

## 760 CMR 71.00: PROTECTED USE ACCESSORY DWELLING UNITS

### Section

- 71.01: Statement of Purpose
- 71.02: Definitions
- 71.03: Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts
- 71.04: Annual Updates

#### 71.01: Statement of Purpose

- (1) *St. 2024, c. 150, s. 8* (the Act) amended M.G.L. c. 40A, s. 3 to encourage the production of accessory dwelling units throughout the Commonwealth with the goal of increasing the production of housing to address statewide, local, and individual housing needs for households of all income levels and at all stages of life.

The Executive Office of Housing and Livable Communities is the regulatory agency that is authorized by the Act to promulgate 760 CMR 71.00 and accompanying guidelines that establish rules, standards and limitations that will assist Municipalities and landowners in the administration of the Act.

- (2) The Act and 760 CMR 71.00 seek to balance municipal interests in regulating the use and construction of ADUs while empowering property owners to add much needed housing stock to address the Commonwealth's housing needs. The Act establishes that in certain circumstances the use of land or structures for ADUs are protected from zoning restrictions by providing that zoning shall not prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single ADU, or the rental thereof, in a single-family residential zoning district. The Act balances protection for these ADUs by authorizing municipalities to impose reasonable regulations on the creation and use of ADUs. The Act, however, explicitly prohibits municipalities from imposing requirements on protected accessory dwelling units that require owner-occupancy of either the ADU or the principal dwelling and imposes limitations on Municipal parking requirements.
- (3) 760 CMR 71.00 establishes definitions, standards, and limitations to assist in the local administration of M.G.L. c. 40A, s. 3, para. 11, pursuant to *St. 2024, c. 150, s. 8*. This regulation may be further supplemented by guidelines issued by EOHLC.

#### 71.02: Definitions

Accessory Dwelling Unit (ADU). A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains 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; (ii) is not larger in Gross Floor Area than 1/2 the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on Short-term Rental; provided, however, that no Municipality shall unreasonably restrict the creation or rental of an ADU that is not a Short-term Rental.

Bus Station. A location serving as a point of embarkation for any bus operated by a Transit Authority. For routes that allow flag stop locations where passengers may signal for a bus to stop at any point along its designated route, the entire route shall be considered a Bus Station.

Commuter Rail Station. Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

Design Standards. Clear, measurable and objective provisions of Zoning, or regulations, which are made applicable to the exterior design of, and use of materials for an ADU.

Dwelling Unit. A single housing unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EOHLC. The Executive Office of Housing and Livable Communities.

Ferry Terminal. The location where passengers embark and disembark from a ferry service.

Gross Floor Area. The sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.

Historic District. A district in a Municipality established pursuant to M.G.L. c. 40C or other state law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C or other state law, as the case may be.

Lot. An area of land with definite boundaries that is used, or available for use, as the site of a building, or buildings.

Modular Dwelling Unit. A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities. A Modular Dwelling Unit shall not include a manufactured home, such as those defined under M.G.L. c. 140, s. 32Q.

Municipality. Any city or town subject to the provisions of M.G.L. c. 40A.

Principal Dwelling. A structure, regardless of whether it conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is located on the same Lot as a Protected Use ADU.

Prohibited Regulation. Zoning restrictions and Municipal regulations that are prohibited pursuant to 760 CMR 71.03(2), and as may be further provided for in EOHLC guidelines.

Protected Use ADU. An attached or detached Accessory Dwelling Unit that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District and no other Accessory Dwelling Unit is located on said Lot and which is protected from Prohibited Regulations and Unreasonable Regulations pursuant to M.G.L. c. 40A, s. 3, para. 11 and 760 CMR 71.00.

Short-term Rental. Short-term rental, as defined in M.G.L. c. 64G, s. 1.

Single-Family Residential Dwelling. A structure on a Lot containing not more than one Dwelling Unit.

Single-Family Residential Zoning District. Any Zoning District where Single-Family Residential Dwellings are a permitted or an allowable use, including any Zoning District where Single-Family Residential Dwellings are allowed as of right, by special permit, variance, waiver, or other zoning relief or discretionary zoning approval.

Site Plan Review. A clear and objective process established by local ordinance or by-law by which a Municipal board or authority may review and impose reasonable terms and conditions on, the appearance and layout of a proposed use of land or structures prior to the issuance of a building permit.

Special Permit. A permit issued by a Municipality's special permit granting authority pursuant to M.G.L. c. 40A, s. 9.

Subway Station. Any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, Silver Line, or Blue Line, including any extensions or additions to such lines.

Transit Authority. The Massachusetts Bay Transportation Authority established by M.G.L. c. 161A, s. 2 or other local or regional transit authority established pursuant to M.G.L. c. 161B, s. 3 or M.G.L., c. 161B, s. 14.

Transit Station. A Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station.

Unreasonable Regulation. Zoning restrictions and Municipal regulations that are unreasonable pursuant to 760 CMR 71.03(3)(b) and as may be further provided for in EOHLC guidelines.

Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the use or occupancy of the Protected Use ADU to individuals or households at a specified income or age, or that imposes conditions that limit future use or occupancy of a Protected Use ADU based on income or age or, that imposes any similar use and occupancy restriction as may be further provided for in EOHLC guidelines.

Zoning. Ordinances and by-laws, adopted by Municipalities pursuant to M.G.L. c. 40A to regulate the use of land, buildings and structures, including base, underlying, and overlay zoning.

Zoning District. A geographic area within a Municipality which, pursuant to Zoning, are subject to use requirements that are generally uniform throughout the area.

