


TOWN OF BLACKSBURG  
AGENDA MEMO

**DATE:** April 6, 2023

**TO:** Town Council

**FROM:** Anne McClung, Planning and Building Director 

**TITLE:** Zoning Ordinance Amendment #47/Ordinance #2022 – Ordinance to Amend and Update the Accessory Apartment Program and Add Detached Accessory Apartments.

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- **Background:** The purpose of Zoning Ordinance Amendment #47 is to expand the Accessory Apartment Program to include detached accessory apartments and to update the existing Accessory Apartment Program based on what staff has learned from implementation of the program since it was created in 2017. The provisions that establish the program and relate to administration are found in Zoning Ordinance Section (§)1270 and the development parameters (setbacks, height, size etc.) are contained in the Use and Design Standards, §4201. Changes are proposed to both sections. The staff report contains an overview of the amendment and outlines key decision points. Attachments to the staff report include background reading materials, history from the previous 2017 amendment, and information on the existing program. The most recent draft of the proposed regulations for ZOA #47 can be found in Ordinance #2022, reflecting input from the Zoning Ordinance Review Committee (ZORC) and the action of the Planning Commission. The Planning Commission public hearing was held on April 4, 2023. The Planning Commission recommended approval of Ordinance #2022 by a vote of 7/0.
- **Considerations:** Refer to staff report.
- **Action:** Place on April 11, 2023 consent agenda and schedule public hearing for May 9, 2023.
- **Attachment:**  
Staff Report dated March 17, 2023 with attachments  
Planning Commission to Town Council memo dated April 4, 2023

**MEMORANDUM**

TO: Town Council

FROM: Planning Commission

DATE: April 4, 2023

SUBJECT: Zoning Ordinance Amendment #47/Ordinance #2022 - Amendment Update to Accessory Apartment Program Regulations and Add Detached Accessory Apartments to the Program

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Planning Commission Recommendation:

**APPROVAL** of Zoning Ordinance Amendment #47/Ordinance #2022:

For: Colley, Ford, Herbein, Jones, Rinehart, Walker, Watson  
Against:  
Abstain:  
Absent: Kassoff

In so recommending approval of this Zoning Ordinance Amendment, the Planning Commission finds the proposed changes in Ordinance #2022 conform to the general guidelines and policies contained in the Town's Comprehensive Plan, and that the changes will further the purposes of the Zoning Ordinance and the general welfare of the entire community.

**TO:** Planning Commission

**FROM:** Anne McClung, Planning and Building Department Director

**RE:** Zoning Ordinance Amendment #47/Ordinance #2022 - Zoning Ordinance Amendment Update to Accessory Apartment Regulations and Add Detached Accessory Apartment

**DATE:** March 17, 2023

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**BACKGROUND**

The purpose of Zoning Ordinance Amendment #47 is to expand the Accessory Apartment Program to include detached accessory apartments and to update the existing Accessory Apartment Program based on what staff has learned from implementation of the program to date. The provisions that establish the program and relate to administration are found in Zoning Ordinance Section (§)1270 and the development parameters are contained in the Use and Design Standards, §4201. This amendment has been prepared by the Planning staff and the Housing and Community Connections staff. Two different perspectives are represented and there may be issues that require the Zoning Ordinance Review Committee, Planning Commission or Council to discuss and determine the appropriate path forward recognizing there is not agreement between the two perspectives on all issues.

The proposed amendment has been reviewed by the Zoning Ordinance Review Committee (ZORC). This subcommittee of the Planning Commission includes both Planning Commissioners and several citizen representatives. The ZORC met on February 27, March 6, and March 13, 2023 to discuss the issues, policies and proposed changes to be included in Ordinance #2022 with significant discussion and consideration of all of the different aspects of the Accessory Apartment Program. Most of the recommendations of the ZORC have been incorporated in the draft of Ordinance #2022 (attached). Summaries of the ZORC discussion are included in the different topic areas covered in the staff report. The Town Attorney has conducted a preliminary review of the proposed ordinance.

In 2017, Zoning Ordinance #32 was adopted with Ordinance #1816 and reintroduced accessory apartments as an allowed use in the R-4, RR-1 and RR-2 zoning districts. Ordinance #1816 and the staff reports/memo from the 2017 amendment are attached. This will provide background on the items discussed during the original consideration of the use and how the current provisions governing accessory apartments developed into Ordinance #1816. The use was limited to attached units only and did not allow for a detached accessory unit. An example of an attached or interior unit would be a basement apartment. An example of a detached or exterior unit would be an apartment over a detached garage. The allowance for attached units only was a conscious decision at the time to reintroduce the use in a limited way. The intent of introducing the more limited accessory apartment use was to assess the level of interest and understand what impacts, if any, might occur before any broadening of the program. Key elements in the program include requiring the owner to live on-site and having occupancy considered cumulatively between the main unit and the accessory unit. A registration program was developed to implement the ordinance. A copy of the accessory apartments registered to date, the application form and the required deed restriction are attached with a cover memo from the Zoning Administrator.

Staff would note that the 2017 program does not apply to any accessory units built in the 1960s and early 1970s when the use was previously allowed. Accessory apartments were encouraged at that time to help accommodate housing for the University during a period of rapid growth. The majority of these lawful non-conforming apartments can be found in the Miller-Southside and McBryde neighborhoods. The Town does maintain a list of the non-conforming units by address. There are also likely accessory apartments that were created over time and exist today. These apartments are illegal as opposed to non-conforming. These units were created without the approval or knowledge of the Town. Staff does not have a way of calculating the number of these units.

To date, staff has not seen an uptake in the addition of accessory apartments from the 2017 program. The lack of accessory apartments created through the program may be due to a lack of awareness about the opportunity or the costs associated with construction. It is possible that some owners are not seeking approval through the current permitted process because they already have an allowed non-conforming unit or an illegal unit. Others may be not be interested in an attached unit, which is what is allowed today, but are interested in a detached unit such as an apartment over a detached garage. Lastly, the lack of interest could be due to the interest in using the Homestay program and not the Accessory Apartment Program.

### **PROS AND CONS**

There a number of pros and cons for the accessory apartment use in general and the changes proposed in the amendment. The main issues are summarized below.

**Pros:** The use of accessory apartments can be a good way to expand housing supply and housing choice, providing more affordable options for all types of residents, including students. It can be an effective way to provide housing for extended family or to support aging-in-place. The accessory unit is often income producing and helps owners afford the cost of the main house, thus supporting homeownership and wealth building.

Home purchase and rental costs continue to escalate and the availability of all types of housing is limited in Town. How to provide affordable housing and increase housing supply to better meet community needs is an ever-growing issue. Accessory units are often one strategy, among others, to try to help with housing issues. The trend to allow and encourage accessory apartments is happening nationwide. Staff would note, however, that the use of accessory apartments is somewhat different in a university town where a student population and lucrative investment student housing rentals are common.

**Cons:** Allowing accessory units can go against the expectations of owners who bought in single family neighborhoods not expecting additional dwelling units to be constructed. Many newer subdivisions have covenants and restrictions prohibiting the creation and rental of accessory units. The actual cost of either renovating a home to create an attached unit, constructing an addition to the home for an attached unit or constructing a detached accessory apartment can be expensive and costs can vary widely. According to a 2020 study prepared for the City of Alexandria, the costs can be significant ranging from \$20,000 to \$400,000 or more depending on design and construction costs, unit style, size and amenities.

Staff would note the accessory unit created is a full dwelling unit with all the same facilities as the main house including sleeping, eating, cooking and sanitation facilities. This can have the effect of turning a single family home in a single family zoned neighborhood into a duplex if not controlled. How to keep the unit "accessory" is part of the discussion on updating and expanding the Accessory Apartment



Program. Unit size and occupancy are the main standards that govern this aspect of the program. This is a significant concern of Planning Staff. See also Building Code Changes.

### **WHAT'S NEW TO CONSIDER?**

New information and changes in the housing market are relevant in considering updates to the program.

#### **Short Term Rentals**

The prevalence of rental services such as Airbnb and VRBO have grown tremendously since 2017. The Town does have a Homestay or short term rental program. Often the inquiries from those interested in the Accessory Apartment Program are interested in creating a dwelling unit for short term rental purposes only. The Accessory Apartment Program is seen a way to create a full second dwelling unit for short term rental with no intention of complying with the intent of the program to provide housing to residents. The short term rental fees for events such as football weekends, graduation, summer orientation, etc. are competitive with the income from a year round rental. Owners see the advantage of having the income from the unit without having a year round tenant. The unit can then be used for guests when not rented out. The goal of the Accessory Apartment Program is not to promote or enhance short term rentals in single family neighborhoods. Planning staff is concerned about how to monitor or effectively enforce the difference between the two programs. While there are clear program requirements for each, effective enforcement is and will continue to be an issue.

#### **Building Code Changes**

There have been changes in the 2018 Virginia statewide building code to make the construction of accessory units easier. These are specific changes based on impediments that previously made the use less viable and more expensive. The changes are helpful to support and encourage the construction of accessory units but staff would note that the changes also make it easier to construct or convert a home into a duplex. The Building Code now defines an accessory apartment as a "two-family" dwelling. In the Town of Blacksburg, a single family home with an accessory apartment is a very different use than a two-family dwelling/duplex. Enforcement will now fall wholly on enforcement of the Zoning Ordinance, which better differentiates between those two uses. This further supports the need to make sure an accessory apartment is indeed accessory. Information from the Department of Housing and Community Development (DHCD) is attached.

#### **Studies and Resources**

A recent study about the State of the Market and Local Policy: Accessory Dwelling Unit in the Commonwealth of Virginia is attached. This study does use nationwide data but has new and thoughtful information on the topic of accessory apartments. Also attached is a user guide prepared by the City of Charlottesville on how to build an accessory unit. This type of resource makes it much easier for a homeowner to navigate the process of how to go about creating an accessory apartment. The Housing and Community Connections staff envision using this guide as a model to create a similar guide for the Town of Blacksburg.

### **ACCESSORY APARTMENT PROGRAM AREAS NOT CHANGING**

#### **Section 2103 Definitions**

The following definitions are in the Zoning Ordinance and not proposed for change but are provided here for reference.

ACCESSORY APARTMENT—(See Residential Dwelling).

RESIDENTIAL DWELLING—A building or part of a building, containing living, sleeping, housekeeping accommodations, and sanitary facilities for occupancy by one (1) or more individuals or families. The following are included as residential dwelling types:

ACCESSORY APARTMENT—A secondary dwelling unit or units established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached structure or structures on the same lot.

ACCESSORY APARTMENT PERMIT PROGRAM - The program established by the Town of Blacksburg for the purpose of regulating accessory apartments created after April 15, 2017. This program does not include lawful non-conforming accessory apartments created prior to 1975 that are documented on the list maintained by the Planning and Building Department.

### **Zoning Districts Allowing Accessory Apartments**

Accessory apartments are currently allowed in the RR-1, RR-2 and R-4 zoning districts. The zoning districts in which the use is allowed are not proposed for change with the exception of clarifying how accessory apartments are handled in the Planned Residential (PR) zoning district, which is covered below.

The permitted use section of the RR-1, RR-2 and R-4 districts simply reference allowing accessory apartments in accordance with §1270 and §4201 and thus no changes to the zoning districts are needed even though others section are changing. The reference remains the same. There is a wording change in the R-4 district regulations for consistency among the districts. The R-4 district occupancy standard wording should be changed from “figured cumulatively” to “calculated cumulative” to match the RR-1 and RR-2 districts.

### **POLICY DECISIONS**

The purpose of this amendment is to expand the program to include detached units and to update the program based on what staff has learned from implementation of the existing program. There are a number of decision points for the Zoning Ordinance Review Committee, Planning Commission and Council to consider. The points are summarized below for discussion. A draft of Ordinance #2022 is attached and sections are referenced in the text below.

#### **• Allow for Detached Accessory Units**

Expanding the program to include detached units is a logical next step in the evolution of the program.

#### **• Allow Accessory Apartment on Non-Conforming Lots of Record**

The current Accessory Apartment Program does not allow accessory units when the lot or parcel does not meet the minimum lot size for its zoning district. ZORC recommends allowing attached or detached accessory apartment on non-conforming lots of record. Staff has suggested wording in General Provisions, §1271(b) that the inclusion of the accessory unit on a lot that has a non-conforming lot size cannot exacerbate any other aspects of non-conformity. However, the impact to the other underlying standards for the primary structure will be vetted by staff. Staff will look at some examples to make sure it is possible to create an accessory unit and not increase other non-conformities.

- **Clarification on Program Requirements**

Proposed as part of this amendment is clarification that only one accessory apartment is allowed per lot or parcel. Also proposed is wording to be clear that an accessory apartment is only allowed on a lot/parcel with a single family detached home. Further, clarification is proposed to state that accessory apartments must be rented by the unit and not by the bedroom. These changes are found in §1271(g) under General Provisions.

- **Relationship to Homestay Program**

The amendment proposes further clarification of the relationship of the Accessory Apartment Program and the Town's short term rental Homestay Program. Changes are shown in §1271(h) under General Provisions. The additional wording is intended to be explicit about the differences between the two programs and that one program (Accessory Apartments) cannot be used as a work around to create an intensification of use in another program (Homestay).

- **Planned Residential District**

The accessory apartment use is being added to the PR district (§3111 and 3113) with the clarification that the accessory apartment use must have been approved as part of the rezoning to PR. For example, the recent single family subdivision approved in the Berewick rezoning allows accessory apartments. Other older approved Planned Residential development would not allow accessory apartments unless the original rezoning were amended.

- **Establish Development Standards for Detached Accessory Units**

There are standards that need to be added to the Zoning Ordinance to govern the location, setbacks and size of a detached unit. More detailed standards are needed since the detached unit is not an extension of the main structure. Attached or interior accessory units are subject to all of the standards applicable to the main structure with some changes proposed in this amendment. The different standards such as size, location, floor area ratio, height, and setbacks work together to govern the impact of the accessory apartment. Each standard is discussed below with a summary chart in this staff report.

**Location of Unit:** Standards are proposed to govern the location of a new detached unit. The goal is to allow units but minimize the impact on adjoining property owners and not disrupt the look and feel of the neighborhood. The most likely scenario for a detached accessory unit is an apartment above a garage. However, other freestanding units such as a carriage house are also possible. The standards below require the unit to be behind the front building line of the main house and limit how much of the yard can be occupied by the accessory unit. These standards are in the Use and Design Standards, §4201(d)(ii) and (iv).

*The exterior accessory apartment shall be located behind the front building line of the principal structure in the side or rear yard.*

*The total footprint of all accessory structures (including sheds, detached garages, pools, etc.) shall not exceed thirty (30) percent of the rear yard area. The rear yard area includes the distance from the back of the primary dwelling unit to the rear yard property line and the distance between the side property lines.*

**Setbacks:** The current setback for an accessory structure, such as a shed, is 5 feet from the property line if the accessory structure is less than 200 square feet, and less than 12 feet in height and not located in a yard adjacent to a public right-of-way. Otherwise, the setback is per the underlying zoning district. Accessory structures must be behind the front building line of the primary structure. Many subdivisions have public utility easements of 7 ½ feet in width on the side and rear property lines. Structures are not allowed in public utility easements. Structures cannot be built over active utilities regardless of whether there is an easement in place.

Setbacks for attached accessory apartments are the same as for the main structure. Side and rear yards in the R-4 district are as follows:

Front yard thirty (30) feet:

- (1) The front yard setback may be reduced to twenty-five (25) feet for uses with parking in rear that is fully behind the structure.
- (2) For infill lots where more than fifty (50) percent of the lots on a block-face are developed, the front yard setback may be reduced to not less than the average of the front yard setbacks of the existing developed lots on the block-face.

Side yard ten (10) feet, except on corner lots, a side yard facing the street will be twenty (20) feet.

Rear yard twenty-five (25) feet.

The detached accessory apartment is also an accessory structure. Compared to an accessory structure such as a shed, however, the accessory apartment is different in size and is an occupied structure. A determination on appropriate setbacks is needed for this specific use. Other communities have allowed smaller side or rear yard setbacks of 5 feet to facilitate the use. Planning staff has concerns about creating a conflict between the 7 ½ foot public utility easement and a setback for an accessory unit that is less than the PUE. The goal is to find a balance of allowing for the accessory unit but limiting impact to adjoining neighbors. The ZORC supported setbacks of 7 ½ feet and that is included in Ordinance #2022, §4201(d)(vi).

*The setback requirements of the underlying zoning district shall be met on all public street frontages. However, if the accessory apartment is not located in a yard adjacent to a public right of way the minimum setbacks shall be:*

- (1) *Side yard: 7 ½ feet.*
- (2) *Rear yard: 7 ½ feet.*

With the addition of the detached accessory apartment use, the location of any patios or decks provided for the accessory unit should be addressed. The ZORC discussed this item and agreed on the concept that the outdoor spaces for the accessory unit should not be placed in a way that negatively impacts the neighbors did not have a specific recommendation to improve the wording shown below and in §4201(d)(vii). The Committee suggested that further work on the wording of this section occur.

*Patios, decks, and balconies shall not be located on sides of the accessory dwelling unit immediately adjacent to adjoining property lines.*

**Height:** Existing regulations for height for an attached accessory apartment defer to the underlying zoning district since the accessory unit is part of the primary structure. The height limit in the R-4 district is 30 feet or additional height up to 40 feet with additional setbacks.

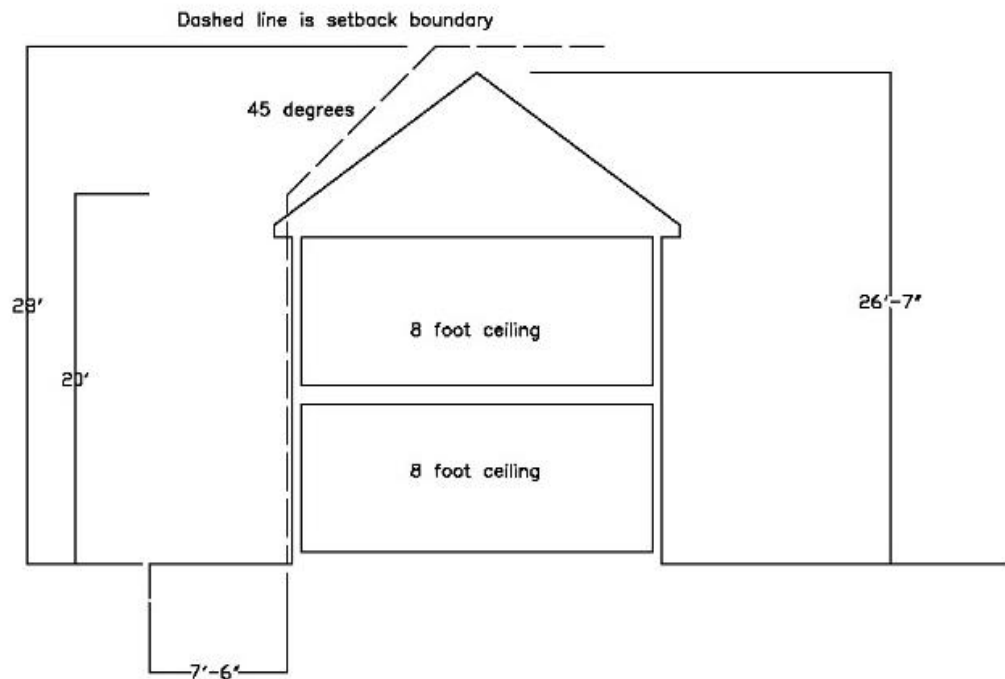
~~(7) The underlying zoning district development standards for lot coverage, height, setbacks and floor area ratio that apply to the primary dwelling shall also include the accessory apartment in the calculations of these standards.~~

However, the impact of a second freestanding structure will be different and a specific and a lesser height standard is needed. The height standard also needs to be clear on how the height will be measured. Height is one of the ways to control the mass and scale of the second unit on the lot.

The Charlottesville Guide has a maximum height of 25 feet. The ZORC in discussion was concerned this was not adequate for a 2-story unit and to allow variation in roof pitch. The Committee was also concerned, however, about the impact of the structure height at the setback, particularly if the full volume of the structure occurred at the setback line. The ZORC recommendation proposes a change for both attached and detached accessory apartment. The ZORC recommendation is included in Ordinance #2022, General Standards, §4201(b)(3) and shown below.

*No accessory apartment shall exceed twenty-eight (28) feet in height, or twenty (20) feet in height at the eaves at the setback line, or the highest point of the primary dwelling unit roof. Height shall be measured in accordance with Section 2301 and the measurements shall be taken at the adjoining grade of the front entrance for the primary structure and for the accessory apartment.*

Staff suggests that including the phrase “whichever is less” may need to be considered. Additional wording and a labeled graphic may be needed to better illustrate the height requirements. One of the ZORC members illustrated the concepts for ZORC discussion (shown on the following page) and a version of the graphic may be helpful to include in the ordinance to supplement the wording.



#### Size of Accessory Units:

The current maximum size of attached/interior accessory apartments is 800 square feet. This is larger than many efficiency or one-bedroom apartments and the maximum in other communities' accessory apartment regulations. Often the units are 500-650 square feet in size. From a housing perspective, increasing the maximum size to 1,000 square feet would allow the unit to serve more market segments who need housing. A larger unit could more easily accommodate a couple with a child or single parent with children. It would also make it easier if when finishing a basement area, to be able to finish the entire basement, as opposed to creating a wall for the purpose of complying with the maximum allowed square footage.

From a zoning perspective, increasing the size of the unit begins to go against the idea the unit is "accessory" to the main house. When is a unit "accessory" and when has the structure become a duplex? With a larger square footage allowed, there is likely greater occupancy of the unit. This is already a significant issue in the Town. While staff investigates every over occupancy reported, violations are often difficult to prove. This is affecting many neighborhoods and community members have concerns about changes to the character of their neighborhood resulting from over occupied rentals to unrelated individuals, mostly students.

Existing regulations, shown below, speak to the accessory unit as secondary and subordinate to the primary structure in General Standards, §(b)(2) and limits the size of an accessory apartment to 800 square feet in #(3). Should the size requirement remain the same and apply to attached and detached accessory units? Should the size be increased?

(b)(2) The accessory apartment shall be clearly secondary and accessory to the primary dwelling unit as to location, height, square footage, floor area ratio, and building

coverage and in keeping with the character of a single family neighborhood. and shall not change its character as a detached single family residence. ~~The accessory apartment must be integrated into, or compatible with, the primary structure using features such as roof lines, exterior materials, window patterning or exterior color.~~

(3) The maximum size of an accessory apartment shall be 800 square feet.

The ZORC recommendation is to increase the maximum accessory apartment size from 800 to 1,000 square feet. The new maximum would apply to both attached and detached units. ZORC also recommends adding a percentage of the primary unit as a factor. The Charlottesville Guide suggests 40% of the primary unit. ZORC is recommending 80%. As written, it would not be a comparison of the measurements and “whichever is less.” The guiding factor will be the 1,000 square feet limit as proposed by ZORC. It may be that the percentage is not needed if the guiding factor is always going to be the maximum square footage allowed. Planning staff does have some concerns that an increase in square footage as proposed could result in units that are not “accessory” in nature given the proportionality of the accessory unit to the primary unit. This would especially be the case with smaller homes, where the accessory unit could be close to or exceed the size of the primary structure.

The wording recommended by ZORC is shown below with a several examples following. Staff is working on some sample applications to existing developed lots in Town and will include this in the discussion at the Planning Commission work session. The wording can be found in §4201 (c) and (d) of Ordinance #2022 and is shown below.

In addition to the requirements set forth above in paragraph (b), the following shall apply to **interior (attached)** accessory apartments:

- (i). The accessory apartment must be entirely contained within the principal structure or an addition in accordance with these regulations.
- (ii). The gross floor area of the accessory apartment may not exceed eighty (80) percent of the gross floor area of the primary structure in which it is located. In no case shall the maximum square footage exceed 1,000 square feet.
- (iii). Setback for accessory apartment setbacks shall comply with setbacks for the zoning district.

In addition to the requirement set forth in paragraph (b), the following shall apply to **exterior (detached)** accessory apartments:

- (i). The footprint of the exterior accessory apartment shall not exceed eighty (80) percent of the building footprint of the primary structure on the property.
- (ii). The gross floor area of the accessory apartment may not exceed eighty (80) percent of the gross floor area of the primary structure, or a maximum of 1,000 square feet of gross floor area. For a garage apartment, the gross floor area includes the square footage of the garage.



**Example #1**

2,000 square foot primary dwelling unit  
80% of the primary dwelling unit = 1,600 square feet  
1,000 square foot maximum  
Maximum size of accessory apartment: 1,000 square feet

**Example #2**

1,200 square foot primary dwelling unit  
80% of the primary dwelling unit = 960 square feet  
1,000 square foot maximum  
Maximum size of accessory apartment: 1,000 square feet

**Example #3**

800 square foot primary dwelling unit  
80% of the primary dwelling unit = 640 square feet  
1,000 square foot maximum  
Maximum size of accessory apartment = 1,000 square feet

ZORC did not discuss the relationship of the maximum square footage in relation to the footprint of the home, §4201(d)(3). The discussion was focused on the maximum square footage of an accessory apartment. The relationship to the primary structure footprint can be discussed at the Planning Commission work session. The relevance of the primary structure footprint is being able to compare the maximum square footage of the primary unit of a one-story home versus a 2-story or 3-story home in relation to the size of the accessory unit.

**Floor Area Ratio:**

Floor Area Ratio (FAR) is a standard in the Town's residential zoning districts. For an attached unit, the underlying FAR would continue to apply because the space is contributing to the mass and scale of the primary structure. In addition, it would create a mechanism for owners to exceed the maximum FAR by indicating the additional space is for an accessory apartment and then not using the apartment. FAR is a development standard that is likely to be reviewed in a future Zoning Ordinance Amendment. Detached units do not contribute to a greater mass of the primary structure. In addition, if the FAR were to include the detached unit, it is unlikely that any detached units could be built. The ZORC recommendation is to include attached units in the FAR and exclude detached units in the FAR, as shown in §4201(d)(v).

**• Overall Requirements**

After a great deal of discussion and calculations, the ZORC has recommended that the maximum size of accessory apartments be governed by a combination of percentage of the primary unit, but with an absolute maximum. The chart below is a summary of the factors and how they apply.

Summary of Factors in Regulating Size	Applies to Attached Apartment	Applies to Detached Apartment
% of primary dwelling unit square footage ZORC = 80%	Yes	Yes Garage counts in square footage
Absolute maximum square footage of any apartment = 1,000	Yes	Yes Garage counts in square footage
30 % of yard area Behind Front Building Line	No	Yes
Floor Area Ratio	Yes	No
Lot Coverage	Yes	Yes

• **Occupancy of Primary and Accessory Structures**

Currently, occupancy is considered cumulatively with the main house/primary structure and the accessory apartment. In the districts in which accessory apartments are allowed, the occupancy allowed is a family plus two unrelated individuals or three unrelated individuals. The existing wording regarding occupancy is found in the Development Standards for the R-4, RR-1 and RR-2 districts shown in (e) below and in the Use and Design Standard shown in (8) below.

(e) The maximum dwelling unit occupancy shall be a family plus two (2) persons unrelated to the family; or no more than three (3) unrelated persons. For a detached single-family dwelling with a nonconforming accessory apartment, or accessory apartment as allowed through the accessory apartment permit program, occupancy shall be ~~figured~~ calculated cumulatively, to include both the single-family dwelling and the accessory apartment, for a total not to exceed three (3) unrelated persons.

(8) Occupancy standards are set forth in the underlying zoning district regulations.

The Housing and Community Connections staff has researched a number of other communities for options regarding occupancy standards and how occupancy is handled to see if changing the standard in Blacksburg could make the accessory units more attractive to year round residents. Alternative wording was put forward for consideration. The proposal was trying to address two unrelated persons plus their offspring in the accessory apartment and also require that either the accessory apartment or primary structure must be occupied by a “family”. Planning staff expressed concerns about changing the occupancy standard given current challenges in enforcement. ZORC concurred and the occupancy standard is not proposed for change.

• **Universal Design Standards**

One of the goals with establishment of the program in 2017 was to support aging-in-place and provide housing for differently-abled individuals. This aspect of the program has been difficult to interpret and to enforce. It becomes more problematic when adding detached units, which may be located above a

12 ZOA #47  
March 17, 2023

garage. Staff's proposed change to this section is to highlight the value of incorporating universal design features and encourage consideration of these features in the design and construction of accessory apartment and can be found in §4201(e). This approach was supported by ZORC.

#### **PUBLIC INPUT MEETING**

A public input meeting was held on Thursday, March 9, 2023 with one attendee. The attendee was interested in constructing a detached accessory unit and indicated the code amendment was timely. In summary, there was discussion about the attendee's specific property and how the regulations would apply. The sign-in sheet from the meeting is attached.

