



**Town of Barnstable**  
Planning & Development Department



Staff Report

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**Summary of Proposed Zoning Amendment**  
**Accessory Dwelling Units (ADUs)**

**Background**

The Cape Cod Commission drafted an Accessory Dwelling Unit (ADU) model ordinance to encourage towns to allow ADUs “as of right.” This was an effort to support the addition of small scale housing alternatives affordable to the regional population. In an overview of Accessory Dwelling Units, the Commission highlights how the gap between median annual income and the cost of housing continues to widen. At the same time, the average household size is declining, creating a demand for smaller units. The Commission identifies ADUs as an important part of meeting Cape Cod’s housing challenge, especially in areas of our region with limited infrastructure and sensitive habitats.

In response to the need to address the crisis in housing supply and affordability, the Town Council’s Zoning & Regulatory Subcommittee proposed a zoning amendment to allow Accessory Dwelling Units (ADUs) “as of right” as an accessory use to single-family residential dwellings town-wide. The Committee used the Cape Cod Commission’s model ordinance as a starting point for discussion. On December 16, 2020, the Zoning & Regulatory Subcommittee put forward a draft ADU ordinance for consideration. The draft ordinance was then referred to Town Staff for technical and legal review as well as review against the new "Housing Choice" legislation adopted by the Commonwealth on January 14, 2021.

The intent and purpose of this amendment, as stated in the proposed ADU ordinance, is to (1) increase the number of dwelling units available for year-round rental while remaining within our current wastewater capacity limitations; (2) allow adaptation of single-family residential properties to be supportive of residents at a variety of stages in their life cycle; (3) encourage greater diversity and support of all populations with particular attention to young adults and senior citizens enabling an intergenerational community; (4) encourage a more economic and efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods; and (5) provide homeowners with a means of obtaining rental income to defray housing costs.

The proposed ADU ordinance directly responds to goals and recommendations in the Town’s [Housing Production Plan](#) and the associated [Housing Needs Assessment](#) as well as [Town Council’s Strategic Plan](#) housing goal. The Housing Production Plan, which is a compilation of housing recommendations for the community based on the Needs Assessment and an extensive community engagement process, explicitly recommends permitting market-rate Accessory Dwellings Units accessory to existing single-family homes and in outbuildings throughout Barnstable to increase housing options.

The housing plans identify the need for expanded housing choice and additional supply of rental housing in order to support an intergenerational community by encouraging aging in place and the attraction and retention of younger residents. The Housing Needs Assessment emphasizes the need for more alternative choices to single-family houses. The Housing Production Plan indicates that 83% of all available housing in Barnstable is single-family. Allowing ADUs as an accessory use to the Town’s many single-family homes is one way to increase the supply and diversity of housing and, consistent with the purpose of the ordinance, to “allow adaptation of single-family residential properties to be supportive of residents at a variety of stages in their life cycle.”

In addition to limited housing choice, the high cost of housing results in homeownership being out of reach for many families. On May 10, 2021, the Barnstable County Registry of Deeds reported the median sale price of property in Barnstable County in April 2021 was \$519,950. The Housing Production Plan cites that 43% of Barnstable residents are spending more than 30% of their total income on housing expenses, and almost one in every two renters are similarly cost burdened. These factors, coupled with very low vacancy rates, place a significant burden on those seeking rental housing options. Allowing small scale housing options like ADUs with a 12 month rental requirement is one way to promote the availability of housing throughout all villages for year-round residents and “provide an option for owners to defray housing costs.”

Town Council’s Strategic Plan housing goal includes developing and promoting rental housing to meet the needs of residents. One of the identified strategies is to review zoning issues identified by the Council to determine how to best achieve housing goals through zoning and regulatory changes. The Town currently allows for the incorporation of accessory apartments through the Accessory Affordable Apartment Program (AAAP) and a Family Apartment ordinance. However, the Housing Production Plan notes that although AAAP has been a successful tool for producing affordable housing, the process requires a Comprehensive Permit and Zoning Board of Appeals approval for each unit, which was noted to be a cumbersome process. The Family Apartment ordinance allows, within a residential district, one temporary family apartment occupied only by the property owner or a member(s) of the property owner's family as accessory to a single-family residence to provide families the ability to live together as a family unit. While the Family Apartment ordinance allows more diverse housing, it is limited by factors including duration and occupancy of units is prohibited for non-family members.

The proposed amendment additionally aligns with the new “Housing Choice” legislation, adopted by the Commonwealth on January 14, 2021 which focuses on encouraging and promoting new housing production by making it easier to approve housing supportive zoning. The new legislation specifically reduces the requirement to vote on a zoning amendment which allows ‘as of right’ Accessory Dwelling Units, whether within the principal dwelling or a detached structure on the same lot, from a two-thirds majority vote to a simple majority vote.

