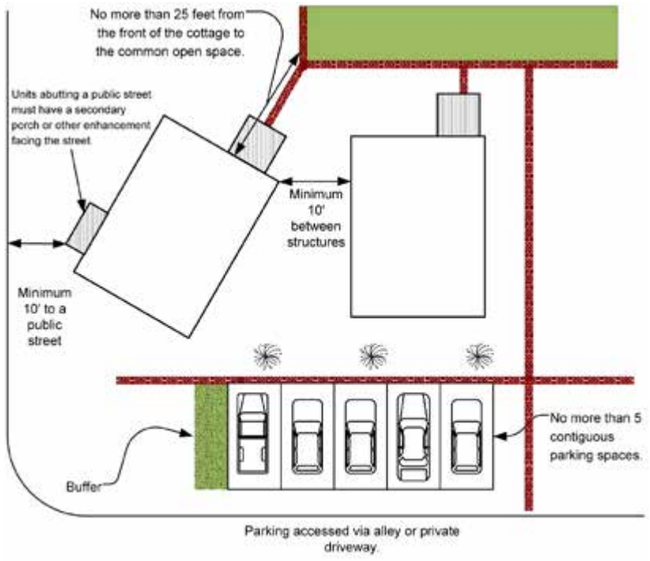
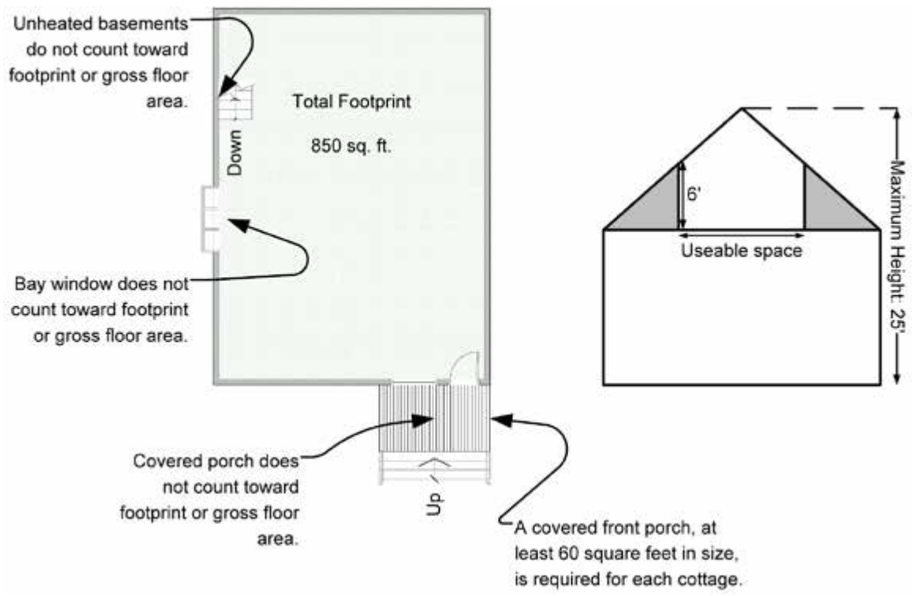


FIGURE 3
Example Cottage



MODEL REGULATIONS

Section 1: Intent

A) These regulations authorize Cottage Housing Developments (CHDs) as a permitted use in certain residential zones with certain standards.
B) Cottage Housing is a type of housing appropriately sized for smaller households. This housing type encourages efficient use of land, affordability and energy conservation. Cottage Housing allows for a higher density development than is normally allowed. This is made possible by smaller home sizes, clustered home sites and parking and design standards.

Section 2: Definitions

A) Cluster: A group of four to 12 cottages, arranged around a common open space.
B) Common open space: An area improved for passive recreational use or gardening. Common open spaces are required to be owned and maintained commonly, through a homeowners' or condominium association or similar mechanism.
C) Cottage: A single family detached dwelling unit that is part of a cottage housing development.
D) Cottage Housing Development (CHD): One or two clusters of cottages developed under a single land development plan, or as part of another land development plan.
E) Footprint: The gross floor area of a cottage's ground-level story.

Section 3: Districts

A) CHDs shall be permitted only in medium density single-family residential, and medium density multi-family residential districts.
B) CHDs shall only be permitted in areas served by public sewer and water.

Section 4: Density

A) Cottages may be built at up to twice the underlying zoned density for single family detached housing.
B) A CHD is composed of clusters of cottages.
   1. Minimum units per cluster: 4
   2. Maximum units per cluster: 12
   3. Maximum clusters per CHD: 2

Comment: There are three ways to achieve the density permitted, depending on the municipality's zoning system:
- Double the allowed units per acre;
- Halve the minimum lot size requirement;
- Allow two cottages on each single family lot.

Section 5: Community Assets

A) Common open space
   1. Each cluster of cottages shall have common open space to provide a sense of openness and community for residents.
   2. At least 400 square feet per cottage of common open space is required for each cluster.
   3. Each area of common open space shall be in one contiguous and useable piece.
   4. To be considered as part of the minimum open space requirement, an area of common open space must have a minimum dimension of 20 feet on all sides.
   5. The common open space shall be at least 3,000 square feet in area, regardless of the number of units in the cluster.
   6. Required common open space may be divided into no more than two separate areas per cluster.

7. At least two sides of the common open area shall have cottages along its perimeter.
8. Parking areas, yard setbacks, private open space and driveways do not qualify as common open space.
9. Any municipal requirements for contributions to off-site recreation facilities shall be reduced for the CHD by the amount of common open space included in the development.

B) Community Building
1. Community buildings are permitted in CHDs.
2. Community buildings shall be clearly incidental in use and size to dwelling units.
3. Building height for community buildings shall be no more than one story.

Section 6: Ownership

A) Community buildings, parking areas and common open space shall be owned and maintained commonly by the CHD residents, through a condominium association, a homeowners' association, or a similar mechanism, and shall not be dedicated to the municipality.