#### **ATTACHMENTS**

- Draft Ordinance #2022 for ZOA #47
- Staff Reports/Memos from 2017
- Current Accessory Apartment Program Information
- New Information including Study on the State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia, Charlottesville, VA User Guide, DHCD Updates to Virginia Building Code
- Sign-in Sheet from Public Input Meeting

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO  
UPDATE THE ACCESSORY APARTMENT PERMIT PROGRAM BY  
AMENDING §§ 1270, 1271, 3021, 3023, 3031, 3032, 3041, 3042, 3111, 3113,  
AND 4201 TO PERMIT DETACHED ACCESSORY APARTMENTS**

**WHEREAS**, Town Council believes that expanding the availability accessory apartments, with appropriate regulation and while retaining key program components such as owner occupancy, can aid in furthering community goals of housing choice, housing affordability and aging-in-place; and

**WHEREAS**, Town Council has directed staff to study the potential for permitting detached accessory apartments in residential neighborhoods;

**WHEREAS**, the public necessity, convenience, general welfare, and good zoning practice so require.

**BE IT ORDAINED** by the Council of the Town of Blacksburg:

1. That the Zoning Ordinance is amended and reordained by amending §§ 1231, 1270, 1271, 3021, 3023, 3031, 3032, 3041, 3042, 3111, 3113 and 4201, as follows:

***DIVISION 17. ACCESSORY APARTMENT PERMIT PROGRAM***

**Sec. 1231 Nonconforming lots of record.**

(a) In any district in which single-unit dwellings are permitted, a single-unit dwelling and customary accessory building may be erected on any single undeveloped lot of record at the effective date of this division or amendments thereto; but only if such lot cannot be combined with another adjoining undeveloped lot or lots under the same ownership in order to establish a lot or lots conforming to the requirements of this division. *Accessory apartments may also be erected on such lots if the requirements of the accessory apartment permit program, as set out at Zoning Ordinance §§ 1270, 1271 and 4201, can be met.*

This section shall apply even though such lot fails to meet the applicable zoning district requirements for area or frontage, or both; provided that all requirements, except area or frontage of the lot, or both, shall be complied with as for other residences in the same district.

(b) If two (2) or more undeveloped lots or combinations of developed and undeveloped lots and portions of lots with continuous frontage under single ownership are of record at the effective date of this chapter [Appendix] or amendments thereto, and if all or parts of the lots do not meet the minimum requirements for lot frontage and area herein established, the lots involved

shall be considered an undivided parcel for the purposes of this division, and no portion of such lots or parcels shall be used or sold in a manner to diminish compliance with the requirements of this division as to lot frontage and area.

(c) If two (2) or more lots or portions of lots with continuous frontage under single ownership are of record at the effective date of this chapter [Appendix] or amendments thereto, and if all or parts of the lots are required for the existing structure or structures to meet the minimum site development regulations herein established, the lots involved shall be considered an undivided parcel for the purposes of this division, and no portion of such lots or parcels shall be used or sold in a manner to diminish compliance with the requirements of this division.

### **Sec. 1270 Purpose and findings.**

(a) Accessory apartments are not “by right” uses and have not been permitted for many years. However, the Blacksburg Town Council has determined that, under certain circumstances, it may be appropriate to allow an accessory apartment in conjunction with a detached single family home through an annual permit program. Done successfully, an accessory apartment permit program can promote home ownership, owner residency, affordable housing, aging in place, mixed age and income neighborhoods, *providing housing for young professionals and critical segments of the workforce* ~~and university related student or faculty housing.~~

(b) The majority of Virginia Tech students live off campus in different types of housing. Based on its experience with absentee landlords and single family homes rented by students, the Blacksburg Town Council has found that owner occupied properties in the town are better maintained and ~~cause~~ *result in* fewer problems in residential neighborhoods. The owner occupancy requirement in this accessory apartment permit program exists as a counterbalance to prevent neighborhood problems such as noise and trash that may be created by the additional housing that will be permitted. Owner occupancy is also consistent with a primary goal of this program, which is to provide aging-in-place-options. It is for these reasons that the Town Council finds that the owner occupancy requirement will prevent the deterioration of neighborhoods and is substantially related to land use impact, making it a land use regulation instead of a regulation of the land owner. Because of the importance of owner occupancy in the Town’s creation of this accessory apartment permit program, this requirement shall not be considered to be severable.

(c) Because of these concerns about residential over-occupancy and impacts on neighborhood character, accessory apartments shall be permitted only under the conditions set forth in this division and Zoning Ordinance § 4201.

***Sec. 1271 General Provisions.***

(a) Accessory apartments are permitted only in the RR-1, RR-2 and R-4 zoning Districts *or as approved as part of a rezoning to the PR zoning district. Accessory apartments are only allowed on lots with a detached single family home and only one accessory apartment per lot or parcel is permitted.*

(b) Lots that are non-conforming with regard to minimum lot size are eligible for an accessory apartment provided that ~~no additions or changes to the footprint of the existing structure occur~~ *all other standards in the Zoning Ordinance are met and the use does not increase any non-conformities.*

(c) The primary dwelling unit or accessory apartment must be owner occupied.

(d) The owner must reside on the premises for at least nine calendar months cumulatively in a calendar year. If an owner will be in residence less than nine months in any calendar year, then the Planning and Building Department must be informed and the owner will not be permitted to rent the accessory apartment during that year.

(e) No accessory apartment may be created or rented without first obtaining a permit from the Town of Blacksburg. Applicants may register at any time during the calendar year. Registration must be renewed annually. The permit does not run with the land, so any new owner must complete an application for rental of an accessory apartment.

(f) The apartment permit registration program does not supersede any applicable private deed restrictions or covenants governing a property.

(g) *Accessory apartments may only be rented by the unit. The accessory unit cannot be rented by the bedroom.*

~~(g)~~ (h) *The accessory apartment permit program is not intended to facilitate the development of homestay units (regulated in Chapter 6 of the Town Code). Owners participating in the accessory apartment permit program are not eligible to rent the property as a homestay (regulated in Chapter 6 of the Town Code unit).*

~~(h)~~ (i) The owner shall sign an affidavit before a notary public stating that he or she occupies either the primary dwelling unit or the accessory apartment. The affidavit will also state that, should the owner choose not to participate in the program in the future, the unit will not be rented as an accessory apartment. Upon the sale of the property, a new owner shall be required to register and sign a new affidavit.

~~(i)~~ (j) As part of the accessory apartment permit program, property owners will consent to comply with the applicable standards of the program and consent to inspection at reasonable times by Town staff for compliance.

(j) (k) Failure to comply with the standards of the program, including all occupancy and use and design standards, may result in revocation of approval for the accessory apartment and the use must cease and no further application will be approved for a period of one year from the revocation. A written revocation notice will be sent to the property owner. Appeal of a revocation will be heard before the Board of Zoning Appeals in the manner outlined in Zoning Ordinance § 1243, et. seq.

(k) (l) "Owner" means the following:

- (1) An individual who possesses, as shown by a recorded deed, fifty (50) percent or more ownership in the property, and occupies the dwelling unit with a bona fide intent to make it his or her primary residence; or
- (2) An individual who is a trustor of a family trust that possesses fee title ownership to the property and was created for estate planning purposes by one (1) or more trustors of the trust. Such individual must occupy the dwelling unit owned by the family trust with a bona fide intent to make it his or her primary residence. Each living trustor of the trust shall so occupy the dwelling unit except for a trustor who temporarily resides elsewhere due to a disability or infirmity. In such event, the dwelling unit shall nevertheless be the domicile of the trustor during the trustor's temporary absence.
- (3) A person who meets the requirements of the preceding sub-sections (1) and (2) shall not be deemed an owner occupant if the property on which the dwelling unit is located has more than one (1) owner and all owners of the property do not occupy the dwelling unit with a bona fide intent to make the dwelling unit their primary residence.
- (4) A claim that a person is not an owner occupant may be rebutted by documentation, submitted to the Planning and Building department, showing that the person who occupies the primary dwelling unit has a bona fide intent to make that unit his or her primary residence as indicated by the following documents that show such person:
  - (i) is listed as a primary borrower on documents for any loan presently applicable to the property where the dwelling unit is located;
  - (ii) has claimed all income, deductions, and depreciation from the property on his or her tax returns for the previous year;
  - (iii) is the owner listed on all rental documents and agreements with tenants who occupy the dwelling unit, including any accessory apartment;



- (iv) is the owner listed on all insurance, utility, appraisal, or other contractual documents related to the property; and
  - (v) is a full-time resident of Virginia for state income tax purposes.
- (5) Any person, or group of persons, who fails, upon request of the Planning and Building department, to provide any of the documents set forth in the preceding sub-sections or who provides a document showing that ownership of a dwelling unit is shared among persons who do not all occupy the dwelling unit shall mean for the purpose of this section.

(4) (m) Before a permit is issued, the owner shall sign a notarized owner occupancy covenant that will be recorded in the Montgomery County Circuit Court land records. This covenant is intended to make the requirements of this program clear to prospective purchasers.

\* \* \*

#### **DIVISION 4. R-4 LOW DENSITY RESIDENTIAL DISTRICT**

\* \* \*

#### **Sec. 3042 – Site development regulations.**

- (e) The maximum dwelling unit occupancy shall be a family plus two (2) persons unrelated to the family; or no more than three (3) unrelated persons. For a detached single-family dwelling with a nonconforming accessory apartment, or an accessory apartment as allowed through the accessory apartment permit program, occupancy shall be ~~figured~~ *calculated* cumulatively including both the single-family dwelling and the accessory apartment for a total not to exceed three (3) unrelated persons.

\* \* \*

#### **DIVISION 11. PR PLANNED RESIDENTIAL DISTRICT**

\* \* \*

#### **Sec. 3111 - Permitted Uses.**

- (a) The following uses are permitted in the Planned Residential district. However, no use shall be permitted except in conformity with the uses specifically included in the final master plan approved pursuant to Section 1162, "Planned Zoning Districts."  
Residential  
Home Occupation  
Multi-family Dwelling

Single-family Dwelling, Attached  
Single-family Dwelling, Detached  
Townhouse  
Two-family Dwelling

*Accessory Apartments as an allowed use and approved as part of a rezoning to the PR district and as permitted by §1270 and in compliance with §4201.*

Civic\*

Community Recreation  
Day Care Center  
Educational Facilities, Primary/Secondary  
Family Day Care Home  
Life Care Facility  
Open Space  
Public Parks and Recreational Areas  
Public Recreation Assembly  
Religious Assembly  
Safety Services  
Shelter  
Utility Services, Minor

Office\*

Financial Institutions (without drive-through)  
General Office  
Medical Office  
Commercial\*  
Gasoline Station  
Grocery Store  
Neighborhood Convenience Store  
Personal Services  
Restaurant, Small  
Miscellaneous  
Accessory Structure

\*Without external speakers only. Any use which incorporates an external speaker may be permitted only with a conditional use permit.

**Sec. 3113 - Site Development Regulations.**

(h) For multifamily dwellings and townhouses, the maximum dwelling unit occupancy shall be a family, plus two (2) persons unrelated to the family; or no more than four (4) unrelated persons. For detached and attached single-family dwellings and two-family dwellings, the maximum dwelling unit occupancy shall be a family, plus two (2) persons unrelated to the family,

or no more than three (3) unrelated persons. *For a detached single-family dwelling with an accessory apartment (as approved in a PR rezoning and as allowed through the accessory apartment permit program), occupancy shall be calculated cumulatively, to include both the single-family dwelling and the accessory apartment, for a total not to exceed three (3) unrelated persons.*

**ARTICLE IV**  
**Use and Design Standards**  
**DIVISION 2. RESIDENTIAL USES**

**Sec. 4200 Residential uses.**

***Sec. 4201 Accessory Apartment.***

- (a) All accessory apartments subject to these Use and Design Standards shall be registered through the accessory apartment permit program pursuant to Zoning Ordinance § 1271 *and meet all requirements in this section.*
- (b) General standards:
  - (1) *Use and occupancy of each dwelling unit must comply with all applicable building code regulations.*
  - ~~(2)~~ (2) *The accessory apartment shall be clearly secondary and accessory to the primary dwelling unit as to location, height, square footage, floor area ratio, and building coverage and in keeping with the character of a single family neighborhood. and shall not change its character as a detached single family residence. The accessory apartment must be integrated into or be compatible with the primary structure using features such as roof lines, exterior materials, window patterning or exterior color.*
  - ~~(2)~~ ~~The accessory apartment must be within the primary structure. The accessory apartment shall not be located in a separate freestanding structure.~~
  - ~~(3)~~ ~~The maximum size of an accessory apartment shall be 800 square feet.~~
  - (3) *No accessory apartment shall exceed twenty-eight (28) feet in height, or twenty (20) feet in height at the eaves at the setback line, or the highest point of the primary dwelling unit roof. Height shall be measured in accordance with Zoning Ordinance § 2301 and the measurement shall be taken at the adjoining grade of the front entrance for the primary structure and for the accessory apartment.*

- (4) The accessory apartment shall have working smoke detectors in each room of the apartment. Carbon monoxide detectors are required with the use of gas heating or appliances.
  - (5) The accessory apartment shall have an egress window in any sleeping area.
  - (6) No commencement of use of an accessory apartment shall occur until the property owner has an approved accessory apartment permit from the Town of Blacksburg and any building permits have been issued for construction related to the accessory apartment and the work completed and approved by the Town.
  - (7) The underlying zoning district development standards for lot coverage, ~~height, setbacks and floor area ratio~~ that apply to the primary dwelling shall also include the accessory apartment in the calculations of ~~these~~ *this* standards.
  - (8) Off-street parking is not required for the accessory apartment. If any parking is proposed, the parking shall be of a pervious surface such as pervious pavers, pervious concrete or other pervious material as approved by the Zoning Administrator.
  - (9) Occupancy standards are set forth in the underlying zoning district regulations.
- (c) *In addition to the general standards set forth above in paragraph (b), the following shall apply to interior (attached) accessory apartments:*
- (i). *The accessory apartment must be entirely contained within the primary structure or an addition in accordance with these regulations.*
  - (ii). *The gross floor area of the accessory apartment shall not exceed eighty (80) percent of the gross floor area of the primary structure in which it is located. In no case shall the maximum square footage exceed 1,000 square feet.*
  - (iii). *The square footage of the accessory apartment shall count in the calculation of floor area ratio.*
  - (iv). *Setbacks for the accessory apartment shall comply with setbacks for the zoning district.*

(d) *In addition to the requirement set forth above in paragraph (b), the following shall apply to detached (exterior) accessory apartments:*

- (i). *The gross floor area of the accessory apartment may not exceed eighty (80) percent of the gross floor area of the primary structure, or a maximum 1,000 square feet of gross floor area. For a garage apartment, the gross floor area includes the square footage of the garage.*
- (ii). *The exterior accessory apartment shall be located behind the front building line of the primary structure in the side or rear yard.*
- (iii). *The total footprint of all accessory structures (including sheds, detached garages, etc.) shall not exceed thirty (30) percent of the rear yard area. The rear yard area includes the distance from the back of the primary dwelling unit to the rear yard property line and the distance between the side property lines.*
- (iv). *The square footage of the detached accessory apartment shall not count in the calculation of floor area ratio.*
- (v). *The setback requirements of the underlying zoning district shall be met on all public street frontages. However, if the accessory apartment is not located in a yard adjacent to a public right of way the minimum setbacks shall be:  
(1) Side yard: Seven and one half (7 1/2) feet.  
(2) Rear yard: Seven and one half (7 1/2) feet.*
- (vi). *Patios, decks, and balconies for the accessory apartment shall not be located on either of the two sides of the accessory dwelling unit that are closest to adjoining property owners.*

~~(10)~~ (e) Incorporation of universal design standards.

To promote aging-in-place, ~~and~~ housing for differently-abled individuals, and to create units that can serve the future housing needs of the owner, family members or renters, universal design features such as zero step entry, wider doorways and hallways, no step or low step showers and universal design door handles are ~~required in~~ encouraged in all accessory apartments. ~~based on the chart below. Any appeals to the applicability of these requirements shall be submitted to the Planning and Building Department~~

with the accessory apartment permit application and will be reviewed and acted upon by the Planning Commission.

Design Feature Required	Use of existing finished space	Conversion of unfinished to finished space	New Constructi on
Universal design door handles	X	X	X
Zero step entry+		X	X
36" wide entry doorway+			X
36" wide hallways+			X
No step or low step shower+		X	X
Sleeping area, full bathroom and kitchen on same level+		X	X

+ Excludes basement apartments where steps are needed to access the apartment.

2. That this ordinance shall be effective on and after the date of its adoption.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

Introduction: \_\_\_\_\_

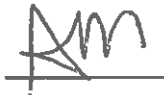
Public Hearing & Action: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

**APPROVED AS TO LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Director of Planning and Building

\_\_\_\_\_  
Town Attorney

**TO:** Planning Commission  
**FROM:** Anne McClung, Planning and Building Director   
**RE:** Zoning Ordinance Amendment #32/Ordinance #1816  
Accessory Apartment Permit Program  
**DATE:** March 3, 2017

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**Background**

At the work session on February 7, 2017, the Planning Commission reviewed the changes to the text of this Zoning Ordinance Amendment #32 based on the January 21, 2017 work session. On February 7, 2017, the Planning Commission opted to continue the public hearing to consider further changes to the ordinance. At the work session on February 21, 2017 the Planning Commission directed the following changes to the ordinance. The changes are summarized below and should be referenced in any motion on the Zoning Ordinance Amendment.

**Proposed Changes**

- Limit the zoning districts eligible for an accessory apartment to the RR-1, RR-2 and R-4 districts.

§ 1271(a)

- (a) *Accessory apartments are permitted only in the RR-1, RR-2 and R-4 zoning districts.*

- Do not require the homeowner to live in the main house. The property must still be owner occupied.

§1271(c)

- (c) *The primary dwelling unit or accessory apartment must be owner occupied. ~~The only exception shall be if the property owner lives in the accessory apartment and a family member lives in the primary dwelling unit. The owner may only receive rent for only one of the units.~~*

- Clarify that the underlying district standards for height, lot coverage, floor area ratio and setbacks all include the accessory apartment.

- Limit the location of the accessory apartment to the existing structure or an addition to the existing structure. Accessory apartments would not be allowed in a freestanding structure. This would include garage apartments, whether existing or newly constructed, if the garage is freestanding.



- No parking will be required for the accessory unit. If parking is provided it must be of a pervious surface.

## **Use and Design Standards**


### **Sec. 4201 Accessory Apartment.**

- (a) *All accessory apartments subject to these Use and Design Standards shall be registered through the accessory apartment permit program pursuant to Zoning Ordinance § 1270.*
- (b) *General standards:*
  - (1) *The accessory apartment shall be clearly secondary and accessory to primary dwelling unit and shall not change its character as a detached single family residence.*
  - (2) *The accessory apartment must be within the primary structure. The accessory apartment shall not be located in a separate freestanding structure.*
  - (3) *The maximum size of an accessory apartment shall be 800 square feet.*
  - (4) *The accessory apartment shall have working smoke detectors in each room of the apartment. Carbon monoxide detectors are required with the use of gas heating or appliances.*
  - (5) *The accessory apartment shall have an egress window in any sleeping area.*
  - (6) *No commencement of use of an accessory apartment shall occur until the property owner has an approved accessory apartment permit from the Town of Blacksburg and any building permits have been issued for construction related to the accessory apartment and the work completed and approved by the Town.*
  - (7) *The underlying zoning district development standards for lot coverage, height, setbacks and floor area ratio that apply to the primary dwelling shall also include the accessory apartment in the calculations of these standards.*
  - (8) *Off-street parking is not required for the accessory apartment. If any parking is proposed, the parking shall be of a pervious surface such as pervious pavers, pervious concrete or other pervious material as approved by the Zoning Administrator.*
  - (9) *Occupancy standards are set forth in the underlying zoning district regulations.*
  - (10) *Incorporation of universal design standards.*

*To promote aging-in-place and housing for differently-abled individuals, universal design features are required in accessory apartments based on the chart below. Any appeals to the applicability of these requirements shall be submitted to the Planning and Building Department with the accessory apartment permit application and will be reviewed and acted upon by the Planning Commission.*

<i>Design Feature Required</i>	<i>Use of existing finished space</i>	<i>Conversion of unfinished to finished space</i>	<i>New Construction</i>
<i>Universal design door handles</i>	X	X	X
<i>Zero step entry+</i>		X	X
<i>36" wide entry doorway+</i>			X
<i>36" wide hallways+</i>			X
<i>No step or low step shower+</i>		X	X
<i>Sleeping area, full bathroom and kitchen on same level+</i>		X	X

+ Excludes ~~apartments over garages and basement apartments~~ where steps are needed to access the apartment

**TO:** Planning Commission  
**FROM:** Anne McClung, Planning and Building Director   
**RE:** Zoning Ordinance Amendment #32/Ordinance #1816  
Accessory Apartment Permit Program  
**DATE:** February 3, 2017

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**Background**

At the work session on January 17, 2017, the Planning Commission reviewed the proposed accessory apartment regulations text and came to consensus on several recommended changes. The changes are summarized below and should be referenced in any motion on the Zoning Ordinance Amendment.

- Include single family structures in the R-5 zoning district as eligible for an accessory apartment.

§ 1271(a)

- (a) *Accessory apartments are permitted only in the RR-1, RR-2 and R-4 zoning districts. Accessory apartments are also permitted in the R-5 zoning district but in single family structures only.*

- Do not require the homeowner to live in the main house.

§1271(c)

- (c) *The ~~primary dwelling unit~~ property must be owner occupied. ~~The only exception shall be if the property owner lives in the accessory apartment and a family member lives in the primary dwelling unit.~~ The owner may only receive rent for only one of the units.*

- Allow accessory apartments to be within five feet of the side or rear property line provided the entry door and any patio/deck space is not located on the property line side of the structure. Also limit the height of an accessory apartment to 10 feet, as measured to the eave of the roof, with one foot of additional setback for every additional foot in height over ten feet.

§4201(b) (6)

- (6) *The underlying zoning district development standards for lot coverage, height, setbacks and floor area ratio that apply to the primary dwelling shall also include the accessory apartment in the calculations of these standards.*

However, any new accessory apartment structure or building addition may be located within five (5) feet of the rear of rear or side property line provided the following standards are met:

- (i) the height of the structure shall be no greater than ten (10) feet in height to the eave of the structure with one (1) additional foot of setback provided for every foot of height above ten (10) feet; and
- (ii) no door or outdoor gathering space, such as a patio or deck, shall be located on the property line side of the structure.

- Do not require off-street parking for the accessory apartment. Staff would suggest the Planning Commission consider only waiving the parking requirement if there are two existing off-street spaces serving the existing structure.

§4201(b) (7)

- (7) ~~One off-street parking space on an approved surface shall be provided for the accessory apartment. This parking space shall be in addition to the two required off-street parking spaces for a single family home. Tandem parking is allowed for two of the three parking spaces required.~~

Off-street parking is not required for the accessory apartment provided there are two (2) existing off-street parking spaces on the property.

The Town Attorney has reviewed the accessory apartment permit program zoning ordinance amendment text and converted it into ordinance form. Ordinance #1816 is attached. The Planning Commission may want to note that the Town Attorney has expanded text on what will constitute "owner occupancy" in §1271(k). He has also reviewed the standard of requiring the recording of a covenant and recommends new §1271(l) requiring a notarized covenant be recorded in the Montgomery County Circuit Court land records.

A public input meeting on the proposed accessory apartment permit program was held on January 25, 2017. The public in attendance was supportive of the proposed amendment. The sign-in sheet and summary notes are attached for your review.

At the work session the Planning Commission asked if staff could contact some other comparable university communities to inquire about accessory apartment permit programs in those communities and any issues with enforcement or any other lessons learned that might be useful. Ms. Elisabeth Willis contacted several communities and a summary of the telephone conversations is contained in her memo.

**Attachments:** Ordinance #1816  
Memo from Elisabeth Willis  
Input Meeting Summary Notes/Sign-in sheet 1-25-17

To: Anne McClung, Planning & Building Director

From: Elisabeth Willis, Housing & Community Development Project Manager

Date: February 2, 2017

Re: Discussions with planning department staff from Chapel Hill, NC, Athens, GA, and Moscow, ID regarding their accessory apartment ordinances

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In an effort to better understand how accessory apartment ordinances in communities with similar characteristics to Blacksburg are working, I spoke to the primary planning staff involved with the drafting and implementation of accessory apartments ordinances in three communities:


- Chapel Hill, North Carolina: John Richardson, Planning Manager for Sustainability
- Moscow, Idaho: Mike Ray, Planner II
- Athens, Georgia: Bruce Lonnee, Senior Planner

**Chapel Hill.** Chapel Hill's ordinance does not require owner occupancy but is similar to the draft Blacksburg ordinance in terms of size of the unit (750 S.F.) and required parking. They have not had a lot of applications for accessory apartments and have not had enforcement issues. When going through the ordinance adoption process residents expressed concerns about neighborhood impacts but given the few applications they have received that hasn't been an issue.

**Moscow.** Moscow went through an extensive community input process over a couple of years before adopting their ordinance in 2015. The Moscow ordinance requires owner occupancy of either unit. The definition of owner occupancy includes a requirement to live in the unit for at least six months of the year. This can be waived by the Community Development Director for military service, employment sabbatical, or family medical leave. If the owner doesn't live in one of the units only one unit can be occupied. The ordinance requires one off-street parking space for the accessory apartment. The square footage of the accessory apartment can't exceed 600 SF or 40% of the gross floor area of the principal unit whichever is less. They've only had 4-5 ADU's created since the ordinance was adopted two years ago and haven't had enforcement issues.

**Athens.** Georgia doesn't allow localities to limit owner occupancy through zoning; therefore their ordinance doesn't require owner occupancy. Accessory apartments are only allowed in multi-family and agriculture zones - not permitted in single family zones. Parking requirements are based on number of bedrooms and follow their multi-family zoning requirements. No enforcement issues.

**TO:** Planning Commission

**FROM:** Anne McClung, Planning and Building Director 

**RE:** Zoning Ordinance Amendment #32  
Accessory Apartment Permit Program

**DATE:** January 12, 2017

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**Background**

Town Council has directed that an amendment to the Zoning Ordinance be prepared to allow accessory apartments with single family homes. Accessory apartments have not been allowed in Town for many years. Accessory apartments were allowed in the Town up until 1976 (Ordinance #415). Concerns about over occupancy, parking problems and the impact on neighborhood character were issues that led to the discontinuance of this use. There are existing lawful non-conforming accessory apartments in Town. Lawful non-conforming apartments are those created when it was legal to do so and then rendered non-conforming when the regulations changed. To retain the lawful non-conforming status, the apartment would have to have been rented out since the time of the regulation change. The majority of the existing lawful non-conforming accessory apartments are found in the Miller-Southside and McBryde Village neighborhoods. The Town maintains a list of the addresses with lawful non-conforming accessory apartments. Because the apartments are an existing lawful non-conforming use they would not be subject to the regulations proposed in this amendment.

Many communities around the country are now allowing accessory apartments. The use is not new but is one that is often not allowed under current zoning regulations. The accessory apartment is also referred to as granny flat, in-law apartment, basement apartment, garage apartment or carriage house. There are many positive outcomes from allowing this type of residential unit when integrated into the neighborhood but there are also concerns, especially in a university town with a high demand for student housing. Student housing in neighborhoods is often where lifestyle conflicts can occur. The pros and cons of the proposed accessory apartment use are discussed below. Also provided in the staff report is a discussion of how a new accessory apartment permit program would be structured and the development standards that would apply to the apartments.

A draft of the proposed Zoning Ordinance Amendment text and a comparison chart of the parameters in the programs in other communities are attached for your review. The draft regulations have also been reviewed by the Zoning Review Committee (ZRC) and the Housing and Community Development Advisory Board (HCDAB). A summary document outlining the recommendations of each group is attached. Information on public input to date can be found later in the staff report.

**Proposed Amendment**

The amendment includes revision to a number of different sections of the Zoning Ordinance. The parameters of the permit program are contained in new proposed Section 1270. The definitions section

of the Zoning Ordinance, Section 2103, would be amended to add a definition of the proposed “accessory apartment permit program”. The existing definition of accessory apartment is included in this amendment for reference but no changes to the definition are recommended. The final regulatory section proposed in the amendment is to create Use and Design standards that would govern the use (Section 4201). The standards are discussed by topic below.

The parameters of both the permit program and the development standards have been drawn from research of programs in other communities around the country. Housing and Neighborhood Services (HNS) staff have conducted this research and provided the attached summary chart which shows that the standards proposed in the Town’s ordinance are common standards.

