DRAFT MINUTES FOR THE VILLAGE OF SHOREWOOD HILLS
PLAN COMMISSION

The Tuesday, September 10, 2024 meeting of the Plan Commission via Zoom was called to order at 7:00 pm by Chair John Imes. Members present were: Mr. Imes, Earl Munson, Jim Etmanczyk, Tessa Martin and Craig Weinhold. Mark Lederer and Cara Coburn Faris were excused. Also present was Administrator Brian Mooney, Administrative Services Coordinator David Sykes, Wayne Crokus (Steve's Wine Market), Aaron Williams (UW Planning), Scott Kammer (Potter Lawson), Sonja Kruesel (Vandewalle) and a number of representatives from the UW Hospital project.

Mr. Mooney confirmed the meeting had been properly posted and noticed.

Approval of Minutes – June 11, 2024 Minutes
Mr. Etmanczyk moved and Ms. Martin seconded a motion to approve the June 11, 2024 minutes as presented. Motion carried unanimously.

Public Comment: There were no public comments at this meeting.

Consider minor PUD change to allow a mural at 3618 University Ave (Steve's Wine Market)
Mr. Imes introduced the request and Mr. Mooney explained the mural would be done by a local artist. A number of concepts were considered and this mural was chosen. He feels the request meets the requirements for a minor adjustment to the approved Planned Unit Development (PUD) agreement.
After a discussion of the design and merits of the mural, Ms. Martin moved and Mr. Etmanczyk seconded a motion to give the administrator discretion to allow the mural at 3618 University Avenue (as a minor change to the PUD). Motion carried on a 4-0-1 vote (Mr. Munson abstaining).

Discussion of UW WIMR East Wedge Cyclotron Expansion Project
Aaron Williams, UW Planning, introduced the team working on the WIMR East Wedge Cyclotron Expansion and reviewed the proposed project. It would be located at 1111 Highland Ave, between the WIMR 1 and 2 towers. The wedge would expand the existing cyclotron and support labs/offices to produce radionuclides for research purposes. The municipal boundary is split between the Village and the City of Madison, so UW is seeking approval from both communities.
Scott Kammer, Potter Lawson, explained there is high demand for radionuclides in the industry. This project would quadruple UW's capabilities to produce elements for research. The intent of the design is to match the wedge to the existing building.
They will be including a number of sustainable features: bird glass, minimum 20% plantings, high efficiency plumbing, single user bathrooms, stormwater retention measures, green roof improvements, LED lighting and electronic controls, smoke-free facility, natural light infiltration, and green foliage screening on façade.
This presentation was informational for the Plan Commission's benefit. The formal application and presentation will likely be in early 2025.
Sonja Kruesel, Vandewalle, explained the zoning regulations limit development to 50% of the lot coverage for principle and accessory buildings. The previous D2 addition estimated coverage of 49%, but that estimate was based on aerial photography measurements that are skewed.

Recalculating with GIS data, the estimate is 46% with the D2 addition and will remain less than 50% with the East Wedge Cyclotron Expansion project.

Mr. Weinhold had to leave the meeting at 7:26 pm, but a quorum of members remained throughout the meeting.

Update on Accessory Dwelling Units (ADUs): Policy Considerations and Community Comparisons
Mr. Imes explained that the Village continues to receive comments from residents about ADUs. The Board hasn't had time to consider this topic yet but will likely do that in October. The Village has engaged Vandewalle for a report on policy considerations and other community comparisons which will also likely be ready for the Plan Commission's October meeting.

Future Agenda Items (includes items that will be considered at a future meeting):
Electric Vehicles Ordinance
Fence Ordinance referral from Zoning Board of Appeals
Locust Drive Multi-Use Path

Next Meeting Dates
The Plan Commission next regularly scheduled meeting is October 8, 2024 at 7:00 pm.

Adjourn
Mr. Etmanczyk moved and Ms. Martin second a motion to adjourned at 7:37 pm.

Respectfully submitted,

David Sykes
Administrative Services Coordinator

VANDEWALLE & ASSOCIATES INC.