Section 7: Design

A) Cottage Size
1. The gross floor area of each cottage shall not exceed 1,200 square feet.
2. At least 25% of the cottages in each cluster shall have a gross floor area less than 1,000 square feet.
3. Cottage areas that do not count toward the gross floor area or footprint calculations are:
   a. Interior spaces with a ceiling height of six feet or less, such as in a second floor area under the slope of the roof;
   b. Basements;
   c. Architectural projections—such as bay windows, fireplaces or utility closets—no greater than 24 inches in depth and six feet in width;
   d. Attached unenclosed porches;
   e. Garages or carports;
4. The footprint of each cottage shall not exceed 850 square feet.

B) Unit Height
1. The maximum height of cottage housing units shall be 25 feet.

C) Orientation of Cottages
1. Each dwelling unit shall be clustered around a common open space. Each unit shall have a primary entry and covered porch oriented to the common open space.
2. Lots in a CHD can abut either a street or an alley.
3. Each unit abutting a public street (not including alleys) shall have a façade, secondary entrance, porch, bay window or other architectural enhancement oriented to the public street.

D) Cottage Setbacks
1. The minimum setbacks for all structures (including cottages, parking structures and community buildings) in a CHD are:
   a. Ten feet from any public right-of-way.
   b. Ten feet from any other structure.

Comment: While lots in a CHD do not have to abut public streets, private streets are not advisable because of concerns of shifting the burden to a municipality if the private entity can no longer maintain it, and private roads are often not constructed to municipal standards.

Comment: The International Fire Code, adopted by all municipalities in Pennsylvania, requires that access for fire apparatus "shall…extend to within 150 feet (45,720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility (503.1.1)."

2. Cottages shall be no more than 25 feet from the common open area, measured from the façade of the cottage to the nearest delineation of the common open area.
3. No part of any structure in the CHD (including but not limited to cottages, parking structures and community buildings) shall be more than 150 feet, as measured by the shortest clear path on the ground, from fire department vehicle access.

E) Porches
1. Cottage units shall have covered front porches. The front porch shall be oriented toward the common open space.
2. Covered porches shall have at least 60 square feet in area.

Comment: Municipalities may wish to include other design standards to address the specific aesthetic requirements of the community.

F) Basements
1. Cottages may have basements.

Section 8: Parking

A) Minimum Number of Off-Street Parking Spaces
1. Units up to 700 square feet: 1 space per dwelling unit.
2. Units 701-1000 square feet: 1.5 spaces per dwelling unit, rounded up to the next whole number.
3. Units with more than 1000 square feet: 2 spaces per dwelling.
4. The CHD shall include additional guest parking. A minimum of .5 guest parking spaces per dwelling unit, rounded up to the next whole number, shall be provided for each cottage cluster. Guest parking may be clustered with resident parking, however, the spaces shall include clear signage identifying them as reserved for visitors.
5. The requirement for off-street parking may be waived or reduced by the municipality if sufficient on-street parking is available.

B) Parking Design
1. Parking shall be separated from the common area and public streets by landscaping and/or architectural screening. Solid board fencing shall not be allowed as an architectural screen.
2. Parking areas shall be accessed only by a private driveway or a public alley.
3. The design of garages and carports—including roof lines—shall be similar to and compatible with that of the dwelling units within the CHD.
4. Parking areas shall be limited to no more than five contiguous spaces.

Section 9: Walkways

1. A CHD shall have sidewalks along all public streets.
2. A system of interior walkways shall connect each cottage to each other and to the parking area, and to the sidewalks abutting any public streets bordering the CHD.
3. Walkways and sidewalks shall be at least four feet in width.

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: RS and RM Zone Minimum Lot Size and Associated Density Standards

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As part of the response to the Mayor's "Planning Commission Inclusionary Development Charge" to the Planning Commission, the Land Use Sub-Committee explored the impact of minimum lot sizes and associated density standards in RS zones and considered the impact of those standards on local housing affordability. The following information has been prepared for consideration by the Planning Commission as a whole.

The code requirements related to minimum lot size and development density are found in Section 9-7-3 (RS Zone General Regulations), Section 9-7-4 (Density), and Section 9-8-3 (RM Zone General Regulations). Attached is a copy of these code sections with the portions that are proposed for removal or addition highlighted in yellow.

Background

The current code was adopted in December 2000 as part of a county-wide rezoning of all property. That rezone process was undertaken following the adoption of a completely revised Future Land Use Plan for Athens-Clarke County that implemented community goals and objectives identified through the county-wide Comprehensive Plan process.

The lot sizes and density standards for the RS zones were developed based on three primary goals:

1. Respect the development character and lotting patterns that already exist in developed areas;
2. Provide for future land division to support additional residential development at a density that accommodates a high quality of life, sustainability, and the maximization of existing infrastructure (public versus private water and sewer system availability); and
3. Allow for a variety of housing densities to be developed, with increased density allowed in in-town neighborhoods (essentially the same as the Traditional Athens area as shown on the adopted Growth Concept Map), and to provide minimum lot size flexibility in the design of major subdivisions (i.e. subdivision of 5 or more lots from parent parcels of 2 acres or greater).

With regard to subdivisions of 2 acres or greater that create 5 lots or more, the current code does not require a minimum lot size as long as other development metrics are satisfied.

The density calculation associated with the design of residential subdivisions of 2 acres or greater in the RS zones is adjusted to allow for the dedication of land for public streets and other infrastructure. Rather than the division of an acre (43,560 square feet) by the minimum lot size associated with RS zone, the density calculation is based on the division of 30,000 square feet by the minimum lot size associated with the RS zone. The determination to use 30,000 square feet of development potential per acre for large-scale residential development was based on research prepared by the consultant that assisted with the drafting of revised zoning ordinance that was adopted in December 2000.

Development yield in RS zones for subdivisions of 2 acres or more is calculated using Adjusted Tract Acreage as defined in Section 9-7-4. Adjusted Tract Acreage removes the following areas from the gross acreage of a development:

1. Land within the 100-year floodplain.
2. Bodies of open water.
3. Jurisdictional wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act.
4. Land lying within the 100-foot or 75-foot riparian buffers identified on the Environmental Areas Map, and land lying within the state-mandated 25-foot riparian buffer.
5. Areas with slopes equal to or greater than 25 percent which are at least 5,000 square feet contiguous area. These areas must remain undisturbed with the exception of easements for drainage access and underground utilities.