#### Pros/Cons of Accessory Apartments

There are pros and cons to adding accessory apartments into single family zoning districts. It is a way to encourage owner occupancy and to make home ownership more affordable. Both of these situations are of ongoing concern in the Town. Accessory apartments also provide options for owners who want to age-in-place but may need family or caregivers to live with them. Accessory apartments are typically affordable and can contribute to the provision of affordable housing in our community. As a university town we do expect that many of the units will be occupied by undergraduate or graduate students, especially apartments in neighborhoods within walking distance to the university campus and downtown. Town Council considered an option put forth for consideration to tie the program to specific community goals and limit the occupants to low and moderate income people earning up to 120% of the area median income, people 55 and older as a means to support aging-in-place, people with disabilities, caregivers supporting older people and people with disabilities and immediate family members. After discussion, Town Council opted to keep the program as flexible and as simple as possible, making the accessory apartment housing available to all. One of the strongest components of the program discussed is the requirement for owner residency. Typically, having the owner live on-site influences renter behavior and helps integrate the unit and its occupants into the neighborhood fabric.

Some of the provisions of the program will be difficult to enforce once a permit is issued. Staff anticipates the same type of difficulties as we currently experience when pursuing investigations of over-occupancy complaints and being able to prove over-occupancy violations. We may have more over-occupancy issues with the creation of accessory apartments. There may also be situations where a unit is created lawfully under the program but then drops out of the program and continues to be rented illegally. There may also be times when an owner represents that they live on-site but do not. Staff anticipates responding to these issues on a complaint driven basis.

Commercialization of residential neighborhood is also a concern. The Zoning Ordinance does allow home occupations by right in all residential zoning districts. A home occupation is the operation of business in the home subject to certain criteria. Allowing accessory apartments will provide another business/revenue opportunity for single family home owners. To limit further commercialization, the accessory apartment permit program would not allow property owners to have an accessory apartment and also operate a homestay. A homestay is the rental of all or a portion of a residential unit for short term occupancy primarily occurring through a web-based platform such as AirBnB, HomeAway or Craigslist. On December 13, 2016 the Town Council adopted regulations for the homestay use which became effective in January. Information on the new homestay use can be found on the Town’s website.

#### **Specific Provisions and Development Standards**

The standards included in the draft amendment text reflect the recommendations of staff on pertinent issues such as where the use will be allowed, how the standards in the underlying zoning district apply,



and what development standards specific to the accessory apartment should apply. The standards are discussed by topic below.

Zoning Districts - The amendment proposed would allow one accessory apartment with a single family home in the RR-1, RR-2 or R-4 zoning district. The R-5 district and multi-family districts were not included given the level of density and intensity already allowed by-right in these districts with housing types such as duplexes, apartments, townhomes etc. Accessory apartments could also be requested as part of rezoning to the Planned Residential (PR) district and would be handled as a proposed use along with the other land use types specified in the PR rezoning application. The ZRC recommends including the R-5 district in the program when limited to single family homes in the district. The HCDAB did not concur and recommends the districts as outlined in the staff recommendation.

#### Non Conforming Lots

The amendment would allow any single family home in a qualifying zoning district that is non-conforming with regard to lot size to have an accessory apartment. The amendment limits the use to existing structures and would not allow additions or expansion to the structure even if the expansion met other district standards such as setbacks or floor area ratio.

The ZRC recommends allowing accessory apartments on non-conforming lots. However, new construction would be allowed. Any new construction would be required to comply with the development standards for the district and could not exacerbate any other existing non-conformity such as non-conforming setbacks, non-conforming lot coverage or non-conforming floor area ratio. The HCDAB concurs with this recommendation.

#### Owner Residency

As previously noted, the owner must live on-site to qualify for the accessory apartment program. In addition the owner must be in residence nine months of the calendar year. No single absence may be greater than 30 days.

The ZRC and the HCDAB recommend striking the wording that limits an owner absence at any one time to 30 days in a calendar year. This would be more flexible and accommodate the needs in a university community.

The proposed regulations also state that the owner must live in the primary unit. The only exception would be if the homeowner lives in the accessory apartment and family members lived in the primary home. The ZRC and HCDAB recommend eliminating this restriction and allowing more flexibility in the residency of each unit.

Density – Accessory apartments will not count towards the allowed density in the zoning district although the units do meet the definition of a dwelling unit. It is anticipated that the accessory apartment with the limitations proposed, will not have the same level of impact as a full second dwelling unit. This exemption should be specifically called out in the Zoning Ordinance to ensure there is no conflict or ambiguity in how density is calculated.

Occupancy - The occupancy standard will remain as it applies today. The resident(s) in the accessory apartment count in the overall allowed number of individuals. The standard in the RR-1, RR-2 and R-4 district is a family plus two persons unrelated to the family or three unrelated persons. The definition of family is provided below for your information.

FAMILY—One or more persons related by blood, marriage, or adoption, or under approved foster care.

The ZRC recommends allowing a greater number of occupants unrelated to the family occupying the primary structure if the occupants in the accessory apartment are related to each other. The recommendation is to allow a maximum of three persons unrelated to the family instead of the existing two persons, provided the three individuals are related to each other. For example, this would allow a family to occupy the primary structure and rent an accessory apartment to a couple with a baby. There would be three persons living in the accessory apartment that are unrelated to the family but are related to one another.

The HCDAB recommends the occupancy standard as contained in the staff recommendation.

Unit Size - Staff is suggesting that a size limit be included. The proposed limit is 800 square feet which should allow for a very reasonably sized apartment. Staff did not want to limit the size to such a small square footage that accessory apartments would include only efficiency units. The size proposed allows for separate bedrooms and for a larger unit if constructed with wider hallways and facilities to accommodate a disabled resident. The concern of having no size limit is that an accessory apartment should indeed be accessory to the primary home and of smaller size than the primary home. In addition, larger units will invite greater occupancy and potentially exacerbate over-occupancy problems.

Parking – The wording as drafted states that one off-street parking space, on an approved surface, is required for the accessory apartment. This is in addition to the provision of two off-street spaces for the primary home. The spaces for the primary home may be tandem spaces and do not include any space in a garage. On-street parking may not be counted as on-street spaces are available to the general public and not reserved for tenant parking. There are also existing neighborhoods where on and off-street parking is already an issue. The problem should not be exacerbated by creating more parking demand when existing demand cannot be met. The HCDAB concurs with the recommendation to require parking.

The ZRC recommends not requiring any additional parking for the accessory apartment. The ZRC would like to discourage auto use and has concerns about increasing impervious area. If parking is provided, the ZRC recommends that the material should be pervious pavers or porous concrete.

Lot Coverage, Setbacks, Height and Floor Area Ratio - Standards for items such as lot coverage, setbacks height and floor area ratio will be as stated in the underlying zoning district. This ensures that any additions for the purpose of having an accessory apartment do not make the home any larger, taller, or closer to the property line than if the owner were constructing an addition to the primary home for the owner's use and not for rental purposes.

The ZRC recommendation includes correcting an oversight and including lot coverage in the applicable development standards from the underlying zoning district. This has been incorporated into the ordinance text.

The ZRC recommends that accessory apartments have a five foot setback from the property line in the rear and side yards as opposed to the typical 10' setback. The HCDAB recommends retaining the existing setbacks.

The ZRC also had discussion about the need to limit the height of structures closer to the property line. The conversation focused on new construction. After discussion, the ZRC recommends that accessory apartments be limited in height to 10' at the eave of the structure and that an additional one foot of setback be provided for every additional foot of height. In no case shall the accessory apartment exceed the maximum height of structures allowed in the zoning district. To aid in privacy for adjoining

neighbors, the entrance to the apartment may not be located on the property line side of the structure. No patios or decks are allowed on the property line side of the structure. The HCDAB concurred with the ZRC proposal with regard to height.

The ZRC further recommends that if the accessory apartment is detached from the primary structure that it not be considered in the calculation of floor area ratio. The HCDAB recommends the text as written with the FAR considered cumulatively.

**Safety Measures** - The regulations do require smoke detectors in each room, carbon monoxide detectors when gas heating or appliances are used and an egress window in any sleeping area. These are reasonable basic safety standards. There may be other standards added based on further conversation with the Building Official. The recommendation to add the requirement for carbon monoxide detectors came from the ZRC.

**Universal Design Features** – One of the goals of the program is to allow for more aging-in-place and for older relatives to be able to move in with family members and retain the independence that comes with a separate living space. Incorporating universal design features in accessory apartments will further this goal. The level of features required is tied to the level of modification or improvements proposed. The requirements are outlined in a chart format. At a minimum, in all cases, the door handles in the apartment must be converted to lever style handles. If unfinished space is being converted to finished space for the apartment then a low or no-step shower must be provided. If new construction is proposed then a wider entryway and hallways must be provided to accommodate anyone who is wheelchair bound. There are exceptions to some of the universal design features which would not be feasible for garage apartments or basement apartments with steps to the entry.

#### **Public Input Meetings**

To gather general thoughts from the community towards allowing accessory apartments prior to any ordinance drafting, staff held two public input sessions on Wednesday evening, October 19, 2016 and Sunday afternoon, October 23, 2016. The meetings posed the idea of allowing the use and solicited thoughts on how the use could or should be regulated. There was support for allowing the use and an understanding that some regulation would be needed. There were concerns that too many restrictive standards or regulations would make the use unfeasible. There were differing opinions on specific aspects of regulation such as limiting unit size and requiring parking. There were concerns expressed about undergraduate student occupancy of the apartments and potential neighborhood problems with over occupancy and parking. Notes from the meetings are attached. At the time of these meetings there was no draft text prepared.

**A public meeting on the now developed draft text will be held on January 25, 2017 at 7:00 pm to solicit input on the specific regulations proposed.** Staff will update the Planning Commission with a sign-in sheet and notes from this meeting.

#### **Zoning Review Committee**

The Zoning Review Committee (ZRC) is a sub-committee of the Planning Commission. The group is comprised of Planning Commissioners and citizens. The Committee met on December 5 and December 12, 2016 to review the proposed accessory apartment regulations. A summary of the Committee's recommendations is attached.

#### **Housing and Community Development Advisory Board**

The Board met on January 5, 2017 to review the proposed accessory apartment regulations. A summary of the Board's recommendations is attached.

**Attachments:**

Draft Ordinance Text dated 1-12-17

Summary chart from other jurisdictions

ZRC Recommendations

HCDAB Recommendations

October 2016 Input Meetings Summary Notes

## **Housing and Community Development Advisory Board (HCDAB)**

### **Summary of Recommendations**

Below is a summary of the recommendations from the January 5, 2017 HCDAB meeting. In summary the HCDAB recommends approval of Zoning Ordinance Amendment #32 to allow accessory apartments with the changes and provisions listed below.

Zoning Districts/§1271(a) - The HCDAB recommends not adding single family homes in the R-5 zoning district as eligible for accessory apartments and only allowing accessory apartments in RR-1, RR-2, and R-4 zoning districts.

Non-Conforming Lots/§1271(b) - The HCDAB supports allowing accessory apartments on non-conforming lots. Any single family home in a qualifying zoning district that is non-conforming with regard to lot size could have an accessory apartment. However, any new construction would be required to comply with the development standards for the district and could not exacerbate any other existing non-conformity such as non-conforming setbacks, non-conforming lot coverage or non-conforming floor area ratio.

Owner Occupancy/§1271(c) - The HCDAB recommends allowing the property owner to occupy either the primary structure or the accessory apartment with no restriction.

Owner Residency /§1271(d) - The HCDAB supports striking the wording that limits an owners absence at any one time to 30 days in a calendar year. The other restrictions on residency are sufficient to address the issue.

Occupancy Limit/§3023(f) - The HCDAB recommends keeping the occupancy limits of the proposed draft ordinance and not allowing any provisions for greater occupancy if individuals in the accessory apartment are related to each other. The HCDAB felt this would be easier for staff and residents to understand as the occupancy limits would not differ if an accessory apartment was in place.

Unit Size/§4201(b)(2) – After discussion the HCDAB was comfortable leaving the 800 square foot size limitation. The HCDAB felt the limit was sufficient for various circumstances and was easy for staff to calculate and citizens to understand (as opposed to calculating percentages of the main houses square footage).

Safety Measures/§4201(b)(3) – The HCDAB agrees that carbon monoxide detectors should be required in any accessory apartment with gas heat or appliances. The HCDAB also supports further conversation with the Building Official regarding any other pertinent safety features that may be needed for the accessory apartment to meet the building code.

Height, Setbacks and Floor Area Ratio/§4201(b)(6) – The HCDAB recommends that accessory apartments be subject to the same setbacks as the main structure. The applicable setback would be those in the underlying zoning district in which the accessory apartment is proposed. The HCDAB agrees with the recommendation developed by the Zoning Review Committee (ZRC) that accessory apartments

be limited in height to 10' at the eave of the structure and that an additional one foot of setback be provided for every additional foot of height above 10'. The HCDAB also agrees with the ZRC that in no case shall the accessory apartment exceed the maximum height of structures allowed in the zoning district. The HCDAB concurs with the ZRC recommendation that the entrance to the apartment may not be located on the property line side of the structure to aid in privacy with adjoining neighbors. The HCDAB also agrees with the ZRC that no patios or decks are allowed on the property line side of the structure.

The HCDAB recommends that if the accessory apartment is detached from the primary structure that it is considered in the calculation of Floor Area Ratio. The HCDAB feels this is easier for staff to calculate and enforce and follows the rules of the underlying zoning and is not in agreement with the ZRC on this matter.

Lastly, the HCDAB agrees with the ZRC recommendation that lot coverage be added to (b) (6) and the existing limit on lot coverage for the underlying zoning district include the accessory apartment.

Parking/§4201(b)(7) - The HCDAB recommends requiring one additional parking space for the accessory apartment as proposed in the draft ordinance. The HCDAB does not concur with the ZRC recommendation to eliminate the parking requirement. The HCDAB would like to see less auto use in town but believes this is not practical in many cases.

Universal Design Features/§4201(b)(9) – The HCDAB recommends keeping universal design features as proposed in the draft ordinance. The HCDAB feels that the universal design requirements would not negatively impact the unit size because the proposed size limit (800 square feet) can accommodate universal design.

**Summary of Recommendations from Zoning Review Committee (ZRC)**

Below is a summary of the recommendations from the December 5<sup>th</sup> and 12<sup>th</sup> ZRC meetings. In summary the ZRC recommends the Planning Commission approve the Zoning Ordinance Amendment with the following modifications.

Zoning Districts/§1271(a) - The ZRC recommends adding single family homes in the R-5 zoning district as eligible for accessory apartments. This would not include other residential use types in the R-5 district such as two-family dwellings.

Non-Conforming Lots/§1271(b) - The ZRC recommends allowing accessory apartments on non-conforming lots. Any single family home in a qualifying zoning district that is non-conforming with regard to lot size could have an accessory apartment. However, any new construction would be required to comply with the development standards for the district and could not exacerbate any other existing non-conformity such as non-conforming setbacks, non-conforming lot coverage or non-conforming floor area ratio.

Owner Occupancy/§1271(c) - The ZRC recommends allowing the property owner to occupy either the primary structure or the accessory apartment with no restriction.

Owner Residency /§1271(d) - The ZRC recommends striking the wording that limits an owners absence at any one time to 30 days in a calendar year.

Clarification on Deed Restriction/§1271(f) – Staff continues to work with the Town Attorney on the provision requiring a deed restriction to determine if the restriction is helpful and should continue to be included in the regulations. The ZRC recommends that if the deed restriction serves a valuable purpose then it should be clarified and retained. If not, the requirement should be deleted from the proposed regulations.

Occupancy Limit/§3023(f) - The ZRC recommends allowing a greater number of occupants unrelated to the family occupying the primary structure if the occupants in the accessory apartment are related to each other. The recommendation is to allow a maximum of three persons unrelated to the family instead of the existing two persons provided the three individuals are related to each other. For example, this would allow a family to occupy the primary structure and rent an accessory apartment to a couple with a baby. There would three persons living in the accessory apartment that are unrelated to the family but are related to one another. This change is recommended for the RR-1, RR-2, R-4 and R-5 zoning districts.

Unit Size/§4201(b)(2) – There was discussion at the meeting regarding the maximum size of an accessory apartment and perhaps differentiating between the size allowed when the accessory apartment is part of an existing structure vs. new construction of an accessory apartment. The 800 square foot size limit helps ensure the apartment is indeed accessory to the primary home

and smaller than the primary home. In addition, larger units will invite greater occupancy which is difficult to enforce. After discussion the ZRC was comfortable leaving the 800 square foot size limitation.

Safety Measures/§4201(b)(3) – The ZRC recommends adding a requirement for carbon monoxide detectors in any accessory apartment with gas heat or appliances. The ZRC also recommends further conversation with the Building Official regarding other pertinent safety features that may be needed for the accessory apartment to meet the building code.

Height, Setbacks and Floor Area Ratio/§4201(b)(6) – The ZRC recommends that accessory apartments have a five foot setback from the property line in the rear and side yards as opposed to the typical 10' setback. The ZRC also recommends that accessory apartments be limited in height to 10' at the eave of the structure and that an additional one foot of setback be provided for ever additional foot of height. In no case shall the accessory apartment exceed the maximum height of structures allowed in the zoning district. To aid in privacy for adjoining neighbors, the entrance to the apartment may not be located on the property line side of the structure. No patios or decks are allowed on the property line side of the structure. The ZRC further recommends that if the accessory apartment is detached from the primary structure that it not be considered in the calculation of Floor Area Ratio. Lastly, the ZRC recommends that lot coverage be added to (b) (6) and the existing limit on lot coverage for the underlying zoning district include the accessory apartment.

Parking/§4201(b) (7) - The ZRC recommends not requiring any additional parking for the accessory apartment. The ZRC would like to discourage auto use. The addition of parking will also increase impervious area. If parking is provided, the material should be pervious pavers or porous concrete.

Universal Design Features/§4201(b)(9) – The ZRC had some discussion of the impact on unit size and height with a requirement for new construction that a sleeping area, bathroom and living area all be located on one floor. Staff has provided some illustrations of smaller units that still meet the universal design goals without forcing a larger ground level unit. The ZRC decided that the inclusion of the universal design requirements would not negatively impact unit size. The ZRC did recommend clarification about the applicability of requirements in the chart.

1/12/17



**TO:** Zoning Ordinance Review Committee

**FROM:** Paul Patterson, Zoning Administrator 

**RE:** Zoning Ordinance Amendment #47  
Current Accessory Apartment Program

**DATE:** February 27, 2023

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## **BACKGROUND**

### **Existing Potential Legal Nonconforming Accessory Apartments.**

Blacksburg maintains a list of 158 properties with Accessory Apartments that were registered with the Town back in 1993. It is possible these registered properties may still have status of a legal nonconforming accessory apartment. However, if the property was not used as an accessory apartment for any period greater than two years since 1993, then the legal status of a nonconforming accessory apartment use would have been lost.

### **New Accessory Apartments.**

On July 1, 2017, Blacksburg's Ordinance 1816 became effective allowing for the possibility of new Accessory Apartments (Accessory Dwelling Units – ADUs) to be constructed and located within or attached to a principal house in the RR-1 & RR-2 Rural Residential, and R-4 Low Density Residential Zoning Districts.

Since July 1, 2017, Blacksburg has had a total of eight new accessory apartments.

### **Attached are the following:**

- Spreadsheet of the new accessory apartments since 2017
- Accessory Apartment Permit Application
- Sample copy of a Declaration of Restrictive Covenant – Accessory Apartment
- Planning Commission's Direction to Staff on Universal Design Features

<b>New Accessory Apartments Since 2017</b>						
				<b>Owner</b>		<b>Date of</b>
	<b>Street</b>	<b>#</b>	<b>Applicants/Owners</b>	<b>Since</b>	<b>Zone</b>	<b>Application</b>
1	Burruss	712	Stephen and Ellen Davidson	June 2018	R-4	June 2019
2	Circle Drive	716	Gregory and Lisa Evanylo	January 1993	R-4	August 2017
3	Harding Road	1310	Jensen/John Szefc	Oct. 2006/June 2018	R-4	Fall 2017
4	Honeysuckle Drive	1402	Alexander Sang and Sheri Kipkosgei	November 2015	RR-1	July 2018
5	Jefferson Street	708	Julia Burgos	January 2019	R-4	August 2020
6	Lacy Lane	1915	Wilson/Nathan Larson & McGrath	April 2017/2020	RR-1	October 2017
7	Mabry Lane	700	Mark and Sarah Woolwine	November 2017	RR-1	June 2018
8	Piedmont	415	Gregory and Mandy Tew	December 2017	R-4	June 2019



**Town of Blacksburg  
Planning and Building Department  
ACCESSORY APARTMENT PERMIT APPLICATION  
July 3, 2017**

Permit Number: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Accessory Apartments

The Accessory Apartment Program became effective July 1, 2017 and is regulated by Town Ordinance #1816 (Sections of the Zoning Ordinance). A permit is required. No occupation of an accessory apartment can occur until an application has been reviewed and a permit granted. Permits must be renewed annually.

Instructions

Please complete and submit this application to the Planning and Building Department at 400 S. Main St., Blacksburg, Virginia. Currently, all applications must be submitted in-person. Electronic submission will be available this fall. After you submit your application, a staff member will be assigned to review your application, and will contact you within two business days. The staff contact will work with you during the process and schedule the in-house visit which is required prior to issuance of a permit.

Deed Restrictions

A deed restriction is required to be recorded to establish an accessory apartment. A sample deed restriction will be provided to you by the staff contact. The deed restriction form must be completed and returned to the Planning and Building Department along with a check made payable to Montgomery County Circuit Court, in the amount of \$27.00 to be used to pay the filing fee. After confirming that the form has been filled out correctly, Town staff will record the Declaration of Restrictive Covenant. A copy will be provided to you with the final Accessory Apartment Certificate.

Other Permits Needed

If you are planning any changes to your home for the accessory apartment please contact the Building Division at 540-443-1325 first to determine if building permits are needed for the work you plan to have done. If you plan to add any parking to your lot, (not required for the accessory apartment), you will need a zoning permit.

For general information on the Accessory Apartment Program please call us at 540-443-1300.

**PART I – APPLICANT AND PROPERTY INFORMATION**

Applicant Name: \_\_\_\_\_  
(applicant must be the property owner or have legal authority to represent the property owner)

Property Ownership as shown on Montgomery County Property Records (all owners must be listed below):

\_\_\_\_\_

Street address of property: \_\_\_\_\_

Tax Parcel #: \_\_\_\_\_

Zoning district: \_\_\_\_\_

Preferred contact phone number: \_\_\_\_\_

Preferred email contact: \_\_\_\_\_

Type of Accessory Apartment:

- a. ground level: part of existing house
- b. ground level: attached new construction
- c. basement
- d. above attached garage (attached garage only)

**PART II – REQUIRED MATERIAL**

**THE APPLICATION WILL NOT BE ACCEPTED IF THE REQUIRED MATERIALS ARE NOT PROVIDED**

1. Attach a property sketch to include the following:
  - a. lot lines and location of all existing and proposed structures with square footage of each listed and setbacks from property lines.
  - b. square footage of accessory apartment.
  - c. room layout of the accessory apartment.
  - d. location of existing off-street parking spaces.
  - e. location off-street parking space(s) for accessory apartment *if additional parking is proposed.*
  - f. location of entry to accessory apartment.
2. Attach a description of any interior alterations planned for the accessory apartment.
3. Accessory apartments are subject to the installation of universal design features based on the type of improvements proposed for the apartments:
  - a. All apartments must have universal design door handles (lever handles as opposed to knobs)

- b. New construction: zero step entry (unless the accessory dwelling is located in a basement or above a garage)
- c. New construction: 36" entry doorways
- d. New construction: A bedroom, bathroom, and kitchen on one floor
- e. New construction: minimum 34" hallways
- f. New construction: zero step or low step shower

3. If an addition to the home is proposed, attach a detail of the design of the accessory apartment and relationship to the existing residence (i.e., trim, roof pitch, height, finish material). Pictures or elevation drawings are recommended for this requirement.

4. Attach building permit application or zoning permit application, if needed.

**Part III - CHECKLIST**

Complete the checklist below by filling in the spaces in the right hand column. This will ensure that you have all of the information needed for the Town to approve your application and verify that you are agreeing to continued compliance with all of the program requirements.

	REQUIREMENT	TO BE COMPLETED BY APPLICANT
1	Fee to be paid upon application submittal. This fee does not include building permit fees. Please speak with a Planner to understand all fees involved.	No fee for application received by 9/1/17
2	Accessory Dwellings are permitted in the following zoning districts: RR-1, RR-2, R-4 You can check the zoning of your property at: <a href="http://www.webgis.net/va/Blacksburg">http://www.webgis.net/va/Blacksburg</a> (type in your address and turn on the zoning layer)	Zoning District of property: _____  Zoning Confirmed <input type="checkbox"/> ____ Initial
3	A house on a lot of record may have only one accessory apartment.	Confirmed <input type="checkbox"/> ____ Initial
4	The accessory apartment shall not exceed 800 square feet in area.	Confirmed <input type="checkbox"/> ____ Initial
5	The accessory apartment shall be clearly secondary and accessory to primary unit and shall not change its character as a detached single family residence.	Confirmed <input type="checkbox"/> ____ Initial
6	The principal home or the accessory apartment shall be owner occupied. For the purposes of this section an owner is defined as the individual listed on the deed for the property and must own 50% or more of the property. The property shall be the owner's permanent and principal residence.	Confirmed  I agree <input type="checkbox"/> ____ Initial

7	The listed owner must reside on the premises for nine calendar months cumulatively in the year. Please read the ownership information carefully. No exceptions are allowed as owner residency is a key component of the program.	I agree <input type="checkbox"/> ___ Initial
8	The owner shall file a certification of owner-occupancy with the Planning and Building Department prior to the issuance of the permit to establish an accessory apartment and shall record a deed restriction.	I agree <input type="checkbox"/> ___ Initial
9	The total number of persons who may occupy the principal home and the accessory apartment shall be figured <u>cumulatively</u> including both the primary home and the accessory apartment. The occupancy limit is a family plus one unrelated person or a total not to exceed three (3) unrelated persons. A family is defined as one or more persons related by blood, marriage, domestic partnership, adoption, or under approved foster care.	I agree <input type="checkbox"/> ___ Initial
10	Any property with an accessory apartment under the Accessory Apartment Registration Program <u>may not rent the primary home or the accessory apartment for Homestay purposes at any time</u> (refer to Town Code Chapter 6, Article VI for information on the town's Homestay regulations). Homestay includes the use of online rental platforms such as AirBnb, Homeway, Craigslist, etc.	I agree <input type="checkbox"/> ___ Initial
11	The owner of an accessory apartment shall file an owner's verification of occupancy with the Planning and Building Department no later than April 1 of each subsequent year. Any person that falsely certifies that he or she resides in a unit at the stated address to satisfy the requirements of this section shall be subject to the violation provisions of Section 1271(j) of the Zoning Ordinance.	I agree <input type="checkbox"/> ___ Initial
12	Applicants shall be subject to the violation provisions of Section 1271(j) of the Zoning Ordinance if: a. the accessory apartment is substantially altered and is no longer in conformance with the plans/permit approved by the planning director or the building official; or b. the applicant does not comply with the owner occupancy requirements.	I agree <input type="checkbox"/> ___ Initial
13	The accessory apartment permit shall be void if the applicant ceases to own the property.	I agree <input type="checkbox"/> ___ Initial

Applicant Signature \_\_\_\_\_

Date: \_\_\_\_\_

PREPARED BY AND RETURN TO  
Lawrence S. Spencer, Jr., Town Attorney  
300 South Main Street  
Blacksburg, VA 24060

*Exempted from recordation taxes under Virginia Code Section 58.1-811 (A) (3)*

DECLARATION OF RESTRICTIVE COVENANT

This Declaration is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ (hereinafter the "Owner(s)") in favor  
of the TOWN OF BLACKSBURG, a Virginia municipal corporation (hereinafter the "Town").

WHEREAS, the Owner(s) wish to rent an accessory apartment contained in their  
property located at \_\_\_\_\_, Blacksburg, Virginia, identified as Tax Map  
Number \_\_\_\_\_ (the "Property").

1. COVENANT. The Owner(s) hereby acknowledge and declare that an accessory  
apartment shall only be permitted and established at the Property in accordance with the  
Blacksburg Zoning Ordinance, and specifically as follows:

- (a) Either the primary dwelling unit or the accessory apartment shall be owner  
occupied.
- (b) An Owner shall reside at the Property at least nine months of each calendar year.
- (c) The permit issued pursuant to Blacksburg Zoning Ordinance §§ 1271 and 4201  
does not create a property right, is subject to being revoked, and must be renewed annually.

2. BINDING NATURE OF COVENANT. This covenant is to run with the land  
from the date it is recorded and shall be binding on the Owner(s), any heirs or assigns and all  
subsequent owners. The Owner(s), heirs, and assigns agree to inform all prospective purchasers  
about this covenant.