## **Zoning Amendment Summary**

The proposed ADU ordinance predominately aligns with the Cape Cod Commission’s model ordinance. The Commission notes that the model ordinance limits zoning restrictions to encourage the creation of more accessory units, while including limitations necessary to protect community character.

### **Zoning Requirements**

#### Lot Restrictions

The Commission’s model ordinance recommends that dimensional considerations (such as setbacks) for ADUs should be addressed by general standards required of all buildings and uses contained in the Town’s zoning. Similarly, the proposed ordinance requires that an ADU comply with applicable zoning requirements, including but not limited to building height and yard setbacks, for the zoning district in which it is located. Any new construction is required to comply with setback requirements. Of note, both the model ordinance and the proposed ordinance do not propose a minimum lot area requirement specific to ADUs.

Consistent with the model ordinance, the proposed ordinance limits the number of ADUs per lot to no more than one ADU. The proposed ordinance explicitly prohibits the ability to seek a variance to exceed the

limit of one ADU per lot and notes that no ADU shall be permitted on the same lot at the same time as a Family Apartment exists on that lot.

#### Permitted Use and Special Permit(s)

An ADU which conforms to all of the requirements defined within the proposed ordinance as well as applicable zoning requirements shall be permitted as an accessory use to a lawful single family dwelling as of right. "As of right" means that the development can proceed under the zoning ordinance without the need for a discretionary zoning approval. Allowing ADUs to be permitted "as of right" will enable a more streamlined process for property owners and Town staff alike. An as of right development is not required to provide neighbor notice or a public hearing which ultimately will allow proposed ADUs to be reviewed and approved more efficiently. Additionally, applicants will not be subject to additional costs associated with a discretionary approval.

As defined in the proposed ordinance and elaborated below, an applicant may seek a Special Permit from the Zoning Board of Appeals for an ADU that has more than two adult occupants, more than two bedrooms, or that exceeds 900 square feet (which is the subject of the second item under consideration). A Special Permit application requires the Zoning Board of Appeals to hold a public hearing; mailed notice to neighbors (abutters and owners within 300' of the subject property) of the hearing is required.

Any commercial use, with the exception of permitted home occupations, shall not be allowed on a property on which there is an ADU.

#### Parking

The model ordinance requires that at least one off street parking space is provided for the ADU. The proposed ordinance states that all parking for the ADU shall be off-street.

The Town Zoning Ordinance does not currently have parking requirements for single-family residential dwellings, or requirements about where on a lot parking areas can or should be located on lots in single-family residential zoning districts, and there are no additional requirements proposed for the addition of an ADU.

#### **Design Requirements**

As noted in the intent and purpose, one of the objectives of the proposed ordinance is to encourage a more economic and efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods. In addition to compliance with zoning requirements, the proposed ordinance requires that an ADU shall be designed, to the maximum extent practical, to maintain the appearance of the property as a single family dwelling residential property in order to preserve community character. Any addition or new construction is required to be consistent in design with the principal single family dwelling with regard to architectural details, roof design, building spacing and orientation, door and window location, and building materials. Additionally, 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.

Because the ordinance allows ADU as-of-right, determinations with regard to design would be made administratively. However, as the ordinance explicitly states, "any person aggrieved by the determination of a Town official with respect to the design of an ADU may appeal said determination to the Zoning Board of Appeals."

## **Size Requirements**

Both the CCC model ordinance and proposed ordinance regulate the size of ADUs in two ways beyond the dimensional regulations in the underlying zoning: number of bedrooms and square footage.

### Number of Bedrooms and Wastewater Capacity

The model ordinance and the proposed ordinance limit the number of bedrooms, as of right, in an ADU to two bedrooms. Per the proposed ordinance, an owner may apply to the Zoning Board of Appeals for a Special Permit for an ADU with more than two bedrooms. However, both ordinances stress that the total number of proposed bedrooms must remain within the established wastewater capacity limitations. The principal dwelling unit and the ADU must meet all wastewater requirements for the combined number of bedrooms/wastewater flow on a lot. No additional wastewater disposal capacity is permitted by the proposed zoning amendment. If a property has a septic system, there must be adequate septic capacity to allow an increase in the amount of bedrooms. All properties served by Title V Septic Systems will be required to comply with the current state and local regulations for maximum number of bedrooms. The total number of bedrooms in the principal dwelling and the ADU cannot exceed the maximum allowed under Title V and local regulations.

