

MODEL BYLAW FOR ACCESSORY DWELLING UNITS

Introduction

Accessory dwelling units (also known as ‘accessory apartments’, ‘guest apartments’, ‘in-law apartments’, ‘family apartments’ or ‘secondary units’) provide units that can be integrated into existing single family neighborhoods to provide low priced housing alternatives that have little or no negative impact on the character of the neighborhood.

The regulatory approach used by most municipalities for accessory dwelling units is a zoning bylaw that permits an accessory unit, thereby allowing certain improvements to be made to the existing dwelling. Provisions can address certain restrictions based on whether the dwelling existed as of a certain date, the maximum allowed building and site modifications, the options for choosing inhabitants, whether the main unit needs to be owner occupied, and minimum lot sizes. However, the greater the number of restrictions, the fewer options there are available to homeowners for adding the units.

The following is a model bylaw for accessory dwelling units. It is recognized that there is no single “model” that can be added to community regulations without some tailoring, therefore revisions to the text within this model is encouraged. There may also be a need to examine local development review process to find ways that the process can be streamlined to encourage homeowners to use the accessory dwelling unit ordinance.

The annotation included in this model bylaw will not be part of the adopted bylaw, but will serve as a “legislative history” of the intent of the drafters and the interpretation to be given to certain terms and provisions. The annotation includes some recommended positions that reduce burdens on both homeowners and municipalities when implementing the bylaw.

MODEL BYLAW

01.0 Purpose and Intent: The intent of permitting accessory dwelling units is to:

1. Provide older homeowners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
2. 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;
3. Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle;
4. Provide housing units for persons with disabilities;

5. Protect stability, property values, and the residential character of a neighborhood.

COMMENT: *Accessory dwelling units are a relatively rare circumstance in most communities, but can be very important to the homeowner that needs this option. There are various provisions in this model bylaw that will ensure that the appearance of neighborhoods are not substantially affected, including limitations on floor area, number of bedrooms, setbacks, ingress/egress location, and ensuring that accessory dwelling units are installed only in owner-occupied houses.*

02.0 Definitions:

1. Accessory Dwelling Unit: An Accessory Dwelling Unit is a self-contained housing unit incorporated within a single-family dwelling (not within accessory structures, except with a Special Permit) that is clearly a subordinate part of the single-family dwelling and complies with each of the criteria stated below.

COMMENT: *The definition of an accessory dwelling unit can restrict tenants to family members, low- or moderate-income tenants, or be unrestricted. However, unrestricted or family-member-only units will not count towards the 10% goal of the Subsidized Housing Inventory (SHI). This bylaw is not intended to provide housing which would count towards the Commonwealth's Local Initiative Program ("LIP"). Please see the Department of Housing and Community Development's regulations for addition information and requirements regarding the LIP.*

RECOMMENDED POSITION: *Do not restrict tenants. Allowing only family members is easiest politically and may limit the overall impact of the units, but it will also limit the use (and re-use) of these units and may result in additional administration costs associated with enforcement. Having no restrictions on accessory dwelling unit tenants gives greater control over the unit to the homeowner while offering more diverse housing opportunities.*

COMMENT: *Restricting accessory dwelling units to low-income tenants may help add units to the town's SHI list; however, the units must be permitted under a DHCD-approved bylaw. This model does not contemplate the SHI compliance.*

COMMENT: *The following definitions (or similar) are typically used in an accessory dwelling unit bylaw to support the accessory dwelling unit definition.*

2. Building, Attached: A building having any portion of one or more walls in common or within five feet of an adjacent building.
3. Building, Detached: A building having a five feet or more of open space on all sides.
4. Dwelling, Single-Family: A building designed or used exclusively as a residence and including only one dwelling unit.

COMMENT: *The limitations on accessory dwelling units that are identified in the bylaw will strengthen the distinction between two-family dwellings, and single-family dwellings with accessory dwelling units. However, it is recommended that a community review its other definitions and residential bylaws to ensure the distinction.*

6. 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 trailer, however mounted.
7. Primary Residence: A building in which is conducted the principal use of the lot on which it is located. For residentially zoned lots, such a building would be a dwelling.

