



January 9, 2025

Secretary Edward M. Augustus, Jr.
Executive Office of Housing & Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

Dear Secretary Augustus,

Thank you for the opportunity to provide public comment on the Accessory Dwelling Units (ADUs) “by-right” draft regulations. As members of the regional coalition Housing to Protect Cape Cod (HPCC), we share the Healey-Driscoll Administration’s commitment to addressing the housing affordability crisis in our Commonwealth and greatly appreciate the administration’s work to pass the Affordable Homes Act.

Allowing ADUs “by-right” is an important housing production tool to quickly create inventory in regions like Cape Cod, where the housing crisis has severely impacted the regional economy. We support EOHLC’s goal to balance municipal interests with those of property owners seeking to build much-needed housing stock. Our comments on the draft regulations are informed by our experience with local ADU bylaws, and the observed effectiveness of various regulatory approaches and enforcement mechanisms. Below are several changes we propose to ensure the regulations have the intended effect of spurring healthy ADU production, moving our state closer to meeting demonstrated housing needs for residents, workers, and families.

Issues we found that will hinder the development of ADUs, along with proposed changes that would make them more easily achievable by changing the definitions of Accessory Dwelling Unit in section 71.02:

- 71.02(ii) replace the phrase “not larger in Gross Floor Area than $\frac{1}{2}$ the Gross Floor Area of the Principal Dwelling” with language proposed by the Home Builders & Remodelers Association of Massachusetts that aligns the regs with Conditioned Space as defined by 780 CMR 51.00.

The prohibited regulations outlined in **71.03(2) of Protected Use ADUs in Single-Family Residential Zoning Districts** are incredibly helpful as this section removes many municipal restrictions of occupation, parking, and a special permit that were obstacles to ADU production. However, we have found areas where municipalities could block ADU construction.

- Under **71.03(3) Unreasonable Regulations**, there is language that might be problematic for homeowners. 71.03 (a)(1) “**Does not serve a legitimate municipal interest sought to be achieved by local zoning.**” The question of who determines what a “legitimate municipal purpose” is left open to interpretation and could be used to hinder the production of ADUs. For example, what is the recourse for a homeowner if they disagree with the municipality’s determination of a “legitimate municipal purpose”?
- 71.03(3)(a3ii) “**Imposing Excessive Costs**” - what amount is determined as excessive, and who makes that determination if there is a dispute?

- 71.03 (3)(b1). **Design Standards.** Under (ii), who determines the outcome if there is a dispute between a municipality and homeowner as design standards that are considered “so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible or unreasonably increases the cost of the use or construction of a Protected Use ADU”?

Here are recommendations for sections of 71.03 and 71.04:

- 71.03 (3)(c) **Design Standards in a Historic District.** It is important to add that a Zoning Board of Appeals, Planning Board or Historic Committee or Commission cannot deny the construction of an ADU unless it is in line with the denial of a single-family dwelling. Also, the design standards must only apply to the exterior of the Protected Use ADU.
- 71.03 (3)(D) **EOHLC Guidelines.** We applaud EOHLC for its intention to offer guidelines for Unreasonable Regulations. However, we request that EOHLC provide guidelines that offer clarification and examples of Unreasonable Regulations on the same date that these draft regulations are finalized (February 2, 2025).
- 71.03 (4) **Enforceability of Restrictions and Regulations of Pre-Existing ADUs.** We suggest EOHLC include language that a municipality may not add any enforcement rules that are not consistent with single-family homes as we have seen some municipalities require homeowners to provide onerous paperwork from the landlord and the tenant on an annual basis. In addition, we recommend that language be added to allow current ADUs not properly permitted to be granted amnesty with no repercussions and given a specific period to work with a municipality to bring the ADU up to code.
- 71.04 (1)(b) **Data Collection.** As part of the annual update requirement by municipalities, it is important to record the number of denied ADU permit applications and include the reasons for any denial by a town.

HPCC’s goal is to help facilitate EOHLC’s rollout of the new ADUs “by-right” provisions of the Affordable Homes Act and our comments are meant to offer recommendations to that effect. Thank you for your consideration.

Respectfully,

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