To: Village of Shorewood Hills

From: Sonja Kruesel, AICP, Consulting Village Planner

Date: September 2024

RE: Accessory Dwelling Unit Memo

This memorandum provides context and policy information on the topic of Accessory Dwelling Units (ADU) regarding this type of land use within the Village. Information presented herein seeks to clarify how this type of land use is defined, how it is treated or not treated in the existing Village Zoning Ordinances, whether changes to current ordinance should be considered, and if so, what kinds of policy implications should be reviewed in order to develop regulations most appropriate for Shorewood Hills. This information builds upon a memorandum presented by the Village Attorney dated June 7, 2024, which summarized initial background information on this topic.

What is an Accessory Dwelling Unit?

An ADU is a residential dwelling unit that is located on the same parcel as a primary or principal residence such as a single-family dwelling unit. By nature, ADUs must be accessory or secondary to the primary use on the property therefore, ADUs are typically regulated to require that they be smaller than the principal residence, amongst other regulatory considerations. ADUs may be attached or detached in relationship to the primary structure, taking many different forms as illustrated in the image below.

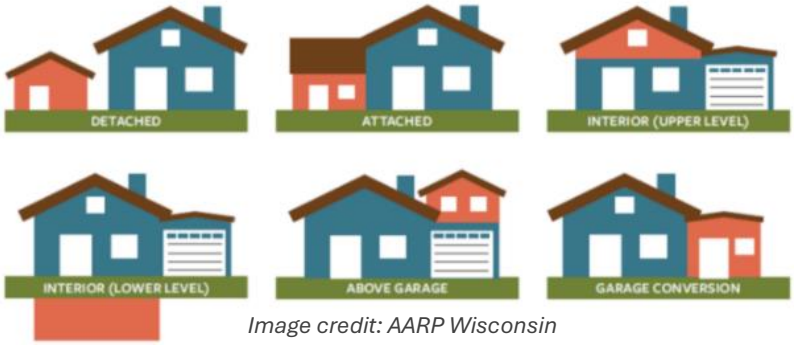


Image credit: AARP Wisconsin

Village of Shorewood Hills Current Ordinance

Under the Village's Zoning Code, ADUs are not permitted in single-family residential districts. Similarly, ADU's are not authorized as an accessory land use. Principal and accessory land uses may be permitted (by-right) or conditionally allowed (reviewed and considered after a public hearing and must be approved if certain conditions are met). In general, land uses that are not expressly permitted in any zoning district are *prohibited* in that zoning district.

Village of Shorewood Hills Comprehensive Plan

Wisconsin Statutes require that implementation of a zoning ordinance and zoning map be consistent with the Village's Comprehensive Plan. When a general policy is established in an adopted Comprehensive Plan, zoning ordinances can be developed in response as a tool to implement or further the goals and policies within the Plan. For example, if the Village establishes goals related to environmental sustainability, certain ordinances may be adopted which further those goals such as requirements for impervious surface maximums. Similarly, if the Village establishes goals related to housing, certain ordinances may be adopted to further those goals. In the Village's adopted Comprehensive Plan, the following goals are listed which are relevant to the discussion on Accessory Dwelling Units.

- Housing Chapter, Goal 2: Expand Housing Opportunities, Policy 6: "Encourage the development of housing for people of all abilities – including universal design principles in new housing (and accessory dwelling units) that can provide flexibility in care for senior households." (Village of Shorewood Hills Comprehensive Plan, P. 59)
- Housing Chapter, Goal 2: Expand Housing Opportunities, Action 9: "Consider amending the Village's ordinances to allow accessory dwelling units (with appropriate standards to ensure compatibility with other homes in the neighborhood) for the purpose of increasing housing choice, accommodating different household types and preferences, and increasing affordability." (Village of Shorewood Hills Comprehensive Plan, P. 59)

Theory and Policy Considerations

Housing issues have been in-focus in local municipalities, as well as in State and Federal government policies and programs, due to an ongoing housing shortage and affordability crisis. Housing policies can be systematic and complex, and therefore may be addressed by several different approaches. ADUs have become a key component of this conversation across the country as one potential way to increase affordable housing supply in small increments. Specific ADU policy differs from community-to-community based on local market conditions and community preference. The following categories discuss different theories and policy considerations relevant to the general topic of ADUs.

