

**Report on Status of Nonconforming
One- and Two-Family Dwellings**
December 22, 2015

Contents

Executive Summary 2

Introduction..... 7

Purpose of this study 11

Adopted Zoning Ordinance provisions..... 12

Analysis and findings..... 14

 Structural alterations to nonconforming one-family dwellings. 14

 Replacement of walls that do not conform to setbacks 16

 Additions or expansions to nonconforming two-family dwellings 17

 Lot coverage 19

Conclusions and recommendations 22

 Educational materials 22

 Outreach..... 22

 Zoning Ordinance provisions..... 23

Executive Summary

This report addresses nonconforming one- and two family dwellings in Arlington. A property or structure that is nonconforming is one that is not in compliance with current zoning regulations. A nonconforming condition may occur legally through changes to the Zoning Ordinance subsequent to development or subdivision of a property, or illegally, when a property is developed or subdivided without proper permits and/or developed out of compliance zoning regulations and/or with permits that were issued. Many one- and two-family dwellings in Arlington County are legally nonconforming due to changes to the Zoning Ordinance subsequent to construction of the dwelling and in some cases, subsequent to subdivision of the lot.

For one- and two-family dwellings, the Zoning Ordinance regulates placement on the lot, the footprint of the main building, lot coverage, and height. In addition, with respect to lots, the Ordinance regulates total lot area, width, and frontage. Dwellings may be nonconforming if they are not in compliance with any of the aforementioned requirements. A standard best practice in zoning is to phase out nonconforming uses. However, there are some examples of nonconforming uses where phasing out the use is not the desired outcome. This is the case for most one- and two-family houses in Arlington, many of which do not meet all Zoning requirements due to changes in regulations originating as far back as the 1930s. There are a total of 27,523 one-family detached dwellings and 2,240 two-family dwellings in Arlington County. However, it is unknown what percentage of the one- and two-family dwellings in the County are nonconforming in some way.

In January, 2015, a change in interpretation of the Zoning Ordinance resulted in requiring both a variance (which may only be approved in the case of a hardship) and a use permit by the Board of Zoning Appeals (BZA), for any structural alteration to certain nonconforming buildings or structures. Previously, such changes had required only approval of a use permit or a variance, but not both. Recognizing that structural alterations are required for many repairs and alterations that impact only the interior of a house (having no impact or change on the exterior of the house), the County Board advertised amendments to the Zoning Ordinance that would facilitate the process for making by-right interior structural alterations to nonconforming houses, as part of an unrelated Zoning Ordinance amendment. In addition to adopting this amendment, the County Board asked staff to conduct additional research on nonconforming one- and two-family dwellings in Arlington. This task was included in the 2015 – 2016 Zoning Ordinance amendment work plan, stating that staff would compile a report that further analyzes this issue as it relates to alterations to nonconforming one- and two family dwellings, including a description of ways in which one- and two-family dwellings may be determined to be nonconforming; and how alterations are allowed by-right, with BZA approval, and/or with County Board approval.

Staff has analyzed Zoning Ordinance regulations and recent Board of Zoning Appeals (BZA) data relevant to nonconforming one- and two-family dwellings in order to better understand the issues raised by homeowners and contractors. This report provides a summary of these data and recommendations for future action. The following summarizes the conclusions and recommendations discussed in this report.

Structural alterations

Description: The Zoning Ordinance prohibits structural alterations to nonconforming dwellings, however, allows by-right alterations to nonconforming *one- and two-family dwellings* in R2-7, R-5, R-6, R-8, R-10, and R-20 (R) districts when the alterations are fully contained within the existing exterior walls. Other existing provisions allow by-right additions to nonconforming *one-family dwellings*, only in R-5, R-6, R-8, R-10 and R-20 districts, when the addition is either above the existing footprint, and/or completely conforming to all requirements. Any other structural alteration, or structural alteration to one- or two-family dwellings in other zoning districts, may be approved only by the BZA.

Recommendations.

- 1) Informational materials should be developed online and link(s) should be sent to Civic Associations
- 2) Zoning should continue to communicate with homebuilders through regularly-scheduled homebuilder forums on this and other topics, on an as-needed basis.
- 3) Additional outreach and education should be conducted by Zoning, on an as-requested basis.
- 4) A future Zoning Ordinance amendment should extend the new provision that allows structural alterations by-right when wholly interior to the dwelling, to 1- and 2-family dwellings in the R10T, R15-30T and RA districts.
- 5) A study should consider the appropriateness of applying provisions that allow by-right expansion either above nonconforming portions and/or new conforming additions, to one-family dwellings in the R2-7, R10T, R15-30T and RA districts.

Explanation: Recent amendments have negated the need for most (12 of 13) BZA use permits or variances requested since 2012 for renovations and additions involving structural alterations, facilitating retention of existing housing stock. While BZA action may still be required to address other nonconforming conditions, internal structural alterations and structural alterations associated with construction that is otherwise allowed by-right no longer requires BZA action. A proposed future amendment (see 4 above) would extend these allowances to all but 19 of the County's one- and two-family dwellings (those in P and C districts). While staff does not yet have enough information to recommend an amendment that would extend allowances for certain by-right additions to one-family dwellings in the R2-7, R10T and R15-30T districts, a future study could help inform the appropriateness of a future amendments on this topic.

Development of information materials for the Building Arlington web site, as described above, is underway, and expected to be completed in Fall 2015.

Replacement of walls

Description: The Zoning Ordinance allows complete replacement of a nonconforming wall by-right only when it is between the existing house and an addition that is allowed by-right. If any other nonconforming wall is removed, BZA action is required before it may be replaced. Furthermore, once two or more nonconforming walls are removed (subject to case-by-case review), Zoning reviews the construction as a new house rather than an addition. Such requests may be approved by BZA Use Permit (in R-20, R-10, R-8, R-6, R-5 and R2-7 districts) or Variance (in all other zoning districts).

Recommendation:

- 1) No study needed.
- 1) Zoning Administrator advice should be developed to articulate when construction is reviewed as a new house versus an addition.

Explanation: This type of request remains relatively uncommon, with only 6 use permit requests heard by the BZA since 2011. Five of the six cases were supported by staff and approved by the BZA (with the sixth case deferred and not yet heard at the time of this printing), indicating that the use permit process provides a means of addressing this issue through the BZA.

Development of Zoning Administrator advice is underway, and a draft is expected to be completed in Winter 2015-16. The draft will be shared with residential contractors, and then published for thirty days prior to becoming effective.

Two-family Dwellings

Description: The Zoning Ordinance includes more restrictions for additions to nonconforming two-family dwellings than it does for nonconforming one-family dwellings. New provisions allow for by-right structural alterations to nonconforming two-family dwellings in R2-7, R-5, R-6, R-8, R-10, and R-20 (R) districts when they are completely contained within the existing exterior walls. However, any addition to a nonconforming two-family dwelling may be approved only by BZA use permit, or by variance if it is not in one of the aforementioned districts.

Furthermore, no addition to a two-family dwelling that is nonconforming to lot or area requirements may be larger than 50% of the floor area contained in the dwelling as of July 15, 1950. Additions exceeding this threshold may be approved only by BZA variance.

Recommendation: A future Zoning Ordinance amendment should eliminate the prohibition on additions to two-family dwellings that exceed 50% of the gross floor area existing on July 15, 1950.

Explanation: Eighteen cases were heard by the BZA since 2011 for additions or expansions to nonconforming two-family dwellings. Six of those cases were variances to exceed the 50% maximum floor area for additions (four of which also included use permits for encroaching into required setbacks), and twelve cases were use permits. Staff supported 11 of the 12 use permits and recommended denial of all six variances (and the associated use permits for those cases). However, all 18 cases were approved by the BZA, indicating that:

- The BZA use permit process provides a means of addressing the nonconforming issue with respect to setbacks; and
- Staff follows a strict interpretation of VA Code with regard to Variances, and therefore was unable to support any of the six variances for additions exceeding 50% of the original floor area. For these units, the addition of one bedroom and a bathroom can easily exceed this threshold. As these units provide a more affordable home ownership option within the County, staff views an amendment to remove the prohibition on additions greater than 50%, as a means of making additions to these units more accessible, and furthermore, as a means to encourage the proper permitting and oversight of such renovations. While a use permit would likely still be required for many such additions, due to other nonconforming conditions, the standard for a use permit is less than that of a variance.

Staff concludes that restrictions to two-family dwellings that require a BZA use permit for approval, are appropriate. Two-family dwellings share a lot line with another dwelling, and therefore it is appropriate that the use permit process be used to assess the demonstrated need for relaxing the regulations and the potential impact on the immediate neighbor and surrounding properties. Furthermore, the BZA hearing triggers legal notification requirements and formally encourages applicants to speak with neighbors about proposed additions.