#### 71.03: Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts

- (1) Municipalities shall not prohibit, impose a Prohibited Regulation or Unreasonable Regulation, or, except as provided under 760 CMR 71.03(5), require a special permit, waiver, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected Use ADU, including the rental thereof, in a Single-Family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.03(2) to 760 CMR 71.03(5), inclusive.
- (2) Prohibited Regulation. A Municipality shall not subject the use of land or structures on a Lot for a Protected Use ADU to any of the following:
  - (a) Owner-Occupancy Requirements. A requirement that either the Protected Use ADU or the Principal Dwelling be owner occupied.
  - (b) Minimum Parking Requirements. A requirement of, as applicable:

1. More than one additional on-street or off-street parking space for each Protected Use ADU on a Lot if all portions of such Lot are located outside a 0.5-mile radius of a Transit Station; or
  2. Any additional on-street or off-street parking space for each Protected Use ADU on a Lot if any portion of such Lot is located within a 0.5-mile radius of a Transit Station.
- (c) Use and Occupancy Restrictions. A requirement that a Protected Use ADU be subject to a Use and Occupancy Restriction.
- (d) Unit Caps & Density. Any limit, quota or other restriction on the number of Protected Use ADUs that may be permitted, constructed, or leased within a Municipality or Zoning District. Protected Use ADUs shall not be counted in any density calculations.
- (e) Relationship to Principal Dwelling. A requirement that a Protected Use ADU be attached to or detached from the Principal Dwelling.
- (3) Unreasonable Regulation.
- (a) A Municipality may reasonably regulate and restrict Protected Use ADUs provided that any restriction or regulation imposed by a Municipality shall be unreasonable if the regulation or restriction, when applicable to a Protected Use ADU:
1. Does not serve a legitimate municipal interest sought to be achieved by local zoning;
  2. Serves a legitimate municipal interest sought to be achieved by local zoning but its application to a Protected Use ADU does not rationally relate to the legitimate municipal interest; or
  3. Serves a legitimate municipal interest sought to be achieved by local zoning and its application to a Protected Use ADU rationally relates to the interest, but compliance with the regulation or restriction will:
    - i. Result in complete nullification of the use or development of a Protected Use ADU;
    - ii. Impose excessive costs on the use or development of a Protected Use ADU without significant gain in advancing the municipality's legitimate interest; or
    - iii. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the municipality's legitimate interest.
- (b) For the purposes of 760 CMR 71.03(3), the following restrictions and regulations shall be considered unreasonable when applicable to a Protected Use ADU:
1. Design Standards. Any Design Standard that (i) would not be applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or (ii) is so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU.
  2. Dimensional Standards. Any requirement concerning dimensional setbacks, lot size, lot coverage, open space, and the bulk and height of structures that are more restrictive than

what is required for a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located.

3. Utilities, Safety, and Emergency Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than state requirements.
4. Environmental Regulation. Any regulation for the protection of public health, safety, welfare and the environment pursuant to Title 5, 310 CMR 15.000 that is more restrictive than is required for a Single-Family Residential Dwelling in the Zoning District in which the Protected Use ADU is located.
5. Site Plan Review. Any requirement under Site Plan Review concerning the Protected Use ADU that is more restrictive than those applied to the Principal Dwelling.
6. Impact Analysis and Studies. Any requirement under Zoning or Site Plan Review for any impact analysis, study, or report that is not required for the development of a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located.
7. Modular Dwelling Units. Any requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as a Protected Use ADU that is more restrictive than the Massachusetts state building code.
8. Short-term Rentals. Any restrictions or prohibitions on Short-Term Rentals that are not consistent with M.G.L. c. 64G.

(c) Notwithstanding 760 CMR 71.03(b)1. and 760 CMR 71.03(b)2., a Municipality may establish Design Standards and dimensional standards for Protected Use ADUs located in an Historic District that are more restrictive or different from what is required for a Single-Family Residential Dwelling in the Single-Family Residential Zoning District; provided, however, that such standards are not so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU.

(d) EOHLIC may clarify and provide examples of what constitutes Unreasonable Regulations through guidelines.

(4) Enforceability of Restrictions and Regulations on Pre-Existing ADUs. A Municipality shall not enforce any Prohibited Regulation or Unreasonable Regulation that was imposed as a condition for the approval of the use of land or structures for a Protected Use ADU prior to the effective date of 760 CMR 71.00, regardless of whether such Protected Use ADU complies with the Municipality's Zoning, including, but not limited to, use requirements and dimensional requirements, such as setbacks, bulk, and height.

(5) Special Permits for Multiple ADUs on the Same Lot. Notwithstanding 760 CMR 71.03(1), Zoning shall require a Special Permit in a Single-Family Residential Zoning District for the use of land or structures for an ADU, or rental thereof, on a Lot on which a Protected Use ADU is already located.

#### 71.04: Annual Updates

(1) Data Collection. To assist EOHLIC in the administration of M.G.L c. 40A, s. 3, para 11, Municipalities shall collect and maintain, at a minimum, the following data related to their permitting of ADUs, in a format specified by EOHLIC:

- (a) The number of approved ADU permit applications, separately tabulated for attached and detached ADUs;
  - (b) The number of denied ADU permit applications;
  - (c) The number of occupancy permits issued for any ADU; and
  - (d) Other data or information as may be further provided for in EOHLC guidelines.
- (2) Annual Report. To assist EOHLC in the administration of M.G.L c. 40A, s. 3, para 11, Municipalities shall annually submit a report to EOHLC not later than March 31 containing the data collected under 760 CMR 71.04(1) during the prior calendar year. Said report shall be filed on a form as prescribed by EOHLC and shall contain all data as required therein.

#### REGULATORY AUTHORITY

760 CMR 71.00: M.G.L. c. 40A, s.3, para. 11; St. 2024, c. 150, s. 8.