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# The State of Zoning for Accessory Dwelling Units

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Even in the midst of a housing crisis, zoning laws prohibit most homeowners in cities and towns around Boston from adding accessory dwelling units (ADUs) to their single family houses. An ADU is an apartment within or behind an owner-occupied single family house that appears from the street to be a single-family as opposed to a two-family house.

Only 37 out of 100 cities and towns surrounding Boston allow for ADUs to be put in and rented out — and typically with significant restrictions on the houses that could qualify for gaining an ADU. Another 31 municipalities allow temporary ADUs for occupancy by relatives of the homeowner or caretakers. The remaining 32 municipalities have no zoning for ADUs.

Given the restrictive zoning, few ADUs are being created legally. This paper provides a detailed survey of the ADU regulations in the region, and argues that these regulations are overly restrictive, particularly in light of the housing crisis and recent demographic trends in Greater Boston.

## Executive Summary

Of the 100 cities and towns in the Metropolitan Area Planning Council (MAPC) region outside the City of Boston, only 37 allow a homeowner to create an accessory apartment and rent it to persons other than family members or caregivers. However, only a fraction of the single-family homes in those municipalities are eligible for an ADU because of other restrictions.

For example, Manchester allows ADUs, but only on lots twice the minimum lot size for the district, and only in houses built before 1984. Most houses in the municipality do not qualify, and the town rarely gets any applications.

In Dedham, ADUs can be added to houses where the lot is 10 percent bigger than the minimum lot size, but most of the houses in Dedham are on non-conforming lots, smaller than the zoning requires. Dedham has more than 6,000 single family houses, but the town receives only a few applications per year to add ADUs.

As is the case in Manchester and Dedham, 16 of the 37 municipalities that allow ADUs limit them to houses on lots bigger than a certain size. In Duxbury and Wenham, the lot needs to be 20,000 square feet, or almost a half-acre.

In Medfield, ADUs are allowed in houses built before 1938 that have a minimum floor area of 2,000 square feet. In Burlington, they are allowed in houses that had at least 1,800 square feet of floor area, as of 1989. Before the 1990s, most new houses were not that big; the median size of new single family houses in the Northeast did not surpass 1,800 square feet until 1987, and did not top 2,000 square feet until 1992. In Weston, ADUs are only allowed in houses that have at least 3,000 square feet.

In Belmont, ADUs are only allowed in detached historic structures such as antique carriage houses. Most houses lack historic accessory buildings.

In addition to the 37 municipalities that allow ADUs, another 31 municipalities only allow them to be occupied by relatives of the homeowners or caretakers; the units are supposed to be removed when the relative moves out. Some apartments get removed, which is a terrible waste of housing capacity during a housing crisis. Other apartments are rented out illegally, without the safety inspections permitted apartments get.

Municipal planners and housing advocates have been working for decades to pass ADU bylaws and ordinances. In the last decade, almost half of the 100 Boston-area municipalities have adopted either a master plan or housing production plan that recommends allowing ADUs more liberally. At least one in five municipalities did revise zoning for ADUs in that same time period. Belmont, Swampscott, and Hudson voted to allow ADUs (unrestricted to relatives.) Ipswich, Middleton, and Milford revised their provisions to switch from allowing temporary family-apartments to allowing regular ADUs. Lexington, Newton, Carlisle, and a few other municipalities voted to allow ADUs in detached structures, and liberalized other aspects of their regulations. Hamilton used to allow ADUs only on lots 10 acres or bigger; now the town allows ADUs on any-sized lot.

Meanwhile, despite the significant efforts to revise the zoning, the majority of municipalities still do not allow ADUs as rentals, and most municipalities that permit them still over-restrict them. Progress across the region has been remarkably slow, in a time of rapidly increasing demand for housing.

Homeowner-voters can be reassured that new rental housing that could be added as ADUs would be highly dispersed and barely visible. The houses are owner-occupied; the landlord lives next to the ADU renters, so the risk of property-neglect or loud parties is minimal. The houses also have to look like single family houses. Since household sizes are shrinking, new residents in ADUs might maintain current neighborhood population densities, but are unlikely to increase them.

Moreover, ADUs are permitted at such low levels now — only 2.5 permits annually per municipality where they are allowed — that permitting levels could increase substantially without being at all noticeable in neighborhoods. If the region were to average five permits per municipality per year across 100 municipalities, over a decade, ADUs could provide 5,000 apartments, dispersed among 538,000 single family houses. Less than one in 100 houses would have an ADU, yet the new rentals would house thousands of people.