Lot coverage

Description: Current lot coverage provisions were adopted in 2005 following a five-year study. In February 2015, Zoning Ordinance amendments that clarified lot coverage requirements, but did not substantively change requirements, triggered broad community and County Board discussion of this issue. A few residents requested additional study of lot coverage to address one-story additions to facilitate aging-in-place for one-family homeowners. Relationship between lot coverage and regulation of pervious surfaces was also raised as part of the discussion of this issue.

The County Board asked staff to consider lot coverage when developing a list of possible Zoning Ordinance amendments for the 2015-2016 work list. However, at a January 2015 County Board-County Manager work session, lot coverage was not included on the current work list.

Recommendation:

- 1) Current requirements, resulting from a 2005 study, remain appropriate to regulate lot coverage.
- 2) If additional study is desired, in addition to bulk and massing, it should include consideration of pervious surfaces, and aging-in-place for existing one-family dwellings, neither of which was considered as part of the 2005 study.
- 3) Staff does not recommend that such study be prioritized at this time.

Explanation: The BZA heard 30 variance requests for total lot coverage, main building footprint cap or main building footprint coverage since 2011. Eighteen cases were approved and 5 were denied by the BZA; eight cases were withdrawn by the applicant. Staff recommended approval of 7 cases, denial of 15 and withdrawal of the 8 cases requested by the applicant. In those cases withdrawn, staff was able to work with the applicant to reduce the lot coverage such that a variance was no longer needed.

The BZA data indicate that where the BZA finds that there is a hardship, there is a means of addressing this issue, and that in many cases staff is able to help homeowners and contractors find viable alternatives that meet Ordinance requirements.

Lot coverage typically regulates bulk and massing, or pervious surfaces, or both. Study of lot coverage in this context would be consistent with County environmental goals and policies. Additional research would have to be conducted to understand whether lot coverage restrictions present a barrier to aging-in-place for one-family dwelling homeowners.

Study of lot coverage regulations could result in recommendations to increase or decrease lot coverage, and changes could result in creation of nonconformities. Such study would likely necessitate related studies of height, and other provisions that regulate bulk and massing and could potentially be a multi-year study. Consideration of such study should be carefully assessed with respect to commitment of staff and community resources, and whether or not the County is willing to consider the range of outcomes that could result from the study. At this time, an average of six cases/year over the last five years does not demonstrate that this is a problem of great magnitude.

Introduction

This report addresses nonconforming one- and two family dwellings in Arlington. A property or structure that is nonconforming is one that is not in compliance with current zoning regulations. A nonconforming condition may occur legally through changes to the Zoning Ordinance subsequent to development or subdivision of a property, or illegally, when a property is developed or subdivided without proper permits and/or developed out of compliance zoning regulations and/or with permits that were issued. This report discusses only legally nonconforming one- and two-family dwellings and subsequently, use of the term nonconforming in this report, is used to refer to the legally occurring condition.

Many one- and two-family dwellings in Arlington County are nonconforming due to changes to the Zoning Ordinance subsequent to construction of the dwelling and in some cases, subsequent to subdivision of the lot. Arlington's first zoning ordinance was adopted in 1930, with new editions published in 1950 and 2013. Additionally, within each edition there have been many amendments to individual regulations. Because there are several types of regulations that apply to one- and two family dwellings and their accessory structures, as well as many regulations that apply to one- and two-family lots, there are many different ways in which a property or structure may be nonconforming. Furthermore, in some cases a property or structure may be nonconforming in multiple ways. For one- and two-family dwellings, the Zoning Ordinance regulates placement on the lot, the footprint of the main building, lot coverage, and height. In addition, with respect to lots, the Ordinance regulates total lot area, width, and frontage. One- and two-family dwellings may be nonconforming with respect to any, and sometime several, of these regulations wherever the regulation was amended subsequent to development of the property. Some notable amendments to the Ordinance that may have created nonconforming conditions for existing properties include amendments to regulations for: pipe-stem and split-lots in 2003; and lot coverage, main building footprint, and height regulations in 2005. However, there are numerous other amendments that changed regulations specific to one- and two-family dwellings over the seventy-five years since the first Zoning Ordinance was adopted.

A standard best practice in zoning is to phase out nonconforming uses. However, there are some examples of nonconforming uses where phasing out the use is not the desired outcome. This is the case for most one- and two-family houses in Arlington, many of which do not meet all Zoning requirements due to changes in regulations originating as far back as the 1930s that made them nonconforming.

There are a total of 27,523 one-family detached dwellings and 2,240 two-family dwellings in Arlington County. Table 1 below shows the distribution of these dwellings across zoning all districts, showing that the majority of the one-family (20,317) and two-family (1,546) dwellings are in one-family (R) zoning districts, which are the zoning districts specifically intended for these types of dwellings. Two-family dwellings in the table below are broken out into the two different

types of two-family dwellings, which include semidetached (two units side by side on separate lots) and duplexes (two units sharing a single lot). There are a limited number of one- and two-family dwellings in Public (P), Multifamily (RA) and Commercial/Mixed-Use (C) districts. It is unknown what percentage of the one- and two-family dwellings in the County are nonconforming some way.

Table 1: Zoning Distribution of One- and Two Family Dwellings

Zoning District	Two-family (duplex)	Two-family (semidetached)	Single Family Detached	Total
Public (P) District				
S-3A			5	5
S-D			1	1
All P Districts			6	6
Residential One-Family (R) Districts				
R-20			305	305
R-10			4,939	4,939
R-10T		8	5	13
R-8			1,745	1,745
R-6	59	34	17,752	17,845
R-5	177	46	2,096	2,319
R15-30T	3	2	33	38
R2-7	12	1,464	436	1,912
All R Districts	251	1,546	20,317	22,114
Residential Multifamily (RA) Districts				
RA14-26	7	176	50	233
RA8-18	6	200	125	331
RA6-15	1	42	21	64
All RA Districts	14	418	196	628
Commercial/Mixed Use (C) Districts				
RA-H	1		0	1
C-1			1	1
C-O-1.0			1	1
C-2		2	8	10
All C Districts	1	2	10	13
Grand Total	266	1,974	27,523	29,763

Source: CPHD, Planning Division, 2015 Housing Unit Dataset

While it would be difficult to provide comprehensive data on the number of dwellings that are nonconforming due to the numerous regulations applicable to one- and two-family dwellings and the unique characteristics of each house and lot in the County, it is possible to summarize the age of dwellings in the County through review of real estate data. Tables 2a, b and c below summarize the age of existing one- and two-family dwellings in the County. The years shown represent the year originally built; years of additions and renovations are not comprehensively tracked and cannot be summarized.

Table 2a: Year Built and Zoning Distribution of One-Family Detached Dwellings

Zoning District	Unknown	Before 1930	1930-1949	1950-1969	1970-1989	1990-2009	2010 or Later	TOTAL
Public (P) Districts								
S-3A	2	1	1	1	0	0	0	5
S-D	0	0	0	1	0	0	0	1
Residential One-Family (R) Districts								
R-20	5	10	19	157	59	44	11	305
R-10	18	118	652	3,223	318	400	210	4,939
R-10T	0	1	3	1	0	0	0	5
R-8	10	55	524	859	70	142	85	1,745
R-6	61	1,740	9,002	4,554	880	1,152	363	17,752
R-5	18	643	790	200	138	231	76	2,096
R15-30T	2	14	7	6	2	2	0	33
R2-7	3	59	157	126	36	45	10	436
Residential Multifamily (RA) Districts								
RA14-26	1	8	22	16	1	2	0	50
RA6-15	0	7	10	2	0	2	0	21
RA8-18	1	61	42	10	2	7	2	125
Mixed Use (C) Districts								
C-1	0	1	0	0	0	0	0	1
C-O-1.0	0	0	1	0	0	0	0	1
C-2	0	7	1	0	0	0	0	8
Grand Total	121	2,725	11,231	9,156	1,506	2,027	757	27,523

Source: CPHD, Planning Division, 2015 Housing Unit Dataset

Table 2b: Year Built and Zoning Distribution of Two Family Duplex Dwellings

Zoning District	Unknown	Before 1930	1930-1949	1950-1969	1970-1989	1990-2009	2010 or Later	TOTAL
Residential One-Family (R) Districts								
R-6	0	7	27	24	1	0	0	59
R-5	0	9	16	147	4	0	1	177
R15-30T	0	0	0	3	0	0	0	3
R2-7	0	0	4	2	0	0	6	12
Residential Multifamily (RA) Districts								
RA14-26	0	0	3	2	0	0	2	7
RA8-18	0	1	3	2	0	0	0	6
RA6-15	0	0	1	0	0	0	0	1
Mixed Use (C) Districts								
RA-H	0	0	0	0	0	1	0	1
Grand Total	0	17	54	180	5	1	9	266

Source: CPHD, Planning Division, 2015 Housing Unit Dataset

Table 2c: Year Built and Zoning Distribution of Two-Family Semidetached Dwellings

Zoning District	Unknown	Before 1930	1930-1949	1950-1969	1970-1989	1990-2009	2010 or Later	TOTAL
Residential One-Family (R) Districts								
R-10T	0	0	0	8	0	0	0	8
R-6	0	5	14	14	0	1	0	34
R-5	0	8	17	1	19	1	0	46
R15-30T	0	0	0	0	2	0	0	2
R2-7	0	0	1,002	428	17	16	1	1,464
Residential Multifamily (RA) Districts								
RA14-26	0	0	46	128	0	0	2	176
RA8-18	0	0	193	4	2	1	0	200
RA6-15	0	1	41	0	0	0	0	42
Mixed Use (C) Districts								
C-2	0	0	0	2	0	0	0	2
Grand Total	0	14	1,313	585	40	19	3	1,974

Source: CPHD, Planning Division, 2015 Housing Unit Dataset

Purpose of this study

In January, 2015, a change in interpretation of the Zoning Ordinance resulted in requiring both a variance (which may only be approved in the case of a hardship) and a use permit by the Board of Zoning Appeals (BZA), for any structural alteration to certain nonconforming buildings or structures.