Housing Costs

- Planning organizations such as the American Planning Association, and other advocacy groups and agencies, purport that ADUs can ameliorate certain housing related costs by increasing the supply of affordable housing, by providing a cost-effective means of accommodating development with a lower cost of building, operating, and maintaining new infrastructure.
- Homeowners may rent an ADU for an additional income stream.
- Regulatory costs and market costs (material, labor, and financing costs) can impact implementation of ADU construction.

Neighborhood Character

- Traditional Euclidean zoning ordinances generally include zoning districts that permit only one detached single-family dwelling unit per parcel. Adding an additional, smaller accessory unit to those same parcels often raises questions about changing neighborhood character.

- ADUs are often characterized by advocacy organizations as “gentle density” housing, or “housing hidden in plain sight.” These phrases describe the fact that ADUs are often unnoticeable to the casual observer, especially in cases where they are part of (attached to) the principal structure. Examples of this type of construction may include ADUs located within basements of the principal structure, or on top of existing garage. In these cases, some argue that neighborhood character changes are minimal.
- Conversely, allowing ADUs could bring small increases in vehicle traffic and noise to an area, given the increased number of individuals living there. Some zoning policies require that ADUs provide additional parking spaces however, this requirement could also have the effect of requiring additional driveway space to accommodate cars that otherwise might park on the street or unnecessarily burden ADU occupants who choose not to own a vehicle.
- Design requirements can help camouflage the appearance of the ADU to blend in with its surroundings. Too many requirements can also inflate the cost, working contrary to affordability goals.

Environmental Considerations

- Housing development can take many different forms and result in different development patterns on the landscape. Traditional Euclidean zoning with exclusive single-family detached districts can have negative impacts on the environment by proliferating a lower density, segregated, and sprawling land use pattern. Housing policies that advance a mix of housing units and formats can reduce the land consumption associated with the above example. While ADUs represent a very small component of overall housing supply, advocates argue that they can provide gentle “infill” density in existing neighborhoods without additional land consumption and infrastructure costs.

Social Considerations and Public Health

- ADUs can offer an alternative form of housing choice especially for people at different stages and styles of life. Examples of households who may provide a market for ADU occupancy include older homeowners looking to downsize, aging adults who require close-proximity to family for affordable dependency care, young home buyers or college-aged children transitioning into new housing formats, renters in general, as well as people with disabilities who can achieve independence in housing while near others for support if needed. The flexibility and privacy that this housing type can offer makes living in an ADU attractive to:
    - Persons with disabilities
    - People needing dependency care
    - Aging adults / older adults looking to stay in their community
    - Adult children in college
    - Young adults and professionals
    - Single person households
    - Single-parent families
    - New employees to the region/area
- Living near family while maintaining an independent household can combat the negative effects of social isolation. Adding affordable housing units to established neighborhoods

that may be walkable or close to parks and schools can have positive impacts on physical health.

Market Considerations

- The most common approach to encouraging the use of ADUs to fit a market is the removal of tight zoning barriers. However, markets can lag changes in municipal policy. Despite relaxing zoning regulations, ADUs might still not get built. This could be due to market constraints, property owner preference, and building costs. At the same time, without explicit knowledge that this type of housing is even allowed, many residents will not consider having this use on their property.
- Market constraints might not be tight enough for ADUs to be financially profitable for property owners to build. Compare this to California, where the housing market is significantly tighter, and ADUs become more common. The Madison metropolitan housing market, while still very tight, may not be to the levels to make ADUs an everyday encounter for the neighborhood.
- The cost of construction is also a large concern whether ADU housing is built or not. Since the pandemic, the cost of building materials and labor has been increasing at a rapid rate. With stringent design requirements, the cost of these materials can be greater. Finding skilled labor that can construct the ADU is also an expensive task, which puts a greater constraint on how viable this kind of housing can be.
- Property owner preferences also can play a big role in why ADUs don't get built. Even if ADUs may be legal and financially feasible, sharing one's property with others may not be desirable. In cases with relatives and close friends, owners may feel more comfortable with others living on their lot. In this way, ADUs may seem more a matter of convenience to assist family and friends, rather than a profit venture for many residents.

