

To: **Inverness Planning Advisory Committee  
Inverness County Council**

From: **Planning Staff (EDPC)**

Date: **February 16, 2023**

Reference: **Amendments to the Inverness *Secondary Plan and Land Use By-law* to permit  
Detached Accessory Dwelling Units in the Residential Urban (R-1) Zone**

---

**Recommendation:**

That the Inverness Planning Advisory Committee recommend that Council approve the proposed amendments to the Inverness *Secondary Plan and Land Use By-law* to permit detached accessory dwelling units in the Residential Urban (R-1) Zone.

**Background:**

District Planning received an application from Todd MacDonald and Ashley Ward on September 27, 2021 to amend the Inverness *Secondary Plan and Land Use By-law* to allow for the construction of a detached accessory dwelling unit (“ADU”) on their property at 35 Mann Avenue. A public hearing was held on February 3<sup>rd</sup>, 2022. During the hearing, the applicant indicated that the proposed rule to prohibit ADUs in the front yard would prevent them from building a unit. As a result, Council tabled the matter. The Planning Advisory Committee has discussed the application further; at the most recent November 10<sup>th</sup> meeting, the Planning Advisory Committee requested that staff investigate alternatives for controlling the location of ADUs on a given lot, including by a variance.

**Analysis:**

The decision whether to allow ADUs in the front yard is subjective in nature, as it is largely based on aesthetics. An accessory building located in front of a main building may be considered aesthetically displeasing by surrounding residents or may detract from the streetscape.

There are several planning tools which could be used to regulate ADUs, including variances, site plan approval, and as-of-right permission.

Prohibition and Variance

This option involves adopting a Land Use By-law provision which prohibits the construction of an ADU in the front yard.

The *Secondary Plan* contains policy which defers to the variance provisions of the Act (Chapter 5, Policy 18). The *Municipal Government Act* (“the Act”) enables the Development Officer to allow a departure from certain provisions of a Land Use By-law, subject to three tests.

The first question is whether there is any provision for the requirement to be varied. The Act states that variances may be granted for “size or other requirements relating to yards.” The requirement in question states that “Garden and Garage Suites must not be built closer to the front lot line than the main building.” Because this provision relates to yard requirements, staff is of the opinion that it is eligible to be varied.

The second question is whether the request meets three tests provided in the Act:

235(3) *A variance may not be granted where the: (a) variance violates the intent of the development agreement or land use by-law; (b) difficulty experienced is general to properties in the area; or (c) difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.*

The applicant has gone through proper channels with their request, and therefore the difficulty experienced is not due to an intentional disregard for the requirements of the *Secondary Land Use By-law*. Staff is also of the opinion that the variance also would not violate the intent of the Land Use By-law. The intent can be found within the *Secondary Planning Strategy*. The proposed amendments are general in nature and do not speak to the specific rules of the Land Use By-law.

In regards to (b) above, variances are only to be granted for a unique situation. In this case, the difficulty experienced is due to the location of the existing dwelling towards the rear of the lot. The dwelling was constructed following the demolition of the former company home. Any property owner in the area would experience the same circumstance should they choose to construct to the rear of the lot. For that reason, staff would not support granting a variance for the applicant's proposal.

It is important to note that when a variance is refused, the applicant has the right to appeal to Council. Council must consider the same tests as outlined above, and has the authority to make any decision that the Development Officer may make.

#### Site Plan Approval

ADUs could also be permitted in the front yard by site plan approval. In site planning, the Development Officer and applicant negotiate the layout of the site and its features before a Development Permit is issued. In site planning, the use is permitted as-of-right provided that there are adequate measures to reduce possible land use conflict sources as identified in the *Secondary Planning Strategy* (Appendix A). These matters include the size and location of building itself, the parking area, and landscaping, among others. Once the site plan has been agreed to, there is a notification process similar to that for a variance. Those that receive a notice have the opportunity to appeal the Development Officer's decision to Council. Again, Council may make any decision that the Development Officer may make.

Site planning does impose some additional burden on the applicant, as there is an additional fee and timeframe associated with the application.

#### As-of-Right Permission

This option has previously been discussed with the Planning Advisory Committee, and involves allowing the construction of an ADU in front of the main building as-of-right. Under this option, if a property owner has a proposal to construct an ADU in the front yard, District Planning would issue the development permit provided that the applicable rules can be met.

In most jurisdictions ADU location restrictions reflect those in place for accessory buildings. Within the Inverness Plan Area, accessory buildings may be built in front of the main building as long as they meet the minimum front yard requirement. Staff is of the opinion that because the concern is aesthetic in nature, the rule for accessory buildings and ADUs should be consistent.

## Conclusion

There are many benefits of ADUs which align with the policies of the Inverness *Secondary Planning Strategy*. For that reason, staff recommend that Council approve amendments to allow detached ADUs in the R-1 zone. Whether to permit ADUs in the front yard of the main building is an aesthetic concern. There are various options to address front yard ADUs as outlined below.

### Options

1. **Prohibit** the construction of ADUs in the front yard. Property owners may apply for a **variance** to this rule; however, the Development Officer may refuse such an application for the reason outlined in the staff report.
2. Allow ADUs to be located in the front yard by **site plan approval**.
3. Allow ADUs to be located in the front yard **as-of-right**.
4. Table the decision and request further information.
5. Other.

## **Appendix A: Site Plan Approval Policy**

- Policy 17.2 In considering Site Plan applications, in addition to all other criteria as set out in various policies of this Plan, Council shall have regard to the following matters:
- a) That the proposed site plan is in conformance with the intent of this Secondary Plan and the requirements of all other Municipal By-laws and regulations.
  - b) That controls are placed on the proposed developments so as to reduce the conflict with any adjacent or nearby land uses by reason of:
    - i. The height, bulk and lot coverage of any proposed building or structure;
    - ii. Access and egress from the site and the distance of these from street intersections;
    - iii. The location and screening of on-site parking facilities;
    - iv. Landscaping;
    - v. The screening of outdoor storage;
    - vi. The location and design of any signage;
    - vii. Community design elements as outlined in the Land Use By-law; and,
    - viii. Any other relevant matters of planning concern.