Density bonuses are presently allowed in RS zones in Section 9-7-4 for the provision of open space area in excess of the minimum 5% open space area set aside required for major subdivision development. One percent of additional density is available for each 1% of open space provided beyond the minimum 5% required, to a maximum density bonus of 25%. The density bonus percentage is applied to the Adjusted Tract Acreage of the proposed development site.

It is important to note that single-family uses are allowed by-right in all RM zones. Density in RM zones is calculated using a minimum lot size of 5,000 s.f. in addition to a bedroom-per-acre calculation that ranges from 16 bedrooms/acre in the RM-1 zone, to 24 bedrooms/acre in the RM-2 zone, to 50 bedrooms/acre in the RM-3 zone. In instances where lots of record that existed prior to December 7, 2010 are zoned with a RM designation, current code in footnote #1 following Table 9-8-3 allows 3 bedrooms per lot regardless of lot size.

Findings

The Sub-Committee discussed the purpose and effect of the current RS zone minimum lot size regulations and development density calculations, and concurrence was expressed for the following findings:

- The Committee acknowledged the potential for a direct causal link between minimum lot size and development density regulations and the relative ability to provide affordable housing. However, without establishing other requirements for the provision of affordable housing in association with an increase in development yield, there are no guarantees that

decreased lot size or increased development density will result in more affordable housing. Such a code change would merely create the potential for cost savings for the developer, land owner, and eventual home owner and/or tenant.

- The current minimum lot size and development density regulations were adopted in 2000 based on development data, best practices, and community expectations that existed in Athens-Clarke County at that time. It is reasonable to revisit these regulations in light of current development data, best practices, and community expectations as expressed in the recent Envision Athens plan, the 2018 Comprehensive Plan, and the recommendations of the GICH Committee, as well as other locally-produced housing and land use analysis that is reflective of current conditions and expected future need. Any change to the minimum lot size requirements should be made only after careful consideration and with sufficient justification to ensure that, at a minimum, the previously expressed goals related to minimum lot size and maximum residential density are met:
  (1) respect the development character and lotting patterns that already exist in developed areas;
  (2) provide for future land division to support additional residential development at a density that accommodates a high quality of life, sustainability, and the maximization of existing infrastructure; and
  (3) allow for a variety of housing densities to be developed, with increased density allowed in appropriate areas, and to provide minimum lot size flexibility in the design of major subdivisions (i.e. subdivision of 5 or more lots from parent parcels of 2 acres or greater).

- The development community has worked with the current regulations without citing minimum lot size or maximum density regulations as impediments to design or development.

- Any reduction in lot size or increase in development density should be adopted only if it is accompanied with the provision of a community benefit that is incorporated into the development receiving the increased residential yield. Such community benefits already include the provision of usable open space, and could also include the provision of affordable housing.

- It is important to note that single-family uses are allowed in RM zones, and that single-family uses on RM zoned lots exist throughout many established in-town neighborhoods. The RM zone bedroom density provision that allow up to 3 bedrooms by-right on any lot of record that predates December 7, 2010, creates situations where incompatible bedroom densities can legally exist in close proximity to less dense residential development and possibly single-family uses.

- Other than instances of extreme structural deterioration or deferred maintenance, the retention of existing housing stock lends itself to furthering affordability. The allowance for up to 3 bedrooms on any RM lot of record that predates December 7, 2010, creates an incentive for the demolition of older, smaller housing stock that could otherwise be occupied.

Recommendation:

The Sub-Committee finds that the current RS zone minimum lot sizes and density calculations are appropriate for supporting standard market-rate single-family residential development. However, additional density could be provided through density bonus incentives that are related to the provision of affordable housing. The following code sections have proposed additional text (indicated with yellow highlighting) demonstrating how the code could be amended to accommodate an Affordable Housing Unit Density Bonus once an inclusionary zoning provision or related Athens-Clarke County affordable housing program has been developed and adopted.

The Sub-Committee also finds that the current RM provision in footnote #1 following Table 9-8-3 allows more bedroom density than should be possible to ensure compatibility with existing development conditions in established residential areas with single-family uses that are zoned RM. Revisions to this code section are proposed that would no longer allow 3 bedroom units by-right on existing lots with less calculated density. Instead, lots of record that meet the minimum lot size of 5,000 sq. ft. would be eligible to contain a maximum of 3 bedrooms, and lots less than 5,000 sq. ft. would be allowed a maximum of 2 bedroom units by-right.

In a related discussion, the Sub-Committee also recommends that the Accessory Dwelling Unit development standards associated with the RM zone be revisited in an effort to add appropriate density without changing development character.

Sec. 9-7-3 - General regulations.

General regulations of the RS zone are contained in the table below:

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
Subdivision of less than 2 acres and/or fewer than five lots:					
Minimum lot area (square feet)	40,000	25,000	15,000	8,000	5,000
Minimum lot width and continuous linear street frontage (feet) [2]	150	85	75	60 For single-family attached units, the lot width shall not be less than 50% of the minimum lot width for the district	50 For single-family attached units, the lot width shall not be less than 50% of the minimum lot width for the district
Minimum lot depth (feet)	260	100	100	80	80
Minimum front yard (feet) [1, 2, 5, 6]	50 feet	20 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	20 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	15 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	15 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
Minimum side yard (feet) [6,]	18 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	8 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	6 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	6 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
Minimum side yard, adjacent to street (feet) [5, 6]	15 feet Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
Minimum side yard building separation between primary residential structures	30 feet	20 feet	12 feet	12 feet	12 feet

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
Minimum rear yard	25 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	20 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	20 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
The following limits apply to subdivision of 2 acres or more and five lots or more in lieu of minimum lot size requirements:		The following regulations apply to lots subdivided from parent parcels totaling 2 acres or more or included as part of subdivisions of five lots or more after ~~between~~ 12/20/00. ~~and the effective date of this section shall use the development regulations in effect at the time of final plat approval.~~			
Minimum lot width and continuous linear street frontage (feet)[1, 2, 6]	80	60	40	40 For single-family attached units, the lot width shall not be less than 50% of the minimum lot width for the district	40 For single-family attached units, the lot width shall not be less than 50% of the minimum lot width for the district
Maximum residential density, subdivision of more than 2 acres[7]	0.92 dwelling units per acre	1.4 dwelling units per acre	2.0 dwelling units per acre	3.8 dwelling units per acre	6.0 dwelling units per acre