Every municipality should allow ADUs to be added to owner-occupied single family houses and to be rented out. The ADUs should not be restricted to large old houses on big lots,

or to antique accessory buildings. Most houses within walking distance of stores and public transportation are on smaller lots; it's good for both the region's traffic levels — and its people — to have more residents in walkable neighborhoods where cars aren't needed for every activity.

Cautious voters seeking to protect the character of their single-family neighborhoods should be reassured that they risk virtually nothing by allowing ADUs to provide much-needed housing, and they could potentially gain rental income.

## Background On The Study

In 2017, the Massachusetts Smart Growth Alliance commissioned a study on local regulation of residential development in eastern Massachusetts. The study is funded by a coalition of organizations including the Smart Growth Alliance, Citizens' Housing and Planning Association, Home Builders & Remodelers Association of Massachusetts, Massachusetts Association of Realtors, Massachusetts Housing Partnership, MassHousing, and the Metropolitan Area Planning Council (MAPC). A committee that includes representatives of the funding organizations, as well as municipal planners and representatives of environmental organizations, provided input into the research design.

The research is designed to update a 2004 – 2006 study produced by Pioneer Institute and the Rappaport Institute. In the 2004 – 2006 study, researchers answered more than 100 questions about residential zoning, road design standards, local septic system requirements, and local wetlands regulations for the 187 cities and towns within 50 miles of Boston, but not including Boston itself (Zoning in the City of Boston is governed by a state statute different from the one that governs zoning in all other Massachusetts municipalities). The updated study asks many of the same questions and also includes new ones. The updated study covers the 100 cities and towns that are served by MAPC, but again not including Boston. The updated study covers zoning for ADUs, multi-family housing, and cluster development (where houses are clustered on a parcel and part of the land gets preserved as open space), as well as road design standards and local septic system regulations.

The research includes a survey of zoning bylaws and ordinances, along with the housing production plans and municipal master plans that have been produced in the last decade in the 100 cities and towns. This stage of the research is complete.

The research also includes survey questions sent to the local director of planning, or to the building inspector when a municipal planner is not available to answer questions. Planners and building inspectors from 53 of the 100 municipalities have provided answers so far, although in some cases, not to every question.

Regarding ADUs specifically, the study has included the collection of the ADU bylaws and ordinances in the 100 municipalities and compared them on a number of metrics, explained below. The study also asked local planners and building inspectors the following questions:

- How many accessory dwelling units have been permitted in each of the last three years?
- Approximately how many accessory units have been permitted town-wide or city-wide, if that information is available?
- Have any permit applications for ADUs been rejected in the last five years? For what reasons?
- What have been the challenges, if any, of enforcing requirements for accessory dwelling units, after the units have been permitted?
- How much staff time is devoted in an average month to process applications for permits for accessory dwelling units — and to guide the process and enforce the rules?

Researchers have been collecting the data from September 2017 through July 2018. Once a municipality's zoning is surveyed for the research, it is not checked again for changes. So, for example, if a municipality did not allow ADUs in November of 2017 when its zoning was reviewed, but amended the zoning to allow ADUs at the annual Town Meeting in May of 2018, that change will not be reflected in the study.

## Housing in Greater Boston

Even if nobody new were moving to Greater Boston, the region would need more housing due to demographic shifts. The baby boomers are now largely empty nesters, and their grown kids are forming new households, while delaying marriage. When household sizes shrink and the population does not, demand for residences increases. In addition, the region is attracting new people, as happens when hundreds of thousands of jobs get created.

Production of new housing has not been keeping up with escalating demand at least in part because local voters are highly cautious about allowing new housing in their cities and towns. Renters and homebuyers are bidding up the prices of the limited supply of residences, with the wealthiest winning the contest. People of all income levels should be able to live near centers of employment.

