

# Accessory Dwelling Unit (ADU)

## How-To Checklist

Vermont Department of Housing & Community Development

June 2020

### WHAT IS AN ADU?

Vermont's Planning Act (24 V.S.A 4412) defines ADU to mean “one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.”

### OVERVIEW OF CHECKLIST

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ADUs can help address the acute need for smaller and more affordable homes in Vermont and can help families navigate changing housing and financial needs, but creating an ADU can be complicated in the state's fragmented system of development and rental housing oversight.

The to-do list summarized above and detailed below identifies items you may need for creating an ADU. The permits and steps all have important functions but taken as a whole, can make the process difficult, expensive or even impossible.

If you are a homeowner or builder interested in building an ADU, this checklist provides a guide and reality check on the steps and obligations required for creating and managing an ADU.

If you are a government official, housing advocate or have other interests in promoting ADUs, the checklist highlights some of the areas where permit reform and technical assistance can be applied to smooth the path for ADUs and other types of in-fill housing.

## DETAILED CHECKLIST

### BACKGROUND RESEARCH

#### ADU Types

Research the many great resources about ADUs online. Consider the types of ADUs that might work on your lot: internal, addition, or detached and discuss them with the designer and builder you plan to work with. Note that some municipalities like [Burlington](#) and [Montpelier](#), provide helpful resources for creating ADUs.

#### Water/Wastewater Service

Early in the process, identify if the ADU is or will be served by municipal water/sewer versus an on-site well and septic system. The water/wastewater service and the type of ADU can trigger different permit requirements. Knowing the status of available services and considering the different ADU types helps you prepare for conversations with designers/builders and permitting authorities.

#### Covenants, Conditions, Deed, and Mortgage Restrictions

Even in municipalities with ADU-friendly bylaws, private agreements can restrict the construction of an ADU. These could be homeowner/condo association (HOA) covenants, municipal or state permit conditions, deed restrictions, easements, or even mortgage conditions (such as a 502 loan from the US Department of Agriculture). Most of this information is available in the municipal clerk's land records or by reaching out to an HOA president or the mortgage holders. You will need to navigate around any constraints you find, or you may learn that you cannot build an ADU.

### LOCAL REGULATION & PERMITS

The municipal zoning administrator (ZA) can help identify local permits and help estimate the time needed to permit the ADU at the local level. Municipal development regulations include standards that apply to different places in town and to different activities, and outline procedures for review of an ADU – either administrative review by the ZA or before a municipal panel, like the Development Review Board. Ask the ZA to point out all the applicable sections of the regulations, including any review standards, sequencing, timelines, and fees. In municipalities with zoning regulations, the following approvals are common.

#### [Zoning Permit](#)<sup>1</sup>

Municipal land use permits (referred to here as zoning permits) typically evaluate compliance with development standards within a zoning district or for a use. Standards may include setbacks from property boundaries, height limits, square footage of an ADU, lot coverage maximums, minimum parking spaces, and more. More than 80% of Vermont municipalities regulate land use. Most towns post their zoning or development regulations online. Administrative permits (permits that can be reviewed by the ZA) must be issued within 30 days and have a 15 days' notice and appeal period. Review fees vary. In South Burlington, an 800 s.f. ADU would cost \$526<sup>2</sup> for permitting and certification. All administrative zoning permit decisions may be appealed to the appropriate municipal panel (typically the development review board or zoning board of adjustment).

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<sup>1</sup> Vermont's fair and affordable housing law in the Planning Act ensures that local zoning cannot exclude one ADU outside flood hazard areas that meets the following: 1) property has wastewater capacity, 2) unit does not exceed 30% of the floor area of the single-family dwelling, and 3) applicable dimensional and parking bylaw requirements are met (24 V.S.A. 4412(1)(E)). The municipality may be more permissive than this if it chooses. The municipality may also apply a conditional use review if it results in: 1) a new accessory structure, 2) an increase in the height or floor area of the existing dwelling, or 3) an increase in the dimensions of the parking areas. This means that the application would have to undergo hearing by the appropriate municipal panel and could not be reviewed administratively by the zoning administrator. Conditional use review requires additional notice than is required of an administrative zoning permit.

