

November 21, 2024

Libby Garvey, Chair
Arlington County Board
2100 Clarendon Boulevard, Suite 300
Arlington, VA 22201

Dear Chair Garvey and Board Members:

On behalf of the 15 civic associations listed below, we believe that it is imperative that the Board promptly make good on the County's longstanding commitment to study reforms of the lot coverage provisions of the Zoning Ordinance applicable to residential ("R") districts, and to complete that study as soon as possible. As we have discussed, the study should include building height, setback restrictions, and building footprint and maximum square footage limits.

Study Timing. In its letter to you of September 27, 2024, the Forestry and Natural Resources Commission (FNRC) emphasized the need to "direct the County Manager to explicitly identify the lot coverage study [as] a top priority for CPHD." In the Commission's judgment, "explicit priority-setting is essential to send an unambiguous message of how important it is to start work now," because "[d]elay in moving forward only makes the issue all the more pressing as space for trees to grow and thrive is further diminished." (Emphasis by the FNRC.)

We strongly agree. The County has already lost critical time in addressing this issue, posing a real challenge in meeting its goal of increasing our tree canopy given that only 13% of such canopy is on County land. Week after week, year after year, and in neighborhood after neighborhood throughout Arlington, smaller homes that are more affordable have been and continue to be taken down, and mature trees clear cut on these properties to make way for enormous new homes. These homes cover much more of the lot than the houses they replace. They often dwarf neighboring homes. They often cost more than \$2 million and sometimes over \$3 million apiece. A year ago, we provided you with a list of representative examples. These teardowns continue at an accelerated pace.

Study Scope. We believe the study should include each of the questions posed in the civic associations' August 2023 and (slightly restated) July 2024 outlines provided to you (and reattached here). In last week's work session, the staff's focus was only on one of these issues, involving sidewalks and patios. The elephant in the room, however, is not these – which staff showed have remained relatively constant over many decades. It is the shockingly large size of the building footprints of new houses. A few years ago, the late Board Member Erik Gutshall noted that this increase in footprint was totally unforeseen when the County last revisited lot coverage in 2005.

Examining these building footprints is exactly the approach approved by the Board last year in the Forestry and Natural Resources Plan. Page 58 of that Plan charged staff with a study not only of "[w]hat does and does not count as lot coverage" (such as sidewalks and patios), but also:

- "[w]hether to set a square footage cap on lot coverage in addition to the percentage cap,"
- "[w]hether to tie lot coverage regulations to a lot size rather than its zoning district," e.g., to address the oversized lot issue, and
- whether "enhanced standards" for setbacks "could support additional tree canopy, conservation landscapes and RPA buffers."

There is also now widespread consensus for addressing these questions as required by the Plan, and not just from the many civic associations listed below. As the Online Engagement Summary for the Plan noted three years ago, among Arlingtonians' most frequently mentioned themes were the need to "[d]iscourage development of large homes on small lots," to "[p]lace restrictions on single-family home sizes," and to "[i]ncrease or strengthen requirements for tree protection." (Emphasis added.)

We also strongly support Board Members' suggestions at the work session to include in the study the issues regarding step transactions. Under current rules, lot coverage now is permitted to exceed even the current limits, if the owner sequences additional largely unregulated work after the grant of the original building permit.

As Winston Churchill recognized over 80 years ago, "We shape our buildings, and afterwards our buildings shape us." What we do or fail to do here will be our legacy to future generations. Do not wait any longer to initiate – and promptly to conclude – a comprehensive study of whether to recommend changes to these provisions of the Zoning Ordinance. Time is truly running out for these critical elements of our community: its mature trees, its stormwater management, and its diminishing numbers of smaller and more accessible homes.