IN WITNESS WHEREOF, the Owner(s) have executed this Declaration of Restrictive  
Covenant, the day and year first above written.

\_\_\_\_\_  
[Printed Name]

COMMONWEALTH OF VIRGINIA  
COUNTY OF MONTGOMERY

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Registration No.  
My Commission Expires:

\_\_\_\_\_  
[Printed Name]

COMMONWEALTH OF VIRGINIA  
COUNTY OF MONTGOMERY

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Registration No.  
My Commission Expires:



## INSTRUCTIONS FOR DECLARATION OF RESTRICTIVE COVENANT

Outlined below are some of the basic requirements:

1. Type or print clearly in black or blue ink.
2. On the first page of the Declaration of Restrictive Covenant, fill in the full name of all owners, the complete street address of the property, and the Tax Map Number.
3. Each owner must sign the bottom of page 2 in the presence of a Notary Public. If there are more than two owners, town staff can revise the form for you.
4. Bring the completed covenant to the Planning and Building Department for review.
5. If the covenant is in proper form, town staff will record it and provide a copy to you. Staff can also assist you with making required changes.

**Planning Commission Direction to staff on Universal Design Features:**

“For new construction of an accessory apartment located above the ground floor where steps are required to access the accessory apartment, zero step access is not required to be initially installed if the person(s) who will be residing in the apartment does not need to have the zero step access. However, as aging-in-place was one of the primary considerations that allowed for the accessory apartment program, zero step entry access does not have to be completed with initial construction, but during the rough-in inspection process all infrastructure necessary to install a zero step entry at a later date must be in place. The annual renewal of the accessory apartment permit will include a self-certification statement that zero step entry access will not be needed by the resident(s) for an accessory apartment above the ground floor where steps are currently required to access the apartment. Installation of the zero step entry access will then be installed, if and when it is needed. The other universal design features, other than zero step entry would be required for new construction of an accessory apartment located above the ground floor and steps are needed to access the apartment.”

# **State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia**

Prepared for:

**Accessory Dwelling Unit Stakeholders Advisory Group**

Sponsored and Led by:

**Virginia Department of Housing and Community Development**

Prepared by:

**George Mason University  
Center for Regional Analysis**



In collaboration with:

**Virginia Polytechnic University  
Virginia Center for Housing  
Research**



and

**Housing Forward Virginia**



**November 2021**

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## Contents

Acknowledgement .....	i
Introduction.....	1
Section 1: Key Informant Interviews .....	1
ADU Counts.....	2
Undercounted:.....	2
ADU Registration .....	3
Current & Future Market Demand.....	3
Actions & Ordinances.....	4
Issues regarding Policies & Codes.....	5
Commercial Use.....	5
Architecture.....	6
Role of the State.....	6
Section 2: Literature Review.....	7
Expected benefits from ADUs and outcomes in reality.....	7
ADUs can provide affordable housing, but only affordable for acquaintances. ....	8
Most residents are concerned about overcrowding, not mixed-income communities. ....	9
ADUs and Regulation .....	9
Regulations to Protect the Neighborhood, But Why Controversial? .....	11
Parking Requirement for Converting Garages into Housing, Is It Excessive? .....	12
Equity Problem, Not Everyone Gets A Permit. ....	12
Success stories of some cities .....	13
Section 3: Review of Best Practices .....	14
Legalization of illegal and nonconforming ADUs.....	15
Incentives for specific use.....	17
Financing .....	20
Section 4: Approaches for Identifying Existing ADUs.....	20
Active Primary Data Gathering.....	21
Using Secondary Data with Subsequent Confirmation.....	21
References.....	24
Appendix 1: Key Informant Interview Guide .....	25
Appendix 2: Best Practices Synthesis .....	27
Appendix 3: House Bill 2053 .....	28
Appendix 4: Stakeholder Advisory Group.....	29

# Introduction

The following reports the findings of a data and information gathering exercise to provide the Accessory Dwelling Unit Stakeholder Advisory Group (SAG) and the Virginia Department of Housing and Community Development (DHCD) input on key issues related to accessory dwelling units (ADUs) in the Commonwealth of Virginia. The work performed in this analysis and the SAG was implemented pursuant to House Bill 2053.

The research undertaken covers issues related to:

- Assessing local jurisdiction efforts in counting the number of ADUs in their communities;
- Consideration of market trends that impact the demand and supply of ADUs;
- Review policies and actions taken by selected Virginia localities regarding ADUs; and,
- Identifying best practices by localities or states regarding the role of ADUs as contributions to the local supply of housing.

The format of this report takes on the form of a briefing paper. The observations and findings reported here have been presented to the SAG with the assistance of DHCD staff in a series of virtual meetings held during the summer and early fall of 2021. This report summarizes the data and information provided in those briefings.

The report is organized into four sections. Section 1 reports the findings of several stakeholder interviews with local officials, businesses, professional organizations, and others with special knowledge of the policies and market conditions for ADUs in Virginia. Section 2 offers a review of the extensive professional and academic literature that has emerged over the past several years as governments explore the role of ADUs in the housing market and the potential for this type of housing to contribute to the supply of workforce housing or to meet specific homeowner needs. Section 3 provides examples from jurisdictions across the nation that can be considered best practices for policies and programs to encourage the development/creation of ADUs. Finally, Section 4 offers some insights from the research team on the specific issue of how local jurisdictions could improve upon existing strategies for counting existing ADUs.

## Section 1: Key Informant Interviews

In pursuing information on specific ADU-related issues and policies within Virginia localities, we interviewed several local government officials, business leaders, and others with special knowledge of this topic. Some of the individuals interviewed are members of the SAG. Participants were requested to provide data and information of several topics and to freely offer their professional insights under the condition that their insights would not be personally attributed to encourage frank conversations. The subject areas covered in the interviews included:

- Counting existing ADUs;
- Current and future market demand;
- Local actions and ordinances;
- Policy issues;
- Creation and use of specific codes or regulations; and,
- Exploring how the state could help localities.

The sampling approach use to identify localities for participation is purposive with emphasis on geographic diversity, market diversity, and over-representing localities with notable recent efforts in studying and implementing programs and policies regarding ADUs. Participants in the interview represented the following jurisdictions and key subject matter experts:

### Public Sector

#### Cities

- Alexandria
- Blacksburg
- Charlottesville
- Richmond
- Harrisonburg
- Norfolk
- Virginia Beach

#### Counties

- Chesterfield County (two perspectives)
- Fairfax County
- James City County

### Private Sector

- Bayse (HOA resort community in Shenandoah)
- Virginia Association of Counties
- Mercer Trigiani (legal firm for HOAs and condo associations)
- The Gaston Group (government relations firm for realtor associations and others)

The interview guide used for these participant interactions can be found in the appendix to this report. The interviews were performed in a qualitative manner and subjects and interviewers were free to explore topics not specifically listed in the interview guide. If the interviewee offered specific numbers relevant to a subject area, they are reported below.

The following reviews the findings of these key informant interviews organized by topic.

## **ADU Counts**

### **Undercounted:**

Interviewees with counts reported between 14-164 total approved units using registration applications. However, all acknowledge that these numbers are undercounts. They do not include ADUs with expired registrations nor those that were never registered. For some jurisdictions it is suspected that official counts severely underrepresent the number of units in the market.

### **Vocabulary matters:**

Special Use Permits (SUP) and Conditional Use Permits (CUP) probably include many ADUs, but they are usually counted separately. Other terms used to describe ADUs among the jurisdictions include “duplex,” “flex suite,” “AA” (accessory accommodation), and “in-home rental space.”

### Limited resources:

Most jurisdictions interested in improving the accuracy of ADU counts report that they do not have enough staff or time resources to investigate further. There is little incentive to collect the data in areas not politically motivated to promote ADUs.

## ADU Registration

### Complaint-based penalties

Most jurisdictions have systems in place to register ADUs. Encouragement to register is based primarily upon the threat of penalties. However, investigations into unapproved ADUs are based almost completely in response to (usually) neighbor complaints. Most participating jurisdictions will waive any penalties if an owner comes into compliance. However, this is not public knowledge, so it is not perceived to be particularly impactful on owners coming forward. There were various views on incentivizing the registration of existing un-registered units by waiving fees with some being concerned about revenue impacts of waivers.

### No registrations

Some jurisdictions have no registration system for ADUs, although nearly all interviewees referenced CUP/SUP zoning permit systems that likely include many ADUs.

## Current & Future Market Demand

### Inferred Demand

Interviewees were familiar with their communities' housing demands in general.

Based on increasing real estate prices and shortages of affordable housing in nearly all areas, most interviewees reporting stable or rising demand for ADUs. However, descriptions of ADU-specific market demand are anecdotal and are driven more by local market factors such as being a college town, tourism destination, and other factors. Many noted the role of ADUs in addressing immediate family needs (granny-flats, units for returning children, see below) but noted that these needs change over time and as unit ownership changes. Multiple interviewees described ADUs as a small piece of a much larger picture. Therefore, some jurisdictions have not focused much attention on this issue.

### HOA-Represented Neighborhoods

Areas with a substantial portion of housing represented by Homeowners Associations (HOAs) are not looking to expand or increase density. These organizations are highly concerned about policy changes that would erode owner property rights in maintaining neighborhood character. Interviewees from the private sector agreed that HOAs could be expected to oppose policies that overrule by-laws and deed restrictions (neighborhood control) regarding the number of housing units on a given property.

### Housing for Family Members

Interviewees described an increase in multi-generational households driving the demand for ADUs. The family members who could occupy them are either elderly or adult children. Interviewees that expressed interest in the specific use of the ADUs all hypothesized that owners could register under the guise of housing a family member but instead use it as a rental property. Monitoring the use of the ADU and then enforcing the rules is a universal challenge.



## Housing for Students

Among the four university towns (i.e., Charlottesville, Norfolk, Harrisonburg, and Blacksburg), all but Harrisonburg expect students to occupy most ADUs in their markets.

## Rental Income

Most participating jurisdictions allow long-term rentals but have restrictions on short-term rentals. Policies range from disallowing most rental properties and all short-term rentals to allowing nearly all income-generating rentals. These policies mostly align with observer expectations of the structure of the local economy. Identifying best practices regarding short-term rentals requires consideration of the overall policy goals related to the role of these units in the local economy.

## Actions & Ordinances

### Active Discussions

Nearly all communities have ongoing conversations regarding ADUs among policymakers. They are generally in favor of ADUs as a means of increasing housing stock. Respondents report that enthusiasm for allowing and promoting the creation of new ADUs varies greatly across neighborhoods and constituencies in their jurisdictions.

### Policy Development

Communities vary widely in their level of development of ADU policies. Some currently have no relevant policies with very little discussion, while others have well-developed, fully implemented policies. Many interviewees expect even fully implemented policies to be revised and updated in the near future.

Four municipalities are currently creating or implementing new ADU initiatives:

- Alexandria (implemented March 2021),
- Richmond City (expected enactment Fall 2021),
- Virginia Beach (currently under consideration),
- Blacksburg (currently revising the 2017 ordinance).

None are promoting ADU development directly, though some have incentives for building affordable housing units that could potentially be applied to ADUs.

### Priorities

All interviewed jurisdictions see ADUs as a tool to increase the housing supply and address affordable housing needs. Three described expanding the number of ADUs to address the economic issues of homeowners and the tourism industry. Only two interviewees described their jurisdictions as overall politically resistant to density and growth.

### Network

Most interviewees were unaware of any efforts to collaborate with neighboring jurisdictions on creating consistencies in policies or programs related to ADUs. At least two interviewees cited Norfolk as a possible model for relevant policies. The City of Williamsburg was also cited multiple times as a model and potential collaborator.

## Issues regarding Policies & Codes

### Current Zoning Ordinances

#### *By-Right and Conditional Use Permits (CUPs)*

Most jurisdictions represented have at least some residential zones where ADUs are by-right. Exceptions are James City County and Chesterfield County, where all ADUs require CUPs. There are a variety of conditions that impact the zoning of a property. In some areas, ADUs are allowed by-right in any residential property, while others allow ADUs only on properties in specific zoning categories, even when the properties are in the same neighborhood.

### Enforcement

Nearly all interviewees, including those from the private sector, recognize that enforcing ADU ordinances are difficult.

- In a development that plans to include ADUs, any checks on compliance after the initial plan is approved is perceived as overly burdensome.
- An approved addition to an existing property is resource-heavy in that enforcing building codes requires comparison to the original plans.
- Once approved, enforcing the type of occupant is difficult, if not impossible. Several participants expressed concern that ADUs approved for housing family members would actually be or become short-term rentals.
- Complaints are the only tool that is used to learn of ADU ordinance violations.

### HOAs

Municipalities have little authority over HOAs to change their covenants and restrictions to include ADUs if they are not explicitly included in the original development plans. Three themes were described concerning HOAs and ADUs:

1. Density, especially parking, is a primary concern
2. Wear and tear on common facilities are accelerated by additional residents.
3. Enforcing architecture that maintains the neighborhood's character is a significant responsibility of an HOA; therefore, additions are problematic.

### Parking and Density

All private and public sector interviewees who described challenges with increasing the number of ADUs reported that parking density is a major concern. It is a source of political conflict in some jurisdictions. Many interviewees believe that parking concerns are related to the misconception that ADUs equate to changes in type of housing/zoning on a given property. Some report addressing parking as part of the requirements for current ADU registration processes.

### Commercial Use

#### Long-Term Rentals

Long-term rentals are generally allowed if the principal dwelling is owner-occupied. For jurisdictions wanting to increase the number of ADUs, this is the target market, so restrictions on this use are relatively few.

#### Short-Term Rentals (STR)

There is a wide range of attitudes regarding the regulation of ADUs as STRs. Some jurisdictions, including most HOAs, prohibit STRs. Several allow short-term rentals for a maximum of 90 days in a calendar year. All of the jurisdictions included in this analysis have some type of regulation on STRs,

though it is likely that some small communities outside of usual tourism areas may have found little need to develop such policies.

## Architecture

Some interviewees described the importance of ensuring structures complement existing forms and characters of the neighborhood. This is more of an issue for detached structures than interior units.

### Restrictive Codes

Three interviewees discussed building codes in detail. Some regulations are cumbersome and are disincentives to either build or register ADUs. Fire-rated walls were cited multiple times as an example of a building code that may be unnecessary in some ADUs. The research did not specifically ask if participants are aware of recent building code amendments or the process for future changes to building codes relevant to ADUs. Several interviewees characterized the permitting process as too complex.

During the 2018 Code Development Cycle (2019 - 2020), Uniform Statewide Building Code (USBC) requirements related to accessory dwelling units (ADUs) were discussed by DHCD's Residential Uses Sub-Workgroup. The Sub-Workgroup, made up of a diverse group of stakeholders, developed and submitted a code change proposal that was approved by the Board of Housing and Community Development for the 2018 edition of the USBC, which became effective on July 1, 2021. The changes provided a new compliance path for ADUs that eliminates or provides trade-offs for some of the most costly construction requirements that were required by previous editions of the Code.

### Initial Site Plans

Including ADUs in a site's building plan is widely supported as the simplest measure to ensure that aesthetic and functional requirements are fulfilled. Some interviewees indicated that community members are more likely to be resistant to later additions.

## Role of the State

### Resistance to Broad-stroke Regulations

Many interviewees expressed interest in the guidance from the state, including standardized definitions for auxiliary structures or transient occupants. However, several expressed concern that state land-use mandates would restrict county processes and be "destructive to communities."

### Influence of HOAs

According to the private-sector interviewees, HOA covenants and restrictions (C&R) are durable, and even state legislation can have a limited effect. ADUs will only be allowed in HOA communities if they are written into the original C&R or if the community changes its rules. Public-sector interviewees requested support from the state to encourage HOAs to consider flexibility on ADUs, especially in areas with ample developable space (large lots).

### Support Local Incentives

#### *Dedicated affordable housing*

Interviewees suggested that increases in state funding could support local incentive programs for potential ADU homeowners and builders. Most would prefer to offer loan forgiveness or tax incentives in exchange for dedicating an ADU as an affordable housing unit.

### *Development fee waivers/tax incentives*

The inclusion of an ADU in initial home construction is considered easier than adding to an existing residence. For that reason, state level support of fee waivers or tax incentives for developers would be helpful. One interviewee was explicit that the state allows developers to choose to either provide affordable units or contribute to county proffers. Their jurisdiction would prefer to have the actual units rather than the cash contribution.

### **Public Perception**

A frequent theme among participants was the discrepancy between public perception of ADUs, along several topic dimensions, and market and governance realities. Multiple participants suggested that the state could educate the public on the potential and real roles ADUs play in supporting economic resilience, do not change neighborhoods from single-family dwellings to multi-family complexes, and likely already exist, even if they are not registered.

## **Section 2: Literature Review**

The diverse terminology of Accessory Dwelling Units (ADUs) including secondary units, secondary suites, second units, ancillary units, accessory apartments, accessory living units, accessory suites, backyard cottages, back houses, alley flats, carriage flats, coach houses, garage apartments, granny flats, companion units, mother-in-law apartments, in-law units, in-law suites, outlaw in-laws, and laneway houses, reflects local variations in housing market, regulatory environment, available resources, urban forms, and policy goals. (Anacker & Niedt, 2019). Although ADUs are recognized as a useful means of supplying housing without changing the neighborhood physically, the use of ADUs for housing supply varies widely from region to region (Stacy et al., 2020). For example, in Arlington, Virginia, only 20 units were built between 2009 and 2017 due to stringent regulations on ADUs, whereas in Portland, Oregon, 4,047 ADU permits were issued between 1995 and 2019 with a clear and streamlined permitting process (Anacker, 2018; Chapple et al., 2018). Recent interest in ADUs has stemmed from the various advantages ADUs offer, especially the ability to create housing units without significant side effects in environments where available land is limited. Several cities have actively removed obstacles to promote ADU construction, and their actions have been followed by significant increases in supply.

In this review, we discuss the relevant academic and professional literature available on ADUs and ADUs' role in housing markets. The findings of such a review can guide other research elements and provide insights into a wide range of related issues that will inform recommendations developed by the Stakeholder Advisory Group.

### **Expected benefits from ADUs and outcomes in reality**

The construction of ADUs can offer a number of advantages over conventional housing construction. However, the expected benefits are not always realized due to barriers such as financing, access, and concerns among neighbors. The following subsections outline common barriers inhibiting popular goals of ADU construction.

An ADU can provide rental income to owners, but construction financing can be a barrier. Creating a living space for family members and helpers is one of the important motivations for building ADUs, but gaining additional income is the most powerful motivation (Chapple et al, 2017). According to surveys in California, Portland, Seattle, and Vancouver, about half of new ADUs serve as rental units, including long-term and short-term rentals (Chapple et al, 2017; Chapple et al, 2021). This means that ADUs can

serve as an additional income source for homeowners and provide rental housing to the housing market. Since building ADUs can generate a high return in income, owners have an incentive to construct them where it is feasible. However, not all landlords who are able to build generate ADUs. Although construction costs are relatively low, building an ADU is not easy if owners do not have cash or cannot refinance the primary home. Since the construction of an ADU effectively has no land cost, it is possible to add housing units at a lower cost than building a new home or buying an existing home. The 2019 data in California show that the cost of ADUs are \$450/sf less than the average construction cost of Low-Income Housing Tax Credit units (Chapple et al., 2021). However, an ADU is not duly recognized as a formal housing unit, and ADUs have been denied mortgages by some lenders (Buker, 2015; Chapple et al., 2017; Peterson, 2018). Several surveys point out that cost and difficulty in financing is a key barrier (Chapple et al., 2021; Gebhardt et al., 2018; Salvador, 2020). According to a Portland survey, ADUs are commonly constructed with cash savings (45%) and 56% of respondents said more than 50% of construction costs came from cash savings (Gebhardt et al., 2018).

In summary, while ADUs can bring additional income to homeowners, building an ADU has higher financial barriers than building a typical home.

### **ADUs can provide affordable housing, but only affordable for acquaintances.**

Stabilizing rent prices through additional supply of housing units and incentives such as waiving fees for units rented to low or very low-income renters are reasons why ADUs are considered as an approach to achieve affordable housing goals. California mandated ADUs as suitable housing for seniors, college students, and low-income households in 1982 (Ramsey-Musolf, 2018). Negative views prevail as to whether ADUs fulfill their role as affordable housing. While the median rental price of an ADU is reported to be affordable to the median household of two people in the San Francisco Bay Area and the Central Coast regions (Chapple et al., 2021), there is no evidence that affordable units contribute to the stock of housing affordable to low-income households. In California, very few cities imposed covenants on ADUs such as maximum rent and occupant income limits. This reduced the efficacy of ADUs produced as low-income housing units because of the lack of oversight (Ramsey-Musolf, 2018). Moreover, while planners planned to dedicate more than 80% of new ADUs to low-income households, none of the 749 new units were actually identified as suitable for low-income households (Ramsey-Musolf, 2018). Reports on whether ADU rental prices are lower than comparable units and market-rate are mixed (Brown & Palmeri, 2014; Salvador, 2017; Wegmann & Chapple, 2012). Research suggests that the key determinant of rental price is who becomes the tenant. The affordability benefits of ADUs appear to be reserved for family and friends (Palmeri, 2014; Salvador, 2017; Salvador, 2020). In Edmonton, Canada, ADUs rented to friends and family tend to be much lower than the market rate, while units rented to unrelated people are slightly above the market rate (Salvador, 2020). 58% of ADU units for long-term rental in Portland are occupied by acquaintances (Gebhardt et al., 2018). This affordability is recognized as “voluntary affordability” and is seen as a unique phenomenon in ADUs.

In summary, attempts have been made to provide affordable housing units through ADUs to low-income and select groups, but that goal has not been consistently achieved because there are no affordability guidelines or ordinances that city administration can or have the capacity to enforce. Rather, it is the ADU owner's acquaintances (including family members and friends) who get the affordable benefits. The main affordability benefit of ADUs is they increase the overall market supply of housing options.

## **Most residents are concerned about overcrowding, not mixed-income communities.**

ADUs distributed across low-rise units can contribute to diverse and mixed-income neighborhoods without Not-In-My-Backyard (NIMBY) community opposition that often blocks multifamily affordable housing offers (Buker 2015; Chapple et al. 2017; Fischel 2001; Galster et al. 2003; Mukhija et al. 2014; Rudel 1984). There is no study that directly addresses whether ADUs contribute to the creation of a mixed-income community. However, the contribution to mixed-income communities can be seen through the concerns of local residents in the construction of ADUs, the characteristics of the neighborhood where ADUs are built, the ADU owner profile, and the ADU renter profile.

In the past, ADU construction was more likely to take place in neighborhoods featuring slightly lower incomes, younger households, less children, and lower concentrations of white households (Wegmann and Chapple 2012). However, recent evidence shows that most activity occurs in areas with high house prices and rents, even though there are variations from region to region (Chapple et al., 2020). According to recent evidence in Edmonton Canada, two types of neighborhoods were identified as having the highest proportion of ADUs. The first type has exceptionally high household incomes, but lower rental potential. The second type has lower household incomes, but still comparable to or higher than Edmonton's average household income, and they have high rental potential and are located in close proximity to the University and commercial district (Salvador, 2020).

The typical ADU homeowner is white, with an average age of 49 years, well-educated, and affluent (Chapple et al., 2012). Until recently, this trend was still maintained in California and Portland (Chapple et al., 2021; Gebhardt et al., 2018). According to a Portland survey, half of the renters living in ADUs are young people under 35, 86% are white, 93% have at least some college degree, and a median household income of \$50,000-\$59,999. (Gebhardt et al., 2018). Income ranges from zero to more than \$150,000, with half of the renters earning less than \$50,000.

Local residents raise issues with ADUs such as increased traffic, scarce parking, and a reduced sense of privacy. The growing population due to the construction of ADUs can strain existing infrastructure and public services (S. A. Moore and Palleroni 2008; Mukhija et al. 2008). Residents and local officials in single-family neighborhoods fear the possibility of a change in their neighborhood's characteristics (Morales, 2019). They worry that the social structure will collapse as the increased ADUs are used for short-term rentals such as Airbnb. Residents included in several surveys are more concerned about parking and congestion issues caused by overcrowding than the influx of low-income or minority households (Mukhija et al, 2014; Stacy et al., 2020).

In summary, local residents are more concerned about the problems of overcrowding than being a mixed-income community, perhaps because ADUs are not explicitly or exclusively low-income housing or because they are more likely to be populated by young people.

## **ADUs and Regulation**

For many neighborhoods, residents have been concerned about the negative impact the construction of ADUs could have. Accordingly, the localities that allow ADUs try to maintain the neighborhood's identity through various regulations. However, these regulations can hinder the construction of ADUs significantly. Local governments removed unnecessary regulations in areas where ADU construction is active, and suggested that these actions gave owners flexibility and facilitated construction. So, which

regulations should be maintained, and which should be relaxed for the prosperity of ADUs? In this section, we will discuss the negative impact that ADUs can have on the neighborhood, and the ambivalence of regulation from local experience.



The main regulations related to ADUs are listed in the table below.

<b>Regulation</b>	<b>Description</b>
Owner Occupancy Requirement	Homeowners must live in the main house or the accessory unit.
Parking Requirement	There are specific parking requirements for the main house or an off-street parking requirement based on the location and attributes for the ADU.
Short-Term Rental	Prohibit the exclusive use of an ADU as a short-term rental.
Occupant Income Limit	Units built for affordable housing could be subject to the renter's income limit.
Maximum Rent	Units built for affordable housing could be subject to maximum rent.
Setbacks	ADUs shall be setback a minimum distance from side and rear lot lines.
Unit Size Limit	ADUs cannot exceed a certain size.
Minimum Lot Size	Regions have minimum lot size based on the main housing type.
Impact Fee	Impact fees for parks, sewers, water, and streets are charged for new units.

## **Regulations to Protect the Neighborhood, But Why Controversial?**

Neighbors and local officials fear that the social fabric can be destroyed (Morales, 2019). Building an ADU can increase assets and income, so they are an attractive option for homeowners. To make more money, they are likely to use the ADU as a short-term rental (STR), make several small units, or even rent the main house. As the proportion of transient and renter-occupied units increases in single-family neighborhoods and the number of travelers using the STR increases, the identity of the neighborhood and social fabric among neighbors may be disrupted.

Owner occupancy requirements and STR restrictions can act as guards, protecting neighborhoods from the threats mentioned above. Ironically, it is argued that these two regulations should be eliminated or relaxed to promote the creation of ADUs. In most cities with an owner-occupancy requirement, it does not work properly (Peterson, 2018). In Portland, only 35% of owners in regulated neighborhoods live on their properties, while 90% live in the rest of the city. It's not clear how to check or enforce whether an owner occupies their home. Although more than half of the residents still insist that owner-occupancy requirement is necessary (Stacy et al, 2020), cities where ADUs thrive show that this regulation not only undermines landlords' willingness to build ADUs, but it is also ineffective (Chapple et al, 2017; Peterson, 2018; Peterson; 2021).

STR regulation also faces challenges. 32% of units are used as STR in Portland Oregon, and 8% of new units are used for STR in California (Chapple et al, 2021; Gebhardt et al, 2018). Given that owners operate ADUs as STRs for a while in the absence of tenants, advocates argue that this figure is an



overestimation (Peterson, 2018). Banning the STR use would eliminate a flexible and attractive option for homeowners to earn an income when the ADU is not occupied by long-term tenants. Moreover, even if STR is banned among ADUs, owners can operate their main house as a STR. However, many residents still feel hostile towards STRs.

Areas where ADUs thrive do not have owner-occupancy requirements and do not completely ban STR (Chapple et al, 2017). In the past, they also made such restrictions, but gradually relaxed them. It is evaluated that this was an important factor in facilitating construction (Chapple et al, 2017; Peterson, 2018). For example, some cities have relaxed regulations by limiting the number of days an STR operates or have waived fees to landlords who do not register STR (Stacy et al, 2020). However, it is not well-known whether the identity of the neighborhood has been maintained or whether there are complaints from the residents after the relaxed regulation. Most of the areas implementing ADUs are struggling with housing supply. If the policy goal of allowing ADUs is building more housing units, a transition from complete ban to conditional ban or no ban may be appropriate. Nevertheless, as it is likely to face opposition from existing residents, policy design should be enforceable, clear, and detailed to reduce residents' concerns.

## **Parking Requirement for Converting Garages into Housing, Is It Excessive?**

Parking does matter. As ADUs often involve converting a garage into a housing unit, residents' concerns about parking and congestion are inevitable. Many cities have created off-street parking requirements. ADU advocates and developers argue that this requirement is a significant barrier to ADU construction and should be removed. They offer two reasons. First, they argue that parking isn't as much of a problem as traditionally thought: 75% of garages have been used for storage, and renters living in ADUs are disproportionately not owning a car (Arnold et al, 2012; Chapple et al 2012). This means that the required parking space is exaggerated. In addition, a study found no evidence that ADUs cause congestion in Portland and Vancouver (Peterson, 2018).