Previously, such changes had required only approval of a use permit or a variance, but not both. Recognizing that structural alterations are required for many repairs and alterations that impact only the interior of a house (having no impact or change on the exterior of the house), the County Board, as part of an unrelated Zoning Ordinance amendment, advertised amendments to the Zoning Ordinance that would allow by-right interior alterations to nonconforming houses.

These amendments, subsequently adopted on February 21, 2015, allowed by-right changes that are completely contained within the existing exterior walls of nonconforming one- or two-family dwellings or nonconforming accessory buildings or structures in R-20, R-10, R-8, R-6, R-5 or R2-7 districts (R-districts), even when those changes include structural alterations. These recently adopted provisions allow the Zoning Administrator to approve alterations that are fully within the interior of the structure, as well as replacement, expansion or addition of doors, windows or other openings in an exterior wall, as long as none of the new construction furthers any nonconforming condition. Neither a variance nor a BZA use permit is now required for structural changes that are fully within the interior of a dwelling in the aforementioned zoning districts.

In addition to adopting this amendment, the County Board asked staff to conduct additional research on nonconforming one- and two-family dwellings in Arlington. This task was included in the 2015 – 2016 Zoning Ordinance amendment work plan, stating that staff would compile a report that further analyzes this issue as it relates to alterations to nonconforming one- and two family dwellings, including a description of ways in which one- and two-family dwellings may be determined to be nonconforming; and how alterations are allowed by-right, with BZA approval, and/or with County Board approval. Staff has analyzed Zoning Ordinance regulations and recent Board of Zoning Appeals (BZA) data relevant to nonconforming one- and two-family dwellings in order to better understand the issues raised by homeowners and contractors. This report provides a summary of these data and recommendations for future action.

Adopted Zoning Ordinance provisions

The following are existing provisions in §16 of the Arlington County Zoning Ordinance, which regulates nonconformities. Only those provisions relevant to one- and two-family dwellings are excerpted below.

16.1.1 Lots in R districts

In the R-20, R-10, R-8, R-6, and R-5 districts, where a lot has less width and less area than required in the subject district and was recorded under one ownership on or before July 15, 1950, such lot may be occupied by any use permitted in the respective districts.

16.2.2 Qualification of nonconforming dwellings

- A. *Existing nonconforming one-family dwellings and accessory buildings or structures shall be permitted to be added to or expanded, provided that the addition or expansion complies with all current provisions of this zoning ordinance.¹ The provisions of this section shall not preclude construction, within applicable height limits, of an addition over an existing one-family dwelling encroaching on a required setback or yard area provided there is no more of an encroachment into the required setback or yard than that of the existing wall below it, and providing that new construction may not take place over encroaching garages or porches.²*
- B. *Notwithstanding any provision to the contrary in this Ordinance, existing nonconforming one- and two-family dwellings, and nonconforming accessory buildings and structures located in the R-20, R-10, R-8, R-6, R-5 and R2-7 districts shall be permitted to make interior repairs and alterations, whether structural or non-structural, provided the repair or alteration is wholly contained within the existing exterior walls of the dwelling, building or structure.³*
- C. *Existing main and accessory buildings or structures shall be permitted to be rebuilt within the building footprint and height and stories as they existed prior to damage or destruction if structures are damaged or destroyed by fire, wind, earthquake or other force majeure, and if construction commences within two years from the date of such damage or destruction. However, if the nonconforming building or structure is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the owner shall have an additional two (2) years within which to complete the repairs, rebuilding, or replacement. As used herein, “force majeure” shall mean any natural disaster or phenomena, including a*

¹ Prior to the 2013 reformat, this provision (first sentence only, as highlighted) was located in §35.A.1. The provision was not changed at that time, it was simply moved from one location to another in order to group it with similar provisions.

² This second sentence was moved from 3.2.6.A.3(g) (Bulk, Placement and Coverage Requirements) as part of an amendment adopted on June 14, 2014, for clarity in order to combine it with the first sentence, which might otherwise be interpreted as conflicting.

³ This provision (B) was adopted on February 21, 2015, in conjunction with changes to 16.2.4.

*hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire or other accidental fire (accidental fire shall not include arson committed under Va. Code Ann. §§18.2-77 or 18.2-80).*⁴

16.2.4 Repairs, alterations

Repairs and alterations may be made to a nonconforming building or structure; provided, that no structural alteration shall be made except those required by law or ordinance,⁵ or as provided by §16.2.2. Repairs and alterations to a nonconforming dwelling, building or structure not otherwise permitted under this Zoning Ordinance are prohibited, unless approved under a use permit or variance pursuant to sections §15.6.4 and §15.6.6.⁶

16.2.5 Additions, enlargements, moving

This §16.2.5 applies to all buildings except one-family dwellings located in the R-5, R-6, R-8, R-10, and R-20 district.⁷

- A. A nonconforming building or structure shall not be added to or expanded in any manner unless such building or structure, including such additions and expansions, is made to conform to all the regulations of the district in which it is located.*
- B. A building or structure which does not comply with the height or lot area regulations shall not be added to or expanded in any manner unless such addition or expansion conforms to all the regulations of the district in which it is located; provided, that the total aggregate floor area included in all such separate additions and expansions does not exceed 50 percent of the floor area contained in the existing building or structure, as of July 15, 1950.*
- C. A building or structure lacking sufficient automobile parking space in connection therewith as required in §14.3 may be altered or expanded, provided additional automobile parking space is supplied to meet, for the entire building, requirements of §14.3.*
- D. No nonconforming building or structure shall be moved in whole or in part to any other location on the lot unless every portion of such building or structure is made to conform to all the regulations of the district in which it is located.*

⁴ This second sentence, starting with "However," was adopted on June 14, 2014, for consistency with Virginia Code.

⁵ Prior to 2013 reformat, this provision (first sentence up to comma only, as highlighted) was located in §35.A.3. The provision was not changed at that time, it was simply moved from one location to another in order to group it with similar provisions. The remainder of this paragraph (starting after the first comma) was adopted on February 21, 2015, in conjunction with 16.2.2.B

⁶ This provisions was adopted February 21, 2015 in conjunction with amendments to 16.2.2.B.

⁷ As stated here, this provision does not apply to one-family dwellings in the R-5, R-6, R-8, R-10 and R-20 districts, however, it does apply to one-family dwellings in any other zoning district, as well as to two-family dwellings in any zoning district.

Analysis and findings

Staff analyzed Board of Zoning Appeals data for requests in four topic areas related to nonconforming one- and two-family dwellings. These topics include structural alterations to one-family dwellings; replacement of walls that do not conform to setbacks; nonconforming two-family dwellings; and lot coverage. Each topic area is discussed below.

Structural alterations to nonconforming one-family dwellings.

By-right. The Zoning Ordinance allows certain additions and renovations to nonconforming one-family dwellings in the R-5, R-6, R-8, R-10, and R-20 districts by-right. These include:

- Extension of existing exterior walls (either up or out) on one-family dwellings, whether or not conforming to current Zoning Ordinance requirements, as long as the addition complies with all current provisions of the Zoning Ordinance (§16.2.2.A, first sentence, denoted with footnote 1 in the above section of this report).
- Additions above certain portions of existing one-family dwellings that encroach into a required setbacks (16.2.2.A, second sentence, denoted with footnote 2). The original intent of this provision when it was added in 1976, was to allow for the by-right addition of dormers, which often encroached into the required front or side setback(s). However, more recently, this provision is more often used for addition of a second (or third) story atop the footprint of the existing dwelling. This provision, which explicitly allows for construction “over” an existing encroachment, has consistently been interpreted by Zoning to allow for by-right construction up above the existing walls of the house, so long as existing walls are not removed.