Sincerely yours,

John Wilson, President
Arlington-East Falls Church Civic Association

Sal D'Itri, President
Arlington Forest Citizens Association

Scott Sklar, President
Ashton Heights Civic Association

Henry McFarland, President
Bluemont Civic Association

Bill Richardson, President
Donaldson Run Civic Association

Brandon Hemel, President
Glencarlyn Civic Association

Wilma Jones, President
John M. Langston Citizens Association

Jean Henceroth, President
Leeway Overlee Civic Association

Michael Kunkler, President
Lyon Park Citizens Association

Jason Harrier, President
Lyon Village Citizens Association

Rana Jazayerli Bortot, President
Old Dominion Citizens Association

Howard Solodky, President
Old Glebe Civic Association

Mona Steffen, Board Member
Rivercrest Civic Association

Ruth Shearer, President
Williamsburg Civic Association

Mike Cantwell, President
Yorktown Civic Association

Attachments

cc: County Board Members
County Manager

Lot Coverage/Height/Setbacks Study

1. *Identify the Nature and Significance of the Problems*

- *Stormwater Impact.* In its 2014 Stormwater Management Plan ten years ago, staff recognized the need for “a more comprehensive look” at lot coverage, because of the significant increases in impervious surfaces associated with residential construction.
 - How has impervious surface from residential construction changed since then?
 - Are developers building “to the max” more frequently? EHO applicants?
 - Expand the November 2023 list of examples civic associations have provided, and include more recent EHO applications.
 - How do other County steps in measuring and addressing stormwater affect the analysis?
 - How should we factor in increased frequency and severity of storms?
 - Do steep slopes warrant special treatment, as they do in defining the RPA for purposes of the Chesapeake Bay Ordinance?
 - 61% of Arlington’s tree canopy is on privately owned land. FNRP p. 71. The 10% to 20% tree canopy requirement in these residential neighborhoods (only a prediction for 20 years out) cannot serve to replace the present value of *mature* trees. How have the current lot coverage/height/setbacks limits affected the loss of existing trees? Given the value of trees to “[r]educe stormwater runoff” (FNRP p. 70), what has been the resulting impact on stormwater management?
- *Climate Impact.*
 - How have these current trends in residential impervious surfaces affected the urban heat island problem?
 - The FNRP recognizes (p. 70) that tree canopy can “[r]educe the impacts of climate change.” How much can mature trees mitigate that problem?
 - How can we quantify the climate-related benefits of mature trees as shade cover, e.g., in annual cooling savings? in reducing carbon dioxide emissions (FNRP p. 146)?
- *Amenity Rights of Quiet Enjoyment.* The FNRP also notes (pp. 69-70) that tree canopy is valuable in and of itself, in fostering “[v]ibrant, verdant neighborhoods” that “[p]romote human health and well-being.” How can we quantify the economic value or other benefits of preserving tree canopy?¹ or more generally the reasonable expectations of privacy and quiet enjoyment by neighbors preserved by greater restrictions on lot coverage/height/setbacks?
- *Solar Access.* Are current height and setback limits inconsistent with the federal, state, and County goal of promoting solar access, by permitting larger residential structures that may block such access?

¹ See, e.g., R. McDonald, *Conservation for Cities* at 165-70 (2015) (citing one benchmark of \$48 per square inch of cross-sectional area).

- *Other Impacts.*
 - What is the industry standard for root zone protection areas for qualified species of plantings permitted to satisfy County tree canopy requirements?² To what extent have current lot coverage and setback requirements made it more difficult to provide sufficient space for 20-year expansion and survival of the tree canopy plantings needed to help the County meet its 40% tree canopy goal?
 - The November 2023 list of examples, and more recent EHO applications, show teardowns of smaller homes replaced with much larger and expensive ones. What has been the impact of the current rules on home prices?