Property Values

- An article in the Journal of Housing Research (2022) studied the effect of ADU reform on property values in the City of Ogden, Utah[1]. This article found no statistically significant effect of the ADU policy change on nearby property values. During the period of study, homes appreciated at the same rate as they would have without the ADU reform.

Short-Term Rentals

- Nationwide, property owners are increasingly using short-term rental sites like AirBnB and Vrbo to rent their property for short-term lodging. Investment companies are also buying property for this purpose which can take needed housing out of the market for the local population that needs it. Wisconsin Statutes limit how local municipalities may regulate short-term rentals.
- If the Village desires to regulate the use of ADUs as short-term rentals, Statute 66.1014 would have to be considered when crafting standards and regulations. Most importantly, since ADUs qualify as a residential dwelling, municipalities likely cannot enact and enforce

[1] Gnagey, Jenny & Gnagey, Matt & Yencha, Christopher. (2022). The Impact of Legalizing Accessory Dwelling Unit Rentals on Property Values: Evidence from Ogden, Utah. Journal of Housing Research. 32.1-20.10.1080/10527001.2022.2106039. https://www.researchgate.net/publication/362583643_The_Impact_of_Legalizing_Accessory_Dwelling_Unit_Rentals_on_Property_Values_Evidence_from_Ogden_Utah

an ordinance that prohibits short-term rentals for stays of 7 days or longer. However, regulating stays shorter than this is permissible under any short-term rental ordinance. This matter has been initially reviewed by the Village Attorney but will require additional legal review if standards are developed.

66.1014 Limits on residential dwelling rental prohibited.

(1) In this section:
- (a) "Political subdivision" means any city, village, town, or county.
- (b) "Residential dwelling" means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(2)
- (a) Subject to par. (d), a political subdivision may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer.
- (b) If a political subdivision has in effect on September 23, 2017, an ordinance that is inconsistent with par. (a) or (d), the ordinance does not apply and may not be enforced.
- (c) Nothing in this subsection limits the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with the provisions of pars. (a) and (d).
- (d)
  1. If a residential dwelling is rented for periods of more than 6 but fewer than 30 consecutive days, a political subdivision may limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days. The political subdivision may not specify the period of time during which the residential dwelling may be rented, but the political subdivision may require that the maximum number of allowable rental days within a 365-day period must run consecutively. A person who rents the person's residential dwelling shall notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins.
  2. Any person who maintains, manages, or operates a short-term rental, as defined in s. 66.0615(1)(dk), for more than 10 nights each year, shall do all of the following:
     a. Obtain from the department of agriculture, trade and consumer protection a license as a tourist rooming house, as defined in s. 97.01 (15k).
     b. Obtain from a political subdivision a license for conducting such activities, if a political subdivision enacts an ordinance requiring such a person to obtain a license.

History: 2017 a. 59; 2021 a. 55, 240; s. 35.17 correction in (2)(a)

Regulatory Details

Zoning District Use

- Uses in a Zoning Code are either "Permitted" or "Conditional" uses. If not mentioned, the use is generally prohibited. Permitted uses are allowed by-right and can be constructed once administrative permits are obtained. Conditional uses must be reviewed during a public hearing and may be approved only after action by the Village Plan Commission and/or Village Board.

Owner-Occupancy

- Many municipalities require one of the units on a parcel to be owner-occupied. In some municipalities, the principal building on the property must be owner-occupied for an accessory dwelling unit to be allowable. Planning organizations recommend that regulations allow *either* unit to be owner-occupied instead of limiting owner-occupancy to the principal structure.

Size

- Size limits ensure that ADUs maintain an *accessory* relationship to the principal structure. Size limits are an important element in developing an ADU ordinance, regardless of whether the ADU is attached or detached.

Parking

- Many municipalities require ADUs to have separate parking requirements in addition to those of the principal residential use. The inclusion of additional parking requirements can constrict the ability of the ADU to be built affordably given the additional pavement and space needed to accommodate the cars. Not only are affordability benefits diminished, but imposing incredibly strict parking regulations can make ADUs effectively illegal if lot area or impervious surface limits cannot accommodate the space.