<sup>2</sup> All fee references are pulled from posted schedules; officials were not consulted for accuracy.

### ❑ **Conditional Use Review**

If the ADU is classified as a conditional use in the municipal regulations, a conditional use [hearing](#) by the 'appropriate municipal panel', like a Development Review Board, requires 15 days' notice (including adjoining property owners) and a decision within 45 days of the hearing's close. [Conditional use review](#) includes some discretionary standards, such as "character of the area". Review fees vary. In Rutland City, a conditional use review costs \$140. Decisions may be appealed to the Superior Court.

### ❑ **Design and Historic Preservation Review**

In municipalities with regulations governing building design, properties may be in special overlay districts that guide compatible neighborhood design and character. ADUs built in these districts will typically be reviewed by an advisory design review committee to evaluate construction materials and configurations prior to an approval by the ZA or appropriate municipal panel. Woodstock has design review overlay districts and provides [this](#) design review worksheet for projects in the village, with fees starting at \$50.

### ❑ **Flood Hazard and River Corridor Regulations**

Local bylaws regulating development in flood hazard and river corridor districts strive to maintain the ecological functions of waterways and prevent loss of property and life. A flood safe ADU might be allowed in limited circumstances, but most new structures are prohibited in these areas. A hydraulic analysis by an engineer may be required if the ADU is allowed.

### ❑ **Certification of Permit**

If the municipal regulations require a certification verifying that permitted development matches what was built, the applicant applies for inspection upon project completion. The administrative officer has 30 days to act on the application. Review fees vary. Certifications can be appealed to the appropriate municipal panel. Certification in Brattleboro costs \$25 for a 1-2 family residence.

### ❑ **Manufactured Housing Installation Form**

If the municipality requires a zoning permit certification and the ADU is a manufactured home, then a [HUD 309 Form](#) must be provided to the zoning administrator for certification to verify that it has been properly installed.

### ❑ **Municipal Highway Access Permit**

If the project involves a new or expanded driveway curb cut or work within the right-of-way for utilities, a municipal highway access permit and inspection may be required. Fees, requirements, and timelines vary by local ordinance and custom (but are often integrated into the zoning permit review). State highway curb cuts are regulated under the State's [1111 permit](#), not by the municipality.

### ❑ **Municipal Water/Sewer Permit**

If the project involves new or changed service to municipal water and sewer, a municipal water/wastewater permit and inspection may be required. Fees, requirements, and timelines vary by local ordinance and custom (but are often integrated into the zoning permit review). Unless the project is in Charlotte or Colchester ([delegated communities](#)), this will also require a State water/wastewater permit (see below). Fees can be substantial and may require bonding to ensure proper installation. In Rutland City a new connection is \$30 and requires a bond of \$970. In Milton, the connection fee is \$1,670 per bedroom, plus gallons per day allocations.

### ❑ **Municipal Building/Electrical/Plumbing Code Permit**

10 municipalities in Vermont have cooperative inspection agreements with the [VT Div. of Fire Safety](#) and administer local construction codes for building, fire safety, electrical, plumbing, and structural compliance locally. These local codes must meet statewide baseline standards but allow municipalities to adopt higher standards, as well as collect fees and conduct administration. Review & inspection fees vary. In Barre City, an 800 s.f. ADU building permit would cost \$160.

### ❑ **Municipal Impact Fees**

If the municipality assesses an impact fee to support capital improvements affected by the development, a fee may be due at the time of municipal zoning permit application or certification. Fees can vary by size and type but tend to cost about \$2,000. An 800 s.f. ADU in Burlington would have a \$2,132 impact fee.

### ❑ **Municipal Assessment & Property Taxation**

Zoning permits must be copied to assessors/listers so the grand list can reflect any value impacts from the improvements. ADU assessment practices may vary by municipality. Increases tend to be less for internal conversions and more for additions and detached ADUs. You can talk to the local assessor to understand how an ADU might affect the property tax bill.

## □ **E-911 Address**

The local ZA is typically the E-911 coordinator responsible for assigning an address for the postal service, utilities (Power, Telecomm., & Gas), and emergency service providers. In some cases, you will need an address to set up new utility accounts/services, so asking what the address will be can be helpful. Units cannot be ½ numbers in Vermont.

