



TOWN COUNCIL
Committee to Review Zoning and Permitting Regulations
Selectmen's Conference Room
Thursday June 11, 2020 – 6:00pm

Councilors:

Councilor Paula K. Schnepf (Chair)
Councilor Jennifer Cullum
Councilor Gordon Starr
Councilor Kristine Clark
Councilor Britt Beedenbender

MEETING MINUTES

PRESENT: Councilor Paula K. Schnepf; Councilor Jennifer Cullum; Councilor Britt Beedenbender; Councilor Gordon Starr; Councilor Kristine Clark; **ALSO IN ATTENDANCE:** Elizabeth Jenkins, Director, Planning and Development; Stephanie Coxe, of Smarter Cape Cod; Gloria McPherson; Arden Cadrin

Chair of the Committee opened the meeting at 6:00pm, making the statement that the meeting is going to be recorded and aired at a later time, The Chair also declared the following statement: **In Accordance with MGL, Chapter 30A, Section 20, I must inquire whether anyone is recording this meeting and if so, to please make your presence known;** The Chair also declared the following: Tonight's meeting is with Remote Participation Instructions Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Join Zoom Meeting

<https://zoom.us/j/97565241992> Meeting ID: 975 6524 1992

PHONE# 888 475 4499 US Toll-free

Meeting ID: 975 6524 1992

Chair of Committee asked for a motion to accept the meeting minutes of May 14, 2020. This motion was made by Councilor Britt Beedenbender, seconded by Councilor Kristine Clark; Administrator Cynthia Lovell took a roll call vote:

Councilor Paula K. Schnepf YES

Councilor Jennifer Cullum YES

Councilor Britt Beedenbender YES

Councilor Gordon Starr YES

Councilor Kristine Clark YES

Unanimously approved by all members present; Chair of Committee asked if there was anyone for Public Comment: Mr. Jake Dewey (recording at 2:07) what the intent for these types of rentals that they are only occupied by owners, however will listen to the rest of the presentation.

Chair of Committee asked for Committee response to public comment, Councilor Cullum said that we should listen to these developers that join us each time for this housing issue we should be listening to these developers. Councilor Clark mentioned the Cotuit School for housing, and if we have looked at this property for this type of housing. Chair closed Committee response to public comment.

Chair of Committee introduces Arden Cadrin, Housing Coordinator, Planning and Development (5:40 in recording) who explained the two programs currently that the Town offers; (1) Accessory Affordable and (2) Family Apartment Program

Accessory Dwelling Units

- Owner's primary residence
- Units offered at an affordable rent to qualified tenant
- Owner must live in principal residence
- Limited to "amnesty" units created prior to 2000 or new units
- Permitted through "local 40B" process & units count on SHI
- Deed restriction & monitoring
- Program funded by CPA for code upgrades
- Housing Production Plan: "Consider strengthening the Accessory Affordable Apartment Program and allowing market-rate accessory apartments to increase housing options."
- Communities on Cape Cod have permitted the creation of market-rate accessory apartments by-right through zoning

Family Apartments

- Property owner
- Occupancy of one unit limited to a family member/relative
- Property owner can reside in principal or accessory unit
- Permitted either by-right or with ZBA Special Permit
- Annual affidavit

Arden stated that in the last few months they have received very few applications for either program, there is a significant amount of money still left for individuals as they have only awarded 1 loan. Currently there are 130 active accessory apartments, but this program is very timely for not only staff but for the homeowners as well. The Family Apartment program is administered by the building department, so she can't speak to its entirety, only limited.

(10:36 in the recording) Councilor Beedenbender asked if a homeowner has a garage they want to convert to an apartment you would use the family apartment program, Arden answered correct.