To stabilize prices and house the growing population, local and state lawmakers level will need to decide where new housing can go. Greater Boston does not have a lot of developable green space, such as farms, woods, or meadows, where neighborhoods might rise, and popular support for protecting green space is strong. New housing can generally be put in three kinds of places: A) business districts, including historic downtowns and newer strip malls, B) office or industrial districts, often on the edge of a municipality near a highway, or C) existing

residential neighborhoods. Much planning is now going into the residential development of the first two categories of places. Wellesley's 2018 Draft Unified Plan states: "Participants in the Unified Plan public meetings saw the commercial, office and industrial districts as the most acceptable locations to construct new housing that is not single-family housing." Three-fourths of the region's municipalities now have zoning for apartments and condos above stores, with many of these zoning provisions adopted in the last decade. Unfortunately, the projected buildout of currently planned growth districts is not nearly enough to satisfy projected demand for housing.

## Concerns About Neighborhood Character

Homeowners are understandably cautious about allowing increases in housing density in their neighborhoods. They might be worried about more traffic, the paving over of grassy yards and gardens for parking, the aesthetics of new construction, the hassle of living next to construction, and a loss of privacy. They might worry that new renter-neighbors will be less invested in the neighborhood than homeowners. Furthermore, for most homeowners, their house is their single largest investment, and unlike a portfolio of stocks, it cannot be diversified against risk; voting against changes in the neighborhood is a way of protecting their investment.

Many municipal master plans emphasize that residents would like to protect the character of single family neighborhoods and the small-town feel of the community:

- ***Medway's 2009 Master Plan:*** "We enjoy a 'small town feel'… We are what other towns used to be, and we have challenges ahead in managing our growth so we can retain the character that we all cherish."
- ***Dover's 2013 Master Plan:*** "People choose to reside in Dover because it offers a more rural alternative to the suburban development patterns of most surrounding towns."
- ***Arlington's 2015 Master Plan:*** "Residents seem concerned that additional development will be out of scale or character with the qualities they value in their community."
- ***Medfield's 2016 Housing Production Plan:*** "The town's large preservation areas, historic downtown, and neighborhoods of single-family homes create a small-town character, despite being close to a major metropolitan area."
- ***Randolph's 2017 Master Plan:*** "The Town of Randolph and its residents have expressed a desire to protect and maintain the residential character of their single-family neighborhoods, and to enhance the quality of town services and amenities."
- S***udbury's 2001 Master Plan***, mentions vision statement adopted by town meeting in 1998: "We value the town's essentially residential, low-density nature. A significant aspect of Sudbury's charm and character is derived from its rural/suburban feeling. Becoming more like towns nearer Boston would not be considered progress."
- ***Newton's 2007 Comprehensive Plan:*** "Those living in predominantly single-family areas generally wish them to stay that way. They wish those areas neither to be marginally blurred into resembling the mixed single and two family areas nor to be compromised by large-scale multifamily developments being plopped into their midst."
- ***Wayland's 2016 Housing Production Plan:*** "Within existing residential neighborhoods, new multi-family housing is generally not recommended because of concerns that it would alter the single-family character of most of Wayland's neighborhoods."
- ***Wellesley's Draft Unified Plan 2018:*** "Goals for policies for decision makers: Established single-family neighborhoods maintain a predominantly single family character."

Zoning to allow accessory apartments in single-family houses explicitly addresses public concerns about changing the character of single-family neighborhoods. First, to add an ADU, the homeowner must reside in the house. The owner occupancy requirement means the landlord will be on site, living in close proximity to the renters, perhaps making loud parties less likely, and reducing the risk of the property being neglected.

Second, the house needs to maintain the appearance of a single-family house. Bedford's requirements regarding the appearance of the house and ADU are typical:

"The accessory apartment shall be designed so that the appearance of the structure remains that of a one family dwelling, subject further to the following conditions and requirements: (i) All stairways to second or third stories shall be enclosed within the exterior walls of the dwelling. (ii) Any new entrance shall be located on the side or in the rear of the dwelling. (iii) Where there are two or more existing entrances on the front facade of a dwelling, if modifications are made to any entrance, the result shall be that one appears to be the principal entrance and the other entrances appear to be secondary."

Newton's regulations do allow for exterior staircases to be added because construction of new internal staircases could make projects too expensive or infeasible. Newton's regulations state:

"3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood, including, but not limited to, the following considerations:

a. The exterior finish material should be the same or visually consistent in type, size, and placement, as the exterior finish material of the remainder of the building;
b. The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
c. Trim should be consistent in type, size, and location as the trim used on the remainder of the building;
d. Windows should be consistent with those of the remainder of the building in proportion and orientation;

e. Exterior staircases should be designed to minimize visual intrusion and be complementary to the existing building;
f. The Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above rules."