## □ **Municipal Rental Registry**

Once built, some municipalities may require registration of a short (like an AirBnB) or long-term rental (tenancy) of an ADU. Barre City charges \$50 per long-term rental unit registration, Burlington charges \$110.

## **STATE REGULATION & PERMITS**

For State permits, there is no one-stop shop to interface with regulating State agencies, but the Dept. of Environmental Conservation (DEC) fills the gap best by supporting [State Permit Specialists](#) to flag potential permitting requirements. If the project has enough complexity, DEC may complete a Project Review Sheet (PRS) with links to [information sheets](#) that can guide you through the process. Note that all municipal zoning permits are required to contain a statement directing applicants to a VT Dept. of Environmental Conservation Permit Specialist. They typically state this: “*State and federal regulations may apply, may be more or less restrictive than municipal bylaws, and may affect this project; it is the applicant’s responsibility to obtain all required state and federal permits; call the State’s permit specialist at 802-XXX-XXX with any questions.*” For example, ADU construction near an airport could require a Federal Aviation Administration Filing. A PRS for an ADU may require fewer than five permits and reference 10+ [information sheets](#) to guide the project. Below are the most common permits, but other environmental permits may be triggered, such as when an ADU is located near a lakeshore or wetland.

## □ **Construction Permit: Fire Prevention & New Buildings**

In municipalities without a recognized code (10), ADUs that the Division of Fire Safety considers a ‘public building’<sup>3</sup> will need a construction permit. Although the State code is publicly available, it includes references to a propriety code not publicly available. Without a building code professional, ADU builders rely on the Division of Fire Safety to tell them what must be done. The Division publishes [code information sheets](#) on topics like short-term rentals, but there is no equivalent checklist for ADUs. ADU builders will need construction plans and application fees start at \$50. 90% of applications are reviewed in 30 days. The State’s code does not require a unit to have its own heating source and thermostat, but locally administered State rental health codes do require adequate heat.

## □ **Electrical & Energizing Permits**

ADUs that the Division of Fire Safety considers a ‘public building’ will need an electrical permit. Energizing permits are also required before the electric utility energizes the new service in an ADU. Electrician is a licensed profession in Vermont and a master electrician or journeyman must submit the work notice to Fire Safety. Fees vary based on the size of the installation, but most would appear to be under \$150. The statewide code requires that the units have access to a breaker panel, but it does not have to be a separate service for the ADU.

## □ **Plumbing Permit**

ADUs that the Division of Fire Safety considers a ‘public building’ and any private residence connected to public water and sewer will require a plumbing permit. Plumber is a licensed profession in Vermont. Fees are based on size of installation, but most would appear to be under \$150.

## □ **State Water/Wastewater Permit**

Requirements vary for internal, addition, or detached ADUs connected to municipal services or site-based systems. For instance, a detached ADU would require a water/wastewater permit, while an internal or attached ADU using the existing water and sewer service may be eligible for a permit exemption if the pipes are big enough. This state permit requires a licensed designer or engineer to prepare a certification, adding more than a \$1,000 to the permit fee, which starts at \$306 for an on-site system.

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<sup>3</sup> Title 20: Internal Security and Public Safety, Chapter 173: Prevention and Investigation of Fires: Subchapter 2: Fire Safety Division, Section 2730: Definitions: (a) As used in this subchapter [...] (b) The term “public building” does not include (4) A single family residence with an accessory dwelling unit as permitted under 24 V.S.A. 4406(4)(D). [24 V.S.A 4406 has been deleted, leaving Fire Safety to make determinations on whether ADUs are public buildings.]