(13:00 in the recording) Councilor Starr asked about septic, if someone wanted to enlarge their septic to accommodate the apartment could they. Arden stated if you have the land to accommodate a larger one, the Board of Health would make that determination, they would have to sign off on the application, however typically you would eliminate a bedroom in the house to make up for the apartment use, so enlargement would not be necessary. (14:38 into the recording) Councilor Schnepf asked if we collected any data as to who participates in the program. Arden stated she doesn't collect financial data unless they are over income or under income. Arden did note that most of the people who rent are not charging the maximum amount they could charge, partly because they would not have any tenants, the rent is set very high here which makes it almost impossible to rent to people simply because the wages do not support the higher end. Councilor Schnepf asked about CPC funds and how much it contributed, Arden stated about \$20,000 goes into the program. Councilor Schnepf asked if there would be incentives moving forward to give the homeowner to rent affordable units, Arden said yes, there are some in place now, and can see more in the future as the program develops and becomes less cumbersome to apply and able to be completed

(17:00 into the recording) Councilor Cullum asked who the targeted audience is in building these units, what is the benefit to the homeowner if the program is so restrictive. Arden stated because the homeowner can collect rent, you can't collect rent in a residential zone on an accessory apartment unless it is permitted and registered.

(19:07 into the recording) Councilor Schnepf introduced Stephanie Coxe to explain the following document, she has worked with a number of towns on the Cape to get this passed, its by right for the owner.

Chair of Committee introduced Stephanie Coxe, of Smarter Cape Cod to introduce the following information

Accessory Dwelling Units and “capitol A” affordable housing

By Stefanie Coxe, Smarter Cape

Background & Summary:

Many towns, when changing their Accessory Dwelling Unit (ADU) bylaws from mandated affordable to market rate, have concerns about the existing units and how they can improve the affordable portion of the bylaw.

The short answer is that it is impossible to improve a mandated affordable ADU bylaw. If the only way to build an ADU is to make it affordable, homeowners won't do it. They aren't developers who have to build an affordable unit in order to get the main house built; therefore mandates don't work. These are people who have existing homes and are voluntarily choosing to build an ADU. If the rules don't work for them they simply choose not to build. However, if the rules do work for homeowners to build an (market rate) ADU and towns then provide optional incentives to rent it affordably (reversing the order), it can produce some units.

Under the model bylaw, which requires ADUs to meet existing setbacks, lot coverage, septic, building codes, and applicable historic, conservation, etc. They also must a) have an interest in becoming a landlord, b) not live in a homeowner's association that bans them, and c) have access to capital (good credit, etc). That means that even under the best of circumstances the pool of homeowners eligible to build an ADU is already relatively limited, which is why no town that has adopted the model bylaw has hit even 10/year. Whether a town is able to achieve even that threshold that is dependent on whether they add or remove restrictions for eligible homeowners, thus growing or reducing the pool. Every policy and program written should be viewed through that lens. For example:

- Mandating affordability eliminates virtually all eligible people willing to build the unit because a) they need to make back the cost of construction and b) they want flexibility in whom they rent to. Requiring eligible homeowners to rent to only certain people is a non-starter for most homeowners; nobody wants to be told who to have living in their home and that they can't rent to their colleague's daughter because she makes too much. So too, is telling them they must subsidize the rent of the tenant by charging less than it cost to build the ADU.
- Excluding second homeowners or National Seashore residents also reduces the pool.
- Similarly, a minimum lot size that goes above and beyond the existing zoning for adding a bedroom or accessory structure significantly shrinks the pool.
- Forcing homeowners to collect private info from their tenant and fill out a ton of paperwork just results in people abandoning the idea of an ADU.
- Requiring anything other than all ADU parking to be off-street, i.e. making homeowners add 2 extra parking spaces, further reduces the people willing/able to build one.

On the other hand, if you have a bigger pool because of limited restrictions and you add incentives, you increase the total number of ADUs (market rate, which is needed for the “missing middle”) and increase the number of affordable units.

Ways to preserve existing affordable ADUs:

Financially necessary components:

Create a way to bridge the gap between market rate and what's affordable using one or more of the following tools:

- Rental buy-down program: offer to offset the difference in what they are getting now with Fair Market Rent (FMR)* using a) Community Preservation Act funds b) Affordable Housing Trust** funds or c) Room Occupancy Tax revenue which has increased significantly since the inclusion of short-term rentals in the tax last year; and/or

- Offer a tax deduction equal to the difference between what they are getting now and FMR. This option requires special legislation so the first option is easier to do or could serve as a stop gap until the legislation is enacted. I would recommend there actually be three categories of tax deduction: a) if you live there year-round; b) if you rent year-round; c) if you rent year-round affordably, with c being the greatest deduction.