Second, they argue that it is impossible or expensive to meet the conditions, which will significantly reduce construction of ADUs. Physically, the roads and spatial structures are not designed for off-street parking, so there are few neighborhoods where parking spaces can be secured. Financially, it costs \$3,000-\$5,000 to create a parking space, which is an overburden (Peterson, 2018).

Several studies and reports have also suggested that an off-street parking requirement is a major barrier to ADU construction and has a negative impact on housing supply (Brown et al, 2020; Peterson, 2018; Peterson, 2021; Stacy et al, 2020). In a survey of residents in the city of Alexandria, 49% were against requiring off-street parking and 36% supported the requirement (Stacy et al, 2020). This result may have reflected residents' interests as developers or the fact that the parking requirement could make the construction of an ADU impossible, even though they were concerned about congestion.

## **Equity Problem, Not Everyone Gets A Permit.**

Even if a neighborhood meets ADU regulations, such as off-street parking requirements, and the homeowner is able to pay for the development, not all lots are allowed to include an ADU. A setback and minimum lot size requirement for the individual lot should be met. A setback is the distance that the foundation of a structure must be from a neighboring property line or public right-of-way. If more than 10 feet of setback is required, buildable lots are limited in urban areas with high housing demand (Peterson,

2018). Likewise, the construction possibility is determined by the minimum lot size setting. It is often not possible to build ADUs in places where smaller units are needed, such as the city center (Peterson, 2018). As important as the housing supply perspective is the equity perspective. Even within the same neighborhood, available and non-available lots are divided. Some people get a chance to increase their assets and income, while others don't. Unlike Zoning, it is not a rule that has been in existence for a long time and it has just been created in a certain city. A landlord who owns a lot for which an ADU cannot be built will have a complaint. Since it is not desirable to amend the ordinance frequently to accommodate such complaints, it is necessary to establish a more fair regulation through sufficient review in advance.

## Success stories of some cities

Portland, Seattle, and Vancouver are considered North American ADU leaders because they have achieved remarkable ADU supply growth. Three factors are key to the success of ADU implementation (Chapple., 2017). First, in cities that have reformed their zoning regulations (particularly minimum lot size and floor area) production has jumped. Also important are minimizing design review and easing owner occupancy requirements. Second, waiving fees such as permit or utility connection fees can spur homeowners to build. Finally, cities that take steps to educate homeowners (for instance, via ADU manuals and prototype plans), as well as providing technical assistance, will likely see a payoff for relatively minimal cost and effort. It should be noted that these cities made incremental changes to arrive at their current policy positions. The individual factors that differentiate these cities from the past and other regions follow.

### Portland

- The city has no owner occupancy requirement, no design review, a by-right process, and fee waivers.
- In 2010, the city waived one time System Development Charges (SDC) fees based on the new or increased use of a property (impact fees for parks, sewers, water, and streets that average 7% of the total cost of a new home)
- ADUs have a lower loan to value (LTV) than traditional housing, but advocates are working to increase the LTV to 80%.
- Currently, there is no form of financing designed exclusively for ADU, but in the case of financing with an existing main house, the maximum LTV is 96.5%.

### Seattle

- Although Seattle has allowed attached ADUs since the mid-1990s and detached ADUs (DADUs) since 2006, there has been a rapid growth in ADU permitting and construction since 2016.
- While this growth may have been partly influenced by the housing market, the removal of existing barriers that made ADU construction difficult appears to have played a major role.
- The sharp increase in permitting activity coincides with the beginning of discussions and policy reform on removing barriers such as removing parking requirements and changing owner occupancy requirements.

### Vancouver

- There is no owner-occupancy requirement and garage requirement.

- Institutions like Vancity, a local financial cooperative, provide loan products that are appropriate for ADUs, for instance by allowing homeowners to count rental revenue as part of their income.
- The city provides technical assistance to homeowners and has amended ordinances to make it easier for homeowners to build ADUs.

## Section 3: Review of Best Practices

ADU policies and programs are developed through an iterative process of goal setting, public engagement, evaluation, public re-engagement, policy changes, and program additions. The literature has conveyed realities that jurisdictions face and evidence of program requirements for policies that substantially increase the housing supply or address affordable housing.

Among those Virginia localities that have adopted ADU ordinances, many are in the early stages of policy development, simply legalizing ADUs. Though Virginia jurisdictions have legalized to varying degrees, few have taken steps to minimize regulation and add financing, programming, education, and incentives necessary to encourage ADUs as a central part of their growth strategy or to address affordable housing challenges. Arlington and Charlottesville are two examples of Virginia communities offering support and incentives beyond legalization to achieve broader goals.

This section offers best practices across the country as a useful guide to address a variety of ADU goals:

- Registration and regulation
- ADUs for limited uses
  - Caregiving
  - Voucher holders
  - Students
  - Short-term rental
- Increase the housing supply
  - Minimize regulation
  - Mitigate impacts
  - Safety & accessibility
- Promote affordable housing
  - Financing
  - Education
  - Programing
- Central growth strategy
  - Equity and inclusion
  - Complementary infrastructure
  - Safety & accessibility.

See Appendix 2 for a visual synthesis.

However, this section does not rehash discussion from the literature review, so elements of the later, broader goals are not discussed. Seattle, Portland, and Vancouver are the best examples of the development of an ADU policy and program to substantially impact the housing stock or to make ADUs a central component of an overall growth strategy. They have been discussed substantially in the literature review and are well documented by resources from the HUD User database and other well-known sources such as the American Planning Association.

## Legalization of illegal and nonconforming ADUs

- Watsonville, CA

Homeowners can legalize unauthorized ADUs by bringing a structure up to code, as long as the issues are not related to health and safety.

*14.23.100 Deferred code enforcement [Watsonville Municipal Code]*

*Until 2030, any ADU constructed without permits before January 1, 2020, that face code enforcement action may request a delay of up to five (5) years in enforcement so long as the illegally constructed unit complies with Section 17980.12 of the California Health and Safety Code. Additionally, a property owner may request amnesty from code enforcement if the property owner discloses the code violation to the City before January 1, 2030.*

*(a) If the owner is requesting amnesty and/or a delay in code enforcement, the owner shall submit an application to the Building Official requesting that enforcement of the violation be delayed for five (5) years from the activation date of the code enforcement case, on the basis that correcting the violation is not necessary to protect health and safety.*

*(b) The Building Official may approve the application for delay in code enforcement action if the Building Official finds that correcting the violation is not necessary to protect health and safety...*

In order to legalize an unauthorized ADU, the existing illegal ADU is evaluated first, and a site plan is submitted to the city to obtain a permit. When the paperwork is complete, the owner makes the necessary changes. Legalization is complete when an inspection is performed by the city officials.

- Santa Cruz County, CA

If there is a structure on property that was built without permits and it is not possible to bring that structure up to current building code standards without demolishing and rebuilding the structure, it may be eligible for the County's Safe Structures Program.<sup>1</sup> Under this program, a building inspector performs a health and safety inspection and, pending any required health and safety upgrades, a certificate is granted allowing the structure to be used as housing. ADUs are allowed in structures that have completed the Safe Structures program. Per state law and County code, property owners that receive a code enforcement notice regarding an illegally built ADU may request to wait to resolve the code enforcement issue for up to five years, as long as a building inspector does not identify a health and safety issue.

- San Francisco, CA

According to city and county of San Francisco, unauthorized dwelling units or ADUs may apply to be legalized.<sup>2</sup> This is a voluntary program that allows property owners to formally register and rent their ADUs assuming all life-safety conditions are met. These unauthorized units can be used as legal housing through this process.

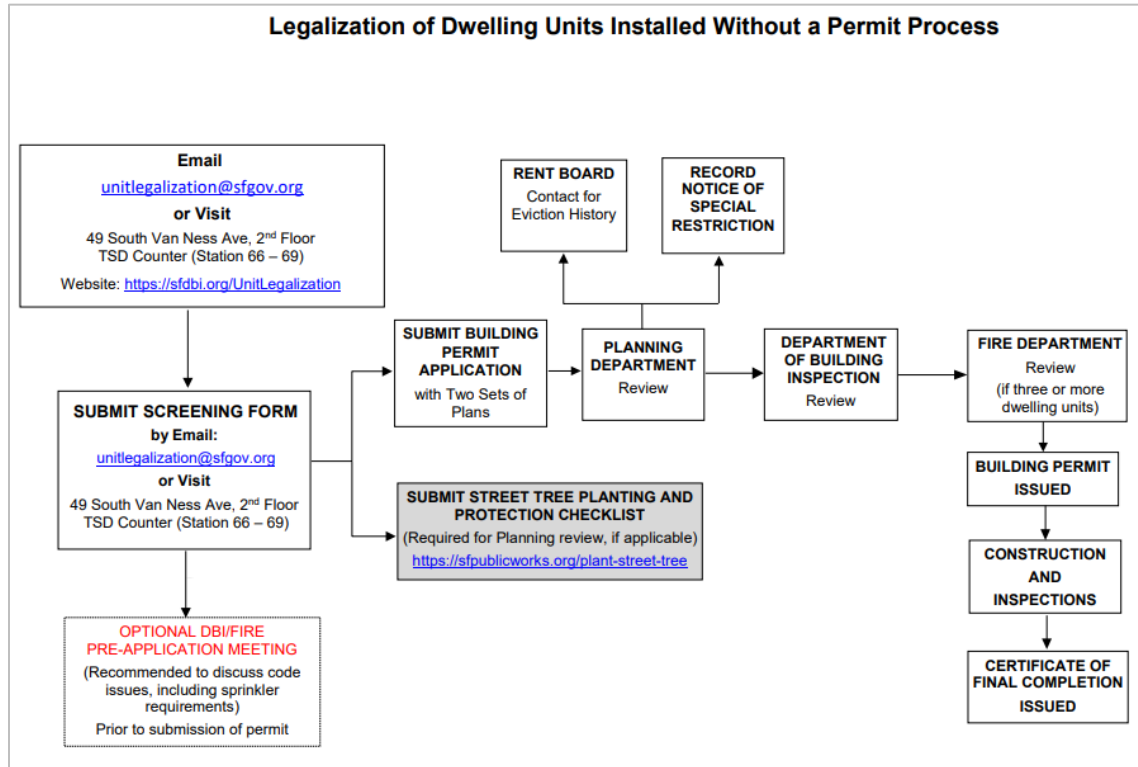
To apply for the Unit Legalization Program, homeowners must hire a professional agent to assess the factors necessary for legalization and provide documentation that the home to be legalized existed prior to

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<sup>1</sup> <http://sccoplanning.com/ADU.aspx>

<sup>2</sup> <https://sfdbi.org/UnitLegalization>

January 1, 2013. Afterwards, they may visit the Unit Legalization Counter to submit the screening form to be accepted into the Program. Following this screening process, when the owner has essential information needed for a decision, they may then formally apply for a building permit for legalization with the Planning Department and Department of Building Inspection (DBI).



- City of Oakland –from Oakland ADU Initiative

City of Oakland made ADU Initiative to develop a strategy to address the housing affordability crisis (City of Oakland, 2020).<sup>3</sup> This initiative includes a legalization program to improve the safety of unpermitted ADUs. It couldn't be recognized as it's a fully established program because details of this program have not been reported anywhere. However, principles for legalization programs can be found from the initiative.

This program can legitimize units that comply with basic health and safety building standards. Legalization may be permissible for factors unrelated to health and safety, but should not cause displacement of existing tenants. The consequences and obligations of legalization must be clearly communicated to the landlord. If an illegal unit is discovered in the future, the legalization program will be terminated. To promote the program, reduction of program application fee or other fees may be considered. Additional incentives for legalization may be considered.

- Seattle, Tacoma – give penalty to promote legalization

After January 1, 1996, owners of illegal ADUs shall be guilty of a misdemeanor and, upon conviction thereof, subject to a fine not to exceed \$1,000, including all statutory costs, assessments, and fees, plus

<sup>3</sup> City of Oakland (2020), *Oakland ADU Initiative: Existing Conditions and Barriers Report*

\$75 per day after notice of the violation has been made. All owners of illegal ADUs shall also be required to either legalize the unit or remove it. [Sec. 13.06.196(C)(11), Tacoma Municipal Code]

- Barnstable, Massachusetts – incentivize legalization (amnesty program)

Barnstable has an amnesty program to bring illegal ADUs into compliance with current requirements (HUD, 2008).<sup>4</sup> The property owner must agree to rent to low-income tenants — those earning 80 percent or less of the area median income — with a minimum lease term of one year. The amnesty program provides fee waivers for inspection and monitoring and designates town staff to assist homeowners through the program’s administrative process. The town can access Community Development Block Grant (CDBG) funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade of affordable ADUs. Homeowners are also offered tax relief to offset the negative effects of deed restrictions that preserve the affordability of the units.

Through the Amnesty program, the town of Barnstable has successfully converted many illegal accessory units into permitted units, made unsafe units safe, and increased the supply of affordable housing. The benefit to this program is twofold. It is increasing the affordable housing supply and it also makes units, that before were unsafe and illegal, safe and legal.

## Incentives for specific use

### Senior, Disabled & Caregiver

No explicit incentives for caregivers could be found. Incentives applying to caregivers could be tied to the eligibility of the person being cared for.

- Florida

If an ADU is constructed for family members of at least 62 years of age, Section 193.703, Florida Statutes, provides that a county may provide for a reduction in the assessed value of homestead property after the new construction.

*193.703 Reduction in assessment for living quarters of parents or grandparents.—*  
*(1) In accordance with s. 4(f), Art. VII of the State Constitution, a county may provide for a reduction in the assessed value of homestead property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive parents or grandparents of the owner of the property or of the owner’s spouse if at least one of the parents or grandparents for whom the living quarters are provided is at least 62 years of age.*

- Santa Cruz, CA

The County of Santa Cruz has partnered with Habitat for Humanity Monterey Bay (Habitat) and Senior Network Services to create My House My Home in order to help low-income senior homeowners to build Accessory Dwelling Units (ADU). The goal of the program is to build ADUs on the properties of

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<sup>4</sup> HUD (2008). *Accessory Dwelling Units: Case Study*. Department of Housing and Urban Development Office of Policy Development and Research.

qualifying low-income seniors, 62 years of age or older, to provide additional income and adjustable living situations to help seniors age in place.<sup>5</sup>

### Voucher holders

- Montpelier, VT

In July 2019 Vermont State Housing Authority (VSHA) was awarded funding for the development and implementation of a two-year pilot Accessory Dwelling Unit Program (ADUP) in Montpelier, Vermont. ADUP aims to assist with the building and initial leasing of an Accessory Dwelling Unit (ADU), including help with pre-construction design and securing of finances, permitting and compliance, contractor procurement and project management, and finally, tenant selection and lease up procedures. A tenant eligible for the ADU program is one who holds the Section 8 voucher or receives the other housing subsidy. Final tenant selection will be decided by the homeowner who will also be eligible for grant and loan funds.<sup>6</sup>

- Los Angeles, CA

A nonprofit in LA, the Backyard Homes Project, offers financing, building design, and construction support in exchange for a pledge to house Section 8 voucher holders (LA Más, 2019).<sup>7</sup> The project was led by LA-MAS, a nonprofit-organization.

### Student

- San Diego

Incentives may be given if ADUs are rented to low-income students. SB1227 contains a clause “projects that provide 20% of the pre-density bonus units as affordable to lower income students”. This is a provision for an affordable housing unit rather than a provision for an accessory dwelling unit. However, ADU owners can apply this to ADU development.

### Low-Income Households

- Santa Cruz, CA

Homeowners may get incentives through the Accessory Dwelling Unit Forgivable Loan Program.<sup>8</sup> Development fees are waived for ADUs made available for low- and very-low-income households. Santa Cruz offers loans up to \$40,000 to homeowners who construct an ADU that is rented out to low-income households at an affordable rate for 20 years.

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<sup>5</sup> <https://www.habitatmontereybay.com/adu>

<sup>6</sup> <https://www.vsha.org/montpelier-adu>

<sup>7</sup> LA Más (2019). *The Backyard Homes Project: An Affordable Housing Initiative*

<sup>8</sup> Accessory Dwelling Unit Forgivable Loan Program. <https://www.aducalifornia.org/wp-content/uploads/2020/09/Forgivable-Loan-Program.pdf>



- Town of Wellfleet, Barnstable County, Massachusetts

Owners are required to rent to low- or moderate-income households. Maximum rents follow the Fair Market Rental Guidelines published by HUD and the property owners must submit annual information on rents to be charged.<sup>9</sup>

- San Diego

With State Law (AB 671), property owners are eligible if they agree to make one of the granny flats they build rent-restricted for low-income residents for at least 15 years.<sup>10</sup>

- Chicago

In Chicago, affordability requirements for ADUs are that property owners shall make one unit affordable (up to 60% of the area median income) for every two ADUs that they build.<sup>11</sup> This may be an ineffective rule because most property owners build one ADU on their property.

- San Rafael, CA

As an incentive, those renting out their ADUs will have permit fees waived up to \$10,000 if they rent to tenants with household incomes below 80% of the local median. There is a \$5,000 break on permits for ADUs that are rented between 80-120% of the median income.<sup>12</sup>

- Toronto

Toronto's Affordable Laneway Suites Pilot Program offers eligible homeowners a forgivable loan up to \$50,000 when they agree to rent their suite below market rates for fifteen years.<sup>13</sup>

## Prohibiting STR

- Portland

The City Council has set up incentives to address the growing backlash against ADUs as some homeowners turn them into short-term rental units.<sup>14</sup> The identifiable best practice is to have a reward for preferred action as a balance against only having penalties for discouraged actions.

*"The resolution adopted by the council...requires ADU builders to attest that they won't rent the units as short-term rentals for 10 years. If homeowners do rent them out via Airbnb or similar platforms during the ensuing decade, the SDC fees must be paid, along with a 50 percent penalty."*

<sup>9</sup> <https://www.wellfleet-ma.gov/planning-board/pages/adu-articles>

<sup>10</sup> [https://www.sandiego.gov/sites/default/files/housing\\_legislation\\_package\\_table\\_webpost\\_20200707.pdf](https://www.sandiego.gov/sites/default/files/housing_legislation_package_table_webpost_20200707.pdf)

<sup>11</sup> <https://www.chicago.gov/city/en/depts/doh/provdrs/homeowners/svcs/adu-ordinance.html>

<sup>12</sup> <https://www.marincounty.org/-/media/files/maringov/board-actions/2020/january/2001149cdajaduadufeewaiverltr.pdf?la=en>

<sup>13</sup> [https://www.toronto.ca/wp-content/uploads/2019/06/96e6-FINALAffordable-Laneway-Suites-Pilot-Program-Q-A\\_june26.pdf](https://www.toronto.ca/wp-content/uploads/2019/06/96e6-FINALAffordable-Laneway-Suites-Pilot-Program-Q-A_june26.pdf)

<sup>14</sup> <https://strpermit.com/blog/2019/9/4/city-of-portland-implementing-new-short-term-rental-law>



## Financing

- Low construction loan – Santa Cruz and San Francisco

Some cities, like Santa Cruz and San Francisco, have started low-interest ADU loan programs to help homeowners better meet the costs of design and construction. Santa Cruz offers loans up to \$40,000 to homeowners who construct an ADU that is rented out to low-income households at an affordable rate for 20 years.<sup>15</sup>

- 0% interest loan for ADU - San Jose

“The launch of the first and only 0% interest loan for accessory dwelling units (ADU) on the market. The San Jose Scaling Accessory Dwelling Unit (ADU) pilot program will provide 20-30 qualifying applicants a 0% interest loan for six months to finance 100% of the costs associated with permitting and building an ADU.” The loan is intended as a bridge between building an ADU and accessing traditional loan options. After six months, interest rates increase to 9.95% to encourage homeowners to refinance through a traditional lender for long term financing.<sup>16</sup>

- Grant and 0% interest loan – Montpelier, Vermont

Qualifying ADU participants will be eligible for a grant of up to \$20,000 and a loan of up to \$10,000 at 0%. Grants will be a reimbursement directly to the homeowner and determined by calculating up to 50% of project costs upon completion, and loans may be made available before construction with a signed agreement. The money for this grant will come from a Community Development Block Grant (CDBG) through the city of Montpelier with at least 51% dispersed to clients meeting a target audience according to funder guidelines. The loan will come from the a Vermont State Housing Authority (VSHA) with a 5-year term and be secured the home’s deed, and returned to VSHA if the home is sold within 5 years or before the loan is repaid in full.<sup>17</sup>

- Huge amount of loan – San Francisco

Housing Trust Silicon Valley operates program called Small Homes, Big Impact. It offers educational workshops to homeowners wishing to build an accessory dwelling unit (ADU) and can offer a financing option through an ADU construction loan program. Maximum Loan Amount is up to \$200,000 or 97% of the property’s combined loan to value, whichever is lower.<sup>18</sup>

## Section 4: Approaches for Identifying Existing ADUs

In this brief section, the research team explores a few ideas for how jurisdictions could approach identifying existing un-registered ADUs along with commentary on the advantages and disadvantages inherent in each approach. Some of these ideas were vetted with key informant interview participants and relevant officials. These do not include some of the incentive programs discussed earlier in the report to encourage self-reporting by owners of properties with an ADU, which are voluntary and therefore have

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<sup>15</sup> <https://www.sccoplanning.com/Portals/2/County/adu/Forgivable%20Loan%20Program.pdf>

<sup>16</sup> <https://www.sanjoseca.gov/Home/Components/News/News/2840/4699>

<sup>17</sup> <https://www.vsha.org/montpelier-adu/>

<sup>18</sup> <https://housingtrustsv.org/programs/homeowner-programs/>

limited effect. In contrast to these incentive programs, all the solutions offered in this section would, we believe, face either significant cost or political challenges.

## Active Primary Data Gathering

This approach requires the acquisition of data by a locality.

- Survey of Housing Units
  - This would be the most accurate assessment if owners/occupants accurately report the presence of an ADU.
    - In person interviews, similar to census taking.
      - Extremely expensive
    - Telephone interviews
      - High rejection rate for participation.
      - Accuracy in responses could be questionable with limited ways to verify responses.
      - Very expensive.
    - Written surveys/web surveys
      - Written
        - Could be done with other official communication such as a water bill.
      - Web survey
        - Recruit participation through mailings or electronic notices
      - Likely low response rate, especially from those with un-registered units.
      - Less expensive than in-person or telephone, but still costly.
- Actively encourage citizen reporting
  - Potential social and political consequences.
    - False/nuisance reports could be burdensome.
    - This approach could negatively impact community-government relations and have negative unintended consequences.

## Using Secondary Data with Subsequent Confirmation

Secondary data gathering is a widely used research approach that uses data gathered by someone else and/or for other purposes. In this application, it is using public or private data sources to identify “potential” ADUs that would need to be subsequently verified using one or more of the primary data gathering approaches identified above.

- Public Records
  - Review permits issued for adding an electrical panel to an existing residence.
  - Review permits for structural changes that add living space.
  - Review U.S. Postal Service records for sub-address listings (unit number or other designation) indicating a separate delivery address.
- Other Records
  - Utility records
    - Applicable if unit is separately metered (water, electricity). This seems unlikely.
  - Real estate rental listings
    - Review listings for rental units focusing on key words that suggest an ADU
      - Examples: accessory, granny-flat, cottage, garage apartment, other

- Could be accomplished using web-scraping programs
  - Machine learning application.
- Challenges of precision versus recall:
  - Precision is accurately classifying lists as ADUs (narrowing the list).
  - Recall is finding all the units (broadening the list). For example, this approach would not identify ADUs that are not market available (granny-flats and the like).
- Multiple Listing Services Records for For-Sale Housing
  - There are no standard categories for MLS listings identifying the presence of an ADU, though that would have to be disclosed to a potential buyer if there were a tenant.
  - The presence of an ADU could appear as “other” information in a for-sale listing.
  - This is not likely a viable approach but may become so as ADUs increase in number and market attention. A mid-October 2021 review of data from Bright MLS, which provides listing services for several Virginia markets, though not all revealed that out of 118,694 Virginia listings from June 2019 through August 2021, a keyword search found reference to 24 ADUs. Of these 24, 14 were descriptions that the home for sale could potentially accommodate an ADU, 3 listings referenced space that could be rented (inconclusive), and 7 specifically mentioned having a “legal” or “permitted” ADU.
- Key Word Search of Social Media Posts
  - Highly imprecise.
  - Highly invasive
  - Could be expensive and would require notable technical expertise. Housing these data could come with liabilities.

There would be administrative and operational costs incurred to use any of the methods described to identify un-registered ADUs. Each jurisdiction would have to weigh the economic, social, and political impacts of undertaking such tasks. However, in communities where there is the potential for a notable number of un-registered units (college towns and tourism areas for example), there could be over-arching health and safety concerns that supersede data gathering costs or perceptions of government intrusion into private homeowner affairs. It is noted that some un-registered (illegal) ADUs do not meet health and safety standards that can pose real threats to community well-being. Having a clearinghouse of best practices for identifying un-registered ADUs, would be valuable for Virginia localities.

## Areas for Continued Consideration

Based on informant interviews, literature review best practices, and stakeholder discussion, below is a list of key areas for future consideration. With some outliers, both informant interviews and stakeholder discussion indicated that future consideration should avoid specific mandates as a method to support creation of ADUs.

Though stakeholder input was not unanimous, there was significant interest in exploring grant opportunities to construct and/or maintain accessory dwelling units. This was seen as particularly important if ADUs are to be utilized as an affordable housing resource.

Continued investigation of financing options for ADU construction; consider both public and private options.

Consider methods for an education campaign about ADUs. This campaign could have a wide focus but based on interviewee input, would benefit from a component aimed at educating (without mandating) HOAs about ADUs.

Continue considering issues presented by stakeholders related to ADUs within the existing building code update process.

Consider opportunities for resource sharing including but not limited to the following areas:

- Consistent methodology for counting ADUs
- Ordinance and design guideline options

Though not released as of the writing of this report, Virginia is currently in the midst of significant housing studies via HB 854 and the Joint Legislative Audit & Review Commission (JLARC). There are also ongoing private studies specifically related to local land use. It may be advisable to examine ADUs and related issues in the context of the findings of these reports once they are released.

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# Appendix 1: Key Informant Interview Guide

## Topics for key informant Interviews

- 1) ADU counts
  - a. Does your jurisdiction have a count of the number of ADUs present?
    - i. Have you attempted a count?
  - b. Just based on your judgement, how accurate is that count?
  - c. What process/methodology do you use to count/estimate the number of ADUs in your jurisdiction?
  - d. Do you have programs to encourage the registration of existing ADUs?
    - i. Encourage registration (marketing)
    - ii. Penalize failure to register
    - iii. Forego penalties to register
    - iv. Waive/grandfather permitting
    - v. Other
- 2) Current and future market demand
  - a. Has there been/is there now demand for ADUs in your area?
  - b. How is that demand proportioned between: granny/children flats; rental units; transient lodging? For rental, is there a target market for most owners (students, non-students)?
  - c. Is demand increasing in scale and/or broadening in scope?
    - i. What is driving that change in demand?
- 3) Actions and ordinances
  - a. Has there been/is there now active discussions about ADUs in your community?
    - i. Policymakers/Staff/Targeted stakeholders/general public
    - ii. Have those discussions been favorable, neutral, or negative towards ADUs?
  - b. On a continuum of policy development, where does your community stand:
    - i. Early discussion
    - ii. Policies proposed, not adopted
    - iii. Policies adopted, not operational
    - iv. Operational policies
      1. Some steps
      2. Moderate steps
        - a. Zoning changes/allowances
      3. Full program implementation (coordinated policies in place includes related regulations for parking, commercial use, public communication strategies, etc.
      4. Incentivizing ADU development
  - c. How would you describe your jurisdiction's policy priorities that have driven these actions?
    - i. Limit the number of ADUs
      1. Control density
      2. Preserve neighborhood character
      3. Enough demand from property owners
      4. Protect property values
      5. Traffic/parking
      6. Other

- ii. Increase number of ADUs
      - 1. Increase number of affordable units
      - 2. Support family needs (aged care, returning children)
      - 3. Support housing affordability through homeowner income generation
      - 4. Property rights support
    - d. Are your neighboring jurisdictions addressing ADUs? Have you collaborated with your neighbors on strategies and policies related to ADUs?
    - e. Can you suggest other jurisdictions or other knowledgeable individuals we should speak with on this topic?
- 4) Policy issues
  - a. Zoning
    - i. By rights
    - ii. Changing
  - b. HOAs
  - c. Parking
  - d. Commercial
    - i. Rental housing (long term)
    - ii. Transient (AirBNB, VRBO)
- 5) Codes
  - a. Can you share any specific codes, statutes, zoning, or development standards you use to promote or impede the development of ADUs? We would like to show model language for others to follow.
  - b. Have you had any formal or informal challenges to codes, etc. that would inform other jurisdictions or the broader public debate on ADUs?
  - c. Do state codes help or hinder your efforts?
    - i. How?
- 6) How could the state help?
  - a. Policy
    - i. By rights development
    - ii. Building codes
    - iii. What needs to change?
  - b. Funding/incentives?