Due to a prohibition on structural alterations to all nonconforming structures outside of the aforementioned R-districts, these provisions do *not*, however, apply to one-family dwellings located in located in public (P), R2-7, R10T and R15-30T, multifamily (RA), mixed-use (C) or industrial (M) districts. As shown in Table 1, 680 (2.5%) of the County’s 27,523 one-family dwellings are located outside of one-family (R) zoning districts.

In February 2015, the County Board adopted amendments to §16.2.2.A and §16.2.4 to allow additional renovations to nonconforming one-family dwellings by-right if they are located in R-districts (see sentences denoted with footnotes 3 and 6 in the above section of this report). Since this time, the following additional renovations may be approved by the Zoning Administrator:

- Basement deepening/expansion, even when completely underneath the existing footprint of a nonconforming one-family dwelling.
- Other structural alterations such as replacement or removal of floor joists, load bearing walls etc., when completely within the existing exterior walls of the one-family dwelling.

This new provision, like the previous provision, also does not apply to one-family dwellings located in public (P), R2-7, R10T and R15-30T, multifamily (RA), mixed-use (C) or industrial (M) districts.

With BZA Approval. With the exception of the by-right provisions discussed above, the Zoning Ordinance prohibits any structural alterations to nonconforming buildings or structures, except those required by law or ordinance (§16.2.4, first sentence, as denoted by footnote 5 in the above section of this report). Therefore, for nonconforming one-family dwellings in P, RA, C or M districts, any structural alteration requires approval of a variance by the BZA.

BZA Cases. Staff reviewed all Board of Zoning Appeals cases from January 2012 through February 2015, where structural alterations to nonconforming one-family dwellings were requested. Thirteen cases were submitted for structural alterations during this time period, and are shown in Table 1 in Appendix A. The following is a general summary of the thirteen cases reviewed during this time period:

Total: 13 cases	Approve	Deny	Withdrawn
Staff recommendation	10 cases	0 cases	3 cases
BZA Action	10 cases	0 cases	3 cases

- The 3 cases withdrawn prior to public hearing were following adoption of new Zoning Ordinance provisions in §16.2.2.B allowing structural alterations by-right in February 2015.
- The structural alterations in the remaining 10 cases would also be allowed by-right under §16.2.2.B as adopted in February 2015, and would not have needed to be heard by the BZA had they been submitted after the Ordinance was amended.
- Six of the 13 cases, while no longer requiring approval for the structural alterations, would continue to require BZA action for approval of encroachments into setbacks that are not permitted under §3 of the Zoning Ordinance, which governs bulk, placement and coverage.⁸

Inconsistency in interpretation. Review of the BZA cases discussed above indicate that there was some inconsistency as to whether Zoning required a Variance or a BZA Use Permit for approval of structural alterations in the time period between 2012 and February, 2015. Eight of the cases

⁸ Bulk, placement and coverage requirements were reviewed through a public process in 2013-2014, culminating in amendments to the Ordinance that codified a number of longstanding administrative practices as well as some policy changes, adopted by the County Board on June 14, 2014. Details of those amendments are discussed in the [June 2014 staff report](#). One common request, is when a second story addition is proposed and the new roof has an eave that projects into setbacks further than the allowed four feet (and beyond the extent of the existing footprint of the house). These cases continue to require approval of a BZA Use Permit, consistent with the June 2014 amendments resulting from the recent study of these requirements.

were processed as BZA use permits and five were processed as variances. Use permits may be heard by the BZA only for modifications of placement that are not otherwise allowed to be approved by the County Board, and only for structures on lots in the R-20, R-10, R-8, R-6, R-5 and R2-7 districts. Variances heard by the BZA have no limitation on type of use or zoning district, however, the standard for approving a variance is stricter than that required for a use permit, and requires that the BZA find that the lot in question poses a hardship such that without approval of the variance, use of the property would be unreasonably restricted. The following summarizes the type of BZA approval (use permit versus variance) processed by staff for each of the thirteen cases reviewed during this time period.

- Thru 2014, Zoning sometimes required a use permit for structural alterations, and other times allowed such alterations only by variance.
- In some cases, a variance was required for the structural alterations in conjunction with a use permit in order to bring the existing dwelling into conformance with any setbacks it did not meet.
- In early 2015, Zoning determined that a Use Permit could be used for both setback modifications and, in the case where setback modification was needed, also for structural alterations.
- After adoption of §16.2.2.B and the second sentence of §16.2.4 in February 2015, structural alterations wholly contained within the existing walls were allowed by-right (with no variance or use permit required). Three cases that had been submitted but not yet heard by the BZA were able to be withdrawn at that time.

Replacement of walls that do not conform to setbacks

By-right. The Zoning Ordinance does not allow existing walls to be removed in order to do a second story addition. However, certain renovations related to removal of walls have been interpreted by Zoning to be allowed by-right, as follows:

- Removal of a wall for an addition that complies with all setback requirements, for example between a rear wall and an addition into the rear yard that does not encroach into the required setback (allowed under §16.2.2.A);
- Replacement of windows and siding on existing walls, but the walls themselves, must remain in place.

With BZA approval. Often, however, homeowners wish to replace an exterior wall that does *not* meet setback requirements as part of such renovation, particularly if damage is discovered during the process. This replacement of a nonconforming exterior wall is prohibited by §16.2.4. , and cannot be approved by-right. Such requests must first be approved by the BZA to approve the existing non-conforming setbacks. Only then can that wall be removed and replaced, however, that wall still may not be moved further into the setback (unless the additional encroachment is requested and also approved by the BZA, and subject to any additional use permit or variance approvals associated with the relocation of the wall).

New house versus addition. Zoning has interpreted the removal of two or more wall(s) as a trigger for the requirements that apply to new home construction, except in the case where the only wall(s) removed are inbetween the existing house and an approved addition (either by-right or by BZA approval). Due to the complexity of construction and the unique aspects of each lot and dwelling, this in an area where the individual case must be examined in order for Zoning to determine whether the proposed construction qualifies as a new house or an addition. However, in conducting that analysis, Zoning has consistently used the general rule discussed above, that once two or more walls are removed, the construction qualifies as a new house.

BZA cases. Table 2 in Appendix A contains all BZA cases for replacement of walls in setbacks from January 2011 through September 2015 (note, there were no cases heard for this type of request in 2011-2013).

Total: 6 cases	Approve	Deny	Withdrawn
Staff recommendation	5 cases	1 cases	0 cases
BZA Action	6 cases	0 cases	0 cases

- The one case recommended by staff for denial was because staff determined the proposed new 2-story home would not be compatible with other properties in the neighborhood with respect to setbacks; most of the similarly situated properties in the neighborhood were built by-right and with similar setbacks to each other (however, this case was approved by the BZA).
- 4 of 6 cases were initially approved for by-right construction to build up atop existing nonconforming walls under §16.2.2.A (as discussed on p. 6 of this report), however, in each of these cases, the actual construction was removal of all exterior walls for a new home construction on top of the existing foundation, which is no longer considered an addition by Zoning, and therefore not allowed under this provision. Once the walls are removed, the construction is considered a new home, which must meet all Zoning Ordinance requirements.
- 1 of 6 cases was a request for a new home built on the existing foundation.
- 1 of 6 cases was a request for replacement of an existing side wall; in this case, the replacement of the existing wall was to accommodate other by-right additions.

Additions or expansions to nonconforming two-family dwellings

By-right. While the Zoning Ordinance includes several provisions, discussed in the previous section of this report, to allow by-right additions or expansions to nonconforming one-family dwellings, the only provision in the Zoning Ordinance to allow by-right additions to two-family dwellings, is the recently adopted provision to allow structural alterations wholly contained within the interior walls, which is applicable in R-20, R-10, R-8, R-6, R-5 and R2-7 districts (§16.2.2.B, adopted February 2015).

However, as discussed in the structural alterations section of this report, this by-right provision does not apply to two-family dwellings located in public (P), R10T and R15-30T, multifamily (RA), mixed-use (C) or industrial (M) districts. As shown in Table 1, the majority of the County’s semidetached two-family dwellings are in R2-7 districts (1476 of 2240, or 66%). An additional thirteen (<1%) semidetached dwellings are in the R10T and R15-30T districts, and 432 (19%) are in RA districts.

With BZA approval. Other existing provisions allow increases in height by-right for all dwellings (both one- and two-family) that comply with *all* Zoning Ordinance provisions, however, many two-family dwellings in the County are nonconforming, either because they are on nonconforming lots or because the placement of the existing dwelling does not conform to all required setbacks or lot area requirements. Furthermore, §16.2.5 requires that nonconforming two-family dwellings must be brought into conformance with all zoning requirements as part of any expansion or addition, except in only limited circumstances where they are allowed up to a 50% increase of the gross floor area existing in July 1950 (§16.2.5.B). §16.2.2.A, which affords nonconforming one-family dwellings by-right additions over an existing footprint, does not apply to two-family dwellings.