Design

- Many ordinances seek to mitigate neighborhood character impacts through design requirements. One such example is regulating where the entrance to the ADU is located. It is common to prohibit the ADU entrance to be on the front elevation of the principal building. This prevents passersby from seeing another entrance in the front, which may be out of the ordinary in a particular area. If detached, many communities require that an ADU be very similar, or even identical, to the design and appearance of the principal building. This helps the ADU blend into the character of the property and convey relation to the principal dwelling unit on the site.

Subdivision

- ADU ordinances should prohibit subdivision of the ADU onto a separate parcel from the principal structure. Subdivision can cause a proliferation of principal housing units where they would not be allowed or create landlocked parcels.

Other Technical Aspects

- Communities deal with addressing ADU units differently and there appears to be a lack of unified standard or guidance from the United Postal Service. Typically, the primary parcel will not have more than one address (or tax key number), but a unit address could be assigned.
- Regarding utilities, ADUs may have a separate electric or gas meter. In the City of Madison, its expressly stated that the Water Utility prefers to only have one meter per parcel. However, if separate service is desired, you will need to run new service from the street to the ADU.
- A definition should be included for ADUs which includes reference to both attached and detached styles. A separate definition should deal with living spaces within a principal structure that should potentially not be considered additional dwelling units. An example is a finished basement with a kitchenette and bathroom, accessible only from internal connections to the house.

Suggested Dimensional Regulations

	Front Setback	Side Setback	Rear Setback	Maximum Size	Maximum Height
Suggested Standard	No closer than the principal dwelling	No less than 12 feet from either lot line or match Village accessory structure setbacks	No less than 10 feet from the rear lot line or match Village accessory structure setbacks	Smaller than the principal structure, or further limitation such as a maximum square footage. Commonly allowed to have at least 750 sf.	Match Village accessory structure setbacks

Suggested Design and Performance Standards

	Design Requirements	Parking Requirements	Occupancy
Suggested Standard	For attached ADUs, entrances must be on either the side or rear elevations of the principal dwelling. For detached ADUs, the accessory building must be architecturally and aesthetically compatible with the principal dwelling. This includes use of similar materials, similar roofline shape, and other elements to make the accessory building as similar as possible to the principal one.	None	Allow either unit to be owner-occupied.

Appendix

Table of Comparable Communities

Regulatory Component	Name	Permitted	Owner Occupancy	Household Characteristics (# of ppl, type of unit, i.e. family)	Size Limit	Parking Rules	Design Rules
City of Madison	Accessory Dwelling Unit	By-right across all res. Districts	Not mentioned	Not more than one family per acc. dwell. unit.	No more than 2 bedrooms. No more than 900 square feet. 25 feet maximum height.	Not mentioned	Cannot be significantly altered from the principal building so that it appears still a single-fam.
City of Middleton	Accessory Dwelling Unit	By-right single-fam to two-fam; mixed use-neighborhood.	Owner must occupy one unit for at least ten months a year.	Not more than one family per acc. dwell. unit.	Cannot exceed size of principal dwell. unit	No minimum	Cannot add entrances to front elevation. Cannot be altered to look to not be single-fam.
City of Monona	Code is silent regarding ADUs						
Village of Cross Plains	Accessory Dwelling Unit	Conditional (single-fam and mixed use districts)	Not mentioned	Not more than one family plus one roomer or two unrelated individuals.	75% of the principal dwelling floor area, up to 700 ft squared	Not mentioned	Door on back/side; design must match principal building.
City of Fitchburg	Dependency Living Arrangement	Conditional use (low and low-to medium density residential districts)	One unit must be owner occupied; other must be occupied by care provider or dependent.	See "owner occupancy" column.	No larger than 750 square feet.	Not mentioned	Cannot have direct entrance on front of building. Needs one interior doorway.
Village of Oregon	Accessory Residential Unit ("Granny Flat"), Caretaker's Residence, and In-Family Suite	Not mentioned	Both units must be occupied by the same party. Not allowed for lots containing primary residential units that are rented.	Caretaker and family only (Caretaker Res.), Family members only (in-fam suite). One or two persons max.	No larger than 640 square feet with 1 sleeping area (acc res unit)	Not mentioned	One all-weather physical connection to the main building may be present, but must be locking.
APA Best Practices	Accessory Dwelling Unit	Permit by right in all single family districts as an accessory use.	Allow the ADU or the principal to be owner-occupied, OR include no owner occupancy restriction	Owner must occupy principal or ADU unit; no rental restrictions.	375-1200 sq ft with allowances for more if a lot is a certain size.	Have no minimum parking requirement	Not mentioned.