2. *Establish a Framework for the Scope of the Rules Under Review*

- *Lot Coverage.* Reflecting the FNRP (p. 58), the study of lot coverage limits should include:
 - Whether the current percentage limits should again be reduced (as in 2005), and if so by how much.
 - Whether the County's 2022 approach to lot coverage parity between single-family and EHO construction should be restored.
 - Whether the limits should differ among residential districts. (The limit now ranges from 45% for R-5 lots to 25% for R-20 lots.)
 - Whether the limits should be reframed as square foot rather than percentage limits.
 - What should count toward lot coverage limits? How should this rule fit with what counts as impervious surface for stormwater management purposes? Currently, the following impervious surfaces do not count for lot coverage purposes:
 - Detached rear garages (5% addition)
 - Front porches of at least 60 square feet (3% addition). See examples of this disproportionate addition in the November 2023 list.
 - Accessory buildings of 150 square feet or less
 - Patios less than 8 inches above finished grade
 - Decks, stoops, and landings less than four feet from finished grade
 - Sidewalks and other pedestrian walkways
 - Exterior basement steps
 - How to address undersized and oversized lots. E.g., why should a new home on a 10,000 square foot lot in an R-5 district, surrounded by lots half its size, be permitted much larger lot coverage than the smaller homes it surrounds? See examples in November 2023 list.
 - The study should explore whether the separate main building limit adopted in 2005 adequately addresses this issue, in light of such examples.
 - In addressing oversized lots, the study should also examine any impact of the subdivision ordinance.
 - As noted above, the study should also look at the impact of current limits on properties with steeper slopes, including oversized lots (e.g., whether to exclude from the total lot area any portion with a greater than 25% slope).

² See N. Matheny & J. Clark, *Trees and Development: A Technical Guide to Preservation of Trees During Land Development* (International Society of Arboriculture 1998); N. Matheny, E. Smiley, & R. Hauer, *Managing Trees During Site Development and Construction: Best Management Practices* (International Society of Arboriculture 3d ed. 2023).

- *Height.* The study of height should include both the 35-foot limit and how to calculate it.
 - The 2005 ordinance addressing lot coverage deferred action on height limits.
 - As long recognized by the Supreme Court, a critical purpose of zoning is to prevent “interfering by . . . height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes.” *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926), cited, e.g., in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2071-72 (2021).
 - The current calculation of height fails to account for the steep slopes in Arlington (by using calculations based on the average height of four corners of the structure). This leads to examples of “looming” structures dominating the neighborhood and surrounding homes.
 - The current calculation also counts only half the height of gables. This leads to a surfeit of overly tall structures, designed to make use of this feature of the rules.

- *Setbacks.*
 - Should the rules require some degree of conformity of setback to the street with those of neighboring homes, in order to avoid “walling off” neighbors? E.g., Example #1 on the November 2023 list (3908 Military Road).
 - Should they promote achievability of tree canopy requirements over time, by expanding side yard setbacks to afford adequate space for expansion and viability of required tree plantings?
 - Do currently permissible intrusions (e.g., for bay windows) unnecessarily frustrate this goal?
 - Do the current rear setback limits provide adequate protection for mature trees?

3. *Examine Lot Coverage, Height, and Setback Rules in Comparable Jurisdictions*

- For example, Vienna’s Zoning and Subdivision Ordinance (18-213 et seq.) relies on 25% lot coverage limits. It calculates height from the average grade only at the *front* of the house, and also measures the 35-foot height limit to *highest point* on the roof.
- Examples should focus on localities with comparable fully-built out urban/suburban areas and comparable tree canopy goals.