BZA Cases. Table 3 in Appendix A contains BZA data for all variance requests for additions to two-family dwellings from January 2011 through August 2015. Twenty-two cases were heard by the BZA for nonconforming two-family dwellings during this time period, although 4 properties included both a variance and a use permit for the same request that were heard separately (counted as two cases each). Note that the data below add up to more than the total number of cases, as some cases included more than one type of request. All cases were in the R2-7 zoning district.

	Use permits (Total: 16 cases)		Variances (Total: 6 cases)	
Total: 22 cases	Approve	Deny	Approve	Deny
Staff recommendation	11 cases	5 cases	0 cases	6 cases
BZA Action	16 cases	0 cases	6 cases	0 cases

- 1 use permit was heard for an accessory structure. Staff recommended approval as the placement of the structure was consistent with that of surrounding properties, and due to slope, was mostly below the grade of the adjacent street.
- 4 use permits were heard for addition of a rear deck or porch. Staff recommended approval of three of these cases stating consistency with other similar structures in the neighborhood; the fourth was associated with a much larger addition that required a variance, for which staff recommended denial, discussed in the last bullet below.
- 4 use permits were heard for addition of a front porch, stoop or portico. Two were recommended for approval by staff, as they were similar to such structures on other properties in the neighborhood. Two were recommended by staff for denial, as they

were associated with much larger additions that required variances, described in the last bullet below.

- 2 use permits were heard for a second- or third-story addition above the existing footprint of the dwelling. Staff recommended approval of both additions, stating consistency with placement of existing dwellings in the surrounding neighborhood.
- 11 use permits were heard for a 1-, or 2-story rear addition (and in one case, a 3-story rear addition) to an existing dwelling. Staff recommended approval of four cases that were determined to be similar to other such additions in the neighborhood. Staff recommended denial of seven cases, six of which also required a variance because they exceeded the size of the existing dwelling by more than 50% (see last bullet), and one of which would have resulted in setbacks significantly smaller than on other similar properties.
- 6 variances were heard for an addition that exceeded the allowed 50% increase in gross floor area over that existing in 1950. Four of these cases each included both a variance for the increase in floor area greater than 50% of the original dwelling size, and a use permit for the modification of setback requirements for the addition (use permits for these cases are discussed in the above bullets). Staff consistently recommended denial of these variances, stating that the requests did not represent a hardship, because in all cases smaller additions meeting the 50% size increase restriction could be achieved without the need for a variance, and in three cases, such addition could be achieved by-right. In those cases where both a variance and use permit were required, staff also recommended denial of the associated use permit for the same reason. Staff noted in each of these cases that the property in question was similarly encumbered as other lots in the subject neighborhood.

Lot coverage

Administrative practices for lot coverage were codified as part of the amendments adopted by the County Board in June 2014. These amendments simply codified all elements included as part of the lot coverage calculation, but did not make any changes to the way lot coverage is calculated. These amendments are discussed in detail in the [June 2014 staff report](#). Previously, a five-year study of lot coverage, among other bulk, coverage and placement requirements, conducted between 2001-2005 resulted significant changes to lot coverage regulations, and those currently codified in the Ordinance that were further clarified in 2014. These amendments, are discussed in detail in the [November 15, 2005 staff report](#).

By-right. In order to meet lot coverage requirements, the total of all structures that count toward lot coverage must not exceed the maximum allowed lot coverage percentage, the maximum allowed main building footprint, and the maximum percentage of the lot allowed to be covered by the main building footprint (the main building footprint coverage).

With BZA approval. No new development or additions on any lot where structures are proposed that exceed the maximum allowance for any of the lot coverage elements discussed above, may be approved by the Zoning Administrator. The BZA may approve a variance in cases where it finds that without the variance, the property is unreasonably restricted.

BZA cases. Table 4 in Appendix A contains BZA data for lot coverage variances from January 2011 through September 2015. Thirty cases were heard during this time, and are summarized as follows:

Total: 30 cases*	Approve	Deny	Withdrawn
Staff recommendation	7 cases	15 cases	8 cases
Total lot coverage	6 cases	12 cases	3 cases
Main building footprint coverage	1 cases	7 cases	5 cases
Main building footprint	2 cases	1 cases	2 cases
BZA Action	17 cases	5 cases	8 cases
Total lot coverage	13 cases	5 cases	3 cases
Main building footprint coverage	6 cases	2 cases	5 cases
Main building footprint	2 cases	1 case	2 cases

*Many cases included multiple requests for different elements of lot coverage, so total of approve/deny/withdrawn cases adds up to more than the total number of cases.

- **Staff recommendations:**
 - For the eight cases withdrawn, typically staff was able to work with the applicant to modify the proposal to eliminate the condition requiring the variance.
 - Of the seven cases recommended for approval by staff, two were for exceeding the main building footprint on extremely large lots for the subject districts; four had limited options without approval of a variance due to undersized lots, topography or modest improvements to existing conditions; and two (including one of the cases on a large lot mentioned above) cases were a result of incorrect information posted on the County website that contributed to the need for a variance.
 - The 15 cases recommended for denial by staff were determined by staff to have alternative options that did not require a variance, and did not represent conditions unusual for the subject neighborhood.

- **Overall summary/BZA actions:**
 - **Total lot coverage:** Eight of the 13 approved cases for were on lots that were substandard in size for the subject district; as was one of the denied cases. For the 13 approved cases, the average lot coverage increase approved was 15% above the maximum allowed in the subject district.
 - **Main building footprint coverage:** One of the six approved cases was on a lot that was substandard in size for the subject district. For the six approved cases, the

average main building footprint coverage approved was 12% above that allowed in the subject district.

- **Main building footprint:** The main building footprint cap for the two approved cases was, on average, 47% greater than the maximum allowed in the subject district. Each of these cases was on an R-6 lot that was significantly larger than the minimum required lot size of 6,000 square feet for that district, with lots of 28,085 and 14,871 square feet, respectively.

Conclusions and recommendations

Many issues related to nonconforming one- and two-family dwellings have been raised through recent amendments and related community discussions on this topic. As discussed above, homeowners and single-family home developers have expressed desire for additional relief from many requirements impacting one- and two-family dwellings. Research conducted by staff following these discussions, and discussed in the above section, leads to the following conclusions and recommendations for future action.

Educational materials

It is evident from recent discussions that there is confusion surrounding requirements for one- and two family dwellings. This confusion has at times led to homeowners and contractors performing repairs prohibited by the Zoning Ordinance, as well as to staff approving additions or renovations in error, and to inconsistent application of Ordinance requirements by staff. Staff recommends that additional documentation of requirements would serve multiple purposes:

- Increasing consistency of application of requirements by staff
- Providing educational materials for homeowners on actions that are allowed or prohibited by code; and what alterations may be approved by the Zoning Administrator versus those that require BZA approval
- Providing training materials for Zoning staff

Staff recommends development of an informational page on the Building Arlington website describing nonconforming one- and two-family dwellings, which articulates each of the various circumstances in which a one- or two-family dwelling may be nonconforming, and what approvals are required for any renovation/addition under each circumstance. This page has been developed and posted to Building Arlington, and may be found here: <insert link> Staff also recommends that the Building Arlington page about the Board of Zoning Appeals be enhanced with additional information. The BZA page may be found here <http://building.arlingtonva.us/resource/board-of-zoning-appeals/>.

Outreach

Zoning staff have in the past, when invited, attended Civic Association meetings to present various zoning issues and respond to questions. Staff recommends that such outreach to interested Civic Associations should be continued on an as-requested basis, as it could provide an updated forum for conversation about issues related to regulations and application procedures for renovations to one- and two-family dwellings, as well as other topics of interest to a particular neighborhood.

Zoning staff also regularly attends monthly homebuilder forums held in the Zoning/Inspection Services office, to address current issues. This outreach has proved to be an efficient and

effective means of communication with homebuilders, and it is recommended that these forums continue to be used to communicate Zoning issues and changes on an as-needed basis.

Zoning Ordinance provisions

Structural alterations

From January 2012 February 2015, there were 13 requests to the BZA for structural alterations. Of these requests, 12 would no longer require a Use Permit for the structural alterations based on the new provisions in §16.2.2.B adopted in February 2015. The one case that would still require BZA approval for structural alterations is unique in that it was a one-family dwelling within a multifamily zoning (RA) district, which is subject to different requirements than the typical one-family dwelling in a one-family (R) zoning district. Additionally, that dwelling fronted on a street that does not meet the standard minimum width requirements for a public street, further complicating the case. Anecdotally, Zoning staff have identified several other cases where structural alterations were explored by homeowners or contractors that were not pursued at the time due to the requirement for BZA approval, but which would also now be allowed by-right under the new §16.2.2.B provisions.