Links to the Table

City of Madison
Section 28.151 - Applicability
https://library.municode.com/wi/madison/codes/code_of_ordinances?nodeId=COORMAWIVOICH1--10_CH28ZOCOOR_SUBCHAPTER_28JSURE_28.151AP

City of Middleton
Section 10.03.28(1) – Accessory Land Uses and Structures
https://library.municode.com/wi/middleton/codes/municipal_code?nodeId=CH10ZOOR_ARTIIILAUSRE_10.03.28ACLAUSST

Village of Cross Plains
Section 84.65(d) – Accessory Land Uses and Structures
https://www.cross-plains.wi.us/DocumentCenter/View/1235/Chapter-84?bidId=

City of Fitchburg
Section 22-57 – Conditional uses.
https://library.municode.com/wi/fitchburg/codes/code_of_ordinances?nodeId=TIIILAUSDE_CH22ZO_ARTIIREDI_DIV2LODEDI_S22-57COUS

Village of Oregon
Section 17-206(y): Detailed Land Use Descriptions and Regulations.
https://www.oregonwi.gov/DocumentCenter/View/224/Village-of-Oregon-Municipal-Code-PDF#page=163

Vandewalle & Associates Model Language (City of Middleton)

(1) Accessory Dwelling Unit (ADU)
   1) Residential dwellings located directly above the ground floor of a building used for an office, commercial, or institutional land use, or 2) a residential dwelling unit located on the same lot as a single-family dwelling unit, either in the same building as the single-family dwelling unit or in a detached building. An ADU is independently habitable and provides the basic requirements of shelter, heating, cooking and sanitation.

Regulations

(a) The number of occupants of the Accessory Dwelling Unit shall not exceed one-family.
(b) Additional entrances shall not be added to the front elevation of an existing building but may be added to side, rear, or street side elevations.
(c) Accessory Dwelling Unit entryways within a rear, side, or street side yard shall be connected to a street frontage by a paved walkway or driveway.
(d) Accessory Dwelling Units shall adhere to the principal setback requirements and other regulations for the underlying zoning district.
(e) For Accessory Dwelling Units located on the same lot as a single-family dwelling unit, the following additional regulations shall apply:
   1. The principal building or Accessory Dwelling Unit must be occupied by the owner of the property as their primary residence for a period of at least ten (10) months in a calendar year. A restrictive agreement between the property owner and the City shall be recorded prior to issuance of a zoning permit and occupancy being granted.
   2. The Accessory Dwelling Unit shall not be sold separately or otherwise conveyed or titled separately from the principal dwelling.
   3. The maximum size of an Accessory Dwelling Unit shall not exceed the size of the principal dwelling's floor area.
   4. The appearance or character of the principal building must not be significantly altered so that its appearance is no longer that of a single-family dwelling.
(f) Minimum required off-street parking: None.
(g) A Zoning Permit shall be required pursuant to Section 10.10.41 prior to establishing any Accessory Dwelling Unit.

Other Model Language (City of Madison)

Section 28.211 – Definitions

Accessory Dwelling Unit. An additional dwelling unit contained within a principal building with up to eight (8) dwelling units or within a detached building located on the same lot as a principal building with up to eight (8) dwelling units. This definition includes accessory buildings constructed in connection with a private garage or a private garage converted into a dwelling unit. (Am. By ORD-23-00013, 1-25-23; Am. By ORD-24-00022, 4-26-24)

Section 28.131 – Accessory Buildings and Structures on Lots Exclusively For Residential and Mixed-Use Purposes

(b) Maximum Height. The height of the principal building or fifteen (15) feet, whichever is lower. The following are exempt from this requirement:

1. The maximum height of accessory dwelling units shall be determined by the district requirements for zoning districts where such units are allowed.

