

Irvington Planning Commission – Report on Accessory Dwelling Units – June 2024

The Irvington Planning Commission was asked to investigate a zoning change to allow Accessory Dwelling Units (ADU's). The Planning Commission approved a motion to forward the ADU proposal to the Town Council (through the Charter, Codes and Ordinance Committee) for further consideration. At the June 13th Town Council meeting it was requested that the Planning Commission publicly post their findings in preparation for discussion at the July 11th meeting.

ADU's can be called accessory apartments, in-law suites, and granny flats. ADU's can be converted portions of existing homes (i.e., internal ADUs), additions to new or existing homes (i.e., attached ADUs), or new stand-alone accessory structures or converted portions of existing stand-alone accessory structures (i.e., detached ADUs). Irvington zoning does not currently allow for ADU's, but does allow for duplex units in Zone R-1 only.

The Virginia Senate has approved a bill (SB-304), that requires all localities to include ADU's as a permitted use in its ordinances for residential zoning districts. Discussion of SB-304 in the Virginia House has been delayed to the 2025 session. The final bill may impose limitations on localities for ADU's that are less favorable than those recommended by the Planning Commission.

After lengthy discussions, the Planning Commission reached a consensus position on ADU's, presented below with explanatory comments. The one thing all Planning Commission members agreed on was that Irvington should adopt an ordinance by January 1, 2025. This is because there is a fair chance that the General Assembly will take broad action and override local authority to legalize ADU's across the state but grandfather in local ordinances that were written prior to January of the year the bill passes.

The Planning Commission recommends that ADU's be allowed, subject to the following:

Planning Commission Comments

ADU Definition – An accessory dwelling unit that is auxiliary to, and clearly subordinate to the principal dwelling unit on a lot, that contains its own bath and cooking facilities, and that is available for overnight occupancy. The ADU can be attached to the principal dwelling unit or located in a detached accessory structure on the same lot.

ADU's that are part of the primary dwelling unit are treated differently from duplex units in the applicable Virginia building code. The 2021 Virginia Construction Code defines ADU's as: a dwelling unit in a two-family dwelling that is accessory to the primary dwelling unit. An [ADU] 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..

Not more than one ADU shall be allowed per single-family dwelling and all structures shall have the same ownership.

Unlike a duplex, which may have separate ownership of each unit.

ADU's are permitted only on lots with single-family detached dwellings and are not allowed on lots with two-family dwellings, townhouse dwellings, or multifamily dwellings.

Irvington Zone R-1 currently allows for duplex units.

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The gross floor area devoted to the ADU shall not exceed the lesser of 700 square feet or 33 percent of the total gross floor area of the principal dwelling. (Thus a 3000 square foot house can have a 700 square foot ADU, but an 1800 square foot house can only have a 600 square foot ADU.) The floor area of the ADU shall not be included as part of the floor area of the principal dwelling for calculation purposes.

ADU's must meet the same required front, rear and side yard setbacks as for a principal dwelling.

At least one off-street parking space shall be provided for the ADU, in addition to off-street parking required for the principal dwelling.

The ADU must obtain a Zoning Permit prior to construction or modification, but construction itself is by-right. The ADU must meet all applicable regulations for building, safety, health, and sanitation. If the dwelling is served by a well or septic system, the applicant must obtain Health Department approval prior to zoning permit approval.

The owner must be a resident on the property while the ADU is in use. Therefore, unless the property is the owner's primary residence (i.e. not a second-home), use of the ADU's will not be permitted while the owner is out-of-town.

Rental of the ADU is not by-right, but is permitted provided that (i) the property is the owner's primary residence (i.e. not a second home), (ii) no STR is permitted, and (iii) the property owner obtains a one-time conditional use permit (CUP) for the ability to rent the ADU (the Planning Commission intends that the neighbor's input on the CUP be given appropriate weight and consideration). Therefore, rental of the ADU in conjunction with rental of the primary residence is prohibited. (The primary dwelling can be rented by right, but the rental party will not be allowed to use the ADU.)

Legislation drafts have included requirements for larger ADU's – up to the 1,500 sq. foot or 50% of the primary dwelling.

Side & rear yard setbacks for principal dwellings are currently 25 feet for Irvington. Legislation drafts have included side & rear setbacks as low as 4 feet

The Planning Commission felt on-street parking should not be encouraged. Currently Irvington requires two off-street parking spaces for the primary dwelling unit.

Self-explanatory.

The Planning Commission felt that, without the owner in residence on the property, the ADU use will be lacking in oversight. Note that the owner can make the ADU their primary residence (if it's on the same "property") and rent their home long-term. Legislation drafts currently allow for the localities to require that the owner occupy either the ADU or primary dwelling, but not both.

Legislation drafts currently allow localities to prohibit ADU rentals of less than 30 days (i.e. STR's). The Planning Commission felt that there should be an opportunity for neighbor input (through the CUP process) prior to approving rental of the ADU.) Legislation drafts include language that no locality shall require a special use permit for an ADU (but are silent on CUP's for rentals).

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Conversion into an ADU of an existing building that does not meet the setbacks for a principal dwelling may be allowed via the Board of Zoning Appeals. (For instance, converting an existing garage that is 10' off the property line would require the BZA since it is a zoning exception as opposed to use exceptions which require a CUP)

No requirement that the ADU occupants have a familial relationship with the property owners.

This is the proposed treatment of existing structures that do not meet the required setbacks.

The Commission members felt that this would be of limited benefit and impractical to enforce.