



50 Milk Street, 16th Floor
Boston, MA 02109

Massachusetts is For Everyone

Edward Augustus
Secretary of the Executive Office of Housing and Livable Communities
100 Cambridge Street
Boston, MA 02114

Re. Accessory Dwelling Unit Draft Regulations

Dear Secretary Augustus,

Abundant Housing Massachusetts is a pro-housing statewide advocacy organization dedicated to tackling the crippling housing shortage facing Massachusetts. We write to you today to submit comments on the draft Protected-Use Accessory Dwelling Unit (ADU) regulations released by the Executive Office of Housing and Livable Communities (EOHLC).

To begin with, we support EOHLC's position that the purpose of the regulations is to encourage the production of ADUs. Massachusetts has a well documented housing shortage and it is critical that our laws and regulations make it easier to build more housing.

Priority Comments

While there are several important issues to be addressed by the regulations, our comments focus on the Dimensional Standards and Definitions.

Dimensional Standards

Giving municipalities total deference on dimensional standards, so long as they are not more restrictive than the base zoning for single-family homes, is not conducive to EOHLC's stated goal "to encourage the production of accessory dwelling units throughout the Commonwealth"; it only further empowers municipalities to use excessive regulation to prevent new homes. To enable increases in ADU development, EOHLC must establish specific dimensional parameters, particularly for setbacks, lot coverage, and minimum lot size.

We recommend the following dimensional standards:

- **Setbacks:** Prohibit rear and side setbacks of more than 4 feet
- **Minimum Lot Size:** Prohibit minimum lot size requirements for ADUs
- **Lot Coverage:** Exempt ADUs from lot coverage calculations on all lots.

If establishing these standards on all lots is not possible, then these standards should be in place for smaller lots of 10,000 square feet or less. Smaller lots are most susceptible to being



overregulated and they are more likely to exist in places where housing is most needed - urban core communities and their surrounding suburbs.

To illustrate this point, we can look at a property in Billerica - [14 Birchwood Road Billerica, MA 01821](#). The square footage of the home is 1,836 square feet, so under the new law the property owner has the right to build a 900 square foot ADU on that lot. The lot itself is 7,400 square feet. However, [Billerica's zoning laws](#) require at least a 20 foot rear setback, a 15 foot side setback, and a lot coverage maximum of 25%. With that lot coverage, only 1,805 square feet of the lot can be covered, which leaves barely 500 square feet of total space available for the ADU, assuming the primary dwelling covers 1,300 square feet of the lot. There is simply no feasible way to build a habitable ADU on such a lot with those dimensional requirements in place, or similar lots across the state.

Definitions

Of the definitions the regulations created, it is essential that you maintain the definitions for Bus Station, Principal Dwelling, Protected-Use ADU, and Single-Family Residential Zoning District as written. The key elements of these definitions are as follows:

- Bus Station: Designating flag stops as bus stations, so that a greater number of lots fall within a ½ mile of transit and do not need to provide a parking space.
- Principal Dwelling: Including any type of dwelling unit, regardless of type or conformity to the base zoning.
- Protected-Use ADU: Clarifying that a Protected-Use ADU includes attached and detached units.
- Single-Family Residential Zoning District: Establishing that a single-family zoning district includes any zoning district where a single-family home is allowed by-right or special permit.

We strongly support these definitions and urge you to keep them as drafted because they give the largest number of property owners possible the ability to build an ADU by-right and maximum flexibility in designing them.

Lastly, it is critical that the definition of a Use and Occupancy Restriction be amended to prohibit a municipality from requiring that the occupant of an ADU be a family member of the owner. A local ordinance that attempts to restrict ADU occupants to family members is unreasonable and will only serve to stifle new ADU construction.

Additional Comments

Non-Conforming Lots

For one reason or another, there are many lots across Massachusetts that do not conform to the base zoning. This can pose a challenge to by-right ADU development if municipalities are

allowed to require a special permit for an ADU built on a non-conforming lot. The regulations should explicitly state that a Protected-Use ADU cannot be counted as a continuation of the non-conformity and must be allowed by-right.

Additionally, a Protected-Use ADU built within the footprint of an existing structure should be permitted by-right even if that structure is non-conforming.

Utility Connections and Septic Systems

Requiring separate utility connections and/or a separate septic system for an ADU is an overly burdensome regulation that can be used by bad faith actors to unnecessarily increase the cost of building an ADU. While increased costs hurt everyone, they are particularly harmful to low and moderate income property owners trying to build an ADU. We recommend clarifying in the regulations that separate utility connections cannot be required, nor can a separate septic system be required unless covered by Title 5, 310 CMR 15.000.

Unit Caps and Density

EOHLC should maintain the prohibition on Protected-Use ADUs from being counted towards density calculations. The sum impact of setback, height, and lot coverage regulations, along with the size of the lot size all serve to regulate the density of a structure. If an ADU complies with those standards, along with all building, fire, health, and safety codes, then it is unreasonable to prevent that ADU from being built based on an arbitrary density maximum. It is especially critical to keep this prohibition given the expansive definition of Gross Floor Area. If this prohibition was lifted while that definition remained, local Floor Area Ratio requirements in particular would become an easy tool for stymieing new construction.

Conclusion

We applaud EOHLC for providing a robust regulatory framework for Protected-Use ADUs in the draft guidelines. The overall approach of encouraging ADU development is apparent throughout. If there are any questions about the content of this letter please reach out to me, Jesse Kanson-Benanav at jesse@abundanthousingma.org.

Sincerely,



Jesse Kanson-Benanav