

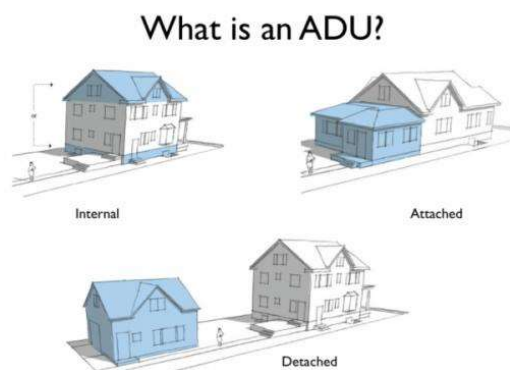
## Article 43 (ADUs): Frequently Asked Questions

May 8, 2021

### What is an Accessory Dwelling Unit, or ADU?

An ADU is a separate, smaller living unit with its own kitchen and bathroom facilities and separate entrance that is included within a larger residence (type 1), attached to a residence (type 2) or located in an accessory (“detached”) structure on the same lot as a main residence (type 3). For a variety of reasons, primarily cost and feasibility, the type 1 ADUs are by far the most common.

### Three Kinds of ADUs and Size Limitations



There are three kinds of ADUs. The most common, because they are easier and cheaper to build, are those ADUs that are added within the existing envelope of the home, the “internal” model. The second type of ADU is a significant bump out “attached” to the existing structure. If building the ADU adds 750 square feet or more of floor area, a special permit will be required from the Zoning Board of Appeals. The third type of ADU is completely “detached” from the existing home. It could be the conversion of a carriage house, the installation of a “tiny house”, as popularized on the West Coast, or

modifications to a garage. The maximum size allowed for an ADU depends on the size of the main unit. In all cases the ADU must be no more than half the size of the principal dwelling and cannot exceed 900 square feet. For example, if you create an “internal” ADU within an 1800 SF house (close to the average Arlington house), then the ADU cannot be bigger than 600 SF, and the primary dwelling would shrink to 1200 SF.

Again, the size is proportional to the square footage of the principal unit and, in no circumstances can the ADU exceed 900 SF. There are special restrictions in Article 43 for ADUs in detached structures. If it is within 6 feet of the lot line of the property, a special permit is required from the Zoning Board of Appeals. Detached ADUs are not just simple conversions of a garage. Detached ADUs must be provided with water, sewer, gas, and electric lines and meet all applicable life safety and building codes. Because of the complicated application and review requirements, detached ADUs will be delayed for six months after the approval of this article to allow ISD to develop the application and review procedures using the easier internal and attached types.

### What is Proposed in Article 43?

Article 43 would allow accessory dwelling units in connection with single-family dwellings, two-family dwellings and duplex dwellings as long as the ADUs can conform to dimensional requirements in existing zones and all code requirements. Key components of this proposal include:

- All setback, height and other limitations of the Zoning Bylaw would remain in place and apply to ADUs. In other words, Article 43, as drafted, would not change the size or location

of what you can build, it would only allow ADUs subject to all of those limitations. For example, under Section 5.4.2B(6) of the Bylaw, any addition of 750 square feet or more of gross floor area (including to create an ADU) would require a special permit from the Zoning Board of Appeals.

- ADUs would be limited in size to 900 square feet, or 50% of the floor area of the principal residence, whichever is less.
- One ADU would be allowed per primary residence, either (1) within the existing footprint of the building (e.g., in a basement or attic); (2) as an addition to an existing residence; or (3) within a detached structure (such as a carriage house or garage).
- A special permit from the Zoning Board of Appeals would be required for a detached ADU located within 6 feet of the lot line.
- No additional off-street parking spaces would be required if a homeowner sought to build an ADU (but all parking would remain subject to existing on-street parking rules).
- Before applying for a building permit for an ADU, the owner would need to certify to the building inspector that the owner or a family member of the owner will reside in either the principal dwelling unit or the accessory dwelling unit upon completion of the ADU.
- ADUs cannot be used for Airbnbs or other short-term rentals.
- ADUs would also be subject to the state Building Code and to all applicable Fire Department rules and regulations.
- An ADU could not be owned separately from the principal dwelling unit (i.e., cannot be converted to a condo and sold).

### **An ADU is Different from a Two-Family Home**

In a two-family home, both units can be the same size, and they might be separately owned as condo units (and can be sold separately from each other). In contrast, an ADU is accessory to the principal dwelling unit with which it is associated – it cannot have more than 50% of the floor area of the principal dwelling (and in any event cannot exceed 900 square feet), and it cannot be sold separately from the principal dwelling. It often is a much more intimate living experience than a typical two-family would be. In addition, as noted above, ADUs will be created by homeowners rather than developers.