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
Minimum side yard (feet) [5,]	18 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	8 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	6 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	6 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
Minimum side yard, adjacent to street (feet) [5, 6]	15 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of	10 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane	10 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane	10 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
	true height of that vertical plane that exceeds 20 feet.	that exceeds 20 feet.	that exceeds 20 feet.		that exceeds 20 feet.
Minimum side yard building separation, subdivisions of more than 2 acres	30 feet	20 feet	12 feet	12 feet	12 feet
Minimum front yard (feet)[1, 2, 5, 6]	50 feet	20 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	20 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	15 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	15 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
Minimum rear yard	25 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for	20 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that	20 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that	15 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical	15 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
	each foot of true height of that vertical plane that exceeds 20 feet.	vertical plane that exceeds 20 feet.	vertical plane that exceeds 20 feet.	plane that exceeds 20 feet.	vertical plane that exceeds 20 feet.
The following limits apply to all lots:					
Maximum lot coverage	25%	25%	40%	45%	50%
The following limits apply to all buildings:					
Maximum overall building height[3,6]	35 feet	30 feet	30 feet	30 feet	30 feet

[1] Unless otherwise specified in section 9-15-9.

[2] The lot width shall be measured beginning at the front lot line and maintained for the entire depth of the front yard, except for lots entirely adjoining turnaround areas of cul-de-sacs, where the lot width shall be measured at the minimum required front setback line. Preliminary plats for residential subdivisions with ten or more lots may have a maximum of ten percent of such lots exempted from the minimum lot width and continuous linear street frontage requirements through the utilization of private drives and/or narrow lot widths and street frontages.

[3] Unless otherwise specified in section 9-15-22.

[4] Except for lots entirely fronting turnaround areas of cul-de-sacs, the lot width shall be measured beginning at the front lot line and maintained for the entire minimum lot depth. For lots entirely fronting turnaround areas of cul-de-sacs, the lot width shall be measured beginning at the minimum required front setback line and maintained for the remaining portion of the minimum lot depth.

[5] In all cases, building setbacks shall allow adequate depth and/or width for required parking to be entirely within the private property per 9-30-8(E).

[6] In all cases, when measuring overall structure height and architectural elevation structure height, retaining wall height shall be incorporated as provided for in Section 9-7-7(B).

[7] Density calculations shall follow the provisions set forth in Section 9-7-4.

Section 9-7-4. Density

A. **Density, subdivisions of more than two acres**. For subdivisions of more than two acres, density shall be calculated by multiplying the number of lots allowed by the adjusted development acreage. For subdivisions of two acres or less, the general regulations regarding lot dimensions set forth in Table 9-7-3 shall apply. For the purposes of this chapter, the following areas shall not be included in the adjusted development acreage.

1. Land within the 100-year floodplain.
2. Bodies of open water.
3. Jurisdictional wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act.
4. Land lying within the 100-foot or 75-foot riparian buffers identified on the Environmental Areas Map, and land lying within the state-mandated 25-foot riparian buffer.
5. Areas with slopes equal to or greater than 25 percent which are at least 5,000 square feet contiguous area. These areas must remain undisturbed with the exception of easements for drainage access and underground utilities.

B. Common Open Space Density bonus. For subdivisions of more than two acres, the permitted base density shall be increased by the percentage gained through bonus points.

1. The maximum bonus permitted shall be 25 percent.
2. *Provision of common open space.* For developments of ten units or greater which provide greater than five percent open space, a one-percent bonus shall be awarded for each one percent of the total adjusted development acreage in common open space over the required five percent. The purpose of the density bonus for common open space is to permit areas that could otherwise be developed, or sold as individual lots, to be retained in their natural state or to be developed as a recreational amenity. It is not the purpose of this provision to permit density bonuses for incidental open spaces which have no realistic use by project residents on a day to day basis. No bonus points shall be awarded for the minimum five percent required open space of the adjusted development acreage, as specified in section 9-7-4 of this title.

C. Affordable Housing Unit Density bonus. For subdivisions of more than two acres, the permitted base density shall be increased by the percentage gained through bonus points.

1. The maximum bonus permitted shall be 50 percent.
2. Seventy percent or more of the number of units gained in excess of the number allowed by the base density for the zone shall be developed as affordable housing units pursuant to the terms and conditions associated with the Athens-Clarke County _____ program *[Staff Note: local affordable housing program yet to be determined].*
3. If used in combination with the Open Space Density Bonus, the total combined density bonus shall not exceed 50% increase above the base density allowed.

Sec. 9-8-3 - **General regulations.**

General regulations of the RM zone are contained in the table below:

[Revisions are proposed to footnote #1 after Table 9-8-3.]

Footnote #1:

[1] For the purposes of calculating RM density, unit values are determined by counting the number of bedrooms, as defined in Chapter 9-2, using the following method:

Studio/1 bedroom = 1 unit.

2 bedrooms = 2 units.

3 bedrooms = 3 units.

4 bedrooms = 4 units.

If the result of this calculation yields a fractional unit amount, only the whole number portion of the unit measurement shall be used to determine the total development density.

No more than 25% of the total number of dwellings within a multifamily development shall have four or more bedrooms per dwelling unit.

Lots of record existing prior to December 7, 2010 and proposed lots on subdivision plats submitted for approval prior to December 7, 2010 with calculated density less than three bedrooms shall be eligible to contain a maximum of three bedrooms provided that the lot meets the minimum lot size of 5,000 sq. ft. All other lots existing prior to December 7, 2010 which do not meet the minimum 5000 sq ft lot size shall be permitted to build a 2 bedroom house ~~regardless of lot size.~~

For subdivisions of two or more acres and five lots or more, in lieu of individual lot density calculation, the maximum density allowed for the entire development shall be calculated by multiplying the number of bedroom units allowed per gross acre by the total development acreage.