Prior to the issuance of a building permit for an ADU, the Health Division must have documented to the Building Commissioner that sewage disposal will be satisfactorily provided for in accordance with the provisions of Title 5 and Board of Health regulations, including provisions for an appropriate reserve area on the site. Only septic systems that are not already at maximum capacity are permitted to expand. Alternative septic systems are only allowed with variances from the Board of Health and DEP and may not allow for an increase of total number of bedrooms allowed on a property. Bedrooms in the principal dwelling can be eliminated, in accordance with Title V standards, to allow for the creation of an ADU. If the property is served by municipal sewer, the Department of Public Works must certify adequate capacity is available to serve the additional unit.

### Square Footage

The model ordinance limits the square footage of an ADU to 50% of the habitable floor area of the principal single family dwelling unit, but no greater than 1,000 square feet. Consistent with the recently adopted "Housing Choice" legislation, the proposed ordinance limits the square footage of an ADU to a maximum habitable floor area that is not larger than ½ of the habitable floor area of the principal single family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller. Of note, garages, unfinished attics and basements, common entries, porches and decks will not be included in the floor area calculations.

As defined in the proposed ordinance, once an ADU has been added to a single family dwelling or lot, the ADU cannot be enlarged beyond the square footage allowed by the ordinance.

An owner may apply to the Zoning Board of Appeals for a Special Permit for an ADU that exceeds the square footage limitation as defined in the ADU ordinance (which is the subject of the second item under consideration). There are no minimum square footage requirements for a dwelling.

## **Ownership**

Both the CCC model ordinance and the proposed ordinance require that the principal dwelling and the ADU remain in common ownership which prohibits the ADU from being converted into a condominium. The proposed ordinance further defines that the lot on which the ADU and principal dwelling are located must

also remain in common ownership with the ADU and the principal dwelling. The proposed ordinance establishes that the rights and requirements of the proposed ordinance shall transfer upon the sale of a property containing an ADU built under the provisions of the proposed ordinance.

### **Occupancy**

The CCC model ordinance does not restrict occupancy. The proposed ordinance limits occupancy of an ADU to two adults (defined in the ordinance as persons over 18). Additional adult occupants may be permitted with the grant of a Special Permit from the Zoning Board of Appeals.

### **Rental Requirements**

#### Rental Term

The CCC model ordinance provides that an ADU and principal dwelling to which it is accessory may be rented for periods not shorter than one month at a time, prohibiting use as rental units on a weekly or daily basis.

The proposed ordinance allows both an ADU and the principal dwelling to be rented, and allows them to be rented concurrently. The proposed ordinance requires the rental period for any rental on a property with an ADU to no shorter than 12 consecutive months. Any other duration of rental, including short-term rentals, would be prohibited on properties with an ADU. These requirements are consistent with the purpose and intent of the ordinance, to create additional dwelling units available for year-round rental.

The proposed ordinance would allow a property owner to live in the principal dwelling and rent the ADU; to live in the ADU and rent the principal dwelling; or to rent both the principal dwelling and the ADU. Again, any rentals would be required to be a minimum of 12 consecutive months.

Consistent with the defined intent and purpose, as voted upon by the Zoning & Regulatory Subcommittee of the Town Council on December 16, 2020, rentals of any duration less than 12 months would not be permitted, including short term rentals.

#### Owner Occupancy

The CCC model ordinance does not include an owner occupancy requirement for either the principal dwelling or the ADU, noting that owner occupancy can be difficult to enforce, and that literature did not necessarily support the proposition that owner occupancy was necessary to protect neighborhood character. Further, research indicates ordinances without residency restrictions encourage the creation of more units than ordinances with residency restrictions.<sup>1</sup>

Consistent with the model ordinance, the proposed ordinance does not include any owner occupancy requirement. The proposed ordinance allows both the ADU and the principal dwelling to be rented concurrently. Of note, the ADU can be used only as a rental, with the exception that the owner of the property can live in the ADU while renting the principal dwelling. The ability to rent both units promotes flexibility, in keeping with the purpose of the ordinance to be supportive of residents at a variety of stages in their life cycle. When coupled with the requirement for 12 month leases, these provisions seek to increase the availability of year-round housing stock in all villages.

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<sup>1</sup> [Dain, Amy, "The State of Zoning for Accessory Dwelling Units."](#) *Pioneer Institute*, no. 184, July 2018,

### Restrictions on ADU Tenants and Rental to Family Members

Both the model ordinance and the proposed ordinance do not restrict to whom an ADU can be rented. The proposed ordinance does require ADUs to be rented with a 12 month lease. The Commission's work indicates that having fewer or no restrictions on ADU tenants provides greater control over the unit to the owner while offering more diverse housing opportunities, and eases the burdens on local administration and enforcement. The Town also allows the establishment of family apartments according to the regulations in Zoning Code §240-47.1. It is suggested that property owners evaluate both programs and the requirements associated with both.