### **Article 43 Does Not Change Height or Setback Requirements**

ADUs will be subject to all existing setback, height and other dimensional requirements of our Zoning Bylaw. In terms of height and setback Article 43 treats ADUs in the same way as any other addition or change to an existing residence (i.e., the addition of an ADU would be subject to the same rules as an expansion to build an additional bedroom or in-home office). Where a special permit is otherwise required (for example, to do an addition of 750 square feet or more), it would likewise be required for an ADU.

## ADUs in Garages

Of the three “types” of ADUs, conversion of a garage to an ADU is likely to be the most expensive and complicated. They must be provided with water, sewer, gas, and electric lines and meet all applicable life safety and building codes. Because of the complicated application and review requirements, detached ADUs will be delayed for six months after the approval of this article to allow ISD to develop the application and review procedures using the easier internal and attached types.

In addition, Article 43 adds an extra requirement for a garage or carriage house that is close to the lot line. If a garage is within 6 feet of the lot line, it is no longer eligible for an “as of right” ADU approval. The homeowner who wishes to proceed must present their case to the Zoning Board of Appeals. The ZBA provides a public, discretionary approval process in which all neighbors are notified and have the ability to object.

## ADUs for Homeowners, Not Outside Developers

The Article explicitly requires that ADUs be built by existing homeowners, not developers, and the ADU cannot be “flipped” or otherwise sold as a condo. Under our proposal, someone seeking to build an ADU would need to certify to the building inspector that they or their family member will reside in either the principal dwelling unit or the accessory dwelling unit upon completion of the accessory dwelling unit.

The proposal includes “or a family member” for this certification because many houses, especially ones that “stay in the family” after someone passes away, are lived in not by the owner but by a family member of the owner. For example, houses are sometimes owned by a set of siblings but lived in by one of them or by one of their children, or by a parent and lived in by one of the children.) The proposal includes an exception to this certification for non-profit or governmental entities that restrict the ADU as affordable, for rents affordable to households with income not exceeding 60% of the area median income (“AMI”).

## Article 43 Protects the Environment

In recognition of our community’s desire to preserve open space, trees, greenery and other natural resources, the article explicitly does not require additional parking spaces for ADUs.

The proponents of this article designed Article 43 to avoid losing neighborhood open space such as gardens, lawns, and trees, by not requiring parking spaces for ADUs or relaxing the setback, height or other dimensional requirements that apply to any other home renovation or improvement.

Our proposal would not change any existing on-street parking requirements, which include a prohibition on overnight street parking on public streets and any applicable rules established for private ways. Any additional vehicles for an ADU occupant would be handled like any other additional vehicle a household acquires. Data from other communities shows us that there is, on average, less than one additional car for each ADU.

It’s important to note that Article 43, as drafted, still allows the owner from adding parking with their ADU if they feel it would be necessary and are able to do so under our existing Town bylaws – this may require permission from the Zoning Board of Appeal and/or a stormwater management plan.

## **Owner-Occupancy Requirements are Bad for Arlington**

We've learned from other municipalities that long-term owner-occupancy requirements for ADUs have the effect of stifling the creation of ADUs by making homeowners reluctant to spend the time, money and effort it takes to build an ADU. Before undertaking the task of building an ADU, homeowners will ask some basic questions (for example, what happens when mom passes away or moves into assisted living? what if we get relocated for work? what will this do when we go to sell?). Life has unexpected events (people die sooner than we'd hoped, their care needs change over time, they have to relocate for jobs, etc., etc.), and when a homeowner is worried that the ADU law wouldn't accommodate those events and might even restrict an opportunity to finance or sell, then, regrettably, but logically, they won't create the ADU. Long-term owner-occupancy requirements also makes banks reluctant to give financing, which makes ADUs out-of-reach for all but the richest.

ADUs are an opportunity for Arlington to enable homeowners to build the kind of diversified, smaller housing that this town so desperately needs. We should be pleased to enable homeowners to help solve our housing problems. Today's homeowners will add an ADU for their immediate family needs. Over generations, these units will become part of the fabric of diversified housing types in Arlington. People living in ADUs are no more likely to be a neighborhood stranger than people who move in next door to the ADU. These ADUs will continue to provide housing for grandmothers, for school teachers, for caregivers, for adult children not ready to leave the home yet, and more.

## **Benefits for Arlington Senior Citizens**

People who have raised their families in Arlington years ago have voted for overrides for their children's schools and for the Town. Their friends are in Town. They want to stay. Many are looking into the future for a way to "age in place" rather than go to a life care community or nursing home. Now on a fixed income and facing an inability to pay the larger tax bills, they may feel forced to leave their homes and neighbors. If they want to stay in Arlington but move to a smaller, easier to manage home, they face the real difficulty of finding such a place in Arlington. Article 43 would allow them to convert some of their now empty bedrooms, or a little used carriage house or garage into an ADU, and so remain in their neighborhood, build a unit with adaptability features where they might live, maintaining their mobility or offer space to a caregiver. An ADU could allow them to earn extra revenue from renting out the rest of the home. This extra income might relieve the financial pressures of a growing property tax bill.