Staff concludes that the new provisions adopted in February 2015 provide sufficient relief to homeowners of existing one- and two-family dwellings to allow most structural alterations as a matter of right, even to nonconforming dwellings, so long as the expansion or alteration does not further the nonconformity. The Ordinance allows all of the following by-right:

- Structural alterations to nonconforming one- and two-family dwellings in R-districts that are wholly contained within the exterior walls
- Replacement or expansion of windows, doors, openings within exterior walls of nonconforming one- and two-family dwellings in R-districts
- Additions up above and/or beneath an existing nonconforming one-family dwelling so long as the addition or expansion is within the existing footprint of the dwelling
- Expansion of or addition to a nonconforming one-family dwelling so long as the expansion or addition is wholly conforming to all Zoning Ordinance requirements

Additionally, a dwelling that is non-conforming with regard to setbacks and which receives BZA approval for those setbacks, is then considered a conforming house. However, a dwelling that does not comply with setback requirements, regardless of whether or not the nonconforming setbacks have been approved by the BZA, is still prohibited by Zoning Ordinance requirements from expanding further into any of the setbacks that were modified – this is a typical condition of BZA approval. Staff concludes that these restrictions are appropriately limiting, and for the following reasons, does not recommend any amendments to the Zoning Ordinance related to structural alterations to one-family dwellings in the R-districts:

- Perpetual ability to encroach further into setbacks with each successive BZA request would effectively allow for unlimited expansion into setbacks, essentially negating

setback requirements altogether. The purpose of setback requirements is to provide light and air between one-family detached dwellings, which is an important purpose of zoning regulation.

- Arlington County wants to encourage the retention of existing housing stock. Due to changes to Zoning Ordinance requirements over time, many existing houses are nonconforming, and therefore some relief from requirements is warranted. However, such relief from requirements should not go so far as to allow new houses to be similarly situated, thus encouraging complete replacement of existing housing stock.
- New houses are often built to maximize size under the requirements, and are thus significantly larger than the existing housing stock in Arlington County. Therefore it is important that new construction meet Zoning requirements that are specifically designed to regulate the bulk, placement and coverage of dwellings on a lot.
- A purpose of zoning code is generally to amortize the existence of nonconformities. However, consistent with the County's land use policies which encourage the retention and preservation of one-family neighborhoods, Zoning provisions should balance moderate relief from provisions to allow for repairs and alterations to existing housing stock, with appropriate restrictions for new construction.

However, staff does recommend that the new provisions in 16.2.2.B and 16.2.4 that allows structural alterations by-right when they are wholly interior to the dwelling, be extended to apply to one- and two-family dwellings located in the R10T, R15-30T and RA districts, affording allowances to make by-right interior structural alterations to all but 19 of the County's one- and two family dwellings (capturing an additional 19% of the two-family dwellings; and 1% of the one-family dwellings in the County).

Additionally, while staff does not yet have enough information to make a recommendation on whether the Zoning Ordinance should be amended with respect applicability of 16.2.2.A (which allows certain one-family dwellings to be expanded up above nonconforming portions and/or add conforming additions) to one-family dwellings outside of R-districts, staff recommends that a future study explore this issue with respect to its applicability in the R2-7, R10T, R15-30T and RA districts, which are one-family, townhouse and two-family dwelling districts. Such a study should explore the locations of these one-family dwellings as they relate to their planned land uses and densities.

Replacement of walls

Regulations in §16 that allow certain renovations to nonconforming one- and two-family dwellings are designed to allow homeowners to retain existing homes by providing opportunities for renovations to meet changing needs. However, at the point at which a renovation turns into development of a new house, staff recommends that it is appropriate that the house be expected to meet all zoning requirements.

Staff recognizes that it is difficult for homeowners and contractors to understand when a renovation is treated as an addition versus when it must be treated as new construction. While staff routinely warns contractors who come in with plans for additions and renovations to one-family dwellings, that the existing walls must remain in place, staff does not have succinct criteria for determining when an addition might alternatively be reviewed as a new house. Staff is working on developing and publishing Zoning Administrator advice to articulate these criteria and it is anticipated that an initial draft of this advice will be completed in Winter 2015-2016. At that time, the draft will be shared with residential contractors through regularly scheduled forums with this group. Subsequent to that review, it will be posted on Building Arlington for 30 days prior to becoming effective.

No changes to the Zoning Ordinance are recommended related to removal of walls for the following reasons:

- Staff has generally not been supportive of reduction of setbacks for new homes on conforming lots because these projects are begun with clear lots with no hardship; therefore, new construction should be expected to meet Zoning Ordinance requirements. In the case of a nonstandard lot or a neighborhood full of similar nonconformities to those proposed for such new construction, it is appropriate that these cases be analyzed by staff and reviewed by the BZA on a case-by-case basis to determine if meeting Zoning Ordinance requirements presents a hardship related to use of the lot.
- Only six requests were heard for removal of walls over the last five years, so at this point this remains a relatively rare request.

Two-family dwellings

The Zoning Ordinance includes more restrictions for renovations and additions to nonconforming two-family dwellings than it does for nonconforming one-family dwellings. However, new Zoning Ordinance provisions now allow structural alterations to nonconforming two-family dwellings by-right, when such alterations are wholly contained within the existing exterior walls of the dwelling.

Staff concludes that it is appropriate that other additions and renovations to nonconforming two-family dwellings continue to require BZA approval, and recommends only one amendment to the Zoning Ordinance related to two-family dwellings (discussed in the next paragraph), for the following reasons:

- Two-family dwellings share a lot line with another dwelling, and therefore it is appropriate that the use permit and/or variance process be used to assess the demonstrated need for relaxing the regulations and the potential impact on the immediate neighbor and surrounding properties.

- The BZA hearing process triggers legal notification requirements, providing a means for neighbors to be informed about proposed additions and renovations in the neighborhood that may impact other properties; Furthermore, the BZA process formally encourages applicants to speak with neighbors about proposed additions.
- Lot sizes for two-family dwellings are smaller and narrower than for one-family dwellings, placing additions and other changes to these lots in much closer proximity to neighboring properties, potentially increasing the impact of proposed alterations.

However, staff recognizes that the Zoning Ordinance prohibition on additions to any two-family dwellings that increase the gross floor area of the dwelling more than 50 percent of that existing on July 15, 1950, where such dwelling is not in conformance with height or lot area requirements (16.2.5.B), is very limiting for two-family dwelling homeowners. The original gross floor areas of these dwellings often includes two-bedrooms and one bathroom, and approximately a total of 1,000 sf or less, which means that renovations which seek to add one additional bedroom and bathroom, may reach that 50%, and therefore allowed only with approval of a variance. As these dwellings provide a more affordable home ownership option within the County, staff recommends that a future Zoning Ordinance amendment revise this provision so that it no longer applies to two-family dwellings. In most cases, these homeowners would still need to pursue a use permit from the BZA in order to make such a renovation (due to other nonconforming conditions), however, the standard for a use permit is less than that of a variance. While there were only six variance cases heard by the BZA over the last five years for this issue, zoning staff has indicated that there are likely additional cases that where this provision was inadvertently overlooked, and therefore not reflected in the BZA data. An amendment to this provision to make additions to two-family dwellings more accessible would also encourage proper permitting and oversight of additions and renovations to these dwellings.

Lot coverage

While the public hearing to adopt clarified lot coverage regulations in June 2014 included County Board discussion of further study of lot coverage regulations to consider increases to lot coverage allowances (as requested by some citizens during the process), it was determined at a County Board work session in January 2015 that amendments to lot coverage provisions should not be pursued as part of the 2015-2016 work plan. The current lot coverage regulations are the result of a five year study concluded with amendments to the Zoning Ordinance in November 2005. The changes to the Ordinance at that time resulted in many existing houses being nonconforming with respect to lot coverage. Staff takes these changes into account as part of its analysis of variance requests. The lot coverage requirements include three components, which include a main building footprint cap, a main building footprint coverage cap (size of main building relative to size of lot), and a maximum total lot coverage. Staff support of requested variances since 2011 includes five cases for total lot coverage, and two cases for exceeding the main building footprint cap. In the latter two cases, an increased main building footprint cap was

supported due to the unusually large size of the subject lots. The cases for lot coverage were supported due to lack of other viable options determined by staff for the subject property. In most lot coverage cases, however, staff has either recommended denial due to lack of evidence supporting a hardship; or has successfully worked with the applicant to bring the proposal into compliance with Zoning Ordinance requirements, negating the need for the variance.