### **Building Code and Procedural Requirements**

Per the proposed definition, an Accessory Dwelling Unit (ADU) is a self-contained Dwelling Unit, which is required to provide sleeping, cooking, and sanitary facilities. The ADU shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state Building Code for safe egress.

ADUs are required to be compliant with all Building Code requirements for an independent dwelling unit. Building and occupancy permits will be required for all ADUs. Prior to the issuance of a Building Permit, the Building Commission must authorize 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 compliance with the provisions as defined by the "Use and Dimensional Requirements" within the proposed ordinance. Site plans, floor plans and elevations must be submitted showing the proposed interior and exterior changes to existing buildings or new buildings and improvements on a lot associated with a proposed ADU.

The proposed ordinance allows ADUs "as of right" subject to administrative review and the issuance of a Building Permit. No neighbor notice or public hearing is required or would be provided. However, an ADU that has more than two adult occupants, more than two bedrooms or exceeds 900 square feet (which is the subject of the second item under consideration) requires a Special Permit from the Zoning Board of Appeals (ZBA). A Special Permit application requires the ZBA to hold a public hearing and mailed notice to neighbors (abutters and owners within 300' of the subject property) of the ZBA hearing is required.

Additionally, the construction of any ADU must be in conformity with the Federal, State, and local laws and regulations, including all historic, and Old King's Highway requirements if applicable.

### **Enforcement**

The owner of any unit that is rented in the Town of Barnstable is required to register that unit with Town's Health Division's Rental Registration Program. All rentals units are subject to inspection and must comply with state requirements for upkeep of the unit.

Properties that successfully register with the Rental Registration Program receive a Rental Certificate which sets out the requirements for each unit. Rental certificates for ADUs will be required to reflect the maximum occupancy requirement and minimum lease term requirement as defined in the ADU ordinance, and also require that the owner produce a lease upon the request of the Town.

The Town does not enforce private restrictions as defined by private covenants, homeowners' association regulations, or private deed restrictions.

### **Property Tax Assessment**

The Town Assessor's Office considers units with independent entrances/egresses and separately metered utilities as additional dwelling units; a single-family residential property with an ADU may be valued as a two-unit property (use code 104) or two units on one parcel (use code 109).

### **Staff Comment**

The proposed ordinance clarifies that a property cannot have both an Accessory Dwelling Unit and a family apartment at the same time. After discussion, staff has concluded that ADUs and units under the Accessory Affordable Apartment Program should also be addressed in the same way.

The Board may wish to consider recommending an amendment to the proposed ordinance to state in section 240-47.1(B)(1) that no ADU shall be permitted on a lot at the same time as an Accessory Affordable Apartment exists on that lot pursuant to Chapter 9, Article II.

### **Procedural Information**

A draft ADU ordinance was put forward for consideration by Town Council's Zoning & Regulatory Subcommittee in 2020, subject to review by Town Staff for technical and legal review as well as review against the new "Housing Choice" legislation.

Revisions to the draft voted by the Zoning & Regulatory Committee include:

- Revision to the definition of ADUs for consistency with the Housing Choice provisions;
- Revision to the maximum size of an "as of right" ADU from 1,000 square feet to 900 square feet for consistency with the Housing Choice provisions;
- Clarification that a property cannot have both a family apartment and an ADU at the same time; and
- Clarification of the proposed language requiring that any rental on a property with an ADU be no shorter than 12 consecutive months, consistent with the Subcommittee's voted intent.

### Community Outreach and Input

On January 25, 2021, the Planning Board, in collaboration with the Planning & Development Department, held a community meeting on Accessory Dwelling Units (ADUs) to inform the public of the proposal and take comments and questions. The Town also accepted comments online and posted an FAQ sheet on the proposed ordinance.<sup>2</sup>

Zoning amendments are processed in accordance with Massachusetts General Laws (MGL) Chapter 40A Section 5. Notice of this public hearing was provided in accordance with all requirements of MGL 40A§5. Additionally, the Town now offers e-mailed notice of public hearings on proposed zoning amendments by request through the Town website. E-mailed notice of this hearing was provided.

The Planning Board must forward an advisory report with recommendations on the proposed zoning text amendment to the Town Council within 21 days after close of the Board's hearing. The recommendation of the Planning Board requires a simple majority of the Planning Board members present and voting.

The Massachusetts Department of Housing and Economic Development advises that the Planning Board should include in their report a determination on the voting threshold for the zoning proposal. The Town Attorney's Office has reviewed the proposed amendment and advises that the required voting threshold for Item No. 2021-174 is a simple majority.

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<sup>2</sup> All of these materials are posted on the Town's [Accessory Dwelling Unit website](#).

## **Attachments**

The following material is attached for the Board's review:

- Town Council Item No. 2021-174 - Order & Rationale
- Draft Ordinance in summary form
- The Cape Cod Commission model ADU Ordinance