## Baseline Findings from The 2004 – 2006 Study

According to the 2004 – 2006 study, only 50 of the 187 municipalities (27 percent) allowed homeowners to add accessory apartments and rent them out to any person, as opposed to allowing them for occupancy by relatives of the homeowner. While allowing ADUs, the regulations restricted their use in various ways. Some municipalities required, for example, that the house have existed for a certain number of years or have a certain amount of floor area. Hamilton's 2002 Master Plan Phase 1 Report noted, "The regulations for this option significantly restrict the universe of eligible properties because in order to qualify for an accessory apartment, the property must have 10 acres of land."

Another 46 of the municipalities (25 percent) allowed accessory apartments only when relatives of the owner reside in the apartment (or the primary dwelling if the owner is in the accessory dwelling). Eleven more municipalities (6 percent) restricted residence to certain categories of people (usually in addition to relatives): (1) elderly, (2) caretakers, and (3) low-income residents.

To prevent occupancy restriction violations, many of the regulations included extensive provisions about verification of occupancy, usually through regular re-certification or re-permitting of the units. After the relatives either move out or pass away, the kitchen must be removed and the apartment reintegrated. For example, Dover's bylaw stated: "Within 6 months of the lapse of a Special Permit hereunder, the owner or owners of the building containing an apartment shall dismantle the cooking facilities of the apartment and restore the building to a single-family dwelling." Two municipalities required that the homeowner put down a surety bond to ensure that the apartment will be reintegrated upon vacancy by the relatives or sale of the house.

## Master Plans And Housing Production Plans

In the last decade, 47 municipalities in the study sample of 100 adopted either a housing production plan or municipal master plan that included recommendations regarding ADUs.

Carlisle's 2015 Housing Production Plan recommends changing the requirements for ADUs, and in 2017 Carlisle revised the bylaw to allow ADUs more liberally. It appears that several municipalities followed up on recommendations in the plans. Several planners mentioned that addressing the topic is on their agenda for the next year or two.

## Recent Changes to Local Bylaws and Ordinances

The research identifies the years that the ADU provisions were either adopted or last revised. The data is still being collected from 22 of the 100 municipalities, but more than one in five have revised zoning for ADUs in the last decade, including:
2007: Gloucester, Hudson
2009: Belmont, Foxborough, Sudbury, Swampscott
2010: Wilmington
2012: Ipswich
2014: Brookline, Medfield
2015: Boxborough, Rockland
2016: Lexington, Medway
2017: Newton, Reading, Cambridge, Lincoln, Littleton, Westwood, Carlisle, Concord

Belmont, Swampscott, and Hudson voted to allow ADUs (unrestricted to relatives). They did not allow ADUs when the 2004 study was conducted. Ipswich, Littleton, and Milford revised their provisions to switch from allowing "family apartments" restricted to relatives of the homeowners to allowing ADUs that can be rented out without restricting who the residents can be.

Several planners mentioned that ADUs are on their agenda to address with the planning board in the next year or two. A few planners mentioned that they have had to prioritize issues to take to the planning board and town meeting, so, for example, they might address new zoning for mixed-use development in the downtown first, and then address ADUs.

## The Regulation Of Accessory Dwelling Units Without Residency Restrictions

The research has involved collecting the 68 ADU bylaws and ordinances adopted in the 100 municipalities. The following analysis is about the requirements in the 37 cities and towns that allow ADUs without restricting occupancy to relatives of the homeowner, caretakers, or qualifying low-income residents.

### Overall Restrictiveness

In the 37 municipalities that allow ADUs, the regulations typically limit the houses that would be eligible for an ADU. For example, Manchester allows ADUs, but only on lots twice the size of the minimum lot size for the district, and only in houses built before 1984. Most houses in the municipality do

not qualify, and the town rarely gets any applications. In Dedham, ADUs can be added to houses where the lot is 10 percent bigger than the minimum lot size, but most of the houses in town are on non-conforming lots, smaller than the zoning requires. Dedham has more than 6,000 single family houses, but the town receives only a few applications per year to add ADUs. Like Manchester and Dedham, 16 of the 37 municipalities that allow ADUs limit them to houses on lots bigger than a certain size. In Duxbury and Wenham, the lot needs to be 20,000 square feet, or almost a half-acre.