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: Variable setbacks in "Greenfield" subdivision development

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As part of the response to the Mayor Girtz's "Planning Commission Inclusionary Development Charge," the Housing sub-committee explored the impact of single-family height restrictions on "greenfield" subdivision development and the impact of those standards on local housing affordability. The following information has been prepared for consideration by the Planning Commission as a whole.

The code requirements related to RS zone building height and setback standards are found in Section 9-7-3 (RS Zone General Regulations). Attached is a copy of this code section with the portions that are proposed for removal or addition highlighted in yellow.

Background

Of specific interest for this analysis, the code section referenced above regulates building placement by establishing setback standards for single-family residential construction and creates a regulatory relationship between residential building height and associated setback requirements.

The current code was adopted in February 2017, and the text amendments adopted at that time represent the primary action taken to implement measures intended to respond to the findings included in the 2016 Athens-Clarke County Infill Housing Study (Phase 3) report. Community concerns were expressed at that time regarding the scale and placement of infill housing development, and Planning Staff was tasked with developing county-wide text amendments that would address these concerns. The regulations that were adopted required that new homes built in RS zones must provide additional setback beyond the minimum setbacks required in instances where the building height exceeded a true height measurement of 20 feet from grade.

Within the past 18 months, questions have been raised regarding the utility of applying this variable setback standard to new multi-parcel single-family subdivisions (as opposed to instances of a single-lot infill development).

"Greenfield" development is defined as multi-lot and/or multi-structure development that is constructed on previously undeveloped, or largely undeveloped, property.

Findings

The Committee discussed the purpose and effect of the current height and setback regulations, and unanimous concurrence was expressed for the following findings:

- The variable setback standards adopted in 2017 were intended primarily to address compatibility concerns associated with single-lot infill construction in previously developed single-family residential areas. Application of the variable setback approach to lots subdivided from parent parcels totaling 2 acres or more or included as part of subdivisions of five lots or more was determined, at the time, to achieve some degree of design consistency between major (5 lots or more) and minor (4 lots or less) subdivision development, and to reinforce the design principle that homes that have heights in excess of 1-1/2 stories should use a 1:1 setback-to-height ratio to maintain appropriate structure separation.
- The Committee found a modest causal link between the building height-based variable setback regulations and the relative ability of developers to provide affordable housing.
- The Sub-Committee finds that single-family residential subdivisions of 2 acres or more that include 5 lots or more create their own development context and are able to sufficiently manage compatibility issues related to building height and placement, as well as separation distance from adjacent properties, at the of initial development without requiring additional variable setback standards.
- The Mayor's charge to the Planning Commission calls attention to *single-family height restrictions in greenfield development*, and it is the Sub-Committee's understanding that the focus of the concern is on how building height affects setbacks in "greenfield" development. Therefore, only the code section establishing these variable setbacks was examined (Table 9-7-3) by the Sub-Committee. Code sections dealing solely with building height were not reviewed [including Section 9-7-7 (Grading and Retaining Walls), in Section 9-15-9 (Yard – General Exception), and in Section 9-15-22 (Structure Height – General Exception)].

Recommendation:

The Sub-Committee recommends that the variable setback standards found in Table 9-7-3 that apply to single-family residential subdivisions created from parent parcels totaling 2 acres or more or included as part of subdivisions of five lots or more be removed. The current minimum setbacks established for each RS zone are believed to be sufficient to accomplish the purposes of managing the adverse effects of building height and placement, as well as separation distance from structures on adjacent properties. The proposed revisions to Table 9-7-3 are attached with affected text indicated in yellow highlighter. Text that is recommended to be deleted has been struck-through.

Sec. 9-7-3 - General regulations.

General regulations of the RS zone are contained in the table below:

Table 9-7-3	**RS-40**	**RS-25**	**RS-15**	**RS-8**	**RS-5**
Subdivision of less than 2 acres and/or fewer than five lots:					
Minimum lot area (square feet)	40,000	25,000	15,000	8,000	5,000
Minimum lot width and continuous linear street frontage (feet) [2]	150	85	75	60 For single-family attached units, the lot width shall not be less than 50% of the minimum lot width for the district	50 For single-family attached units, the lot width shall not be less than 50% of the minimum lot width for the district
Minimum lot depth (feet)	260	100	100	80	80
Minimum front yard (feet) [1, 2, 5, 6]	50 feet	20 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be	20 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be	15 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot	15 feet, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
		setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	for each foot of true height of that vertical plane that exceeds 20 feet.	setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
Minimum side yard (feet) [6,]	18 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	8 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	6 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	6 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
Minimum side yard, adjacent to street (feet) [5, 6]	15 feet Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
	exceeds 20 feet.				
Minimum side yard building separation between primary residential structures	30 feet	20 feet	12 feet	12 feet	12 feet
Minimum rear yard	25 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	20 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	20 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.	10 feet. Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.
The following limits apply to subdivision of 2 acres or more and five lots or more in lieu of minimum lot size requirements:		The following regulations apply to lots subdivided from parent parcels totaling 2 acres or more or included as part of subdivisions of five lots or more after ~~between~~ 12/20/00. ~~and the effective date of this section shall use the development regulations in effect at the time of final plat approval.~~			
Minimum lot width and continuous linear street	80	60	40	40 For single-family attached units, the lot width shall not	40 For single-family attached units, the lot

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
frontage (feet)[1, 2, 6]				be less than 50% of the minimum lot width for the district	width shall not be less than 50% of the minimum lot width for the district
Maximum residential density, subdivision of more than 2 acres	0.92 dwelling units per acre	1.4 dwelling units per acre	2.0 dwelling units per acre	3.8 dwelling units per acre	6.0 dwelling units per acre
Minimum side yard (feet) [5,]	18 feet ~~or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	10 feet ~~or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	8 feet ~~or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	6 feet ~~or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	6 feet ~~or 12% of lot width as measured at the front property line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~
Minimum side yard, adjacent to street (feet) [5, 6]	15 feet ~~or 12% of lot width as measured at the front property~~	10 feet ~~or 12% of lot width as measured at the front property line,~~	10 feet ~~or 12% of lot width as measured at the front property line,~~	10 feet ~~or 12% of lot width as measured at the front property line, whichever is greater. Any~~	10 feet ~~or 12% of lot width as measured at the front property line,~~