Section 27.03 – Rules and Definitions

Dwelling Unit. "Dwelling unit" means one or more rooms with provisions for living, cooking, sanitary, and sleeping facilities arranged for use by one (1) family.

Section 28.151 – Applicability

Accessory Dwelling Unit in Districts.

(a) The principal dwelling shall not contain more than eight (8) dwelling units.
(b) No more than one (1) accessory dwelling unit may be located on a lot.
(c) The number of occupants of the accessory dwelling unit shall not exceed one (1) family.
(d) The accessory dwelling unit shall not be sold separately from the principal dwelling.
(e) The maximum height of a detached building containing an accessory dwelling unit, including one built above a garage or similar space, shall be twenty-five (25) feet. Height shall be measured as a principal building pursuant to Sec. 28.134(1)(b).
(f) The maximum size of an accessory dwelling unit shall be nine hundred (900) square feet.
(g) An accessory dwelling unit shall contain no more than two (2) bedrooms.
(h) The minimum setback requirements shall be those for accessory building or structures of the underlying zoning district.
(i) Accessory dwelling unit entry ways within a rear or side yard shall be connected to a street frontage by a paved walkway or driveway.
(j) For accessory dwelling units constructed within the principal building, the appearance or character of the principal building shall not be significantly altered so that its appearance is no longer that of a single-family dwelling.

Other information

Additional information can be found at the link below from the City:
https://www.cityofmadison.com/development-services-center/1-2-family-residential/new-building-construction/new-detached-accessory

StaffordRosenbaum LLP
Attorneys

To Karl Frantz, Administrator

From Derek J. Punches

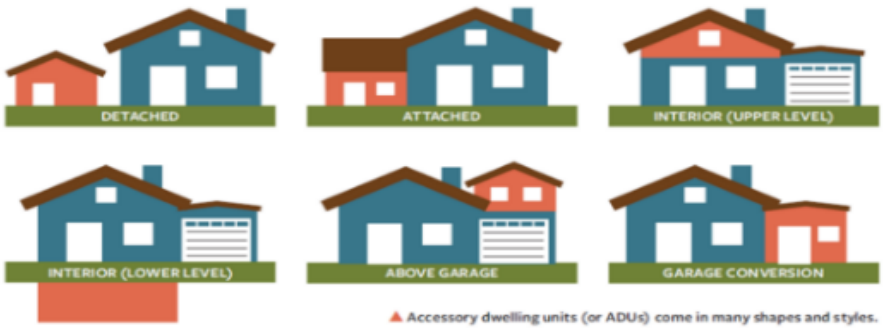
Date June 7, 2024

Re Regulation of Accessory Dwelling Units (ADUs)

The purpose of this memorandum is to provide a brief overview of accessory dwelling units (ADUs) and discuss how ADUs are handled under the Village's Zoning Code. In addition, this memorandum provides possible considerations on whether and how the Village may regulate ADUs in single-family residential and other zoning districts.

BACKGROUND

In response to a shortage of affordable housing units and the high cost of rental units, many municipalities are exploring changes to their zoning regulations and other municipal ordinances to eliminate barriers to, and incentivize the creation of, more housing in their communities. As part of this process, some communities have sought to amend their zoning regulations to allow accessory dwelling units (ADUs) within single-family and other residential districts.



▲ Accessory dwelling units (or ADUs) come in many shapes and styles.

In short, ADUs (also known as carriage houses, "mother-in-law units," or "granny flats") are small residential dwelling units that are located on the same lot as a larger, primary residence, such as a single-family dwelling or a multifamily building. By definition, ADUs are land uses that are accessory, or secondary, to the primary use of the property. As shown above, an ADU can be a separate building detached from the primary dwelling unit, or a dwelling unit constructed on or within the primary dwelling unit. This approach is especially attractive in places that may not have

capacity to support larger, more intensive development, such as new single-family subdivisions or multi-family dwelling projects.