Lot coverage typically regulates bulk and massing, or pervious surfaces, or both. Lot coverage regulations currently in place were designed to regulate bulk and massing. While management of runoff through regulation of pervious surfaces was included in the five year study preceding the 2005 amendments, it was not ultimately considered in developing the current regulations. However, in reviewing the appropriateness of variance requests, staff must determine if the proposed variance would be detrimental to neighboring properties, and has often cited potential for increased runoff that would impact neighboring properties as contributing to its recommendations for denial. Since the current lot coverage regulations were adopted, Chesapeake Bay regulations in the Code of Virginia have been added that require reduced runoff (not regulated through zoning code). In light of these requirements, staff concludes that the current regulations remain appropriate to regulate lot coverage. Also raised by some citizens during the discussions of the June 2014 amendments, is the desire to increase lot coverage allowances to facilitate aging-in-place for owners of one-family dwellings. Additional research would have to be conducted to understand whether lot coverage restrictions present a barrier to aging-in-place for one-family homeowners.

If additional study of lot coverage is desired, in addition to bulk and massing, it should include consideration of pervious surfaces, and aging-in-place, neither of which was considered as part of the 2005 study. Study of lot coverage regulations could, however, result in recommendations to either increase or decrease lot coverage, and changes could result in creation of nonconformities. Such study would likely necessitate related studies of height, and other provisions that regulate bulk and massing and could potentially be a multi-year study. Consideration of such study should be carefully assessed with respect to commitment of staff and community resources, and whether or not the County is willing to consider the range of outcomes that could result from the study.

Staff concludes that current requirements remain appropriate to regulate lot coverage. An average of six cases/year over the last five years does not demonstrate that lot coverage requirements pose a problem of great magnitude, and therefore, staff does not recommend that such study be prioritized at this time.

TABLE 1: STRUCTURAL ALTERATIONS (January 2012-September 2015) (Variances are highlighted in grey; use permits are in white)

Case #	Zone	Address	Hearing date	BZA action	Proposal
V-10663-12-UP-1	R-6	2145 N. Pollard St.	05/08/2012	Approved	Lower floor and foundation for basement addition
V-10816-13-VA-2	RA8-18	1822 N. Wayne St.	07/11/2013	Approved	1.5-story above first floor walls, lower floor and foundation for basement addition
V-10848-13-UP-1	R-6	225 N. Jackson St.	11/14/2013	Approved	Lower floor and foundation for basement addition
V-10703-12-VA-1	R-5	2409 3rd St. N.	12/10/2014	Approved	Structural alterations to left side enclosed porch
V-10968-14-VA-1	R-5	734 20th St. S.	12/10/2014	Approved	Structural alterations to home and rear sunroom
V-10970-14-VA-1	R-6	4054 20th Rd. N.	12/10/2014	Approved	Structural Alterations to construct new 2 nd and 3 rd -story above
V-10971-14-VA-1	R-6	3110 9th St. N.	12/10/2014	Approved	Structural Alterations to construct new 2 nd and 3 rd -story above
V-10972-14-VA-2	R-5	4132 21st Rd. N.	12/10/2014	Approved	Structural Alterations to construct new 2 nd and 3 rd -story above, add basement below
V-10978-15-UP-1	R-6	113 N. Oakland St.	02/12/2015	Approved	Structural Alterations to interior of non-conforming home
V-10983-15-UP-1	R-6	4911 22nd Rd. N.	02/12/2015	Approved	Structural Alterations to interior of non-conforming home
V-10990-15-UP-1	R-6	1828 N. Van Buren St.	03/11/2015	Withdrawn due to Ordinance amendment	Structural Alterations to interior of non-conforming home
V-10992-15-UP-1	R-6	708 S. Adams St.	03/11/2015		Structural Alterations to interior of non-conforming home
V-10993-15-UP-1	R-6	5730 22nd St. N.	03/11/2015		Structural Alterations to non-conforming carport

TABLE 2. REPLACEMENT OF WALLS IN SETBACKS (January 2011-September 2015) (all cases are use permits)

Case #	Zone	Area (sq. ft.)	Lot Width (ft.)	Lot Type	Nonconforming		Date	Staff Rec/ BZA Action	Vote	Construction
					Width?	Area?				
V-10847-14-UP-2	R-6	7,500	50	Corner	Yes		03/12/2014	Approve/ Approved	4-0	Originally approved to build up upon existing walls however walls were removed thus a Use Permit for a new 2-story home was applied for
V-10981-15-UP-1	R-6	5,869	50	Corner	Yes	Yes	02/12/2015	Deny/ Approved	5-0	New 2-story home constructed on top of existing foundation
V-10991-15-UP-1	R-6	6,250	50	Interior	Yes		03/11/2015	Approve/ Approved	5-0	Originally approved to build up upon existing walls however walls were removed thus a Use Permit for a new 2-story right side addition was applied for
V-10943-14-UP-2	R-6	6,600	60	Interior			04/15/2015	Approve/ Approved	5-0	Originally approved to build up upon existing walls however walls were removed thus a Use Permit for a new 2-story home was applied for
V-10984-15-UP-1	R-6	3,922	31	Interior	Yes	Yes	06/10/2015	Approve/ Approved	5-0	Originally approved to build up upon existing walls however walls were removed thus a Use Permit for a new 2-story home was applied for
V-11037-15-UP-1	R-6	7,430	58.5	Corner	Yes		07/15//2015	Approve/ Approved	5-0	Replace existing side wall

TABLE 3. ADDITIONS TO TWO-FAMILY DWELLINGS (January 2011-September 2015) (Variances are highlighted in grey; use permits are in white)

Case #	Zone	Area (sq. ft.)	Lot Width (ft.)	Lot Type	Nonconforming		Date	Staff Rec/ BZA Action	Vote	Construction
					Width?	Area?				
V-10511-11-UP-1	R2-7	2,766	35	Interior			05/11/2011	Approve/ Approved	4-0	Pergola
V-10525-11-UP-1	R2-7	3,000	30	Interior			05/11/2011	Approve/ Approved	3-0-1	Rear deck
V-10562-11-UP-1	R2-7	3,638	43	Interior			07/13/2011	Approve (w/o 3 rd -story on addition/ Approved	5-0	3rd-story addition above existing, 3-story rear addition
V-10687-12-UP-1	R2-7	2,884	35	Corner		Yes	07/10/2012	Approve/Approved	5-0	Rear porch
V-10697-12-UP-1	R2-7	3,682	36	Corner			08/08/2012	Deny/ Approved	4-1	2-story rear addition
V-10731-12-VA-1	R2-7	3,000	30.5	Interior	Yes	Yes	11/14/2012	Deny/ Approved	5-0	Addition exceeds 50% aggregate floor area; 2-story rear addition
V-10752-13-UP-1	R2-7	2,800	30.5	Corner	Yes	Yes	02/12/2013	Approve/ Approved	5-0	Front stoop with steps
V-10764-13-VA-1	R2-7	3,012	30.1	Interior	Yes	Yes	03/13/2013	Deny/ Approved	5-0	Addition exceeds 50% aggregate floor area; 2-story rear addition
V-10795-13-VA-1 V-10795-13-UP-1	R2-7	3,197	34.4	Interior	Yes	Yes	06/13/2013	Deny/ Approved	3-1-1 5-0	Addition exceeds 50% aggregate floor area 2-story rear addition, distance between shed and addition
V-10796-13-UP-1	R2-7	3,002	31.6	Interior	Yes	Yes	06/13/2013	Approve/Approved	5-0	1-story rear addition
V-10865-13-VA-1 V-10865-13-UP-1	R2-7	2,375	25.8	Interior	Yes	Yes	12/10/2013	Deny/ Approved	3-1 4-0	Addition exceeds 50% aggregate floor area 2-story rear addition, rear open stoop with steps
V-10896-14-UP-1	R2-7	3,152	25	Interior	Yes	Yes	03/12/2014	Approve/ Approved	4-0	2-story rear addition
V-10901-14-VA-1 V-10901-14-UP-1	R2-7	3,010	30.1	Interior	Yes	Yes	04/09/2014	Deny/ Approved	3-2 5-0	Addition exceeds 50% aggregate floor area 1-story rear addition, front wrap-around porch
V-10902-14-VA-1 V-10902-14-UP-1	R2-7	3,001	30.1	Interior	Yes	Yes	04/09/2014	Deny/ Approved	3-2 5-0	Addition exceeds 50% aggregate floor area 1-story rear addition, front wrap-around porch
V-10922-14-UP-1	R2-7	4,401	42	Corner			07/16/2014	Approve/ Approved	4-0	1-story rear addition
V-10989-15-UP-1	R2-7	2,779	40	Corner	Yes	Yes	03/11/2015	Approve/ Approved	5-0	Front portico
V-11031-15-UP-1	R2-7	2,500	25	Interior	Yes	Yes	07/15/2015	Partially approve/ Approved	4-0-1	2nd-story addition above existing, rear deck
V-11047-15-UP-1	R2-7	2,335	25	Interior	Yes	Yes	08/12/2015	Approve/ Approved	4-0	3rd-story addition above existing