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
	~~line, whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	~~whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	~~whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	~~vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	~~whichever is greater. Any vertical plane facing a side lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~
Minimum side yard building separation, subdivisions of more than 2 acres	~~30 feet~~	~~20 feet~~	~~12 feet~~	~~12 feet~~	~~12 feet~~
Minimum front yard (feet)[1, 2, 5, 6]	50 feet	20 feet, ~~or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each~~	20 feet, ~~or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each~~	15 feet~~, or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical~~	15 feet, ~~or one foot for each foot of overall structure height, whichever is greater. Any vertical plane facing a front lot line that exceeds 20 feet in height shall be setback an additional foot for each~~

Table 9-7-3	RS-40	RS-25	RS-15	RS-8	RS-5
		~~foot of true height of that vertical plane that exceeds 20 feet.~~	~~foot of true height of that vertical plane that exceeds 20 feet.~~	~~plane that exceeds 20 feet.~~	~~foot of true height of that vertical plane that exceeds 20 feet.~~
Minimum rear yard	25 feet. ~~Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	20 feet. ~~Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	20 feet. ~~Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	15 feet. ~~Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~	15 feet. ~~Any vertical plane facing a rear lot line that exceeds 20 feet in height shall be setback an additional foot for each foot of true height of that vertical plane that exceeds 20 feet.~~
The following limits apply to all lots:					
Maximum lot coverage	25%	25%	40%	45%	50%
The following limits apply to all buildings:					
Maximum overall building height[3,6]	35 feet	30 feet	30 feet	30 feet	30 feet

[1] Unless otherwise specified in section 9-15-9.

[2] The lot width shall be measured beginning at the front lot line and maintained for the entire depth of the front yard, except for lots entirely adjoining turnaround areas of cul-de-sacs, where the lot width shall be measured at the minimum required front setback line. Preliminary plats for residential

subdivisions with ten or more lots may have a maximum of ten percent of such lots exempted from the minimum lot width and continuous linear street frontage requirements through the utilization of private drives and/or narrow lot widths and street frontages.

[3] Unless otherwise specified in section 9-15-22.

[4] Except for lots entirely fronting turnaround areas of cul-de-sacs, the lot width shall be measured beginning at the front lot line and maintained for the entire minimum lot depth. For lots entirely fronting turnaround areas of cul-de-sacs, the lot width shall be measured beginning at the minimum required front setback line and maintained for the remaining portion of the minimum lot depth.

[5] In all cases, building setbacks shall allow adequate depth and/or width for required parking to be entirely within the private property per 9-30-8(E).

[6] In all cases, when measuring overall structure height and architectural elevation structure height, retaining wall height shall be incorporated as provided for in Section 9-7-7(B).

Sec 9-15-22. Structure Height – General exception

Structure or building height in the RS and RM zones may be increased beyond the maximum permitted height by up to ten feet if the following condition(s) are met:

A. Side and rear minimum building setbacks are at least 30 feet; or

B. The lot on which the structure is proposed is immediately adjacent to a lot of the same primary orientation and street frontage with an existing residential structure of equal or greater height. This condition must be demonstrated by the applicant with verification information certified by a licensed surveyor, engineer, architect or landscape architect; or

C. The lot on which the structure is proposed is part of an approved or platted subdivision of ten or more lots that have a common subdivision scheme on file in the Athens-Clarke County Planning Department where 60 percent or more of the existing dwellings have homes of equal or greater height than the proposed structure. This condition must be demonstrated by the applicant with verification information certified by a licensed surveyor, engineer, architect or landscape architect; and

D. For lots at the perimeter of a subdivision as described in 9-15-22 C, criteria of both 9-15-22 A and C must be met.

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: Single-Family Subdivision Grading Regulations (Mass Grading)

The following information has been prepared regarding the practical issues associated with the grading limitations found in Section 9-26-2(A)(6)(d)(2) of the Athens-Clarke County Code of Ordinances. The ordinance language under review is as follows:

> ***Section 9-26-2(A)(6). Approval of the preliminary plat.***
> d. For subdivisions in RS-5, RS-8, RS-15, RS-25 and RS-40 zones, the following standards apply:
> (2) Following preliminary plat approval and issuance of a site review permit, and prior to final plat approval, land disturbing activity shall be limited by permit only to those grading and clearing activities within the areas identified on the preliminary plat as street rights-of-way, water and sanitary sewer easements, and stormwater management facilities. The permitted land disturbing activity zone shall also include an additional 15 feet on either side of street rights-of-way, an additional ten feet on either side of water, sanitary sewer and stormwater line easements, and an additional ten feet around stormwater management facilities. The director of the department of public utilities may approve additional temporary construction easement areas for installation of water and sewer lines and related facilities if required for the installation of such utilities in accordance with the department's policies and procedures. No land disturbing activities shall be permitted outside of such areas.

Background

In response to community concerns regarding mass grading activity associated with the rising number of multi-acre developments across the county in the early 2000s, the Planning Department researched ordinance measures for mitigating environmental damage, speculative clearing, and the extreme manipulation of natural topography. The result of this research yielded an amendment to the Athens-Clarke County subdivision regulations adopted in 2005 that limited mass grading. It is important to note that in 2005 both the state-mandated and locally-adopted environmental protection measures associated with development regulation were far less thorough than those that are in place today, particularly in the areas of stormwater management and erosion control. The exact wording of this amendment is provided above. In short, the code section states that no grading is allowed other than what is required for the construction of roads (plus 15 feet on either side), water service, sanitary sewer service, and storm water facilities. All other grading can only occur after building permits have been issued for each platted lot within the subdivision.

The current mass grading restriction has been identified as a factor in the cost of housing development, and the ordinance has also proven to limit developers' flexibility in meeting NPDES (National Pollutant Discharge Elimination System) requirements and best management practices. As such, the Mayor has requested that the Planning Commission investigate alternative policies in order to allow for appropriately efficient development practices in the hope of reducing development costs and allowing for a reduction in the resulting housing prices.