## Appendix 2: Best Practices Synthesis

### Virginia jurisdictions that have elements of the recommended best practices

- |  |   |  |   |
|--|---|--|---|
| <ul style="list-style-type: none"> <li>Fairfax</li> <li>Blacksburg</li> <li>Norfolk</li> </ul> | <ul style="list-style-type: none"> <li>Charlottesville</li> </ul> | <ul style="list-style-type: none"> <li>Arlington</li> <li>B-burg &amp; C-ville coming soon!</li> </ul> | <ul style="list-style-type: none"> <li>Charlottesville</li> </ul> |
|--|---|--|---|

### ADU Ordinance Types and Intent (increasing intensity)

Registration and regulation	Limited Uses	Increase housing supply	Promote affordable housing	Central strategy for growth
<ul style="list-style-type: none"> <li>Uses</li> <li>Occupancy</li> <li>Form</li> </ul>	<ul style="list-style-type: none"> <li>Caregiving</li> <li>Voucher holders</li> <li>Students &amp; senior</li> <li>STR</li> </ul>	<ul style="list-style-type: none"> <li>Minimize regulation</li> <li>Financing</li> <li>Education</li> <li>Programming</li> </ul>	<ul style="list-style-type: none"> <li>Planning</li> <li>Programming</li> </ul>	<ul style="list-style-type: none"> <li>Equity and inclusion</li> <li>Complementary infrastructure</li> <li>Safety &amp; accessibility</li> </ul>

### Best Practices

<ul style="list-style-type: none"> <li>Incentivize registration</li> <li>Establish use and form guidelines</li> </ul>	<ul style="list-style-type: none"> <li>Incentivize ADUs for specific uses with favorable financing, fee waivers, tax abatement, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Allow ADUs by-right</li> <li>Minimize requirements</li> <li>Develop financing partnerships</li> <li>Expand forms</li> </ul>	<ul style="list-style-type: none"> <li>Developing partnership with non-profit organizations</li> <li>Allow ADUs in multi-family zone</li> <li>Income restriction</li> </ul>	<ul style="list-style-type: none"> <li>Incentivize all ADUs with fee waivers, favorable financing, design and development resources, etc.</li> </ul>
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### Nationwide Examples

<ul style="list-style-type: none"> <li>Barnstable, MA (registration incentives)</li> </ul>	<ul style="list-style-type: none"> <li>Los Angeles, CA (voucher holders)</li> <li>Wellfleet, MA (aging, STR)</li> </ul>	<ul style="list-style-type: none"> <li>Santa Clara, CA</li> <li>Santa Cruz, CA</li> </ul>	<ul style="list-style-type: none"> <li>Los Angeles, CA (partnership)</li> </ul>	<ul style="list-style-type: none"> <li>Portland, OR</li> <li>Seattle, WA</li> </ul>
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## Appendix 3: House Bill 2053

### CHAPTER 411

*An Act to direct the Department of Housing and Community Development to convene a stakeholder advisory group to evaluate the construction of internal, attached, and detached accessory dwelling units as a strategy to address the Commonwealth's growing demand for affordable and market-rate housing.*

[H 2053]

Approved March 30, 2021

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Department of Housing and Community Development (Department) shall convene a stakeholder advisory group to evaluate the construction of internal, attached, and detached accessory dwelling units as a strategy to address the Commonwealth's growing demand for affordable and market-rate housing. The stakeholder advisory group shall (i) to the extent possible, collect data from stakeholders regarding the current state of the for-sale and rental accessory dwelling unit market in the Commonwealth and information regarding projected demand for accessory dwelling units; (ii) solicit input from stakeholders regarding the current implementation of local accessory dwelling unit ordinances in the Commonwealth; (iii) solicit input from stakeholders regarding locally and state-enacted impediments to the development or construction of accessory dwelling units, including state statutes, building codes, and local zoning ordinances and development standards; (iv) identify local tools to facilitate the construction of accessory dwelling units, including alternative permitting processes, waiver or modification of local parking requirements or ratios, expediting permitting processes, small lot ordinances, and density adjustments; and (v) develop recommendations for state policy changes to remove obstacles to local implementation of accessory dwelling units. The stakeholder advisory group shall include representatives from the Department, the Virginia Housing Development Authority, local planning departments, and local building departments; individuals with expertise in land development, construction, land-use and zoning laws and processes, affordable housing, the Virginia Uniform Statewide Building Code, sustainable development, public transit, common interest communities, property owners' associations, or other areas of expertise as determined by the Department; an affordable housing representative; representatives from social equity organizations; a union representative; a youth organizer; and a representative from the American Association of Retired Persons (AARP). To the extent possible, the Department shall endeavor to ensure balanced geographical representation among the members of the stakeholder advisory group, with representation of rural, suburban, and urban localities and regions of the Commonwealth. The stakeholder advisory group shall receive staff support from the Department. Prior to the first meeting of the stakeholder advisory group, to the extent possible, the Department shall solicit input from the stakeholder advisory group members on the issues enumerated by clauses (i), (ii), (iii), and (iv) and compile such information for presentation at the first meeting of the stakeholder advisory group, and the Department shall continually solicit and compile such input throughout the work of the stakeholder advisory group. The stakeholder advisory group shall report its findings, including any legislative recommendations, to the Director of the Department, the Secretary of Commerce and Trade, the commissioners of the Virginia Housing Development Authority, and the Virginia Housing Commission no later than November 1, 2021. The Department may, in its sole discretion, be permitted to continue its work beyond November 1, 2021, but no later than November 1, 2022.*

## **Appendix 4: Stakeholder Advisory Group**

Allison Cook, Arlington County Inspection Services Division  
Andrew Clark, Home Builders Association of Virginia  
Carmen Romero, Arlington Partnership For Affordable Housing  
Christopher Sigler, Fairfax County  
George Homewood, City of Norfolk Department of City Planning  
Gordon Walker, American Association of Retired Persons  
James Moss, City of Galax Project Manager  
Jeff Brown, Dept. of Housing and Community Development, State Building Codes Office  
Joe Lerch, Virginia Association of Counties  
Joel Franklin, Arlington County Housing Division  
Kaycee Ensign, Dept. of Housing and Community Development, Community Development Housing Division  
Kelly Harris-Braxton, Virginia First Cities  
Lucia Anna "Pia" Trigiani, MercerTrigiani  
Michelle Gowdy, Virginia Municipal League  
Michelle Winters, Alliance for Housing Solutions  
Mike Van Atta, McGuireWoods LLP  
Mindy Hall-Sexton, Virginia Housing  
Natalie Snider, American Association of Retired Persons  
Randy Grumbine, Virginia Manufactured and Modular Housing Association  
Steven Mikulic, McGuireWoods LLP  
Thom Stanton, Go Tiny USA  
Tim Murphy, Arlington County Planning Division  
Tom Hardiman, Modular Home Builders Association  
Vaughn Poller, James City County Neighborhood Development  
Will Egen, Virginia Commission on Youth

# ACCESSORY DWELLING UNITS

A GUIDE TO ACCESSORY APARTMENTS  
IN CHARLOTTESVILLE, VA



NOVEMBER 2015



# City of Charlottesville, Virginia

*"A Great Place to Live for All of Our Citizens"*



Department of Neighborhood Development Services

The City of Charlottesville is pleased to provide this guide to accessory apartments. Under our current zoning ordinance, we allow for both external and internal apartments in most zoning districts by provisional use permit; however, there are limited exceptions within our university areas and mobile home parks.

While these units serve to increase the City's overall housing inventory, they also add value to our housing stock and address a variety of housing needs for homeowners. Accessory apartments can be used to facilitate optional independent living arrangements as well as provide extra usable space for aging in place or family members. While the use will likely change over time based on homeowner need, the potential for income generation is a huge benefit of incorporating an accessory apartment into your home and can often be the difference in making your own mortgage affordable.

Also known as accessory dwelling units, ADUs, granny flats, in-law units, basement apartments, multi-generational homes, secondary dwelling units, etc... accessory apartments can add both utility and value to your home. We hope that this guide provides you with the information you need to make a decision about whether this is a good fit for your situation or not.



# TABLE OF CONTENTS

---

## **INTRODUCTION 1**

DEFINITION  
WHO CAN HAVE ONE?  
PLANNING CONSIDERATIONS  
ADVANTAGES

## **GETTING STARTED 2**

KNOW YOUR NEEDS  
KNOW YOUR SITE  
KNOW THE RULES  
KNOW YOUR FINANCING OPTIONS

## **DESIGNING THE ADU 3**

SITE CONSIDERATIONS  
UNIT CONSIDERATIONS  
SPECIAL CONSIDERATIONS  
DRAWING YOUR DESIGN  
ESTIMATING THE COST

## **BUILDING YOUR ADU 4**

BEFORE YOU BEGIN  
HIRING & WORKING WITH A CONTRACTOR  
PERMITS & INSPECTIONS  
BEFORE YOU MOVE IN

## **ADDITIONAL RESOURCES 5**

DEFINITIONS  
RESIDENTIAL BUILDING CODE AMENDMENT  
CREDITS





# INTRODUCTION 1

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DEFINITION

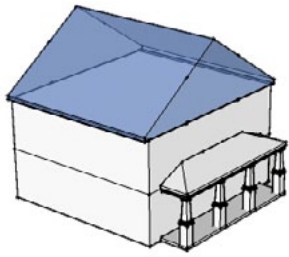
WHO CAN HAVE ONE?

PLANNING CONSIDERATIONS

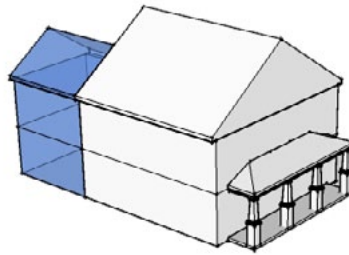
ADVANTAGES



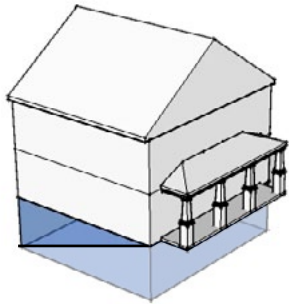
# DEFINITION



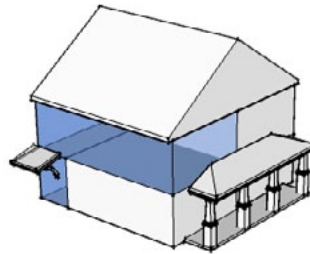
**Interior ADU**  
*Unit in finished attic*



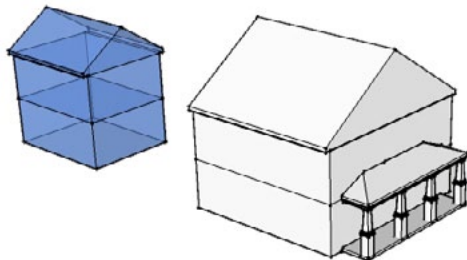
**Interior ADU**  
*Unit in addition*



**Interior ADU**  
*Unit in finished basement*



**Interior ADU**  
*Unit within primary residence*



**Exterior ADU**  
*Unit is unattached to main residence*

## WHAT IS AN ACCESSORY APARTMENT?

The City's zoning ordinance defines an accessory apartment as "an independent dwelling unit, the presence and use of which is clearly subordinate to a single-family detached dwelling and in which no more than two (2) persons reside." They are commonly referred to as accessory dwelling units (ADU's), "granny flats" or in-law suites, and can either be internal to the unit or a separate structure in the rear yard.

The City has two (2) classifications for accessory apartments:

### Interior Accessory Apartment

When an accessory apartment is contained within the structure of a single family dwelling, the city considers the unit to be an "interior accessory apartment." It will share a common wall, ceiling or floor with the main house. Examples include basement apartments, attic units and apartments within an addition attached to the primary residence.

### Exterior Accessory Apartment

All other apartments that do not share a common wall, ceiling or floor with the main house and are considered to be an exterior accessory apartment. Examples of this type of apartment include a smaller structure in the rear yard or a unit above a detached garage.

The City has specific requirements for each type of accessory apartment.

# WHO CAN HAVE ONE?

Most residential property owners will find that they have the opportunity to have an accessory apartment provided:

1. The property owner will live on-site in either the primary house or the accessory apartment; **and**
2. An accessory apartment is permitted in your property's zoning district.

## What is a zoning district?

To promote the health, safety and general welfare of the public, the City has established and adopted rules and regulations to direct the general development and use of land within the city. These rules and regulations collectively make up the zoning ordinance. Zoning divides the city into districts such as commercial, mixed-use, industrial and residential.

## How can I find out which district my property is in?

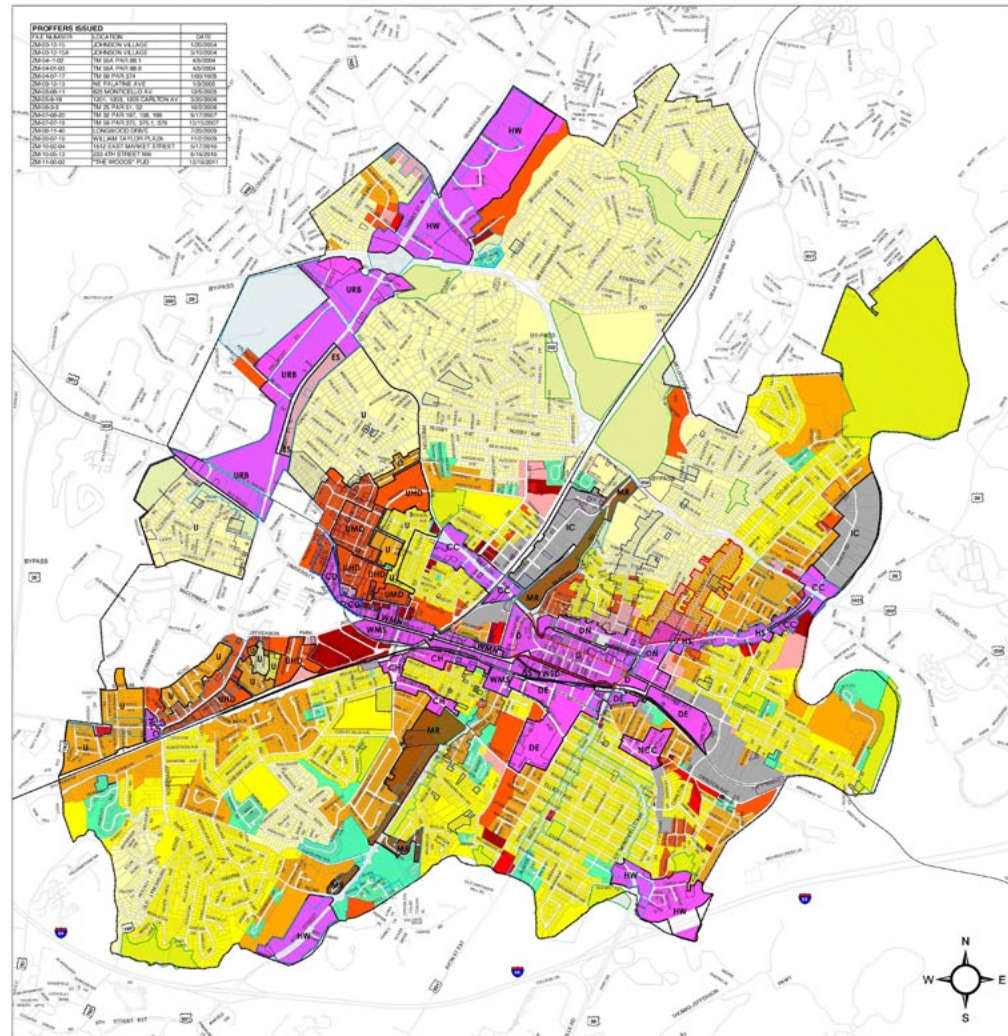
To determine which district your house is in, go to the City's Department of Neighborhood Development Services (NDS) website and review the latest zoning map, or contact NDS to speak to a neighborhood planner (434-970-3182). Information can also be found using the City's "GIS Viewer" by searching for your property, selecting the correct result, and clicking on the "Summary" tab under property details. The zoning district is noted in the "Zone" line item.

## Which districts allow accessory apartments?

Most residential districts and some commercial and mixed-use districts will allow an accessory apartment with the approval of a provisional use permit (PUP)\*.

\* The PUP process provides a means for the city to approve a specific use with certain restrictions or conditions as needed to minimize its impact on neighboring properties. Refer to Article 1, Division 9 of the zoning ordinance for additional information on PUP's.

# CITY OF CHARLOTTESVILLE ZONING DISTRICT MAP



Neighborhood Development Services  
Approved April 6, 2009

<p><b>RESIDENTIAL</b></p> <ul style="list-style-type: none"> <li>R-1</li> <li>R-2</li> <li>R-3</li> <li>R-4</li> <li>R-5</li> <li>R-6</li> <li>R-7</li> <li>R-8</li> <li>R-9</li> <li>R-10</li> <li>R-11</li> <li>R-12</li> <li>R-13</li> <li>R-14</li> <li>R-15</li> <li>R-16</li> <li>R-17</li> <li>R-18</li> <li>R-19</li> <li>R-20</li> <li>R-21</li> <li>R-22</li> <li>R-23</li> <li>R-24</li> <li>R-25</li> <li>R-26</li> <li>R-27</li> <li>R-28</li> <li>R-29</li> <li>R-30</li> <li>R-31</li> <li>R-32</li> <li>R-33</li> <li>R-34</li> <li>R-35</li> <li>R-36</li> <li>R-37</li> <li>R-38</li> <li>R-39</li> <li>R-40</li> <li>R-41</li> <li>R-42</li> <li>R-43</li> <li>R-44</li> <li>R-45</li> <li>R-46</li> <li>R-47</li> <li>R-48</li> <li>R-49</li> <li>R-50</li> <li>R-51</li> <li>R-52</li> <li>R-53</li> <li>R-54</li> <li>R-55</li> <li>R-56</li> <li>R-57</li> <li>R-58</li> <li>R-59</li> <li>R-60</li> <li>R-61</li> <li>R-62</li> <li>R-63</li> <li>R-64</li> <li>R-65</li> <li>R-66</li> <li>R-67</li> 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<li>M-1</li> <li>M-2</li> <li>M-3</li> <li>M-4</li> <li>M-5</li> <li>M-6</li> <li>M-7</li> <li>M-8</li> <li>M-9</li> <li>M-10</li> <li>M-11</li> <li>M-12</li> <li>M-13</li> <li>M-14</li> <li>M-15</li> <li>M-16</li> <li>M-17</li> <li>M-18</li> <li>M-19</li> <li>M-20</li> <li>M-21</li> <li>M-22</li> <li>M-23</li> <li>M-24</li> <li>M-25</li> <li>M-26</li> <li>M-27</li> <li>M-28</li> <li>M-29</li> <li>M-30</li> <li>M-31</li> <li>M-32</li> <li>M-33</li> <li>M-34</li> <li>M-35</li> <li>M-36</li> <li>M-37</li> <li>M-38</li> <li>M-39</li> <li>M-40</li> <li>M-41</li> <li>M-42</li> <li>M-43</li> <li>M-44</li> <li>M-45</li> <li>M-46</li> <li>M-47</li> <li>M-48</li> <li>M-49</li> <li>M-50</li> <li>M-51</li> <li>M-52</li> <li>M-53</li> <li>M-54</li> <li>M-55</li> <li>M-56</li> <li>M-57</li> <li>M-58</li> <li>M-59</li> <li>M-60</li> <li>M-61</li> <li>M-62</li> <li>M-63</li> <li>M-64</li> <li>M-65</li> <li>M-66</li> <li>M-67</li> <li>M-68</li> <li>M-69</li> <li>M-70</li> <li>M-71</li> <li>M-72</li> 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<li>November 19, 2009</li> <li>October 23, 2010</li> <li>November 16, 2010</li> <li>September 21, 2011</li> <li>December 5, 2011</li> <li>December 19, 2011</li> <li>January 9, 2012</li> <li>February 6, 2012</li> <li>March 5, 2012</li> <li>June 11, 2012</li> <li>December 7, 2012</li> <li>April 10, 2013</li> <li>May 8, 2013</li> <li>May 20, 2013</li> </ul>
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Example of Charlottesville Zoning Map  
Current map can be found online at:  
<http://www.charlottesville.org/home/showdocument?id=27267>

# PLANNING CONSIDERATIONS

Once you determine that an accessory apartment is allowed in your zoning district, you need to consider the following:

## How big can it be?

Interior accessory apartment: The size of an internal unit can not exceed forty (40) percent of the gross floor area of the primary residence. See "Floor area, gross (GFA)" in Chapter 5 - Definitions for the definition of gross floor area and how it is calculated.

*Example:*

*If a primary structure is a two-story residence with 1,000 gross square feet per floor, the maximum **area** allowed is:  
 $(1,000 \text{ gsf/story} \times 2 \text{ stories}) \times 40\% = 800 \text{ gsf}.$*

Exterior accessory apartment: The size of an exterior unit must meet the following criteria:

1. It can not exceed forty (40) percent of the footprint of the primary residence; **and**
2. The total of the areas of the footprints of the apartment and all other accessory structures (e.g. sheds, detached garage, pool house, pool, etc.) in the rear yard can not exceed thirty (30) percent of the area of the rear yard.

*Example:*

*If a primary structure is a two-story residence with 1,000 gross square feet per floor, the maximum **footprint** allowed is:*

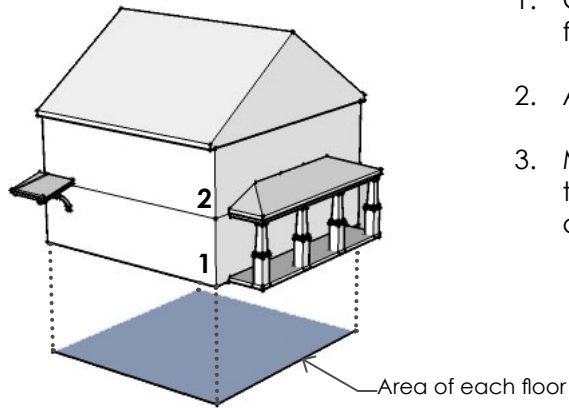
*$1,000 \text{ gsf} \times 40\% = 400 \text{ gsf}.$*

*If the rear yard is 40 ft x 50 ft, the maximum rear yard coverage is:*

*$2,000 \text{ sf} \times 30\% = 600 \text{ gsf}.$*

*The total footprint area of the apartment and any other structures can not exceed 600 gsf.*

See "Footprint, building" in Chapter 5 - Definitions for the definition of building footprint and how it is calculated.

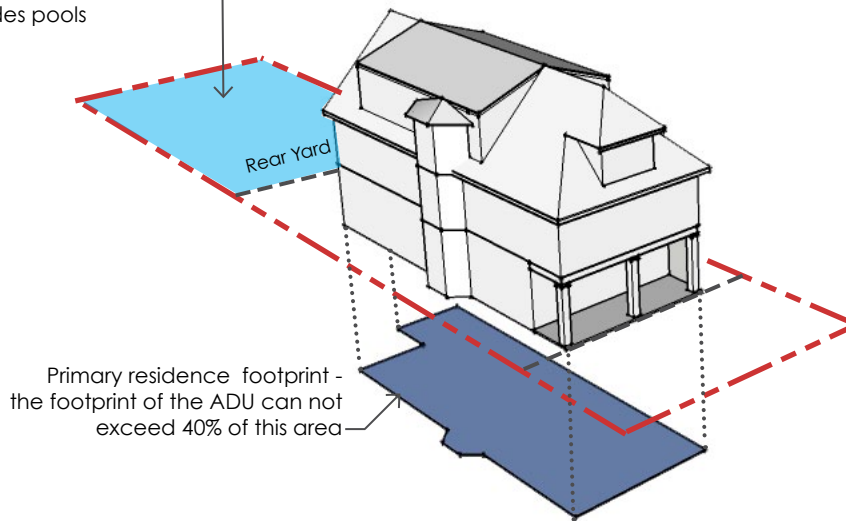


1. Calculate area of each floor.
2. Add the areas together.
3. Multiply the sum by 40% to find the total allowable area for an interior ADU

## Interior ADU Maximum size

Total footprint area of all accessory structures\* can not exceed 30% of the rear yard area

\* includes pools



Primary residence footprint - the footprint of the ADU can not exceed 40% of this area

## Exterior- ADU Maximum size



# PLANNING CONSIDERATIONS

## How tall can it be?

Because an interior accessory apartment must be contained entirely within the primary structure, the maximum height is set by the requirements for the primary residence.

The maximum height permitted for an exterior accessory apartment is the **lesser** of:

1. Twenty-five (25) feet; **OR**
2. The height of the primary residence (measured to the highest point of its roof).

## Where can one be built?

External (detached) accessory apartments can be built within the rear yard\* of a property.

\*The rear yard is defined as the area from the rear face of the primary residence to the rear property line and extending on both sides to the side boundaries.

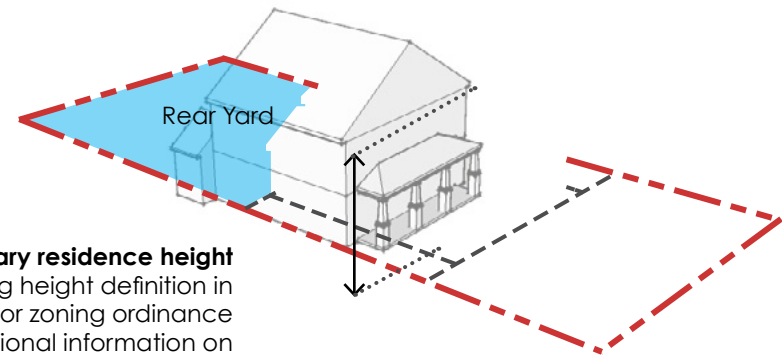
## Who can live there?

There are two (2) principal requirements regarding who can live in an accessory apartment.

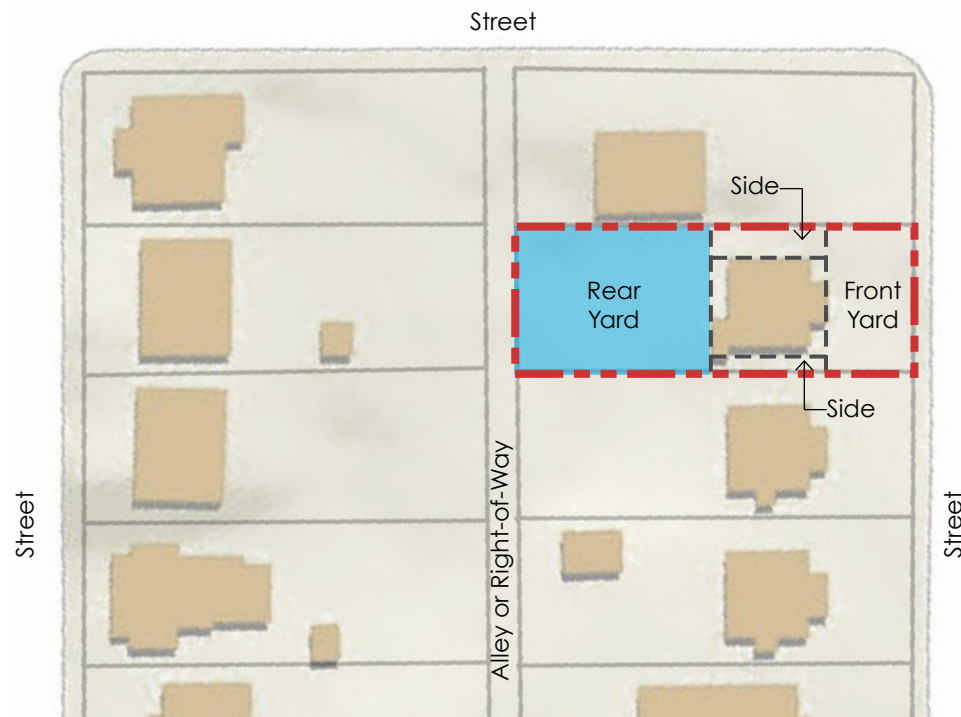
1. The property owner must live on-site in either the primary residence or the accessory apartment; and
2. No more than two (2) people are permitted to live within an accessory apartment.

## Historic District Regulations and Review

If your property is in one of the City's Architectural Design Control Districts (ADCDC), design review is required for a new structure, changes to the exterior of an existing structure, or demolition of an existing structure. To find out if your property is in an ADCDC, refer to the link on the City's Board of Architectural Review (BAR) web page.