Lot Coverage Reform

Recognition of the Problem

- Since February 2022, a majority of the Board have requested staff for a study of the need for reform of the lot coverage provisions of the Zoning Ordinance enacted in 2005.
- In its 2014 Stormwater Management Plan nine years ago, staff recognized the need for “a more comprehensive look” at lot coverage.
- Five years later, in its 2019 Stormwater Action Plan, staff similarly identified the importance of review of lot coverage ratios.
- Now, in the July 2023 draft Forestry and Natural Resources Plan (FNRP), staff also proposes to “re-evaluate” lot coverage (and how to define it).
- This draft plan reflects input from the staff’s 2021 Online Engagement Summary of public comments, compiling 1,018 submissions by 576 participants. These comments identified this issue in various ways, in two of the most frequently mentioned of six major themes:
 - “Find ways to discourage or limit development and impervious surfaces”
 - “Discourage development of large homes on small lots”
 - “Increase or strengthen requirements for tree protection”
 - “Place restrictions on single-family home sizes”
- Lot coverage reform is essential for three independent reasons:
 - Increased impervious surfaces in residential teardowns will continue to pose massive stormwater problems in the face of accelerating climate change.
 - Teardowns result in loss of mature trees as our tree canopy declines, and only 13% of Arlington’s tree canopy is on land owned by the County.
 - The 10% to 20% tree canopy requirement for private residential development – effective only after 20 years -- cannot serve to replace the present value of *mature* trees.
 - The draft FNRP recognizes that such mature tree canopy is valuable “in and of itself,” as well as to “soften the impacts of climate change,” quite apart from its important supplemental role in absorbing stormwater.
 - Preventing massive structures towering over more modest neighboring homes lies at the core of well recognized zoning concerns about privacy and quiet enjoyment.

The Need for Prompt Action

- With every passing month since staff identified this problem nine years ago, teardowns have continued to wreak irreparable damage to Arlington neighborhoods and their mature tree canopy. We have provided the Board with numerous examples. For another recent one, see 3908 Military Road.
- The accelerating frequency and intensity of storms makes the problem even more urgent.
- So does the expansion of these lot coverage provisions to MM/EHO (with an option for 5% extra). This is particularly true in R-5 and R-6 neighborhoods, where 20 MM/EHO applications are already under active review.

- Delay has already forced the County to pay substantial sums to acquire residential properties (e.g., Westover and Waverly Hills) in efforts to mitigate the stormwater management problems that lot coverage reform should be addressing.
- The Board should not delay any longer in addressing this recognized and growing problem. **The study should begin no later than the end of calendar year 2023, with a report due from staff by second quarter 2024.**

The Scope of the Study

- We would like to meet with the Planning Director to discuss this question.
- We agree with the draft FNRP that the study should include:
 - Whether the current percentage limits should again be reduced (as in 2005)
 - Whether the limits should differ among residential districts. (The limit now ranges from 45% for R-5 lots to 25% for R-20 lots.)
 - Whether the limits should be reframed as square foot rather than percentage limits
 - What should count toward lot coverage limits. Currently, the following impervious surfaces do not count:
 - Detached rear garages (5% addition)
 - Front porches of at least 60 square feet (3% addition)
 - Accessory buildings of 150 square feet or less
 - Patios less than 8 inches above finished grade
 - Decks, stoops, and landings less than four feet from finished grade
 - Sidewalks and other pedestrian walkways
 - Exterior basement steps
 - How to address undersized and oversized lots. E.g., why should a new home on a 10,000 square foot lot in an R-5 district, surrounded by lots half its size, be permitted much larger lot coverage than the smaller homes it surrounds?
 - The study should explore whether the separate main building limit adopted in 2005 adequately addresses this issue.
 - In addressing this question, the study should also examine how the subdivision ordinance should apply to oversized lots.
 - Setback and height limits.
 - However, under no circumstances should reduced lot coverage footprints be traded off for *increasing* the 35-foot height limit for residential structures.
 - This would defeat the purpose of zoning as long recognized by the Supreme Court – to prevent “interfering by . . . height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes.” *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926), cited, e.g., in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2071-72 (2021).
 - In fact, although the 2005 ordinance deferred action on height limits, there is widespread recognition that the current height limit is far too generous, because it fails to account for the steep slopes in Arlington (by using calculations based on the average height of four corners of the structure), and counts only half the height of gables.
- The study should include a comprehensive examination of how other comparable jurisdictions address this issue.