

<b>E</b>	<b>CAN I HAVE MORE THAN ONE DWELLING UNIT ON MY PROPERTY?</b>
<p>This section outlines the situations in which one or more additional dwelling units may be constructed on a lot with an existing single-family dwelling or manufactured home. For situations in which a new dwelling is to be constructed on a new lot to be created, please consult <a href="#">Section C – How can I subdivide new lots from my property?</a></p>	
<p><b>Contact Person:</b> Jeremy Camp, Senior Planner/Zoning Administrator (<a href="#">Planning Department</a>) (540) 955-5131, <a href="mailto:jcamp@clarkecounty.gov">jcamp@clarkecounty.gov</a></p>	
<p><b>Permits/Reviews Required:</b></p> <ul style="list-style-type: none"><li>• Zoning Permit – issued by <a href="#">Planning Department</a></li><li>• Building Permit – issued by <a href="#">Building Department</a></li><li>• Land Disturbance Permit (in some cases) – issued by <a href="#">Building Department</a></li><li>• Well/septic system review -- by <a href="#">Virginia Department of Health (VDH)</a></li></ul>	
<p><b>Information Required for Zoning Permit:</b></p> <ul style="list-style-type: none"><li>• Completed accessory or secondary dwelling zoning permit application</li><li>• Site sketch</li><li>• Well and septic system permits/information (if applicable)</li></ul>	

### **Overview**

Constructing one or more additional dwelling units on a property that contains an existing single-family dwelling or manufactured home may be possible depending on several factors. These dwelling units are referred to in the Zoning Ordinance as “accessory dwellings” or “secondary dwellings” depending on how they will be constructed. In order for a structure, or for rooms within a structure, to be considered a dwelling unit, the structure must be a separate, independent housekeeping unit. A separate, independent housekeeping unit consists of one kitchen and at least one bathroom and one bedroom. Accessory dwellings and secondary dwellings are approved by zoning permit issued by the Zoning Administrator.

The most important factor in being able to construct an additional dwelling unit or units is the capacity of the property’s existing and/or proposed onsite sewage disposal system(s). State and County onsite sewage disposal regulations are administered by the Virginia Department of Health (VDH) and the capacity of such systems is based on the total number of bedrooms being served by the system. It is critical to ensure that any existing or proposed onsite sewage disposal systems not only have enough capacity to serve the additional bedrooms in the new dwelling unit, but that there are sufficient reserve areas established in event that the disposal system has to be repaired or replaced in the future.

Other factors in determining whether an additional dwelling unit or units may be built on a lot include:

- Whether the property is zoned Agricultural-Open Space-Residential (AOC), Forestal-Open Space-Residential (FOC), or Rural Residential (RR) as the rules for accessory and secondary dwellings vary by zoning district.
- In the AOC and FOC Districts, whether the property has an available dwelling unit right (DUR) (See [Chapter 1 \(General Information\), Section C – What is Sliding-Scale Zoning?](#)) and whether the proposed type of dwelling unit requires the use of a DUR.
- The size of the lot.
- The size and design of the proposed dwelling unit.

Below are descriptions of different types of accessory and secondary dwellings and their applicable regulations:

## 1. **Secondary Dwelling.**

### Description

A secondary dwelling is a dwelling unit that is constructed within the footprint of an existing single-family dwelling. Secondary dwellings are required to have unrestricted ingress/egress to the balance of the single-family dwelling and cannot be attached independently to the single-family dwelling. Secondary dwellings are often referred to as “accessory apartments” or “in-law suites” and are commonly constructed within existing floors of the single-family dwelling (such as a basement) or as a new connected wing.

### Requirements and Limitations

- Secondary dwellings are allowed in the AOC, FOC, and RR Districts.
- Only one (1) secondary dwelling is allowed per single-family dwelling.
- A dwelling unit right (DUR) is not required.
- There is no maximum floor area requirement.
- A secondary dwelling cannot have a separate electric meter or a separate address as it is intended to be part of the single-family dwelling.
- Onsite Sewage Disposal System Usage. If the single-family dwelling is served by an onsite sewage disposal system, the system must be upgraded to current Virginia Department of Health (VDH) regulations including the provision of a 100% reserve area. Approval by VDH is required as a condition of zoning permit approval.

## 2. **Minor Dwelling.**

### Description

A minor dwelling is an accessory dwelling with a total floor area of living space that is less than 600 square feet and is designed to be occupied by not more than two (2) people. A minor dwelling may be constructed as a freestanding structure or attached to a single-family dwelling. If constructed as an attached structure, the minor dwelling cannot share an unperced wall with the single-family dwelling.

### Requirements and Limitations

- Minor dwellings are allowed in the AOC and FOC Districts. They are prohibited in the RR District.

