

CHARLOTTESVILLE CITY COUNCIL SPECIAL MEETING
WORK SESSION MINUTES
November 13, 2023 at 6:00 p.m.
City Hall Council Chamber, 605 E. Main Street

The Charlottesville City Council held a special meeting in the format of a work session on Wednesday, November 13, 2023. Mayor Snook called the meeting to order at 6:08 p.m. with all members present: Mayor Lloyd Snook, Vice Mayor Juandiego Wade, Councilors Michael Payne, Brian Pinkston and Leah Puryear.

James Freas, Director of Neighborhood Development Services introduced the topic: Draft Zoning Ordinance - Affordable Housing and Accessory Dwelling Unit (ADU) Manual. He made note of scrivener's errors in the Planning Commission draft ordinance lines 6 and 7 regarding equivalency units:

“Sec. 4.2.2.C.1.c. Equivalency of Units

ii. Affordable dwelling units must include the same interior features as the other units in the same building, but appliances and finishes need not be the same make, model, or style, so long as they are new and of good quality.

vi. For projects containing at least 30% of units as affordable housing units meeting the Sec. 4.2.2.C.1.a. Term of Affordability requirements and Sec. 4.2.2.C.1.b. Cost requirements, the equivalency requirements of this section do not apply.

vii. When a project demonstrates the affordability goals of the Comprehensive Plan and Affordable Housing Plan and the intent of this Section are met, the Administrator may accept modifications to these requirements consistent with the guidance of the Affordable Dwelling Unit Monitoring and Procedures Manual.”

The Affordable Dwelling Unit (ADU) requirements of the Charlottesville Development Code, found in Section 4.2.2, is an important part of how this new code implements the Comprehensive Plan and Affordable Housing Plan. The ADU section is an example of “inclusionary zoning” and implements a direct recommendation of the Affordable Housing Plan.

Kyle Talente, RKG Associates, answered a question from Councilor Pinkston about the affordability period, stating that it is more beneficial to try to preserve affordability for as long as possible upfront than to try to renegotiate a commitment if there is a short initial affordability period.

Sunshine Mathon, Executive Director of Piedmont Housing Alliance and representing the Charlottesville Housing Advisory Committee (HAC), handed out a Final Recommendations for Zoning Code Update from the HAC, which stated components for balancing preservation of affordability for the community and opportunity for wealth building for individuals.

Council discussed various housing models including the Habitat for Humanity model, community land trusts, setting a number for affordable dwelling units within built developments, and

maintaining flexibility while adhering to city values. Discussion included the Low Income Housing Tax Credit (LIHTC) program, partnerships with non-profit organizations, and design standards.

Antoine Williams, Housing Program Manager, stated that affordable units will be inspected/monitored at regular intervals to ensure that structural standards are implemented equitably, distinguishable from furnishing, fixtures and equipment equivalency, according to what was marketed.

Meeting discussion areas were summarized in a memo sent from the Mr. Freas to City Council earlier in the day:

“Proposed ADU Rules

Charlottesville’s proposed ADU requirements are that any project of 10 or more units outside of the Residential Districts (R-A, R-B, R-C) must provide 10% of those units as affordable to households earning up to 60% of AMI. Rental projects are required to be affordable for 99 years while the Planning Commission’s recommendation is that ownership units be affordable for only the first buyer. The ADU requirements are found in section 4.2.2. Beyond the base requirements described above, there are three main components of the ADU rules. 1) how the affordable rate is determined; 2) the standards for how the units may be constructed; and 3) the bonus provisions. The Affordable Dwelling Unit Monitoring and Procedures Manual provides greater detail on how these standards and requirements are applied.

Analysis and Policy Questions for Discussion

The ADU section of the Development Code is complex, and given its significance to the City’s overall objectives, there are, not surprisingly, many different perspectives on the details of how it should work. These are important policy questions for the Council to consider moving forward and are presented below.

Term of Affordability, Rental vs. Ownership

One of the significant components of the proposed ADU program is that units are required to be affordable for 99 years, which is effectively to make them perpetually affordable. Approximately 30% of such programs nationally have this requirement and the reason is simple as the policy goal is to establish an effectively permanent affordable housing component to each project.

The Planning Commission’s recommendation includes the distinction that the 99-year standard should only apply to rental projects and that ownership units should only be affordable to the first buyer allowing that buyer to capture full market value at resale of the property. Such a distinction is uncommon in similar ordinances nationally. The policy question is simple and relates to the objective identified above of whether the City is seeking to permanently add to the ownership affordable housing stock or whether the City has a greater interest in creating a wealth building opportunity for the first low-income household buyer. Concern has been expressed about the ability of owners of restricted affordable units to gain equity and wealthbuilding opportunities where there is a long-term affordability requirement, but research has indicated that owners do gain a wealth-building opportunity from these units.

In practice, the affordability restriction requires that the unit be sold to another qualifying low-income household, thereby preserving through time the mixed income aspect of the community established through the ADU requirements.