*Figuring what FMR is in a market with such limited units available year-round may be difficult, so it could be a matter of sampling comparable units of the same size available on Craigslist/etc for six months or so and coming up with the median of that. There needs to be some flexibility built in and has to be relatively easy for the homeowner to go through the process; it can't be a massive grant application or require extensive reporting.

**If the delta between FMR and affordable rent is paid for with CPA or Affordable Housing Trust funds, it will require the tenant's income be verified each year. The problem with that is if they have a good year like a Shellfishing family, they (and their landlord) are punished. So there should be flexibility with the funding source. If you choose to do something that only requires income verification that first year, the successive years would need to be paid for out of a separate account. It's easy enough to create a fund using short-term rental tax revenue (so it's not taking money out of the town's operating budget).

Administratively necessary components:

- Make the compliance process simple and streamlined. Towns should not attempt to count these units towards their 10% affordable (SHI list) because it's too complicated for homeowners and tenants to want to participate in. If the town must certify income, there's no need to have the certification be on the same schedule as the state or even follow the same rules. Income verification should happen either once, when the tenant moves in (preferable) or annually. In terms of annual, it can be vague; sometimes vague is good. As long as they come in sometime in the year, whether it's after tax season or when the lease is renewed, it shouldn't matter to the town.

- Allow the homeowner to simply fill out a form online or town hall annually stating that the rental is still being used by the same tenant and rented affordably. At most use an affidavit. Requiring a copy of the lease is problematic as it contains private information that shouldn't be publicly available. Again, bureaucracy hinders participation. There are always concerns of people breaking the law, but that's why the town should have strong penalties. But the prescriptive approach to writing a bylaw that makes it impossible for someone to violate results in no one participating and is comparable to making the speed limit on 6 20 miles an hour with checkpoints every 2 miles instead of making it 45 and having police empowered with the ability to give stiff fines.

- Build in flexibility for homeowner to account for cost of operating expenses (say taxes go up or they need to do repairs), either in what they can charge or in accessing town funds.

- Stiff fines for homeowners who don't comply with (easy to follow) rules. For example, if you take the grant/loan and then rent it out short-term or rent it above the FMR, you have to pay back the loan in full with interest.

The other reason to make this as easy to do administratively is the burden on town staff. Town meeting voters are skeptical of passing something that's going to require hiring someone (unless that person is a code enforcement officer charged with enforcing other bylaws).

Ways to create new Affordable ADUs:

Affordability should be an add-on on the menu, not a requirement. Allow regular ADUs by right, then add in the following incentives.

It is recommended towns offer a combination of the following options so homeowners have a menu of choices and you add to the number of people who can participate:

- Offer homeowners who can't afford to build an ADU on their own (or who just would prefer not to incur the debt) a trade-off: a zero interest loan to build it in exchange for renting at an affordable

rate for 5 years; or a grant to build it for 15 years of affordability. This is where the CPA and Affordable Housing Trust money can be used.

- Offer an annual rental "buy-down" between FMR and affordable rent.
- Offer a better tax credit for renting affordably.
- Offer a town grant fund (from affordable housing trust/CPA) for homeowners with

preexisting non-conforming units to bring them up to code and legalize them with caveat that they rent affordably for 15 years.

It's recommend that, as with the administrative piece to the existing affordable ADUs, it be done as simply as possible, with the homeowner and tenant being required to do as little as possible administratively.

For more information or for technical consulting contact Stefanie Coxe at info@buildsmartercape.com

MODEL ZONING PROVISIONS FOR ACCESSORY DWELLING UNITS (ADUs)*

*With further modifications suggested by Smarter Cape

Introduction

All 15 Cape towns have adopted zoning that allows for the creation of dwelling units accessory to principal single family dwellings (e.g. accessory dwelling units, accessory apartments, affordable accessory dwelling units or family apartments). The primary purpose of these zoning bylaws and ordinances is to permit the creation of a greater number and variety of housing units, in terms of size and price, which can be integrated into single family residential properties with little or no negative impact on the character of their surrounding neighborhoods.