- Only one (1) minor dwelling is allowed per lot.
- A dwelling unit right (DUR) is not required.
- The total floor area of living space shall be less than 600 square feet.
- A minor dwelling must be located within 300 feet of the main dwelling unless the lot is in permanent conservation easement.
- The minor dwelling shall be designed to be occupied by no more than two (2) people.
- Onsite Sewage Disposal System Usage. If the minor dwelling will use an existing system, the system must be upgraded to current VDH regulations including provision of a 100% reserve area. If the minor dwelling will use a new system, the following requirements apply to account for potential impacts to the single-family dwelling's existing system:
  - If the single-family dwelling's system is functioning properly but does not have a 100% reserve area, a 100% reserve area shall be identified by the applicant's soil consultant and approved by VDH for the existing system.
  - If the single-family dwelling's system is not functioning properly, the system shall be repaired to bring it into compliance with current VDH regulations including provision of a 100% reserve area.

Approval by VDH is required as a condition of zoning permit approval.

### **3. Temporary Family Health Care Structure**

#### Description

A temporary family health care structure is a very specific type of accessory dwelling with limitations on how it may be occupied and how long it may remain on a lot. This dwelling type is defined by State law as follows:

*A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that*

- (i) is primarily assembled at a location other than its site of installation;*
- (ii) is limited to one occupant who shall be the mentally or physically impaired person or, in the case of a married couple, two occupants, one of whom is a mentally or physically impaired person, and the other requires assistance with one or more activities of daily living as defined in [Code of Virginia §63.2-2200](#), as certified in writing by a physician licensed in the Commonwealth;*
- (iii) has no more than 300 gross square feet; and*
- (iv) complies with applicable provisions of the [Industrialized Building Safety Law \(Code of Virginia §36-70 et seq.\)](#) and the [Uniform Statewide Building Code \(Code of Virginia §36-97 et seq.\)](#).*

As described above, a temporary family health care structure is factory-built and meets specific building code requirements. It is designed to be readily moved from a property once it is no longer needed.

**Requirements and Limitations**

- Temporary family health care structures are allowed in the AOC, FOC, and RR Districts.
- Only one (1) temporary family health care structure is allowed per lot.
- A dwelling unit right (DUR) is not required.
- The total gross floor area cannot exceed 300 square feet.
- Occupancy is limited to a caregiver in providing care for a mentally or physically impaired person residing in the single-family dwelling or manufactured home. A caregiver is an adult who provides care to a mentally or physically impaired person and shall be either related by blood, marriage, or adoption to or be the legally appointed guardian of the mentally or physically impaired person for whom they are caring.
- Evidence of compliance with the occupancy requirements is required as a condition of zoning permit approval.
- The temporary family health care structure shall be removed from the property within 30 days from the date in which the mentally or physically impaired person is no longer in need of care.
- Onsite Sewage Disposal System Usage. Approval by the Virginia Department of Health (VDH) for connections to a private well and/or onsite sewage disposal system is required as a condition of zoning permit approval.

**4. Tenant House**

**Description**

A tenant house is an accessory dwelling that is only allowed on properties that are zoned AOC or FOC and a minimum of 20 acres in size. Unlike the other forms of second dwellings, each tenant house requires the use of a dwelling unit right (DUR) and more than one tenant house may be constructed depending on the size of the lot and number of available DURs:

Minimum Lot Area	Maximum Number of Tenant Houses Permitted	Available Dwelling Unit Rights (DURs) Needed
20 acres	1	1
80 acres	2	2
160 acres	3	3
240 acres	4	4

For lots over 240 acres in size, an additional tenant house is permitted for each additional 80 acres of lot area and subject to available DURs.

**Requirements and Limitations**

- Tenant houses are allowed in the AOC and FOC Districts. They are prohibited in the RR District.
- More than one tenant house may be constructed on a lot depending on the size of the lot and number of available DURs as described above.

- A DUR is required for each tenant house to be constructed.
- There is no limitation on the floor area of a tenant house.
- A tenant house must be a freestanding structure and cannot be attached to a single-family dwelling or manufactured home.
- There is no requirement that a tenant house be located within a minimum distance of the single-family dwelling.
- Occupancy of a tenant house is based on the capacity of the onsite sewage disposal system.
- Onsite Sewage Disposal System Usage. If the tenant house will use an existing system, the system must be upgraded to current VDH regulations including provision of a 100% reserve area. If the tenant house will use a new system, the following requirements apply to account for potential impacts to the single-family dwelling's existing system:
  - If the single-family dwelling's system is functioning properly but does not have a 100% reserve area, a 100% reserve area shall be identified by the applicant's soil consultant and approved by VDH for the existing system.
  - If the single-family dwelling's system is not functioning properly, the system shall be repaired to bring it into compliance with current VDH regulations including provision of a 100% reserve area.

Approval by VDH is required as a condition of zoning permit approval.