Some have argued that ADUs can help ameliorate certain housing-related issues by increasing the supply of affordable housing, by providing a cost-effective means of accommodating development with a lower cost of building, operating, and maintaining new infrastructure, and by providing older homeowners, young home buyers, renters, and others a more diverse range of homes, prices, and locations. In addition, in some cases, property owners can supplement their income by renting the ADU on a short- or long-term basis.

CURRENT CODE

Under the Village's Zoning Code, ADUs are not permitted in single-family residential districts. Similarly, ADUs are not authorized as an accessory land use. *See* VOSH § 10-1-100. In general, land uses that are not expressly permitted in any zoning district are prohibited in that district. The R-1 Single Family Residence District, for example, permits the use of property for single-family dwellings. VOSH § 10-1-24(b). That classification, however, does not allow more than one dwelling unit to be situated on such lots.

The Code defines "Dwelling, Single-Family" to mean a detached dwelling containing only one dwelling unit. VOSH § 10-1-140(a)(33). A "dwelling" is a building designed or used exclusively as a residence or sleeping place, but does not include boarding or lodging houses, motels, hotels, tents, cabins or mobile homes. VOSH § 10-1-140(a)(30). A "dwelling unit" is a group of rooms constituting all or part of a dwelling, which are arranged, designed, used or intended for use exclusively as living quarters for one family. VOSH § 10-1-140(a)(34).

In turn, the Code defines "family" as an individual or two or more persons related by blood, marriage, adoption or similar legal relationship, or a group of not more than two persons not so related and their children, plus domestic staff and other persons necessary for health care of a member of the family, living together as a single housekeeping unit in a one-family dwelling or in one dwelling unit of a multi-family dwelling. VOSH § 10-1-140(a)(39). Together, these definitions effectively prevent the maintenance or construction of any additional dwelling units, including an ADU, in single-family residential districts.

REGULATORY CONSIDERATIONS

If the Village chooses to allow ADUs in one or more zoning districts, the Village has discretion to impose use-specific standards in order to ensure that ADUs are operated consistent with the intent and purpose of the Village's Zoning Code. In general, zoning and other land use regulations seek to preserve the public peace and safety by reducing the harms arising from incompatible land uses. An ordinance may be challenged if it is guided by policies that do not promote the public welfare and do not clearly address the kind of activity they seek to curtail.

The following are types of zoning regulations that the Village could consider:

A. Owner – Occupancy. The Village could require that the property owner occupy either the primary dwelling unit or the accessory dwelling unit. The City of Madison initially had an owner-occupant requirement, but recently removed that requirement to further promote the use of ADUs.

B. Number. The Village could limit the total number of ADUs permitted on any property. In most of the communities I reviewed, the regulations limited the property owner to not more than one ADU per property.

C. Size. Some communities have adopted minimum and maximum sizes for ADUs. Some regulate the interior square footage of the ADU, lot coverage (floor area ratios), bulk requirements, or any combination of the same. In some cases, the minimum/maximum size of the ADU is expressed as a percentage of the primary residence on the property (*i.e.*, the exterior square footage of the ADU may not exceed 30% of the square footage of the primary residence).

D. Location and Setbacks. Zoning ordinances typically include regulations limiting where buildings and structures can be located on any lot, including the minimum distance between any building and the side or rear yard lot lines.

E. Parking. Some communities have required that property owners provide one or more off-street parking spaces for each ADU. Depending on the size or configuration of the lot, however, additional parking spaces may not be available.

F. Short-Term Rental. The Village recently enacted an ordinance that authorizes and regulates short-term rentals as an accessory land use in residential districts. If the Village permits ADUs, the Village should consider whether and to what extent ADUs can be operated as short-term rentals.

If the Villages wishes to permit the use of ADUs, the Village should consider engaging its planner to consider whether and to what extent proposed regulations are consistent with the Village's current comprehensive plan, zoning ordinances, and neighboring land uses. For example, planning consultants are typically better positioned to identify the appropriate setbacks or bulk regulations applicable in a given zoning district.

In addition to the above, the Village should ensure that other police power regulations apply to and are enforced against any ADU in the same manner as other residential dwellings. For example, the construction of any ADU should comply with all required building code standards, and all ADUs should have access to electricity, water, and sewer.