03.0 Procedural Requirements:

1. Review procedure: [Refer to the existing Special Permit or Site Plan Review procedures for your municipality.]

COMMENT: *Permitting can be through Special Permit; Site Plan Review; or As-of-Right. The Special Permit procedure is a legislative procedure that provides the highest level of control to the municipality. A Special Permit approval is attached to the land, meaning that it is not affected by change of ownership unless specified. Site Plan Review provides an opportunity for a local entity within the municipality (other than the Building Commissioner) to review the design (possibly including both site plans and elevations) of a proposed development to determine the impacts on surrounding properties. The As-of-Right procedure allows property owners to submit construction plans to the Building Commissioner for assessment against relevant zoning bylaws (including accessory dwelling unit bylaws) prior to issuing a construction permit.*

RECOMMENDED POSITION: *For accessory dwelling units within a home, use as-of-right; for attached or detached accessory dwelling units use Special Permit. As-of-Right permitting will facilitate the development of units that have limited or no impact from the street; for attached and detached units, towns may wish to have a heightened level of control especially on issues of design compatibility and privacy.*

04.0 Use and Dimensional Regulations:

1. The Building Commissioner may issue a Building Permit authorizing the installation and use of an accessory dwelling unit within an existing or new owner-occupied, single-family dwelling and the Special Permit Granting Authority (SPGA) may issue a Special Permit authorizing the installation and use of an accessory dwelling unit in a detached structure on a single-family home lot only when the following conditions are met:

COMMENT: The SPGA is usually designated as either the Zoning Board of Appeals or Planning Board.

COMMENT: Some towns allow all single-family homes to contain accessory dwelling units, while others restrict it to homes existing prior to a certain date, or to a maximum percentage of the community.

RECOMMENDED POSITION: Allow accessory dwelling units in all single-family homes that can meet the requirements of the bylaw. This will enable more accessory dwelling units and reduce administration burdens on the municipality associated with assessment of each unit.

- (a) The unit will be a complete, separate housekeeping unit containing both kitchen and bath.

COMMENT: This provision is to ensure that the unit is separately habitable.

- (b) Only one accessory dwelling unit may be created within a single-family house or house lot.

COMMENT: This provision is to ensure that accessory dwelling units remain ancillary to the principal single-family dwellings.

- (c) The owner(s) of the residence in which the accessory dwelling unit is created must continue to occupy at least one of the dwelling units as their primary residence, except for bona fide temporary absences.

COMMENT: This helps to protect the stability and character of the neighborhood. Provided that similar circumstances prevail, a change of ownership should not automatically result in a Special Permit lapse (refer to 04.5 below).

- (d) Any new separate outside entrance serving an accessory dwelling unit shall be located on the side or in the rear of the building.

COMMENT: This is to ensure that the principal dwelling has the appearance of a single family dwelling. However, entrances could be combined in a single location.

- (e) The gross floor area of an accessory dwelling unit (including any additions) shall not be greater than nine hundred (900) square feet.

COMMENT: The sizes of accessory dwelling units allowed in the various bylaws studied ranged from 500 to 900 square feet. The purpose of stating a maximum floor area is to ensure that the unit remains subordinate to the single-family dwelling. An additional limitation that can be placed on accessory dwelling units is the number of bedrooms (see 04.1(g) below). This limitation may be more important in areas that are not served by a sewer and/or water supply. Another alternative is to use the Special Permit to allow larger ADU's when located in larger homes with additional size criteria added to the bylaw/ordinance.

COMMENT: *An option for the size of the unit could be a percentage of the existing main dwelling, with a minimum to ensure appropriate living space is available in the accessory dwelling unit.*

- (f) Once an accessory dwelling unit has been added to a single-family residence or lot, the accessory dwelling unit shall never be enlarged beyond the nine hundred (900) square feet allowed by this bylaw/ordinance.

COMMENT: *This enables homeowners to make modifications and additions to the accessory dwelling unit while remaining subordinate to the single-family dwelling.*

- (g) An accessory dwelling unit may not be occupied by more than three (3) people nor have more than two bedrooms.

COMMENT: *The intent of this provision is to limit impacts on sewer and water supply systems. This is an important issue for accessory dwelling units in areas that are not served by a sewer or water supply (see 04.1.(h)). Local conditions may suggest a different number of bedrooms and a different number of people allowed.*

- (h) The construction of any accessory dwelling unit must be in conformity with the State Building Code, Title V of the State Sanitary Code and other local bylaws/ordinances and regulations.