Goals

After working with the ordinance for 15 years, other unintended consequences emerged in addition to inflated development costs that are associated with the current subdivision grading regulation that further justify revisiting this code section. Addressing these shortcomings, while maintaining appropriate environmental protection standards and practices, provide the basis for the sub-committee's objectives on this topic. The list of objectives includes:

1. Collaborate with local community experts and government agencies regarding the effectiveness of the current ordinance
2. Identify issues associated with mass-grading ordinance
3. Research identified issues and weigh potential costs/benefits and relationship to cost reduction
4. Recommend to the Planning Commission any changes for improvement

Resources

In order to understand the regulation more thoroughly, and in an effort to accurately identify the pros and cons of the regulation, the sub-committee consulted with landscape architects, planners and civil engineers from local design firms, as well as engineering staff from the Athens-Clarke County Transportation & Public Works Department, and Planning Department staff.

The information received through these discussions was organized under topical headings in two spread sheets that served as working documents for the Committee's deliberations. Spread Sheet #1 identifies the sources of the input, and Spread Sheet #2 identifies which input would be useful to inform possible ordinance revisions, and which input relates more closely to technical standards that exist outside of local ordinances. The development of technical standards is outside the Committee's purview.

The sub-committee working with staff have also identified ordinances and development standards from other communities that illustrate other approaches for managing grading during the residential subdivision design process. These resources include:

- Prince George's County, MD: "Low Impact Development Design Strategies" http://cdnassets.hw.net/6f/66/e6cf4a584c8bb6573dc63d10ad6a/lid-national-manual.pdf
- Montgomery County, Maryland: "Subdivision and land development ordinance" https://www.montcopa.org/DocumentCenter/View/4096/FINAL_Subdivision_Ordinance_06_27_2012?bidId=
- San Diego County, California: "Grading Ordinance" https://www.sandiegocounty.gov/dpw/land/landpdf/gradingordinance.pdf
- Marathon County, Wisconsin: "Model Land Division Ordinance (Town of McMillan) https://www.uwsp.edu/cnr-ap/clue/Documents/KSS/McMillanModelSubdivisionOrdinance.doc
- Moon Township, Pennsylvania: "Grading Ordinance." http://www.moontwp.com/pdf/moon-code-of-ordinace/Chapter%209%20Grading%20and%20Excavating.pdf

Findings

The preliminary issues that surfaced after hearing from our resources include:

- Lot size thresholds
- Drainage and soil preservation
- Storm water management
- Tree canopy and buffers
- Steep slopes
- Project phasing
- Amount of disturbed acreage
- Roadway construction, with specific emphasis on grading of shoulders

Our desired outcomes that came out of the discussions were to:

1. Provide potential for reduced construction costs
2. Allow an appropriate amount of land disturbance with associated mitigation standards to ensure compatibility with adjacent land uses
3. Improve storm water facility design throughout construction
4. Allow for the conservation of native top soil on-site
5. Improve roadway and other infrastructure design to better ensure long-term livability for residents
6. Allow for the preservation of natural features (trees, open water, wetlands, floodplain)

From here, we focused on issues that have the greatest effect on overall development costs. Whether these cost savings are passed on to the consumer is up to the developer. The committee chose to take action on several points that members felt would have the greatest potential for reduced costs for the end consumer.

After refining these issues, the sub-committee has reached a consensus on the following:

- The current regulations create unintended consequences in the design and construction of residential subdivisions that are not sustainable nor in the best interest of the community.
- The grading regulations associated with residential subdivisions should be revised in order to
  - allow expanded grading ability to achieve reasonable development efficiencies,
  - produce safer and more sustainable grades for roadways and buildable lots,
  - construct effective storm water facilities, and conserve native topsoil.
- In conjunction with increased grading ability, quality control standards should also be enacted that address community expectations in mitigating the negative aspects of large-scale residential development (tree protection, buffering during and after construction, etc.).
- While the relationship between mass grading and housing affordability seems tenuous at best, some modifications to this ordinance could reduce development costs. However, it is recognized that any reduction in the purchase price of the resulting housing relies entirely on the developer's willingness to pass those cost savings on to the consumer.

Committee Recommendations: Development Regulation Ordinance Revisions

The following topical areas should be the focus of possible code revisions that could address concerns while still meeting the spirit and intent of the current regulations.

Development Phasing with Maximum Amount of Allowable Disturbed Area per Phase

There is no phasing requirement in the current ordinance. In lieu of the current grading limitations, it is recommended that the ordinance be revised to require phasing of a project when the total disturbed acreage exceeds 25 acres. The maximum amount of disturbed acreage allowed per phase would be 25 acres. Beginning the next phase of development grading would be allowed only after a certain percentage of certificates of occupancy have been issued (perhaps 75%) for the previous development phase. The 25 acre maximum is sufficient to allow development of a considerable number of lots in all of the RS zones, while also providing space to store native soil on site (which was a complaint universally brought by designers, developers and ACCGov Transportation and Public Works staff), which in turn minimizes the need for hauling fill dirt and topsoil from and to the site, resulting in time and cost savings and improved environmental management during construction.

Presently, Georgia EPD standards limit grading to a maximum area of 50 acres per phase, but it is permissible for local standards to be more stringent in this regard. Very few existing undeveloped RS parcels are larger than 25 acres in total area, however recombination of multiple parcels resulting in a total development area in excess of 25 acres is possible.

Storm Water Exemption on Steep Slope Areas

There are currently land disturbance restrictions on 25% slopes with an exemption for stormwater practices. The committee recommends removing this exemption. Stormwater practices on steep slopes are not compatible with better site design.

Additional Grading Plan Requirements for Small Lots

In evaluating the effect of grading in higher density developments, it was determined that for residential lots smaller than ¼ acre, a grading plan showing building pad locations and final grades indicating drainage patterns on each lot would be required. This grading plan would ensure that adequate attention is being given at the design phase to mitigate negative long-term impacts of poor storm water design.