Current zoning bylaws and ordinances include various restrictions intended to mitigate potential negative impacts of accessory units. Town planners across the Cape report that some of these restrictions have discouraged the creation of new accessory units. This model limits zoning restrictions to encourage the creation of more accessory units, while including those limitations (primarily regarding site and building design) necessary to protect community character.

This model proposes that accessory dwelling units (ADUs) should be allowed as a "by right" accessory use to a principal single family dwelling use. It proposes that dimensional considerations for ADUs should be addressed by general standards required of all buildings and uses contained in the zoning. This model does not include an owner occupancy requirement for either the principal or accessory dwelling unit, and it therefore allows for the rental of both or either of the units, so long as the ownership of the units is not severed into legally separate units. Owner occupancy can be difficult to enforce, and the literature does not necessarily support the proposition that owner occupancy is necessary to protect neighborhood character. For towns that wish to prevent both units being rented concurrently, it is suggested that language that "no more than one of the two units may be rented at the same time" be used in lieu of an owner occupancy requirement, which excludes snowbirds.

The italicized comments appearing throughout are not intended to be part of the draft model, and are provided for the reader's consideration.

MODEL ZONING - Accessory Dwelling Units (ADUs)

A. Purpose and Intent.

The intent of permitting Accessory Dwelling Units is to:

- a. Increase the number of small dwelling units available for rent in Town and the range of choice of housing accommodations while remaining wastewater flow neutral;

Add moderately priced rental units to the housing stock to meet the needs of smaller

households and make housing units available to moderate income households who might otherwise have difficulty finding housing;

b. Develop housing units on single-family residential properties that are appropriate for households at a variety of stages in their life cycle;

c. Increase the number of small dwelling units available for rent in Town, and increase the range of choice of housing accommodations;

d. Encourage greater diversity of population with particular attention to young adults and senior citizens; and

e. Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods; and

f. Provide homeowners with a means of obtaining rental income to defray housing costs.

B. Definitions.

The following definitions shall be applicable to this section:

Accessory Dwelling Unit (ADU) An Accessory Dwelling Unit is a Dwelling Unit incorporated within a lawful principal single-family dwelling or within a detached building accessory to and on the same lot as a lawful principal single-family dwelling use, which ADU shall be clearly subordinate in design to that principal single-family dwelling use to which it is accessory.

Dwelling Unit: One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household. This definition does not include a mobile home trailer, however mounted.

Owner: One or more individuals holding title to the property, individually or as a trust or LLC.

COMMENT: Having fewer or no restrictions on accessory dwelling unit tenants gives greater control over the unit to the homeowner while offering more diverse housing opportunities, and eases burdens of local administration and enforcement.

Note, that the definition of "Dwelling Unit" limits use to a 'household' unit, which would help maintain the single family residential use of the property.

COMMENT: A Town may want to ensure that its general zoning contains clear definitions for terms used herein such as "building" and/or "structure," "attached building/ structure," "detached building/ structure," "single family dwelling," "accessory use" and "principal use."

COMMENT: Many older homeowners, for estate planning purposes, have put their property into a family trust or LLC.

C. Procedural Requirements/ Administration and Enforcement:

a. An ADU, either attached or detached that conforms to the dimensional requirements of the town's Zoning Bylaw and the requirements contained herein ADU shall be permitted as a "By Right" use accessory to a lawful single family dwelling use.

b. The Building Commissioner/ Chief Zoning Officer shall administer and enforce the provisions of this section.

c. ADUs shall not be eligible for zoning use variances, or for zoning dimensional variance relief proposing to increase the allowable number of ADUs on a lot.

d. The construction of any accessory dwelling unit must be in conformity with the State Building Code, Title V of the State Sanitary Code and lawful under all other provisions of applicable town health, building, zoning and other local laws and regulations., including all conservation, historic, and Old King's Highway requirements if applicable.

e. Prior to issuance of a building permit for an ADU, site plans, floor plans and elevations shall be submitted showing the proposed interior and exterior changes to existing buildings or new building and improvements on a lot associated with a proposed ADU.

f. Property owners who fail to comply with the requirements of this bylaw shall be subject to a three-hundred dollar (\$300) fine each day that the violation persists.

