



**Town of Barnstable**  
Planning & Development Department



Staff Report

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**Summary of Proposed Zoning Text Amendment**  
**Accessory Dwelling Units (ADUs):**  
**Special Permit to Allow ADUs with Greater Than 900 Square Feet**  
**As Granted By the Zoning Board of Appeals**

**Background**

The proposed amendment adds to the definition for an Accessory Dwelling Unit (ADU) and the dimensional requirements for an ADU as defined within Article V, Chapter 240, Section 47.2(C)(4) to allow an ADU with more than 900 square feet may be permitted by a Special Permit from the Zoning Board of Appeals.

The new "Housing Choice" legislation, adopted by the Commonwealth on January 14, 2021, encourages and promotes new housing production by establishing that zoning for 'as of right' ADUs, defined to be no larger than 900 square feet, shall be adopted by a simple majority vote. The ability to seek relief by Special Permit for ADUs that are greater than 900 square feet diverges from the Commonwealth's Housing Choice provisions and therefore requires a two-thirds majority vote. Massachusetts General Laws Chapter 40A Section 5 was amended to note that any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote. Therefore, consistent with the guidance from local officials on determining voting thresholds for zoning ordinances and bylaws, the additional provision to seek a Special Permit for an ADU greater than 900 square feet should be voted upon as a separate amendment in an effort to not combine provisions that require different voting thresholds.

**Zoning Amendment Summary**

The ability to seek a Special Permit for an ADU greater than 900 square feet enables additional flexibility supporting more diverse housing options and aligns with the provisions of the Family Apartment ordinance. The family apartment ordinance allows an apartment that exceeds the established maximum square footage to be authorized by Special Permit from the Zoning Board of Appeals. Despite any allowed increase in square footage for the ADU, the principal dwelling unit and the ADU shall meet all wastewater requirements for the combined number of bedrooms/wastewater flow on the lot.

**Staff Comment**

The proposed ordinance would allow an ADU with greater than 900 square feet by Special Permit from the Zoning Board of Appeals. This provision would continue to limit the maximum size of an ADU to 1/2 of the habitable floor area of the principal single family dwelling unit (exclusive of floor area that converted to the ADU).

**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>1</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. 2021-175 is a two-thirds majority.

#### **Attachments**

The following materials are attached for the Board's review:

- Town Council Item No. 2021-175 - Order & Rationale
- Draft Ordinance in summary form

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<sup>1</sup> All of these materials are posted on the Town's [Accessory Dwelling Unit website](#).