

MODEL ZONING PROVISIONS FOR ACCESSORY DWELLING UNITS (ADUs)

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.

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. 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.

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."

C. Procedural Requirements/ Administration and Enforcement:

- a. An 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 o t h e r provisions of applicable town health, building, zoning and other local laws and regulations.
- 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.

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.
- e. The ADU shall contain no more two bedrooms and no greater than a maximum habitable floor area of 50% 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.

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.
- 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 apartment shall meet all wastewater requirements for the combined number of bedrooms/ wastewater flow on the lot.
- 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.
- 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.