A determination that the owner has repeatedly failed to comply with this bylaw shall be evidence that the rights and benefits conferred here under are null and void and the elements that make the accessory dwelling unit a separate dwelling unit shall be removed from the property within 90 days of said determination, with the owner to comply with all requirements of the State Building Code and Town Zoning in removing elements determined to be unpermitted; or take any other action thereon.

COMMENT: Permitting and review could also be through Special Permit; Conditional Use; Site Plan Review; or Design Review processes, or some combination thereof to the extent they exist or may be created under zoning.

D. Use and Dimensional Requirements:

The Building Commissioner may issue a Building Permit authorizing the installation and use of an Accessory Dwelling Unit within a lawful existing or new single-family dwelling to which the ADU is accessory, or in a new or existing detached building accessory to and on the same lot as the principal dwelling subject to the following:

COMMENT: This provision allows accessory dwelling units accessory to any lawful new or existing principal single-family dwelling, regardless of whether the principal single family property is conforming or nonconforming. There may be situations where the Zoning Board of Appeals has Special Permit jurisdiction over construction of an ADU because of the non-conforming nature of the residential property on which it is proposed.

a. The ADU shall be a complete, separate housekeeping unit containing both kitchen and bath.

b. No more than one (1) Accessory Dwelling Unit may be created per lot.

c. If the primary entrance of an ADU is not proposed to be shared with that of the principal dwelling, such entrance shall be less visible from the street view of the principal dwelling than the main entrance of the principal dwelling.

COMMENT: A town could require that any new separate outside entrance serving an accessory dwelling unit shall be located on the side or in the rear of the building.

d. An ADU shall be clearly subordinate in use, size and design to the principal single family dwelling. An ADU shall be designed so that, to the maximum extent practical, the appearance of the property on which it is to be located remains that of a single-family residential property and the privacy of abutting properties is maintained, considering the following: building architectural details, roof design, building spacing and orientation, building screening, door and window location, and building materials. Appropriate landscaping may be required in order to provide a buffer between the applicant's lot and abutting properties.

e. The ADU shall contain no more two bedrooms and be no greater than a maximum habitable floor area of 540% of the habitable floor area of the principal single family dwelling unit, but in no event greater than 1000 square feet. Garages, unfinished attics and basements, common entries, porches and decks shall not be included in the floor area calculations. Once an ADU has been added to a single-family dwelling or lot, the accessory dwelling unit shall not be enlarged beyond the square footage allowed by this section. The ADU shall contribute toward the property's lot coverage and the combined use shall not exceed the building or site coverage for the zoning district.

Comment: A town could require that the owner execute/ record a deed rider or restriction limiting the number of bedrooms in and size of an ADU.

f. At least one (1) off street parking space in addition to that required for the principal single family dwelling is required for an ADU. All parking for the ADU shall be off street.

g. The Board of Health must have documented to the Building Commissioner that sewage disposal will be satisfactorily provided for in accordance with the provisions of Title 5 and local Board

of Health regulations, including provisions for an appropriate reserve area on the site. The principal dwelling unit and accessory dwelling unit apartment shall meet all wastewater requirements for the combined number of bedrooms/ wastewater flow on the lot. An ADU and principal dwelling shall share common septic/ wastewater and water service facilities.

h. An ADU is not intended for sale. The principal dwelling and ADU and lot on which they are located shall remain in common or single ownership, and shall not be severed in ownership, including that the lot or buildings thereon shall not be placed in a condominium form of ownership. The rights and requirements of this bylaw hereby transfer upon the sale of a property containing an ADU built under the provisions of this bylaw.