**Primary residence height**  
(See building height definition in appendix or zoning ordinance for additional information on how building height is measured)



# ADVANTAGES

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## Extra Income Source

One of the primary benefits of an accessory apartment is that it can be rented as an individual dwelling, providing the homeowner with additional income. The homeowner would have the option of leasing either the primary house or the ADU, giving him the greatest flexibility for additional income. Accessory apartments can be rented on a short term basis compliant with the City's homestay ordinance or it may be rented in a more traditional landlord/tenant arrangement.

## Aging-In-Place

Accessory apartments may include universal design features such as wider doors, zero step entries, thoughtful bathroom arrangements, and open layouts that facilitate the ability of people to remain in their residences longer. Income gained from renting out either the apartment or the main house also provides a supplemental revenue source which may make it possible for those on fixed incomes to remain independent longer.

## Extended Family Housing

Both internal and external accessory apartments, commonly referred to as "in-law suites" or "granny flats," often provide families with the means to care for extended family members — both young and old — enabling them to maintain their independence and avoid costly housing alternatives.

## Neighborhood Benefits

Accessory apartments can also benefit the larger community by contributing to the diversification of housing types and sizes, thereby increasing the supply of affordable housing.



Source: accessorydwellings.org  
Kristy Lakin ADU  
photo credit: Portland Photos



Image source:  
accessorydwellings.org





## GETTING STARTED 2

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KNOW YOUR NEEDS

KNOW YOUR SITE

KNOW THE RULES

KNOW YOUR FINANCING OPTIONS





Source: [accessorydwellings.org](http://accessorydwellings.org)  
Bassett - Klepinger ADU  
photo credit Michael Klepinger

## KNOW YOUR NEEDS

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### **What are my reasons for creating an accessory apartment?**

Assess whether you are considering an ADU to provide an additional income source, to support extended family members or to provide greater flexibility to meet your needs in the various seasons of life.

### **Who will live there?**

Consider if the resident(s) of the ADU will be members of your own family or someone outside the family. Also, think about any special needs the intended occupant has or may have that should be addressed in the design. Common needs include mobility impairments, the ability to age-in-place, and the need for oversight by others while remaining independent.

### **How much interaction is desired between the primary residence and the ADU?**

Your design will influence the level of interaction between the resident(s) of the primary house and the ADU. A shared entry will encourage more interaction; a detached unit with its own entrance and yard area will create more privacy between the two dwellings.

# KNOW YOUR SITE

## Determine the zoning designation for your lot.

You can find the zoning of your property with Charlottesville's online GIS Viewer ([link](#)) or by contacting the Department of Neighborhood Development Services (434-970-3182). Once you know the zoning classification of your property, review the City's zoning code to determine if an accessory apartment is allowed within your zoning. This information can be found in the ordinance's residential use matrix [Zoning Article III, Division 7 of the ordinance online]. A "B" in the matrix indicates the apartment is a by-right use – meaning that the apartment is an allowed use. A "P" indicates the apartment is a provisional use – meaning the apartment may be allowed, subject to review by the City. If your zoning requires a provisional use permit (PUP) for an ADU, you will need to submit a PUP application to the City's zoning department. Note: there are separate applications for an Interior Accessory Apartment and an Exterior Accessory Apartment. The forms can be found on the City's "Other Permits & Forms" web page.

## Decide where you will place it in your rear yard.

If you are planning an external ADU, consider whether you want to have a shared rear yard between the primary house and the accessory apartment, or whether you would like each to have its own outdoor space. Are there any natural features and views you would like to maintain?

## Determine how the apartment will be accessed.

The entrance to the ADU should be easy for a visitor to find without being mistaken for the entrance to the main house. Access to parking should also be considered in your design. One parking space will be required for the apartment.

Use Types	ZONING DISTRICTS											
	R-1	R-1U	R-1S	R-1SU	R-2	R-2U	R-3	R-UMD	R-UHD	MR	MHP	Requirements
<b>RESIDENTIAL AND RELATED USES</b>												34-xxxx
Accessory apartment, internal	P		P		P		B	P	P	P	P	1105; 1171
Accessory apartment, external	P		P		P		P	P	P	P		1105; 1171

*Example of Charlottesville's Residential Use Matrix*

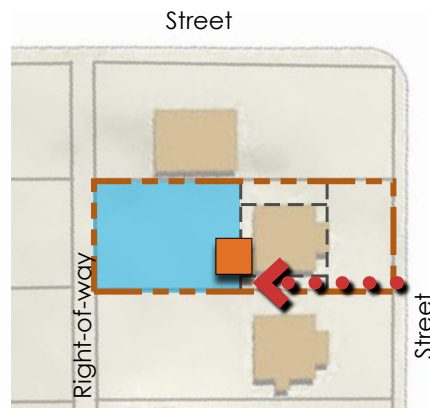
*Current use matrix can be found in the city's "Online CODE of ORDINANCES"*



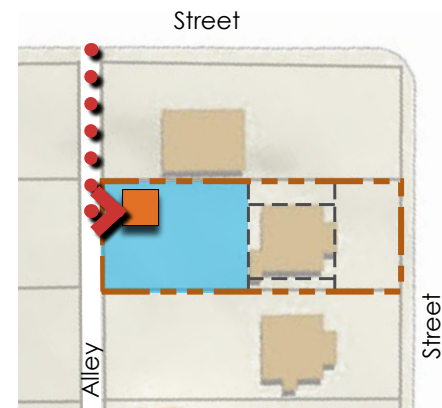
*Example: Rear Addition*



*Example: Detached*



*Example: Accessed from Street*



*Example: Accessed from Alley*



# KNOW YOUR SITE



**Legend**

- Parcels
- Sanitary Manhole
- Sanitary Line
- Storm Structure
- - Storm Line
- Water Hydrant
- Water Line
- Water Meter
- Gas Meter
- Gas Main
- Gas Service
- - Elevation Contour Lines - 2ft (2006)

Sample view of Site Information available on the Charlottesville GIS Viewer

**Understand your utilities.** Most of the utility hookups for the apartment can be made off of the primary house meter if there is adequate capacity. If there is not enough capacity with your existing services, your utilities may need to be upgraded. A qualified contractor can help you with this assessment. Building codes will also require that you maintain access to utility shut-offs and breaker panels for residents of both the main house and the apartment. Building codes stipulate that the heating and cooling systems cannot discharge air from one of the units into the other. Therefore, modifications to your existing system or a separate system for the ADU may be necessary.

**Determine if you need a survey.** Depending on the location of your ADU, you may need to have a surveyor stake out the apartment to ensure that your unit is on your property and complies with all setback requirements. The distance you need to maintain from your property line is called a setback. The depth of the setback for your zoning classification can be found in the zoning ordinance.

If you don't have a survey with field measured distances, general information for existing houses can be found on the City's website :

<http://gisweb.charlottesville.org/GISViewer/>

Follow these steps: view in map/tools/measure/distance to obtain dimensions.

**NOTE:** Information found on the GIS website may not be complete or accurate; it is provided as general information only. The City will require an as-built survey for newly constructed additions or detached ADUs before the Certificate of Occupancy is issued.

# KNOW THE RULES

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## Basic Rules

The following rules apply to all accessory apartments - both interior and exterior:

1. Height is limited to 25 feet **OR** the highest point of the roof on the primary residence.
2. Building must comply with the latest edition of the Virginia Residential Code ([link](#)).
3. The property owner must live on-site in either the accessory apartment or the primary residence.
4. Not more than two (2) unrelated persons can live in the accessory apartment.

## Historic District Regulations

If your property falls within one of the City's Architectural Design Control (ADC) Districts or is one of the City's Individually Protected Properties, additional regulations apply to assure that new structures, additions, landscaping and related elements are compatible with the character of the historic district and property. Information on these regulations can be found in the City's Board of Architectural Review (BAR) "ADC Guidelines" web page.



photo credit:  
Design Develop LLC



Source: [www.modern-shed.com](http://www.modern-shed.com)

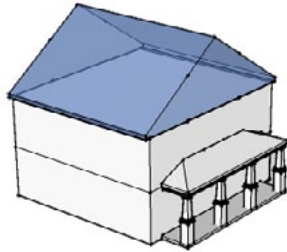


photo credit:  
Design Develop LLC

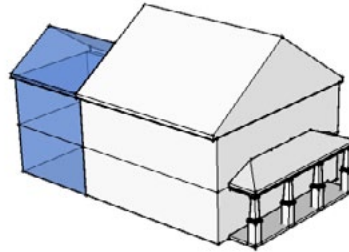


# KNOW THE RULES

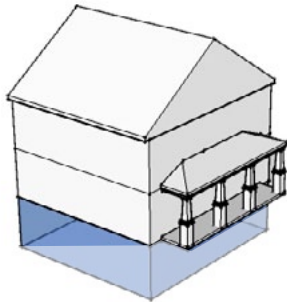
## Interior Apartment



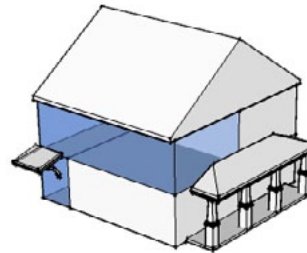
Unit in finished attic



Unit in addition



Unit in finished basement



Unit within primary residence

**Interior Accessory Apartment:** one that is contained within the structure of a single family dwelling. It will share a common wall, ceiling or floor with the main house. Examples include basement apartments, attic units and apartments within an addition attached to the primary residence.

In addition to the basic rules for accessory apartments, the following requirements also apply to interior apartments :

1. The interior apartment can not have its own separate entrance on the front facade of the primary residence.
2. The apartment must be contained entirely within the primary structure. An addition to the rear is considered as meeting this criteria.
3. The gross floor area\* of the apartment can not be more than forty (40) percent of the gross floor area\* of the principal residence in which it is contained.



\* See appendix for definition.

# KNOW THE RULES

## Interior Apartment Example

### Step-by-step guide to planning your own interior ADU.

For the following example, we will assume the following:

- An existing house that is 30 ft x 50 ft.
- The house has 2 stories and a full basement.
- The attic area has areas with structural head room of 6'-6" or greater. For this example, assume this area is 10 ft x 50 ft.

### Step 1: Measure each floor of the existing house.

Calculate the total area of each floor.

*Example:*

*An existing house has a footprint of 30 ft. x 50 ft. or 1,500 sf.*

*The house has 2 stories and a full basement.*

*The attic area is not inhabited but the center portion of the attic has headroom that is 6'-6" or greater.*

### Step 2: Add up the area of all of the floors.

This total is the gross floor area (GFA) of your principal residence.

*Example:*

*Existing house – Basement: 30 ft x 50 ft = 1,500 sf*

*Existing house – 1st Floor: 30 ft x 50 ft = 1,500 sf*

*Existing house – 2nd Floor: 30 ft x 50 ft = 1,500 sf*

*Existing house – Attic: = 500 sf*

*Total GFA = 5,000 sf*

For more information on the definition of "gross floor area" and how it is calculated, see "Floor area, gross (GFA)" in Chapter 5 - Definitions.

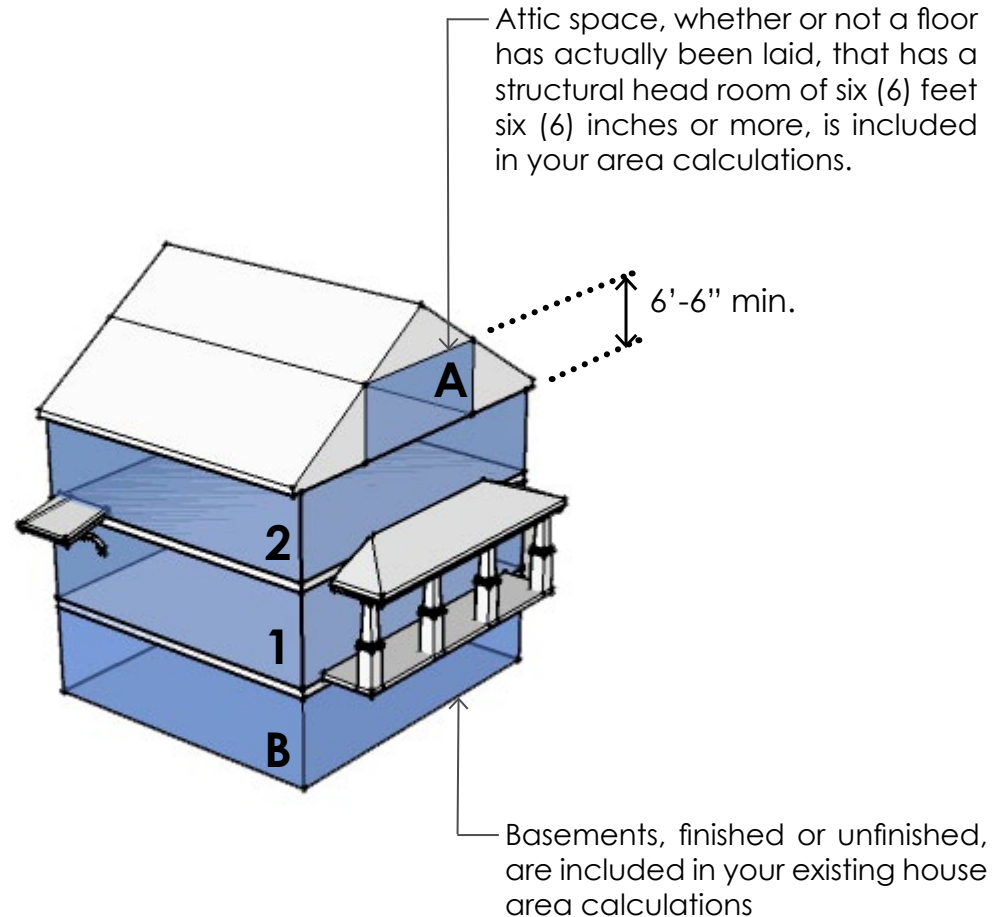
### Step 3: Multiply the total GFA you calculated by 0.40 (or forty percent).

The product is the maximum gross floor area allowed for your interior ADU.

*Example:*

*5,000 sf x 0.40 = 2,000 sf*

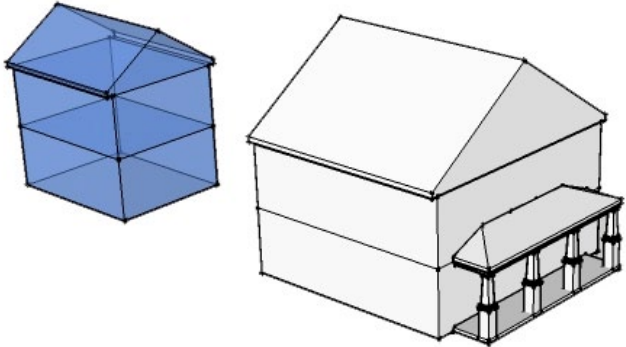
*Therefore, the primary unit must be at least 3,000 sf. and the interior ADU cannot be greater than 2,000 sf.*





# KNOW THE RULES

## Exterior Apartment



Exterior ADU



Exterior ADU over detached garage

**Exterior Accessory Apartment:** Includes all apartments other than interior apartments that do not share a common wall, ceiling or floor with the main house. Examples include a smaller structure in the rear yard or a unit above a detached garage.

In addition to the basic rules for accessory apartments, the following requirements also apply to exterior apartments :

1. The footprint\* of the exterior accessory apartment can not be greater than forty (40) percent of the footprint\* of the primary residence on the property.
2. The apartment structure must comply with the zoning regulations for accessory structures.
  - A. It must be located in the rear or side yard.
  - B. The total footprint of all accessory structures\* (including sheds, detached garages, pools, etc.) shall not exceed thirty (30) percent of the rear yard area.
  - C. It must be at least five (5) feet from the property line. If the apartment structure is both a garage and apartment, and the garage is entered off an alley, then the garage has to be at least ten (10) feet from the property line at the alley.
  - D. It must be at least eight (8) feet from any other structure on site.

\* See appendix for definition.

# KNOW THE RULES

## Exterior Apartment Example

### Step-by-step guide to planning your own exterior ADU.

For the following example, we will assume the following:

- An existing house that is 30 ft x 50 ft.
- The house has 2 stories and a full basement.
- The attic area is not habitable.
- The house sits on a lot that is 130 ft. x 50 ft.
- There is a small 8 ft x 12 ft. garden shed in the rear yard.

#### Step 1: Determine the area of the footprint of your existing house.

Measure each floor of the existing house. Calculate the footprint.

*Example:*

*The footprint of the house is 30 ft x 50 ft. or 1,500 sf.*

#### Step 2: Multiply the total footprint area you calculated by 0.40 (or forty percent).

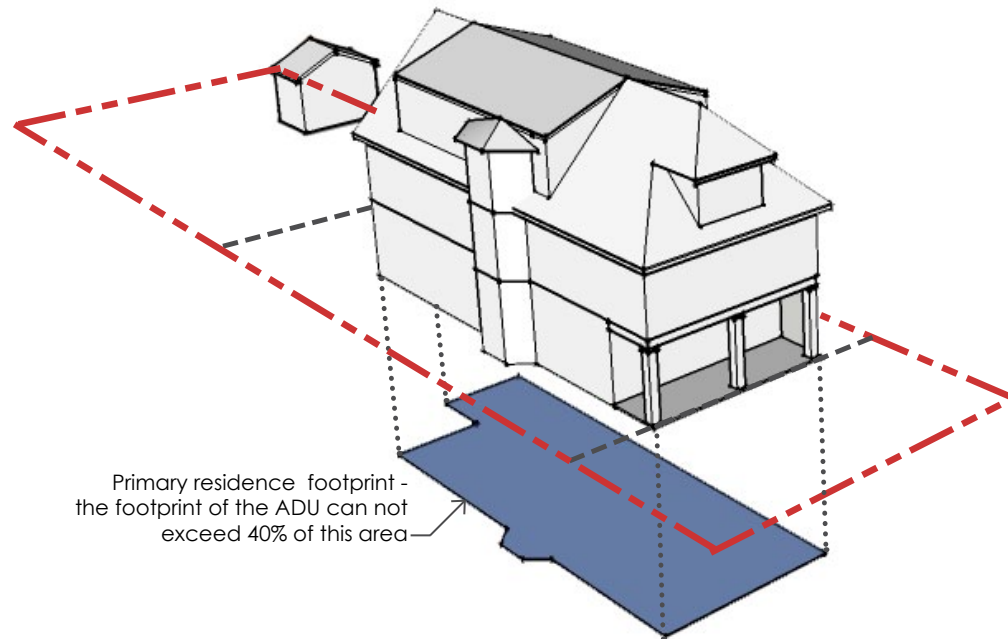
The result is the maximum area of the footprint of your exterior ADU.

*Example:*

*1,500 sf x 0.40 = 600 sf*

*Therefore the footprint of the ADU can not exceed 600 sf.*

*(Note: The height and total area of the ADU will be determined in subsequent steps.)*

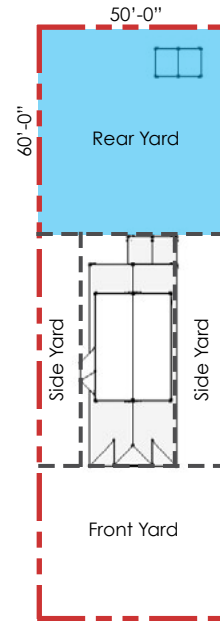


To determine the area of the existing house footprint, include all areas within the surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

# KNOW THE RULES

## Exterior Apartment Example

To determine the area of the rear yard, measure from the furthest projection of the house to the rear lot line and from side lot line to the opposite side lot line.



**Step 3: Calculate the area of your rear yard.** Determine the distance from the back of your house to your rear property line and the distance between your side property lines. The space within these lines is your rear yard. Calculate the area of this space.

*Example:*

*Measure the distance from the back of your house to your rear property line. For our example, we will use 60 ft.*

*Now calculate the area of your rear yard.*

$$60 \text{ ft} \times 50 \text{ ft} = 3,000 \text{ sf}$$

*The total area of the rear yard is 3,000 sf.*

**Step 4: Multiply area of the rear yard by 0.30 (or thirty percent).**

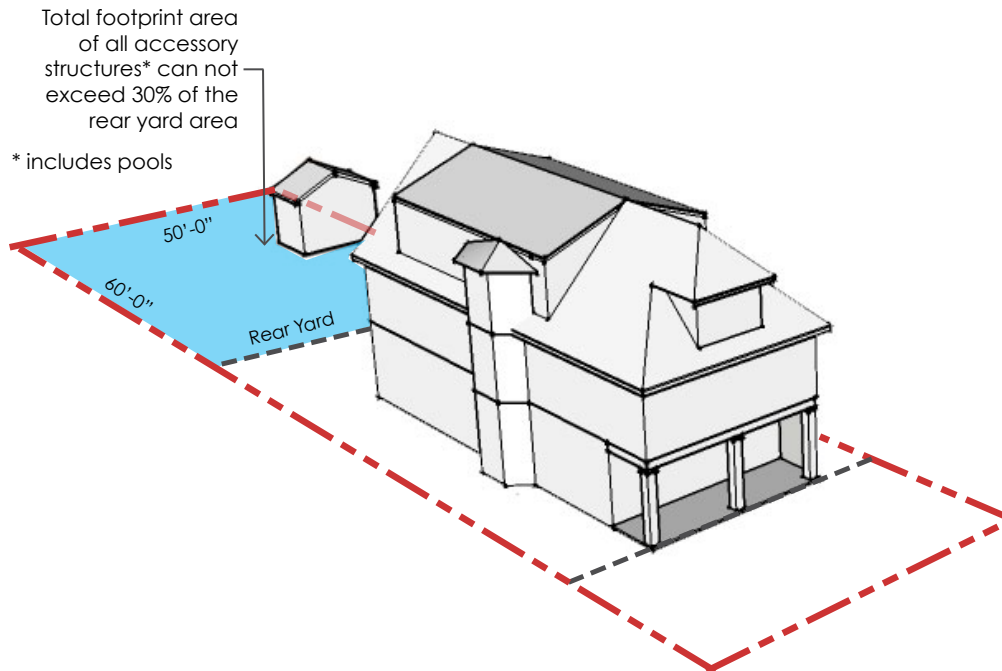
The product is the maximum area of all accessory structures.

*Example:*

$$3,000 \text{ sf} \times 0.30 = 900 \text{ sf}$$

*Therefore the total footprint area of **ALL** accessory structures can not exceed 900 sf.*

*Since there is an existing garden shed that is 8 ft x 12 ft, or 96 sf, the ADU cannot have a footprint greater than 804 sf. to comply with this requirement.*



# KNOW THE RULES

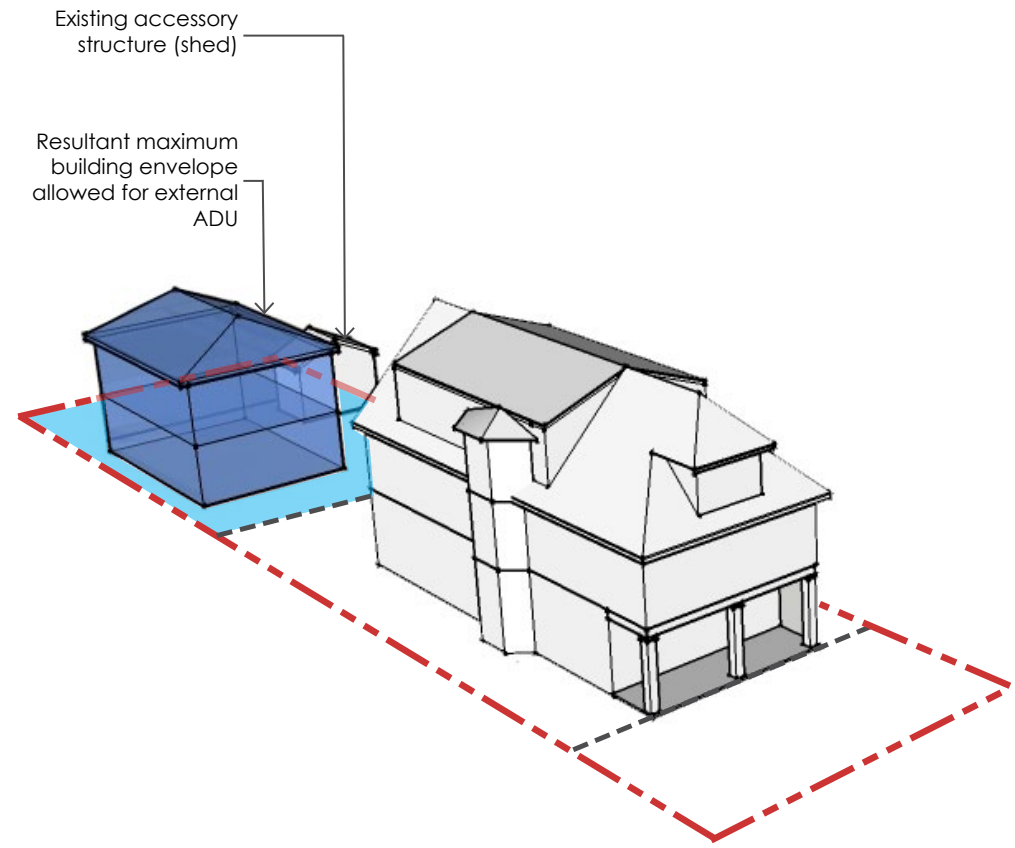
## Exterior Apartment Example

**Step 5: Compare the values calculated in steps 2 and 4.**  
The smaller value of the two is the largest footprint that you can have for your ADU.

*Example:*

*600 sf (from Step 2) and 804 sf (from Step 4).*

*The maximum footprint for the exterior apartment is 600 sf.*



# KNOW YOUR FINANCING OPTIONS

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As you decide how you will finance your ADU – whether by cash-on-hand or with a loan – there are several factors to consider:



1. Your accessory apartment may qualify for the City of Charlottesville Tax Abatement Program. If approved, the tax exemption will run for a period up to seven years. Information regarding eligibility and program requirements can be found on the City Assessor's "Tax Exemptions for Housing Improvements" web page. It is important to note that the application for the program must be **approved by the City PRIOR to the start of any work.**
2. Units that comply with the City's "Design for Life Cville" program qualify for partial refunds of city fees upon certification. More information can be found on the City's "Design for Life Cville" web page.
3. If your ADU incorporates certain accessibility and universal design features, it may qualify for Virginia's "Livable Homes Tax Credit" program. More information about this program can be found on the Virginia Department of Housing and Community Development's "Livable Homes Tax Credit (LHTC)" web page.
4. To encourage increased energy efficiency the City has created an "Energy Efficient Building Special Tax Rate" program that provides a one-time 50% tax reduction for qualifying buildings. More information on can be found on the City's "Special Tax Rate for Certain Energy-Efficient Buildings" web page.
5. If financing is provided through a bank, discuss your plans with your bank as the loan terms and requirements may be different from that of your primary house.



## DESIGNING THE ADU 3

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SITE CONSIDERATIONS  
UNIT CONSIDERATIONS  
SPECIAL CONSIDERATIONS  
DRAWING YOUR DESIGN  
ESTIMATING THE COST





# SITE CONSIDERATIONS

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## **Fit into your neighborhood**

The design and placement of your ADU should follow the larger patterns of your neighborhood. Consider the depth of rear and side yards and maintain a consistent pattern. Review the scale and relationship of other accessory structures in your neighborhood. If you have an alley that serves the rear of your property, study how it is being used and the opportunities it may provide.

## **Parking**

City zoning requires that one parking space be provided per dwelling unit, or at least one for the primary residence and one for the ADU. Each parking space shall be at least 9 feet by 18 feet. There are several City requirements for locating the parking on your site:

- The parking may be located within any yard.
- No driveway shall be located within three (3) feet from the line of an adjacent property.
- The portion of the driveway and the parking space located in the front yard (i.e. the area between the right-of-way and the building setback line) shall not exceed twenty-five (25) percent of the front yard area.
- All driveway entrances are to be at least twenty (20) feet wide but no more than thirty (30) feet.
- No driveway entrance or exit shall intersect with a street at a location closer than fifteen (15) feet to any street intersection.

Refer to the zoning ordinance for additional information (Sec. 34-972. - Location, yard areas, and driveways).

## **Entrance to the unit**

Consider where the entrance to the unit will be placed, how it will be distinguished as a separate unit, and how it will be accessed. City regulations do not allow the entrance to an ADU to be on the front facade of the primary residence. It must be to the side or rear.

# UNIT CONSIDERATIONS

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## Privacy

Maintaining privacy between the main residence and ADU is an important consideration. If you are considering an interior ADU, the location of the entrance, the sound proofing of common walls and floors, and access to utility shut-offs are important. For exterior ADUs, window and door placement, access to the entrance, yard configurations (e.g. shared or individual yard space), and landscaping affect the sense of privacy.