Flexibility in Design Standards and Concurrency

Another important idea found in the ADU requirements is that required affordable units should be equivalent to market rate units and built concurrently. This requirement includes the concept that the required affordable units should be distributed throughout a project rather than concentrated in one location. The policy objective is to ensure that the required affordable units are not distinguishable and stigmatized. Qualifying residents of these units should not be identified as being low-income households by living in an identifiable required affordable unit. 1 See page 34, “Inclusionary Housing: Creating and Maintaining Equitable Communities”; Lincoln Institute of Land Policy.

The Planning Commission recommended that, where affordable housing bonus projects are being constructed in the Residential Districts (R-A, R-B, R-C), that there be some flexibility to this standard, recognizing that such projects might take a variety of forms (small multi-family, townhouses, small single unit, etc.) and that some flexibility in the design and concurrency standards might be required in order to make a project work.

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Fee-in-lieu Options

A fee-in-lieu option for affordable housing requirements are common in these types of ordinances, giving some flexibility towards the goal of affordable housing production in the City. There are two primary methods used to calculate these fees, one based on the cost of producing a new affordable unit and the other based on the increment or affordability gap between the revenue from a market-rate and affordable unit. Very simply, the production cost approach results in a very high fee and therefore steers development projects towards producing the unit rather than paying the fee which the increment calculation approach generally equalizes the cost of producing the unit or paying the fee, leaving other factors to influence whether an affordable unit is provided or not. The currently proposed ADU program recommends the production cost fee approach, reasoning that the City’s primary interest is in development projects providing on-site affordable units. This is an important policy decision.

The ordinance also provides for a fee-in-lieu for fractional units. Where the calculation of the number of required units results in a fraction of .5 or greater, the ordinance requires a unit to be produced. For fractions less than .5, the ordinance requires an equivalent fee. The intent of this fee structure is to reduce the extent to which development projects “game the system” by setting their unit counts to avoid fractions. The practical result of this “gaming” is typically to reduce the overall number of units and therefore works against the City’s housing production goals. By having this fee-in-lieu for fractional units, there is less incentive to “game the system” and the City potentially gets both units and some funding towards the production of affordable units elsewhere. Importantly, this fee-in-lieu calculation must use the increment calculation approach as in this case, the City is not trying to incentivize a unit to be produced and using the production cost approach would be punitive, working against the goal of this section.

Student Housing and the Fee-in-lieu

Making a policy decision on how student housing will be addressed in the ADU program is essential where such housing is a significant component of new construction. The decision here is whether the City would prefer that student housing projects provide affordable units for students or pay the fee-in-lieu. There are pros and cons to each approach.

The ordinance as currently drafted includes a provision requiring student housing projects to provide affordable student housing. The draft is modeled on a program from Minneapolis. The benefit of this approach is that low-income students do not contribute to the displacement of low-income city residents from lower cost housing. On the other hand, a legitimate argument could be made that the University should be directly assisting such students in finding housing options. There is also some added complexity in monitoring these student affordable units and most student housing projects prefer the fee-in-lieu.

Where student housing is required to pay the fee-in-lieu, the benefit is that funding is available to support the creation of more affordable units. In this option, where the policy direction is not to create affordable units as part of student housing projects, the fee-in-lieu should be calculated using the increment approach. Where the City is not actively seeking an affordable unit, the production cost approach would be punitive.

Overall, it is not recommended that a non-student oriented affordable unit be required in specialized student housing projects.

Affordable Housing Bonus in the Residential Districts

Each of the Residential Districts includes an Affordable Housing Bonus of additional allowed units where all of the bonus units are affordable according to the standards of section 4.2.2. In R-A (and RN-A) the bonus allows a maximum of 6 units while R-B and R-C allow a maximum of 12 units. This allowance creates the opportunity for deed restricted affordable units in all neighborhoods of the City. As such projects would generally not be financially feasible as a stand-alone project, most development projects of this nature would involve an affordable housing developer utilizing some form of outside subsidy.

As noted above, the intent of this bonus is to create an opportunity. Staff acknowledges that projects using this bonus may be rare, but where this bonus does not exist, the opportunity for deed restricted affordable units at 60% AMI or less in the Residential Districts becomes much less. Because the bonus allows a project with a substantial amount of affordable housing to have greater density, it gives some competitive advantage to affordable housing projects over market rate projects, essentially boosting the land area competitively available for affordable housing development. The two significant factors limiting the development of deeply affordable housing are the availability of subsidies and the availability of land. The policy question becomes whether that opportunity outweighs concerns for 6 or 12 unit projects in these districts.

(2 See page 28, "Inclusionary Housing: Creating and Maintaining Equitable Communities"; Lincoln Institute of Land Policy.)"

At the request of Mr. Snook, Mr. Talente explained differences between HR&A and RKG methodologies for Rate of Expected Change analysis, stating that the methodology used by RKG was a little more conservative, but the two companies came to similar conclusions.

The meeting adjourned at 8:21 p.m.

BY Order of City Council

BY Kyna Thomas, Clerk of Council