Just a step back in history. Arlington's population peaked in the 1970's at 53,524. By the 2020 census, the population had declined to 42,844, a surprisingly large 20% drop in people in town. Unlike some other places, this drop in population did not result from urban renewal, or natural destruction. Families raised their kids. The kids moved on. The parents stayed in the same family home with a lot of empty bedrooms. ADUs can be a solution for these "over housed" senior citizens in Arlington.

## **What Does "As Of Right" Mean, and what is a "Special Permit"?**

"As of right" or "by right" means that only a building permit is required to do a project, and a special permit, variance or other zoning relief is not required first before a building permit can be issued. A building permit is obtained from the Inspectional Services Department, which reviews

building permit applications to confirm compliance with all zoning, building and other life-safety codes.

A special permit is a discretionary approval that would need to be obtained (in the case of ADUs) from the Zoning Board of Appeals. Requiring a special permit means that even before the owner knows whether an ADU will be allowed, he or she must incur thousands of dollars upfront to engage a design professional and/or attorney and undergo a public discretionary approval process, in which all neighbors are notified and can participate.

Article 43 treats ADUs in the same way as any other addition or change to an existing residence (i.e., the addition of an ADU would be subject to the same rules as an expansion to build an additional bedroom or in-home office). Where a special permit is otherwise required (for example, to do an addition of 750 square feet or more), it would likewise be required for an ADU.

Article 43 also requires a homeowner to go through the Zoning Board of Appeals process, to get a ZBA special permit for an accessory structure that is within 6 feet of a lot line.

If we required this special permit process for all ADUs the upfront cost, risk, and additional time requirements would deter many homeowners from considering this ADU option.

### **ADUs Bring Diversity and Affordability to Arlington's Housing Stock**

Because ADUs are, by definition, small, they can be an important source of reasonably- priced housing within reach for individuals and families who cannot afford a single-family home or larger unit. We have chosen to not impose specific income-eligibility restrictions on the residents of ADUs. Such a rule would make it illegal in many circumstances for ADUs to be occupied by a family member (which will often be the reason an owner wants to create an ADU in the first place) and would make ADUs impractical given the cost associated with adding an ADU plus the administrative requirements of complying with affordability restrictions. The Town badly needs such small, more affordable housing opportunities for senior citizens on a fixed income and for young people like new schoolteachers or graduate students.

According to the US Census Bureau, 34%, over one out of three, Arlington residents live alone, a higher rate than the surrounding region. ADU's will make it easier for these people to find appropriately sized, and priced housing.

This ADU article is unique in that it has a section which allows for the development of permanently income-restricted affordable ADUs, if owned by a nonprofit or governmental entity such as the Arlington Housing Authority or the Housing Corporation of Arlington.

### **No Short-Term Rentals in ADUs**

Article 43, as drafted, expressly makes ADUs subject to the Town's existing short-term rental bylaw ([Title V, Article 18, Section 3 of the Town Bylaws](#)), which was adopted overwhelmingly at Town Meeting in 2019 and is very clear that ADUs cannot be used as Airbnbs.

The short-term rental bylaw also lays out a specific procedure for reporting short-term rental complaints and violations to the Select Board, and provides for fines for violations.

## **Applications Process & Enforcement**

Arlington's Inspectional Services Department will review all ADU permit applications just like all other building permit application. There will likely be a minimum of three phases of review requiring site plan, placement on the site, layout, approximate size, floor plans, design, scale drawings and elevations, final site plan, Registered Surveyor's stamped plot plan of house and land boundaries. ISD will confirm the plan, which should be prepared by an architect or licensed building contractor, meets the building, life safety code and that zone's dimensional requirements. ISD will also require an affidavit that the homeowner or family member will live either in the main house or the ADU when the ADU is completed. ISD will inspect the ADU during construction. As with all other home improvements in Town, when the construction is completed, ISD will inspect the premises to confirm it is in compliance with zoning, building code and fire safety requirements, and then, after confirming such compliance, issue a certificate of occupancy.

Based on the experience of other Massachusetts cities and towns that allow ADUs, we expect the number of ADUs permitted each year to be modest (approx. 2-5 units/year). They will be more likely in some precincts than in others because of the lot size and shape variations among precincts. On average, while we would hope for more, experience elsewhere suggests Arlington may get only about one ADU per precinct every 5 years.

## **ADUs are Good for Arlington's Tax Base**

Building an ADU will constitute "new growth" that allows Arlington to increase our tax base under Proposition 2 ½. Under Proposition 2 ½, the Town cannot assess total property taxes above what is called the "levy limit." Each year, the Town's levy limit is limited to the prior year's levy limit, plus a 2.5% increase, plus "new growth." This new growth is then part of the "levy limit" that can be increased by up to 2.5% each year.