TABLE 4. VARIANCES FOR LOT COVERAGE (January 2011-September 2015) (all cases are variances)

Case #	Zone	Area (sq. ft.)	Lot Width (ft.)	Lot Type	Nonconforming		Date	Staff Rec/ BZA Action	Vote	Coverage Permitted by Variance	Construction
					Width?	Area?					
V-10496-11-VA-1	R-10	12,432	80 pipe 21.07 stem	Pipe-Stem			02/09/2011	Deny/ Approved	4-0	42% Lot Coverage instead of 35% as permitted	Replacement of existing deck
V-10570-11-VA-1	R-5	5,013	54.37	Interior			09/14/2011	Deny/ Approved	4-1	35.5% Main Building Footprint Coverage instead of 34% as permitted	New rear porch
V-10580-11-VA-1	R-8	9,108	75	Interior			11/09/2011	Deny/ Approved	4-0	46.2% Lot Coverage instead of 35% as permitted, 33% Main Building Footprint Coverage instead of 25% as permitted	New one-story rear addition to enclose exterior stairwell
V-10647-12-VA-1	R-6	7,500	75	Interior			03/14/2012	Withdraw/ Withdrawn	5-0	31.5% Main Building Footprint Coverage instead of 30% as required, and 40.7% Total Lot Coverage instead of 40% as required	New rear deck
V-10700-12-VA-1	R-10	7,540	60	Interior	Yes	Yes	08/08/2012	Withdraw/ Withdrawn	5-0	37.4% Total Lot Coverage instead of 35% as required	Raised patio and planters
V-10716-12-VA-1	R-6	28,085	108	Interior			09/12/2012	Approve/ Approved	4-0	4380 sq. ft. Main Building Footprint instead of 2772 sq. ft. as required	New one-story rear addition with rooftop deck
V-10733-12-VA-1	R-5	6,000	50	Interior			11/14/2012	Deny/ Approved	5-0	59.3% Total Lot Coverage instead of 50% as required	New rear screened porch
V-10761-13-VA-1	R-6	7,000	50	Corner	Yes		02/12/2013	Deny/ Approved	5-0	30.5% Main Building Footprint Coverage instead of 30% as required	Left side portico
V-10753-13-VA-1	R-8	5,609	55	Interior	Yes	Yes	03/13/2013	Deny/ Denied	3-1-1	43.9% Total Lot Coverage instead of 38% as required	New driveway
V-10784-13-VA-1	R-10	10,082	94.2	Interior			05/09/2013	Deny/ Approved	3-0	27.9% Main Building Footprint Coverage instead of 25% as required	New one-story rear addition with a garage and a landing with steps
V-10800-13-VA-1	R-6	14,871	119.8	Corner			06/13/2013	Approve/A pproved	5-0	3,430 sq. ft. Main Building Footprint instead of 2,520 sq. ft. as required	New one-story right side conservatory addition

APPENDIX A

Case #	Zone	Area (sq. ft.)	Lot Width (ft.)	Lot Type	Nonconforming		Date	Staff Rec/ BZA Action	Vote	Coverage Permitted by Variance	Construction
					Width?	Area?					
V-10801-13-VA-1	R-20	12,018	94	Interior	Yes	Yes	06/13/2013	Approve/ Approved	5-0	32.1% Total Lot Coverage instead of 28% as required	New three-story detached single-family home with a basement and garage
V-10802-13-VA-1	R-20	11,294	93	Interior	Yes	Yes	06/13/2013	Approve/ Approved	5-0	32.1% Total Lot Coverage instead of 29.2% as required	New three-story detached single-family home with a basement and garage
V-10811-13-VA-1	R-10	5,624	60	Interior	Yes	Yes	07/11/2013	Approve/ Approved	5-0	35% Total Lot Coverage instead of 32% as required	Replacement of an existing rear screened porch
V-10828-13-VA-1	R-6	6,355	55	Interior	Yes		08/08/2013	Withdraw/ Withdrawn	5-0	36.7% Main Building Footprint Coverage instead of 33% as required	New one-story left side addition and a rear screened porch
V-10829-13-VA-3	R-5	6,000	50	Corner	Yes		08/08/2013	Withdraw/ Withdrawn	5-0	37.7% Main Building Footprint Coverage instead of 37% as required	New three-story rear addition with a left side bulkhead feature, a second-story roof terrace, and a projecting second-story balcony
V-10833-13-VA-1	R-6	4,688	62.5	Corner		Yes	11/14/2013	Withdraw/ Withdrawn	4-0	34.5 % Main Building Footprint Coverage instead of 33 % as required	New covered front porch with steps
V-10862-13-VA-2	R-6	8,438	75	Interior			12/10/2013	Withdraw/ Withdrawn	4-0	2,910 sq. ft. Main Building Footprint instead of 2,772 sq. ft. as permitted and a Main Building Footprint Coverage of 34.5% instead of 33% as permitted;	New one-story right side garage addition
V-10883-14-VA-3	R-10	9,100	75	Interior	Yes	Yes	03/12/2014	Deny/ Approved	4-0	37.5% Total Lot Coverage instead of 32% as permitted	New raised pool terrace in the rear yard
V-10917-14-VA-3	R-10	6,600	60	Interior	Yes	Yes	06/11/2014	Approve/ Approved	4-0	35.2% Total Lot Coverage instead of 32% as permitted	Replacement of the roof above an existing right side mudroom and an existing right side porch with steps

APPENDIX A

Case #	Zone	Area (sq. ft.)	Lot Width (ft.)	Lot Type	Nonconforming		Date	Staff Rec/ BZA Action	Vote	Coverage Permitted by Variance	Construction
					Width?	Area?					
V-10886-14-VA-1	R-5	9,000	75	Corner			06/11/2014	Withdraw/ Withdrawn	4-0	2,972 sq. ft. Main Building Footprint instead of 2,380 sq. ft. as permitted	New two-story rear addition attached to an existing non-conforming one-story garage and a covered front porch with steps
V-10925-14-VA-1	R-6	7,249	50	Interior	Yes		07/16/2014	Withdraw/ Withdrawn	4-0	46% Total Lot Coverage instead of 45% as permitted	New left side screened porch
V-10898-14-VA-2	R-6	6,047	71.6	Interior			08/13/2014	Deny; approve/ Denied 2nd-story deck, bbq, patio, drive-way; Approved 1st-floor deck, outdr kitchen	4-0	35.8% Main Building Footprint Coverage instead of 33% as permitted, and a Total Lot Coverage of 46% instead of 43% as permitted	Maintain a right rear deck constructed by the previous property owner
V-10944-14-VA-2	R-6	6,252	67	Through			10/09/2014	Deny/ Approved	3-1	32.1% Main Building Footprint Coverage instead of 30% as permitted and a Total Lot Coverage of 40.5% instead of 40% as permitted	New rear rooftop deck above an existing enclosed porch with a landing with stairs
V-10947-14-VA-3	R-10	13,068	84.9	Interior			10/09/2014	Deny/ Denied	4-0	4,076 sq. ft. Main Building Footprint Cap instead of 3,500 sq. ft. as permitted, a Main Building Footprint Coverage of 31.2% instead of 25% as permitted, and a Total Lot Coverage of 37.2% instead of 32% as required	Maintain an existing detached shed, to maintain an existing rear deck with a landing and steps, and to maintain an existing carport converted to living space in violation of the conditions of a previous Variance approval

APPENDIX A

Case #	Zone	Area (sq. ft.)	Lot Width (ft.)	Lot Type	Nonconforming		Date	Staff Rec/ BZA Action	Vote	Coverage Permitted by Variance	Construction
					Width?	Area?					
V-10906-14-VA-1	R-5	2,197	38.9	Interior	Yes	Yes	11/12/2014	Approve/ Approved	4-0	56.3% Total Lot Coverage instead of 48% as permitted	New 2 ½ -story detached single-family home with a covered front porch and a covered rear stoop
V-10939-14-VA-2	R-6	5,161	58.6	Interior	Yes	Yes	12/10/2014	Deny/ Approved	3-2	44.3% Total Lot Coverage instead of 43% as permitted	New 2 ½-story detached single-family home
V-10995-15-VA-1	R-6	6,225	52.6	Interior	Yes		03/11/2015	Deny/ Denied	5-0	41.6% Total Lot Coverage instead of 40% as permitted	New two-story right side addition
V-11021-15-VA-1	R-6	7,500	50	Interior	Yes		06/10/2015	Deny/ Denied	5-0	47.6% Total Lot Coverage instead of 43% as permitted	New rear porch with a second-story addition above, a rear deck, a rear chimney, two rear projecting bays, and a right side projecting bay
V-11030-15-VA-1	R-10	6,372	59	Interior	Yes	Yes	07/15/2015	Deny/ Approved	5-0	38.5% Total Lot Coverage instead of 32% as permitted	New one-story rear addition, maintain existing non-conforming rear deck