## □ **Residential Building Energy Standards**

ADU builders are subject to the States' residential building energy standards and must affix a [residential building energy standards \(RBES\) compliance form](#) in the home. The certifying person (typically a contractor) must provide a copy to the Department of Public Service and file a copy in the town land records for \$10. There is an exemption for limited historic properties and owner/builders, but the owner-builder still requires evaluation of compliance and disclosure of non-compliance upon sale. If the municipality requires zoning permit certification, the ZA must verify that the certificate has been recorded in the land records prior to issuing a zoning permit certification. RBES standards are provided [here](#) and outline detailed thermal calculations and standards. General contracting is not a licensed profession in VT, but efficiency Vermont provides a list of qualified contractors in high demand. State DPS estimates 72% compliance for new construction and 'significant barriers' to compliance for updates to existing buildings. Non-compliance would allow a homeowner to seek damages in court from contractors or prior homeowners within six years of occupancy or the filing of the form. The 2019 update to the 2015 code, effective in September, is estimated to add \$5,031 to an average housing unit, with a 9.4-year payback (DPS Rulemaking Filings).

## □ **Act 250**

Although the percentage of single-family homes subject to Act 250 permits is low, if the single-family home is in a development or subdivision permitted under Act 250 and the [District Coordinator](#) finds that there's a material change to the permitted project, the ADU would require an Act 250 permit amendment. Other jurisdictional triggers may apply. If no-one requests a hearing, this would likely be processed as a minor amendment. An 800 s.f. project valued at \$50,000 would have a \$370 permit fee, plus any necessary exhibit preparation. Projects subject to Act 250 are sometimes subject to higher standards, like the new energy *stretch code*. The 2019 update to the 2015 code, effective in September, is estimated to add \$10,037 to an average housing unit, with a 13.7-year payback (DPS Rulemaking Filings).

## □ **Rental Housing Safety Code**

12 municipalities have minimum standards for rental housing, and the Vermont [rental housing code](#) outlines a baseline statewide standard for every town, administered by local health officers. These standards often relate to sewage, lead, water quality, air quality, mold, and infestations. The Vermont Department of Health's [rental housing inspection checklist](#) for municipal health officers is the most helpful list of requirements for prospective landlords. The list includes items such as: does each dwelling unit have two separate ways out, are kitchen countertops non-absorbent, and are stairway handrails securely mounted?

## □ **Hazard Mitigation: Lead Paint & Asbestos**

Most older houses will have hazards that renovators must anticipate. Prior to a renovation, an ADU builder [must inspect](#) for asbestos-containing materials with a certified asbestos inspector, listed on the [Dept. of Health's website](#), and notify the Department 10 days before abatement. Similarly, lead-based abatement activities require notice and a \$50 fee. Rental units built before 1978 must also file an [essential maintenance practices](#) filing with the Dept. of Health. Abatement measures can cost several thousand dollars.

## □ **Short-Term Rental Safety, Health, and Income Tax Obligations**

ADU builders interested in offering their unit as a short-term rental in municipalities and developments that allow this must meet State standards that are like those for tenant-occupied units. The Division of Fire Safety has developed this [checklist](#), which includes items like inspected heating systems, grounded outlets in wet rooms, and hard-wired smoke and CO alarms. Some municipalities may define a short-term rental as a land use altogether distinct from that of an ADU or require short-term rental registration. The registration for an ADU used as a short-term rental in Woodstock, the fee is \$100 per guest room, plus \$0.20 per s.f.

## **IMPLEMENTATION & OPERATION**

### □ **Design**

With regulatory constraints known, now is the time to sketch out a design that best complies with the regulations and meets your needs. For some projects and permits, a conceptual drawing will do. More complex projects may need an architect. It is common to revisit a design following a builder's cost estimates, to look for cost savings. Working with a design-build firm can sometimes reduce design fees.

## ❑ Construction Cost Estimates

The least expensive ADU is typically an internal conversion within the existing building envelope. Bathrooms, kitchens, and HVAC represent the most significant costs for internal conversions, but site work and wastewater can also add significant costs (especially if additional parking and an expanded septic system is necessary). Internal ADU's usually cost between \$30k and \$60k, while new backyard cottages and additions can cost between \$100-200k (VSHA). Contractors in many parts of Vermont are in high demand, which is adding cost, time and availability constraints for customized ADU projects, especially projects targeted for affordability.