Construction Buffer Standards and/or Enhanced Tree Preservation Measures

Tree preservation should be located in common areas and around the perimeter of the development to serve as a buffer to mitigate construction dust and sound, and to soften sight lines during construction. Any proposed tree retention or removal allowances would not supersede the requirements and standards found in the Community Tree Ordinance (Chapter 8-3 of the Athens-Clarke County Code). Additional tree-related standards for single-family subdivision development would include forest regeneration to be located in common areas in instances where conserved tree canopy waivers are granted. Proposed perimeter construction buffers would be required on the edges of the development site adjacent to adjoining parcels, even if the adjoining parcels are also residential. These buffers would be required for the duration of the construction activity, and would only be required to remain after construction is completed if these buffer areas were also used to satisfy other development requirements that are intended to remain after construction (e.g. conserved tree canopy or required common open space).

Preservation of high quality trees should be reinforced. It may not be realistic to increase tree canopy requirements, but it could be done with the condition that the existing canopy requirements are permissible as long as high quality existing trees are preserved.

Committee Recommendations: Technical Development Standard Revisions

It is important to note that the sub-committee has focused solely on the limitations of the regulations found in Section 9-26-2(A)(6)(d)(2). Comments regarding engineering standards and associated state and federal requirements, and the interpretation of those standards by Athens-Clarke County staff, were also received from local design firms. Those comments were shared with appropriate staff for further discussion, and while they are not included in the scope of the sub-committee's work as they exist beyond the Planning Commission's purview, they were included so as to be passed on to appropriate officials to investigate further for implementation. These suggested changes are listed below, but would not be part of any new development code ordinance revisions.

Soil Preservation and Restoration

In residential areas that are mass graded, topsoil shall be stockpiled and re-used within the development to the maximum extent practicable. For residential lots smaller than ¼ acre where swales are graded along the sides of houses, a minimum total width of 10 feet (usually 5 feet on both sides of the lot lines) or the distance between houses, whichever is less, shall be over-excavated so that the depth of restored soil or topsoil is at least 18 inches at final grade. The same standard is required at rear lot lines where swales are constructed. For all other part of the yards, a minimum of 6 inches of topsoil or restored soil is needed. This applies even where the yard will be sodded. All of these soil preservation and restoration requirements shall be clearly shown on the grading and erosion control plans including a delineation of the areas for which an 18 inch depth of topsoil or restored soil are needed.

Runoff Reduction

Residential sites that utilize mass grading shall be required to implement better site design, low impact design, and green infrastructure to the maximum extent practicable to retain one inch of rainfall on site. To the maximum extent practicable, runoff from the front yard should drain to the street, runoff from the backyard should drain to a constructed swale or common area at the rear of the lot, and runoff from the side yard should drain to a swale that runs along lots lines between dwellings. Sheet flow from one lot to another or from a road to a residential lot shall be avoided unless this is part of a low impact design approved as part of the storm water management plan. Development guidance of this sort should be proposed in the Athens-Clarke County Technical Standards, and these would address some of the concerns that were raised in 2005 when the mass grading provision was enacted. For more information about the NPDES permitting system and Clean Water Act, please visit: http://cfpub.epa.gov/npdes.

MEMORANDUM

TO: Mayor & Commission

FROM: Planning Commission

DATE: October 8, 2020

RE: Road Interconnectivity

As part of the response to the Mayor's "Planning Commission Inclusionary Development Charge" to the Planning Commission, the Land Use sub-committee explored the impact of road interconnectivity requirements and the impact on local housing affordability. The following information has been prepared for consideration by the Planning Commission as a whole.

The code requirements related to road interconnectivity are found in Section 9-26-3 (street, block, and easement standards in the subdivision regulations), in Section 9-29-5 (Transportation Corridor Concept Map), and Section 9-29-6 (Right-of-way dedication required prior to final [plat] approval). Attached is a copy of these code sections with the portions that relate to interconnectivity requirements highlighted in yellow.

Background

In summary, the code sections referenced above serve to outline the instances when the dedication of public right-of-way is required, the minimum standards for such dedications, and when interconnection is allowed and encouraged. Current code does not require road interconnection with adjacent properties as part of residential development, but interconnection is often necessary in order to maximize the development yield of residentially-zoned land. Interconnection between residential subdivisions using stubbed streets intended for such interconnection is allowed by right. However, the development regulations stipulate that Special Use Permit approval is required for any proposed interconnection into or through an existing platted residential area that involves the use of a platted residential lot and/or the removal of an existing residential structure or through a common open space area.

As part of the Committee's consideration of the current road interconnectivity regulations, it was noted that these connectivity standards exist as a result of the 1999 Comprehensive Plan's goal to increase roadway safety through the interconnection of existing and planned rights-of-way where possible. This goal lead to the adoption of revised subdivision regulations that reduce the length of dead end streets in new subdivisions and to minimize the instances where new subdivisions are platted with only single outlet roadway connections to existing roadways.

Findings

The Committee discussed the purpose and effect of the current interconnectivity regulations, and unanimous concurrence was expressed for the following findings:

- The Committee found no direct causal link between road interconnectivity regulations and the relative ability to provide affordable housing.
- The current regulations establish a procedural requirement for previously unanticipated interconnectivity between residential subdivisions to be heard by the Planning Commission and the Mayor & Commission through the Special Use Permit process. This process provides for a minimum of two public hearing opportunities for the community to speak to the impact that such interconnection could have on their quality of life. In the recent past, residents of subdivisions have expressed strong sentiment against road interconnectivity with proposed new development.
- The issue of interconnectivity appears to be more closely related to safety and quality-of-life rather than housing affordability. It was noted that improved roadway interconnectivity between residential subdivisions might have secondary benefits that could reduce reliance on private automobiles and could support the extension of efficient and inclusive public transit routes or ride-sharing.
- The current regulations are written with a focus on roadways without direct mention of multi-modal or non-motorized access. In the future, however, transportation interconnectivity between existing and proposed developments might be explored to support non-motorized vehicles and pedestrians.

Committee Recommendation:

No changes are recommended. The sub-committee finds that the current code sections contain all of the necessary components to provide for appropriate road interconnectivity.