## Storage

Having adequate storage is important to the livability of any residence. Therefore, thought should be given to the storage needs of the resident of the accessory apartment. If possible, space should be provided for larger items such as bicycles and seasonal items. Within the unit, an efficient layout and the use of leftover spaces, such as the area under stairs, provide additional storage opportunities and can make the unit feel larger than it is.

## Blend in with your primary residence

Your new ADU, whether an addition to the existing house or a separate detached unit, should be secondary to the main house - both in scale and overall size. It should not compete or overwhelm the primary residence. Utilizing the same or complementary design elements (such as materials, colors, and roof pitch) as used on the main house are also desirable.



Delineation of space

Bassett - Klepinger ADU  
Credit Michael Klepinger



Compatibility with primary residence





Charlottesville Internal ADU  
Credit: Design Develop LLC



Image source:  
[www.accessorydwellings.org](http://www.accessorydwellings.org)

## SPECIAL CONSIDERATIONS

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### Flexibility & Growth Options

An ADU can help you meet the changing needs of your family. At first, you might lease it for an additional income source. As your family grows, you may find the space is needed to accommodate your own family. As children move out, you then have the flexibility to revert it back to a leased unit, keep it for your own use, or even use it to house an elderly family member or friend.

### Aging-in-Place & Universal Design

So that a larger segment of the population can live and/or visit the ADU, you may consider incorporating universal design features in your unit.

What is an universal design feature? The Center for Universal Design at North Carolina State University defines it as "any component of a house that can be used by everyone regardless of their level of ability or disability." Such features include:

- Stepless entries
- Wider doors (34" doors or larger)
- Open plans
- Space to turn around on both sides of the entrance door.
- Transitions at doors and flooring materials that are 1/2" or less.
- A usable bathroom
- A usable kitchen
- Laundry facilities (if provided) on the main level

### Energy Efficiency and Sustainability

To make your apartment more energy efficient, locate and orient your ADU to take advantage of the sun, and place windows to allow for natural ventilation. Including high performance windows, increased insulation, and energy efficient appliances /fixtures will also have a positive effect.

# DRAWING YOUR DESIGN

## Concept plan

To start, begin to list your desires and goals and sketch out any ideas that you have. Many times it is advisable to discuss your plans with your neighbors in case there are any concerns that you need to consider and to keep them informed.

## Who can draw it

While it is not required that a licensed architect prepare the plans, it is highly recommended. An architect is trained to help you create your vision. They are also knowledgeable in building codes and construction.

## Meet with NDS to review your concept

After you have a conceptual plan of your accessory apartment, review it with your neighborhood City planner to ensure that your design complies with the City's ordinances. Make any necessary refinements and review your plan with the building official to assure you have complied with all applicable building code requirements.

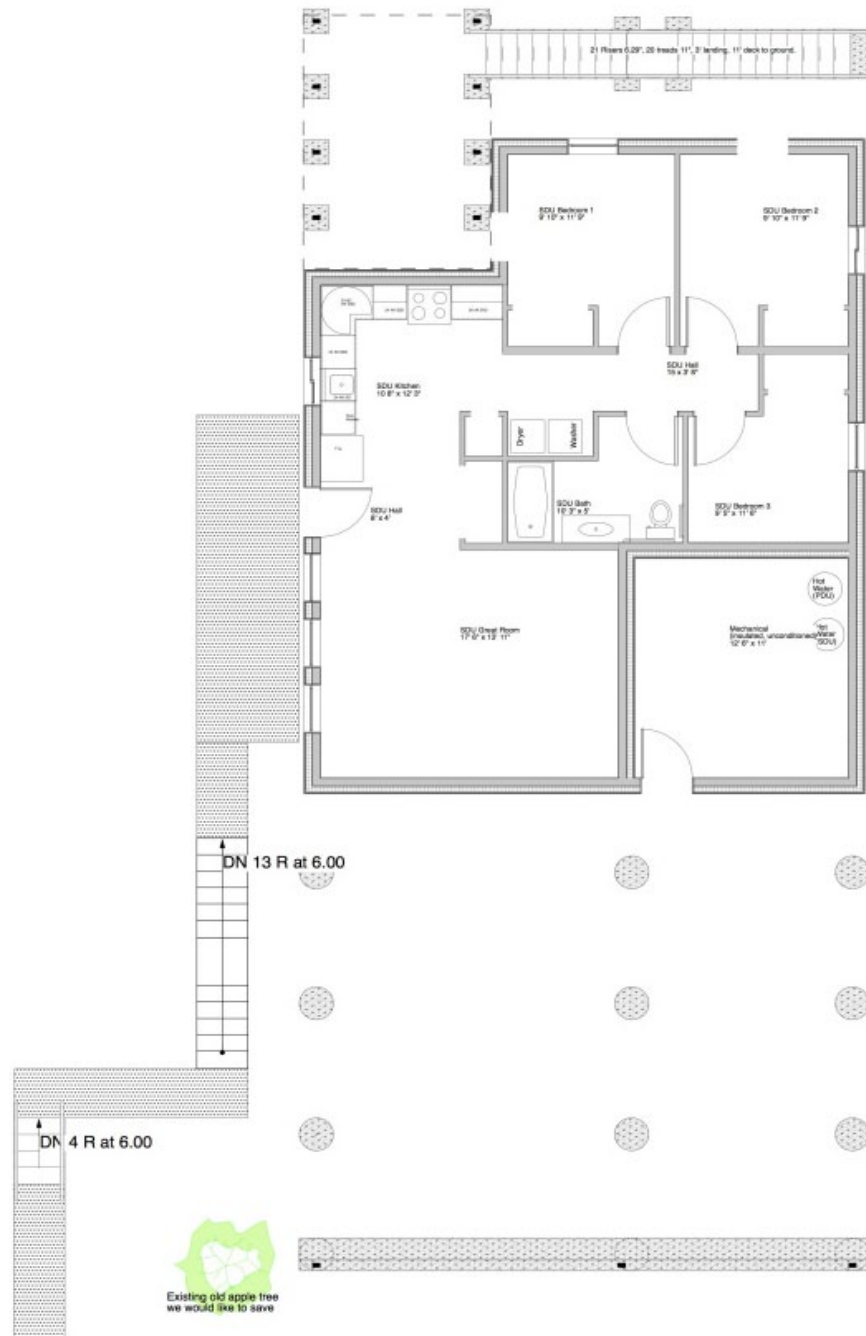
If your project is within one of the city's historic Architectural Design Control districts and is subject to review by the Board of Architectural Review (BAR), you should also review your plans with the City's Preservation Planner.

## Refine your design

Having received the input from planning staff and the building official, you can now refine your design and its details. If possible, create a 3D model of your new apartment. This will allow you to virtually walk through the apartment, giving you a better understanding of the space.

## Develop permit drawings

Permit drawings have the construction details and information required for the building permit. There are different drawing requirements for an interior ADU and an exterior one. Review these requirements with the building official.



Source: [www.accessorydwellings.org](http://www.accessorydwellings.org)  
Albano ADU  
Credit: Robert Albano

## ESTIMATING THE COST

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Involving a contractor before the permit drawings are finalized can help you monitor construction costs and keep the project within budget.

### **Get a list of contractors to consider**

Talk to your architect and friends to develop a list of recommended contractors to consider for your project. Interview each company, follow up with their references, and understand how each would approach the construction of your accessory apartment. Ask each one to review a draft of your plans and offer feedback on estimated costs, schedule and construction. Identify as much of the work, equipment and finishes as possible to improve the reliability of the estimate. *See also "Hiring & Working with a Contractor" in Chapter 4.*

### **Talk to your preferred contractor**

Once you have selected a contractor for your project, review the plans and scope of work to get his/her feedback on potential cost savings and other alternates that he/she may recommend to help you stay within budget.

### **Get a sense of the cost**

Review the suggestions with your architect and incorporate the suggestions that you wish to take into your design. Update and coordinate the permit drawings to reflect the changes. Ask the contractor to provide a price to construct your ADU. You should include in your budget a contingency line item which can be used to cover unforeseen expenses that inevitably come up.



# BUILDING YOUR ADU 4

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BEFORE YOU BEGIN  
HIRING & WORKING WITH A CONTRACTOR  
PERMITS & INSPECTIONS  
BEFORE YOU MOVE IN





# BEFORE YOU BEGIN

## Call MISS UTILITY

Before you begin digging, you must first call MISS UTILITY to mark the locations of existing underground utilities. MISS UTILITY, or Virginia 811, is a one-call center that notifies the utility companies in your area and requests they locate and mark their services on your property. This helps to prevent possible damage to underground utilities, personal injury, property damage and disruption in services. It's not just a good idea – it's the law!



## Get your survey (if needed)

Depending on the location of your ADU and extent of work, you may need a surveyor to stake out and document the location of your new apartment to document that it complies with all zoning requirements.

## Review the requirements for one- and two-family dwellings.

Information on the general residential requirements for new construction and for conversion of a single-family residence to a two-family dwelling can be found on the City's "Residential Req's & Checklist" web page. Here you will find information on the applicable building codes and a link to those codes, minimum fire ratings, and requirements for the building and mechanical (HVAC), electrical and plumbing systems.

## Be familiar with unique state requirements regarding accessibility.

To promote the number of housing units that are usable by a larger cross section of people, the state has additional requirements to consider. If your ADU has both a kitchen and a living area on the first floor then:

1. An interior circulation route (or pathway) shall be provided from the exit door to:
  - a. The kitchen and
  - b. The living or entertainment area, and
  - c. To at least one bedroom, and
  - d. At least one full bathroom where such rooms are provided on the same level.
2. Any doors or cased opening along this interior route shall comply with the following:
  - a. Cased opening shall provide a minimum clear width of 34 inches.
  - b. Door shall be, at a minimum, nominal 34-inch doors.

Additional information, including exceptions to these requirements can be found in "Chapter 5 - Additional Resources" under Virginia Residential Building Code Amendment.

# HIRING & WORKING WITH A CONTRACTOR

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## **Hiring a contractor.**

It is recommended that you hire a licensed contractor to construct your ADU. Interview several candidates to assess the quality of their work, their professional qualifications and the satisfaction of previous clients. Contact their references to learn about their performance on past projects. You will want to find one with whom it is easy to communicate and you feel you can trust. Part of the contractor's job will be to help you monitor project costs during construction. Before he gives you a proposal for the work, the contractor should review the site to become familiar with the existing conditions and the proposed changes. A proposed schedule for the work should also be included in the proposal.

## **Working with a contractor.**

To help things run smoothly during your construction project, you can take several proactive steps:

- Keep clear written communications of decisions made, the project schedule, and project costs.
- Pay only for completed work.
- Monitor the project's progress. If you have any questions about the work in place, promptly bring it to the contractor's attention.
- Make timely decisions and selections. This will help the contractor in the scheduling and execution of his/her work.

# PERMITS & INSPECTIONS

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## Permitting Process:

**If applicable, complete and submit an application for Board of Architectural Review (BAR) Certificate of Appropriateness.** If your property is within one of the City's Architectural Design Control Districts and you are making any changes to the exterior of any existing structure, demolishing an existing structure, and/or adding a new structure, you will need to first obtain approval from the City's Board of Architectural Review. A submission containing a completed BAR application as well as all required supporting documentation and application fee is required for this review. Submissions must be made at least three weeks prior to the BAR meeting, according to the City's preset schedule. A copy of the City's Development Filing Deadlines can be found on the City's "Other Permit and Forms" webpage. BAR approval should be obtained as soon as possible and is valid for eighteen months from approval.

**Obtain your Accessory Apartment Provisional Use Permit.** Before a building permit can be approved, you must have an approved provisional use permit for your ADU. The City has separate application forms for interior and exterior accessory apartments under "4) Administrative Requests" on the "Other Permits and Forms" web page.

**Review the Residential Plans Pre-Application Checklist:** Look over the pre-application to confirm that you have all of the required information and correct number of copies to submit with the application. Following this checklist will facilitate the process.

**Complete the building and site plans.** Having reviewed the pre-application checklist, you can prepare the building and site plans with all of the required information and notations.

### **Complete the Building Permit Application.**

The building permit application must be completed by a licensed contractor, or in some instances, the home owner. A copy of the permit application can be found on the "Forms and Applications" page of the City's website.

### **Complete Electrical, Mechanical, and Plumbing Permit Applications.**

A separate application for the electrical, mechanical and plumbing work is required.

### **Calculate the Permit Fees.**

A list of the current permit fees can be found on the City's "Building Permits" web page. Payment of this fee is due with the permit application. It is recommended that you verify the permit amount with the City prior to finalizing any payments. The City accepts cash, checks, and MasterCard, Visa and Discover credit cards. American Express is not accepted.

### **Submit all Permit applications.**

Additional information regarding permits and fees can be found on the City's "Building Permits & Inspections" page of the website. You should allow adequate time in your schedule for the City's review and approval process.

# PERMITS & INSPECTIONS

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Once you have the building permit, you will need to post it near the building's address and protect it from the weather. A copy of the approved building plans with the City's approval stamp is also required to remain on-site during construction

## **Required Inspections.**

As you proceed with your construction project, the City will require the work to be inspected at certain project milestones. The following are the minimum inspections that may apply:

1. Footing (including deck footings): before placing concrete.
2. Water, Sewer and Sprinkler laterals (underground piping from building to City utilities). NOTE: the Public Works Department requires an additional inspection for each connection to the City Utilities
3. Concrete Slabs (before placing concrete): ensure that vapor barrier is installed, rebar or welded wire if applicable.
4. Foundation & Foundation Drainage (before backfilling, and with foundation drainage, waterproofing or damp proofing installation).
5. Framing: before concealment with insulation or drywall.
6. Rough-in (includes Electrical, Plumbing, Mechanical, gas piping & sprinkler piping).
7. Insulation
8. Finals: when all work is complete

## **Scheduling Inspections.**

1. 24-hour notice required for inspection requests.
2. Have all pertinent permit numbers, address of the job and type of inspections being requested when you call.
3. All inspections will be scheduled through the main office, at 434-970-3182 (not the inspector).
4. All framing and rough-ins will be done at the same time. No framing inspections will be inspected until all rough-ins are ready.
5. All final inspections will be performed at the same time.

# BEFORE YOU MOVE IN

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Source: [www.accessorydwellings.org](http://www.accessorydwellings.org)  
Johnson & Creel ADU

## **Obtain the Certificate of Occupancy**

Before you move in to your new accessory apartment, the City must issue a Certificate of Occupancy (CO). This entails the following:

- Building Final Inspections are completed and approved.
- An As-Built Survey (if required) documenting any additions and other physical improvements made on the property.
- Satisfaction of any engineering requirements.
- Compliance with the City's off-street parking requirement (i.e. a minimum of one off-street parking space).
- All exposed soil must have sod laid, a full covering of seed and straw, or must be stabilized with vegetation.
- Required setbacks have been kept clear of all structures, including HVAC units.

More information can be found on the City's "Certificate of Occupancy" webpage.



## ADDITIONAL RESOURCES 5

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DEFINITIONS

RESIDENTIAL BUILDING CODE AMENDMENT

CREDITS





# DEFINITIONS

**Accessory apartment:** an independent dwelling unit, the presence and use of which is clearly subordinate to a single-family detached dwelling and in which no more than two (2) persons reside. When contained within the structure of a single family dwelling, such apartment constitutes an "interior accessory apartment." Also referred to as an **ADU**.

**Accessory building, structure or use:** a building, structure or use located upon the same lot as the principal use, building, or structure, the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common residential accessory buildings and structures.

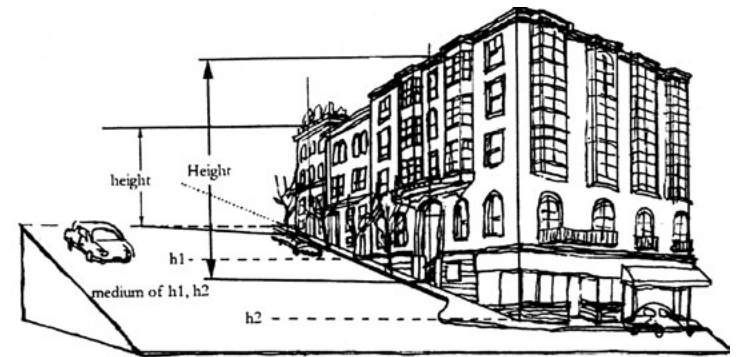
**Accessory Dwelling Unit (ADU):** another name for accessory apartment. See definition of accessory apartment.

**Addition (to an existing building):** any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition that is connected by a firewall or is separated by independent perimeter load-bearing walls is new construction.

**Alley:** a thoroughfare, whether dedicated to public use or privately owned, that provides access for persons and vehicles to the rear and/or side lot lines of properties from abutting public streets or private roads.

**Bed and breakfast (Homestay):** a temporary lodging facility operated within a single family residence which is owner occupied and managed; having no more than three (3) guest rooms; and wherein food service shall be limited to breakfast and light fare for guests only.

**Building height:** the vertical distance measured from the level of the grade of the building footprint to the level of the highest point of the structure's roof surface. This distance is calculated by measuring separately the average height of each building wall, then averaging them together. The height is measured to the level of a flat roof, to the deck line of a mansard roof, and to the average height level between the eaves and ridge for gable, hip, or gambrel roofs.



**Building, principal:** a building in which is conducted the principal use of the lot on which it is located. Where a lot contains residential uses, the principal building on the lot shall mean the largest building that contains any dwelling unit.

**Building setback line:** a line establishing the minimum required distance between the wall of a building and the nearest adjacent lot line.

**Certificate of occupancy:** the approval required under the Uniform Statewide Building Code prior to the use or occupancy of certain buildings and structures. This permit is obtained from the City's building code official.

**Driveway:** a form of private vehicular access from a public street, private road or alley to the interior of a lot or parcel of land.

# DEFINITIONS

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**Dwelling unit:** a building, or any portion thereof, containing a complete set of living accommodations suitable for occupancy by one (1) or more persons, consisting of sleeping, bathroom, and complete kitchen facilities for the exclusive use of such occupants, and having either direct access from the outside of the building or through a common hall to the outside of the building.

**Floor area, gross (GFA):** the sum of all the horizontal areas of the several floors of a building, measured from the interior faces of exterior walls. GFA shall include:

- (i) basements, elevator shafts and stairwells at each story,
- (ii) spaces used or occupied for mechanical equipment and having a structural head room of six (6) feet six (6) inches or more,
- (iii) penthouses,
- (iv) attic space, whether or not a floor has actually been laid, having a structural head room of six (6) feet six (6) inches or more,
- (v) interior balconies, and
- (vi) mezzanines.

GFA shall not include outside balconies that do not exceed a projection of six (6) feet beyond the exterior walls of the building; parking structures below or above grade; or and roof top mechanical structures.

**Footprint, building:** For the purposes accessory apartment calculations, the footprint is the area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

**GFA:** See "floor area, gross."

**Lot:** a parcel of land that is either shown on a recorded subdivision plat or described by metes and bounds or other legal description.

**Lot, corner:** a lot abutting upon two (2) or more street rights-of-way at their intersection.

**Lot, depth:** the mean horizontal distance between the front and rear lot line.

**Lot, double frontage:** a lot having a frontage on two (2) non-intersecting street rights-of-way as distinguished from a corner lot.

**Lot frontage:** a portion or portions of a lot abutting street right-of-way.

**Lot, interior:** a lot with frontage on but one (1) street right-of-way.

**Setback:** See "yard".

**Structure:** anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, etc.

**Visitable,** when used in reference to a residential dwelling: such dwelling is wheelchair-friendly, to the extent that:

- (i) One (1) exterior entrance is constructed at-grade, or is served by a ramp, and
- (ii) On the same floor as is served by the wheelchair-accessible entrance, there is at least one (1) bathroom with sufficient space in which a wheelchair may maneuver, i.e., a minimum of thirty (30) inches by forty-eight (48) inches (exclusive of the space over which the door swings) of unobstructed floor area.

# DEFINITIONS

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**Yard:** the distance between the exterior facade of a building or any projection thereof (other than steps, unenclosed balconies and uncovered unenclosed porches) and an adjacent property line. The term "required yard," where used within this zoning ordinance, refers to the minimum distance required by the regulations of a particular zoning district to be unobstructed by any building, structure, or projection thereof (other than steps), extending the full length of the adjacent property line. Also commonly referred to as "setback," "required setback," and "building setback line."

**Yard, front:** a yard extending across the front of a lot between the side yard lines and being the minimum horizontal distance between the street right-of-way line and the main building or any projection thereof other than steps. On corner lots, the front yard shall be considered as being adjacent to the street on which the lot has its least dimension.

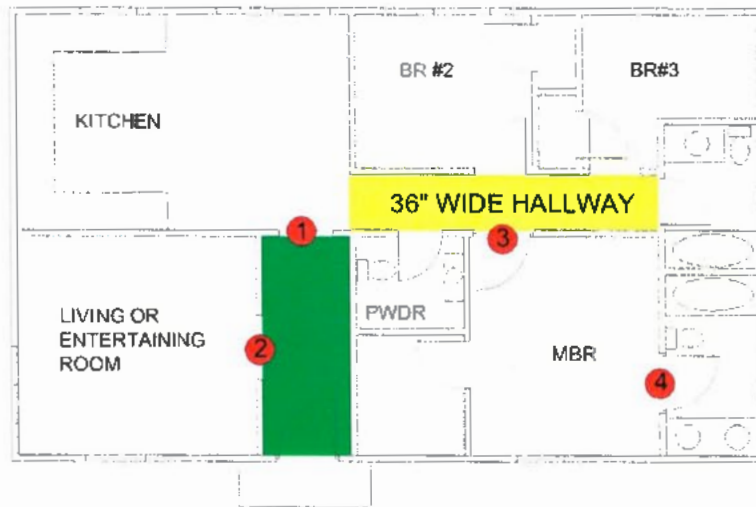
**Yard, rear:** a yard extending across the rear of a lot between side lot lines and being the minimum horizontal distance between the rear lot lines and the rear of the main building or any projection other than steps. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard.

**Yard, side:** a yard between the building and the side line of the lot and extending from the front lot line to the rear yard line and being the minimum horizontal distance between a side line and the side of the main building or any projections thereof other than steps.

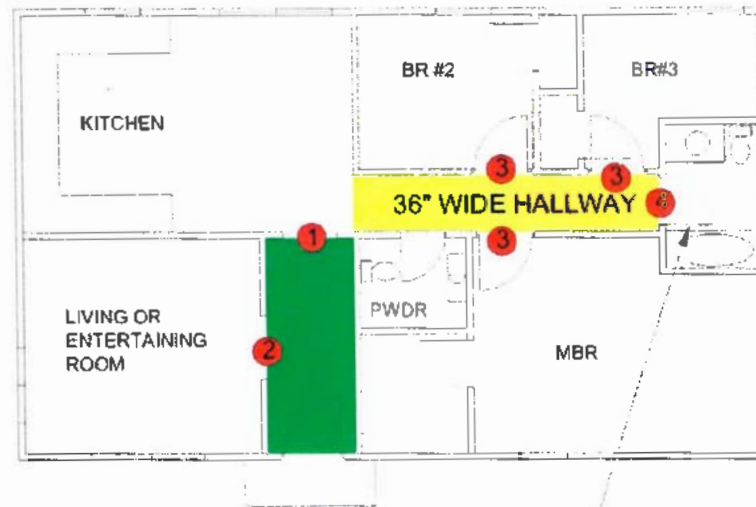
**Zoning administrator:** an employee in the department of Neighborhood Development Services designated by the Director of Neighborhood Development Services to administer and enforce the provisions of this (zoning) chapter.



# VIRGINIA RESIDENTIAL BUILDING CODE AMENDMENT



EXAMPLE 1



EXAMPLE 2:

**R311.2.1 Interior passage.** Where a dwelling unit has both a kitchen and a living or entertainment area on the same level as the egress door required by Section R311.2, an interior passage route shall be provided from such egress door to:

1. the kitchen and
2. the living or entertainment area and
3. to at least one bedroom and
4. at least one bathroom containing a water closet, lavatory and bathtub or shower, where such rooms are provided on that same level.

Any doors or cased openings along such interior passage route providing access to the areas identified above shall comply with the following.

1. Cased openings shall provide a minimum 34-inch clear width.
2. Doors shall be, at a minimum, nominal 34-inch doors.

Exceptions:

1. Where a door or cased opening, and its associated molding or trim, is at the end and facing the length of a hallway and the width of the hallway is not wide enough to accommodate such doors or cased openings.
2. Closet doors or cased openings.
3. Pantry door or cased openings.
4. Bathrooms accessed directly from a bedroom that is not required to comply with this section.



# CREDITS

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This document has been prepared for the City of Charlottesville, Virginia, Department of Neighborhood Development Services.

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## Accessory Dwelling Units – 2018 USBC

During the 2018 Session of the General Assembly, Senate Joint Resolution No. 53 was introduced requesting the Virginia Housing Commission to study accessory dwellings. In June 2018, a stakeholder group convened to begin discussing the building code implications related to Accessory Dwelling Units (ADUs) and developed an initial draft USBC proposal. The Residential Uses Sub-workgroup took up the issue and met (8 meetings) during the 2018 Virginia code development cycle ultimately presenting a final version of the proposal to the Board of Housing and Community Development in the fall of 2020, which was approved for the 2018 Virginia Residential Code (VRC), which became effective July 1, 2021

Key changes in the 2018 VRC related to ADUs:

- New “Accessory Dwelling Unit” definition – A unit in a two-family dwelling that is accessory to the primary dwelling and can share living space, means of egress, utilities, etc.
- Means of egress – Each dwelling unit in a two-family dwelling must have a compliant means of egress, but an ADU may share means of egress with the primary dwelling unit.
- Fire separation – New exception added to eliminate the requirement for fire separation between dwelling units and ADUs. Both units must be on the same lot, a fire alarm system complying with Chapter 29 of NFPA 72 and interconnected CO alarms must be installed throughout.
- Return Air Openings – An exception was added to allow an ADU and primary dwelling unit to share return air.

## FAQs

### What is an Accessory Dwelling Unit?

An “Accessory Dwelling Unit” is defined in the 2018 Virginia Residential Code as, “A dwelling unit in a two-family dwelling that is accessory to the primary dwelling unit. An accessory dwelling unit provides for separate living, sleeping, eating, cooking and sanitation facilities for one or more occupants, but may share living space, means of egress, utilities, or other components. An accessory dwelling unit fully complies with the requirements of this code for a dwelling unit except where specified otherwise.”

### What are the design criteria for an ADU?

ADUs are required to comply with all of the applicable design criteria in the Virginia Residential Code. Light, ventilation, heating, room areas, ceiling heights, sanitation, toilet, bath, and shower spaces, EEROs, etc., are all required within an ADU. As the definition states, “An accessory dwelling unit fully complies with the requirements of this code for a dwelling unit.”

### How must egress be provided within and from an ADU?

Egress within an ADU must comply with Section R311 Means of Egress in the Virginia Residential Code. The definition of an ADU provides the opportunity for a shared means of egress between the ADU and the primary dwelling.



## **Can an ADU be detached?**

Although detached living structures are commonly referred to as ADUs, the new USBC definition only includes ADUs that exist within a two-family dwelling. That can be an attached ADU with a shared wall, an interior conversion of an attic, basement, or other room to an ADU, an above-garage converted space, or a garage that has been converted to an ADU. For USBC purposes, a detached dwelling unit would simply be considered a separate dwelling.

## **Are ADUs required to be fire-separated from the primary dwelling?**

There is an exception that allows construction of an ADU without fire separation from the primary dwelling, however, there are specific additional safety features that may be required throughout the building.

## **What fire protection systems are required in a non-separated Two-Family Dwelling with an ADU?**

Non-separated Two-Family Dwellings with an ADU are required to have a fire alarm system complying with the NFPA 72 provisions applicable to Household Fire Alarm Systems. The requirements for these systems can be found in Chapter 29 of NFPA 72. The control panel for this system must be located in a place where access to the panel is provided to both the occupant(s) of the ADU and the occupant(s) of the primary dwelling.

## **Are there system monitoring requirements for the fire alarm system in a non-separated Two-Family Dwelling with an ADU?**

Yes. System monitoring is a requirement of NFPA 72. Chapter 29 of NFPA 72 should be examined in its entirety while reviewing the proposed design of the fire alarm system to ensure that all monitoring requirements are met.

## **Are CO alarms required in an ADU?**

CO alarms are only required in an ADU where required by Section R315 of the Virginia Residential Code. In a non-separated Two-Family Dwelling with an ADU, the required CO alarms shall be interconnected between the ADU and the primary dwelling.

## **Are ADUs required to be provided with access to utility controls, disconnecting means, and all overcurrent devices?**

Yes. Full access to utility controls, disconnecting means, and all overcurrent devices must be provided to the ADU. As an example, locating an electrical panel with disconnecting means for circuits serving an ADU in a locked closet, to which only the primary dwelling would have access, is prohibited.

Link to [Virginia Codes](#)