COMMENT: *Provisions can be added in the bylaw stating that the accessory dwelling unit must conform to all applicable health, building, and other codes. In areas without sewer and water infrastructure, a minimum lot size may be needed to ensure that the accessory dwelling unit has adequate and safe water supply and sewage disposal. It should be noted that the provisions of the accessory dwelling unit bylaw may not conflict with the State Building Code, Title V of the State Sanitary Code or other local bylaws relating to health and safety without appropriate variance.*

- (i) Off-street parking spaces should be available for use by the owner-occupant(s) and tenants.

COMMENT: *The accessory dwelling unit may result in demand for extra vehicle parking; however, the number of additional vehicles associated with the property may be minimal due to the limited size of the unit. The typical requirement is for one additional on-site parking space for the accessory dwelling unit.*

RECOMMENDED POSITION: *Require one additional parking space and consider allowing a waiver when transit is a reasonable option.*

2. In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility, the SPGA may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

3. Approval for an ADU requires that the owner must occupy one of the dwelling units. The zoning approval and the notarized letters required in 04.4 and 04.5 below must be recorded in the County Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the accessory dwelling unit.
4. When a structure, which has received a permit for an accessory dwelling unit, is sold, the new owner(s), if they wish to continue to exercise the Permit, must, within thirty (30) days of the sale, submit a notarized letter to the Building Commissioner stating that they will occupy one of the dwelling units on the premises as their primary residence, except for bona fide temporary absences.

COMMENT: *Some municipalities include a provision in the bylaw/ordinance stating that the zoning approval or Special Permit for the accessory dwelling unit will lapse if the owner no longer occupies one of the dwelling units. This adds unnecessary administrative burden on the municipality. Provided that similar circumstances prevail, a change of ownership should not automatically result in a permit lapse.*

5. Prior to issuance of a permit, the owner(s) must send a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence, except for bona fide temporary absences.

COMMENT: *Some bylaws/ordinances specify time periods for which the owner must occupy the dwelling in any given year; however, enforcement of this adds unnecessary administrative burden on local officials.*

6. Prior to issuance of a permit, a floor plan must be submitted showing the proposed interior and exterior changes to the building.

COMMENT: *This is to demonstrate that the accessory dwelling unit will not significantly affect the appearance of the single-family dwelling.*

05.0 Administration and Enforcement

COMMENT: *Cities and towns need to examine their development review processes to find ways that the review process can be streamlined so homeowners are encouraged to use the accessory dwelling unit ordinance. It is recognized that most towns have existing illegal accessory dwelling units, and if a town is to encourage homeowners to legalize the existing units or create new accessory dwelling units under this bylaw, the process should be made as straight forward as possible. Making the process simple for the homeowners while still imposing all reasonable requirements for accessory dwelling units helps reduce the administrative burden on municipalities.*

COMMENT: Some towns require annual notarized letters attesting to the conditions of the accessory dwelling unit (owner-occupancy and any restriction on tenancy). Some bylaws require annual renewal of the permit.

RECOMMENDED POSITION: No requirements for annual compliance or renewal are recommended. This places unnecessary burden on local officials. Using change in ownership as the trigger for renewal of the accessory dwelling unit is preferable.

1. It shall be the duty of the Building Commissioner to administer and enforce the provisions of this Bylaw.
2. No building shall be constructed or changed in use or configuration, until the Building Commissioner has issued a permit. No permit shall be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health and the proposed building and location thereof conform with the town's laws and bylaws. Any new building or structure shall conform to all adopted state and town laws, bylaws, codes and regulations. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector where required.
3. The Building Commissioner shall refuse to issue any permit, which would result in a violation of any provision of this chapter or in a violation of the conditions or terms of any special permit or variance granted by the Board of Appeals or its agent.
4. The Building Commissioner shall issue a cease and desist order on any work in progress or on the use of any premises, either of which are in violation of the provisions of this chapter.
5. Construction or use according to a building permit or special permit shall conform to any subsequent amendment of this chapter unless the construction or use is begun within a period of not more than six months after the issuance of a permit granted before the effective date of the amendment. To qualify for this exemption, construction must be completed in a continuous and expeditious manner.
6. The SPGA specified in this section may, after making findings of fact that support the decision, approve modifications to the dimensional standards of this bylaw, section 04.0, that will not exceed those standards by more than [10] percent.

COMMENT: These provisions may be standard within the community's regulations, and can be simply referenced in this section. Additional references may be made to the Site Plan Review and Special Permit processes if included in this bylaw.