i. An ADU shall not be used for boarding and lodging, or other commercial use. An ADU and principal dwelling to which it is accessory may be rented for periods not shorter than one month at a time, and are prohibited from any use as rental units on a weekly or daily basis.

j. An ADU and principal dwelling shall share common septic/ wastewater and water service facilities. The minimum lot area required for a parcel allowing an ADU in an accessory structure shall not be less than the minimum lot area required for any other accessory structure. An ADU constructed as an addition to the existing dwelling shall not be less than the minimum lot area required for any other addition. An ADU within the footprint of the existing dwelling shall not have to meet a minimum lot size requirement.

E. Amnesty

In an effort to meet local housing needs, real property containing an accessory dwelling unit as described in this Section, for which a validly-issued Variance, Special Permit, Building Permit, Occupancy Permit or Rental Certificate does not exist, may apply to the Building Department for an Occupancy Permit within 7 years of the date of adoption of this bylaw. An Occupancy Permit shall not be granted unless the Building Commissioner has determined the accessory dwelling unit meets all applicable state and local building codes. The accessory dwelling unit must follow all applicable Board of Health regulations. Amnesty is for accessory dwelling constructed prior to the passage of this bylaw and shall not be granted unless the septic loading capacity for existing structure(s) and the existing approved septic flow for the property, both comply with the requirements of the Board of Health regulations and 310 CMR 15.00 – The State Environmental Code, Title 5. Failure to comply with all pertinent State and local rules and regulations shall result in forfeiture of the accessory dwelling unit and/or the removal of the bedroom(s) causing exceedance to the approved septic flow capacity of the property. All rights and requirements of this bylaw hereby apply to accessory dwelling units approved under Amnesty.

2017 Approach: More conservative			
Truro*	Special Permit		2 in 3 years
Falmouth	Design Review/Sp Permit	Voice Vote	Average of 5/yr
2018 Approach: Less conservative			
Brewster	By Right/Special Permit	Voice Vote	10
2019 Approach: Closer to Model Bylaw			
Harwich	By Right	Voice vote	5
Chatham	By Right/Special Permit	75%	1
Eastham	By Right	87%	4
Mashpee	By Right	Voice vote	Approved by AGO just before COVID
Yarmouth*	Special Permit/Kept Restrictions	Failed - even housing supporters voted against it.	
2020 Towns Considering Model			
Sandwich	By Right/Special Permit		
Barnstable	TBD		
Wellfleet	TBD		
*Considering changes to simplify process			

Chair of Committee suggested to the members that a review of the model by law for discussion at the next meeting take place after the Committee members have had a chance to review all the information and understand it. Councilor Schnepf also suggested that we include members of the Planning Board in the process as well as she finds it very helpful with things not understood by all, they are part of this process, and will also have to look at it and she believes very helpful to this Committee.

Councilor Beedenbender suggested we also have clear goals set as to why this is the to go or not to go, but there needs to be a clear end goal in mind and whatever it takes to achieve that end goal for the better of the town as a whole.

Chair of the Committee asked Councilor Cullum to explain the next topic so that we can possibly add to the next Agenda, as time is on everyone's mind tonight.

Discussion of criteria for by-right high density housing in certain areas of Barnstable

Councilor Cullum stated the idea is around the need for more density housing, we need to find ways to incentivize people to buy the duplexes that need a rebuild and bring market rate housing to areas and recreate the neighborhoods and help the people living in these areas who are already living in these homes

Chair of Committee will get together with the Chair of the Asset Management Committee to figure out the dates we can alternate with.

Chair of Committee thanked everyone for their participation tonight and all the explanations that were presented.

Chair of Committee asked for motion to adjourn, Councilor Kristine Clark made the motion to adjourn; this was seconded by Councilor Gordon Starr

Administrator Cynthia A. Lovell did a roll call vote:

- Councilor Paula K. Schnepf YES
- Councilor Jennifer Cullum YES
- Councilor Britt Beedenbender YES
- Councilor Gordon Starr YES
- Councilor Kristine Clark YES

ADJOURN: 7:35pm