## ❑ Lender Financing

Lenders typically will not appraise for the potential increase in value that an ADU may provide, so unless equity is available in the principal single-family dwelling, obtaining financing for an accessory dwelling unit is difficult – even with excellent credit. The most common way to finance construction is with a home equity line of credit (running around 3% to 6% interest). Construction loans based on a debt-to-income ratio may also be possible and tend to have higher interest rates. Some places in Vermont have special programs to support ADU production, but no statewide program exists. VSHA is currently running a pilot ADU program in Montpelier. The rollout has revealed unexpected Federal requirements that limit the pool of potential homeowners and eligible ADU configurations.

| EXAMPLE FINANCING SCENARIO   |          |
|--|----------|
| Loan Amt.  | \$60,000 |
| Loan Term  | 15 years |
| Interest   | 5.5%     |
| Annual Payments (\$490.25\mo)  | \$5,883  |
| Total Loan Cost (\$28,245 interest)                                      | \$88,245 |
| Median VT Rent (housingdata.org)   | \$945    |
| Annual Gross Income from Rental  | \$11,340 |
| Less Annual Mortgage Payments Equals                                     | \$5,457  |
| Less 30% of Gross for Taxes & Insurance (\$3,402\yr) Equals              | \$3,402  |
| Less 20% of Gross Maintenance, Legal, Admin., & Contingency (\$2,268\yr) | \$1,134  |
| Annual Net Income (\$94\mo)  | \$1,134  |

## ❑ Utilities

If the ADU can or will be separately metered for things like water/sewer, telecommunication, or power, ADU builders/contractors will need to coordinate with the utility companies to set up metering and service.

## ❑ Contracting and Permits

Some contractors will take on the responsibilities of permitting, and certain permits require the licensed tradesperson's signature. Sequencing everything to meet lenders, contractors, and permitting authorities' schedules can be complicated, and some permits can expire if no action is taken within a certain period. Having a timeline sketched out with allowances for things to not go as planned will help builders deal with the unexpected. Contractor is not a licensed profession in Vermont, so due diligence and a basic contract protects ADU builders from risk.

## ❑ Homeowner Insurance

Homeowner insurance policies can vary widely and may need to be updated for the ADU, with an increase in value for the new use.

## ❑ Budgeting, Accounting & Income Tax Obligations

Income from an ADU rental is taxable but can be eligible for certain deductions. Talking with an accountant with expertise supporting small scale landlords can help optimize the business. ADU operators will want to save for maintenance and operational costs.

## ❑ Landlord/Tenant Legal Obligations

New ADU operators have many responsibilities as a housing or accommodation provider. The Dept. of Housing & Community Development has an [information page](#) that highlights responsibilities related to rental housing: from judicial proceedings for eviction to tax department filings for landlord certificates and rental rebates. Housing

providers must also follow fair housing and anti-discrimination law. DHCD offers [guidance](#) to comply with the law, and the [Vermont Landlord Association](#) provides public and member resources, including legal forms and leases to support good landlord/tenant relations. Honoring rights and limiting liability exposure can save time, money and heartache.

## EXAMPLE OF TYPICAL MUNICIPAL ADU REGULATION

Swanton's [Regulations](#) codify the statutory floor included in statute and apply conditional use review in some districts. DHCD finds that this is typical regulatory language in municipal bylaws.

(A) The Administrative Officer may permit one accessory dwelling unit to a single-family dwelling provided it meets the requirements of this section. An accessory dwelling unit shall be defined as efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with the following:

- (1) the property has sufficient wastewater capacity,
- (2) the unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
- (3) applicable setback, coverage and parking requirements specified in these regulations are met.

Notwithstanding the provisions above, the creation of an accessory dwelling unit will require conditional use approval when one of more of the following is involved:

- (1) A new accessory structure, constructed after the enactment of these bylaws.
- (2) An increase in height or floor area of the existing dwelling, or
- (3) An increase in the dimensions of the parking areas.

District Example: Swanton's Moderate Density Residential District classifies accessory dwelling units as a conditional use. Conditional use review requires 15 days' notice prior to a hearing and requires a decision within 45 days of the hearing's close. The zoning district allows no more than 15% of the lot to be covered in buildings; front setbacks are 75', side setbacks are 30', and rear setbacks are 50'. The district allows minimum lot sizes for 1 acre (e.g. a lot of 200' x 200'). 1 parking space is required per accessory dwelling unit.