### **Zoning Permit Review Process**

- **STEP 1** – Schedule a fact-finding meeting with Planning Department Staff to discuss your project and determine whether it qualifies for an accessory or secondary dwelling zoning permit. Staff will review the applicable regulations and process steps with you, can determine whether you have available dwelling unit rights (DURs) for your project (if applicable), and will provide a copy of the zoning permit application form.
- **STEP 2** -- Contact the Virginia Department of Health (VDH) to obtain information on your private well and onsite sewage disposal system and to discuss potential required modifications to serve your proposed second dwelling. In nearly all cases, you will be required to hire a soil consultant to provide a report or design modifications to your existing system and/or to design your new proposed system to serve the dwelling unit. Approval by VDH of connections to a private well and/or onsite sewage disposal system is required as a condition of zoning permit approval.
- **STEP 3** – File a complete accessory or secondary dwelling zoning permit application with the Planning Department. Your application must include a site sketch containing the following site features and distances to the closest point on the proposed structure shall also be provided:
  - Lot lines, adjacent public roads, and adjacent private access easements
  - Any existing structures (dimensions, floor area, and use information may also be required)

- Any existing and proposed septic systems (including tanks and drain lines), reserve areas, and wells
- Existing and proposed driveways
- Existing or proposed utility, drainage, or other easements
- Sinkholes, springs, perennial streams, and intermittent streams
- Any other site features or information required by the Zoning Administrator

Measurements of required distances must comply with the minimum setback distances required by the Zoning Ordinance. Tables showing minimum setback distances by zoning district are included in the Guidance Manual Appendix and in the zoning district descriptions set forth in Section 4 of the Zoning Ordinance.

- **STEP 3** – After providing a complete zoning permit application, the Zoning Administrator will review the zoning permit application and will notify you if it is approved, denied, or requires additional information. A building permit issued by the Building Department is required prior to commencing construction. Zoning permit approval is a prerequisite to the approval of a building permit.

For questions or assistance in completing the zoning permit application, please contact the Zoning Administrator to schedule an appointment.

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**ZONING ORDINANCE REFERENCES:**

**Zoning Ordinance**

- [Section 3 – Sliding-Scale Zoning](#) – Contains rules for dwelling unit right allocation and usage.
- [Section 4, Zoning Districts](#). Contains setback for requirements buildings and structures.
  - [Section 4.1.1 – Agricultural-Open Space-Conservation District \(AOC\)](#)
  - [Section 4.1.2 – Forestal-Open Space-Conservation District \(FOC\)](#)
  - [Section 4.1.3 – Rural Residential District \(RR\)](#)
- [Section 5.2 – Residential Uses](#) – Contains descriptions of the different types of accessory dwellings allowed in County zoning districts.
- [Section 6.2.1, Administrative Review Processes – Zoning Permit](#). Contains regulations that apply to the review and approval of zoning permits.

**QUICK REFERENCE CHART – ACCESSORY AND SECONDARY DWELLINGS**

TYPE	AOC/ FOC	RR	NOTES
Secondary Dwelling	Yes	Yes	<ul style="list-style-type: none"> <li>• Limit of one (1) per single-family dwelling.</li> <li>• No dwelling unit right (DUR) is required.</li> <li>• Must be located within footprint of an existing single-family dwelling with internal ingress/egress.</li> <li>• Cannot have separate electric meter or address.</li> </ul>
Minor Dwelling	Yes	No	<ul style="list-style-type: none"> <li>• Limit of one (1) per lot with area of six (6) or more acres.</li> <li>• No dwelling unit right (DUR) is required.</li> <li>• Must be located within 300 feet of single-family dwelling unless the lot is in permanent conservation easement.</li> <li>• Total floor area shall be less than 600 square feet.</li> <li>• Can be attached to the single-family dwelling so long as the minor dwelling does not share an unpierced wall with the single-family dwelling</li> </ul>
Temporary Family Health Care Structure	Yes	Yes	<ul style="list-style-type: none"> <li>• Limit of one (1) per lot.</li> <li>• No dwelling unit right (DUR) is required.</li> <li>• Maximum of 300 gross square feet in area.</li> <li>• Shall be for use by a caregiver in providing care for a mentally or physically impaired person residing in the single-family dwelling.</li> <li>• Must be removed when the impaired person no longer requires caregiver’s services.</li> </ul>
Tenant House	Yes	No	<ul style="list-style-type: none"> <li>• One (1) tenant house may be constructed on a lot at least 20 acres in size. Two (2) tenant houses may be constructed on a lot at least 80 acres in size. One (1) additional tenant house may be constructed for each additional 80 acres (e.g., 3 at 160 acres, 4 at 240 acres)</li> <li>• A dwelling unit right (DUR) is required for each tenant house constructed.</li> <li>• Must be constructed as a freestanding structure.</li> </ul>