In Medfield, ADUs are allowed, but only in houses built before 1938 that have a minimum floor area of 2,000 square feet. In Burlington, ADUs are allowed in houses that had at least 1,800 square feet of floor area as of 1989. Before the 1990s, most new houses were not that big; the median size of new single family houses in the Northeast did not surpass 1,800 square feet until 1987, and didn't top 2,000 square feet until 1992. In Weston, ADUs are only allowed in houses that have at least 3,000 square feet.

Belmont allows ADUs only in detached historic structures such as antique carriage houses. Most houses lack historic accessory buildings.

## Owner Occupancy

In general, ADU regulations specify that the single-family house must be occupied by the owner or owners. Many of the requirements include the language, "except for bona fide temporary absences." Some requirements get more specific about owners being absent. In Lexington, absences of up to two years are allowed:

> An owner of a property containing an accessory apartment who is to be absent for a period of less than two years may rent the owner's unit as well as the second unit during the temporary absence provided: a. Written notice thereof shall be made to the Building Commissioner on a form prescribed by him. b. The owner shall be resident on the property for at least two years prior to and between such absences.

In Hudson, Bedford, and Burlington, the owner/s can be absent up to six months; in Manchester and Medfield, one year. In Wayland, the owner can be absent one or two years:

> The owner may be absent for periods not exceeding one year, provided that no one occupies the owner's unit, except a house sitter paying no rent. The owner's unit may be rented for periods not exceeding two years, provided that prior written notice is given to the Building Commissioner, the owners have occupied their unit for the prior two years, and occupy for two years between rental periods, and the owners remain legal residents of the Town.

Some municipalities, such as Cambridge, require that owner/s submit a notarized letter that owner/s will live at the house as primary residence, to get a permit for the ADU.

In Westwood, the owners need to submit an affidavit every four years certifying owner occupancy. Owners in Sudbury are also supposed to certify compliance every four years. Canton, Waltham, Milford, and Dedham require re-permitting, renewal, or re-certification every three years. In Marshfield, the owner is supposed to recertify annually. Newton also requires annual certification.

Other municipalities have no requirements for re-certification, but specify that the special permit terminates upon sale or transfer of the property. New owners need to re-apply. Some regulations specify that the requirement for re-application upon sale shall not dispossess current tenants.

A planner in one small town, where ADUs are allowed by right with no requirements for permit renewal, said:

> It is difficult to know for sure if units are being owner occupied. We don't inspect or review unless it's brought to our attention. In the four years that I have worked here, there was one incident where the residence was not owner-occupied. The building inspector contacted the owner to let them know that the accessory apartment could not be rented if the residence was not owner occupied.

In Lincoln, the Zoning Board of Appeals sends out renewal letter annually. Several planners and inspectors mentioned that it has been a challenge to establish a management system to reliably make re-permitting and recertification happen. In Dedham, homeowners are supposed to renew their ADU permits every three years, but "virtually nobody comes to renew," said the building inspector. The issue can come up during the sale, but the process to permit the unit might then take longer than the sellers have. The process can take six weeks to five months in Dedham.

## Restrictions on houses that qualify

There are three common types of restrictions on the single family houses that could qualify for an ADU: 1) the age of the house, 2) the minimum floor area, and 3) the lot size.

***Age of the house.*** Fourteen of the 37 municipalities that allow ADUs to be rented out (not just occupied by relatives of the homeowner), restrict the houses that qualify to have ADUs created based on the age of the house. Some restrictions on the age of the house significantly reduce the number of qualifying houses, while others principally prohibit ADUs in brand-new construction. For example, Wayland's and Concord's bylaws require that houses must have existed for at least two years; Marshfield's says three years; Newton's four. In other municipalities, like Duxbury, Hamilton, Lincoln, Cohasset, and

Weston, the house must have existed for 10 years. In Waltham and Dedham, it must have been in existence when the subsection of the ordinance or bylaw was adopted.

Others are more restrictive. In Stow, ADUs can be added to single-family houses or detached accessory structures that were built by 1991. In Dover, the house must have been built by 1985; In Manchester, 1984. In Medfield, the house must have been in existence prior to 1938.

***Minimum floor area.*** Another way of restricting houses that qualify to have ADUs added is to require a minimum floor area for the house. In Cohasset, the house must be at least 1,200 square feet. In Bedford and Cambridge, it must have at least 1,800 square feet. In Burlington, the house must have been 1,800 square feet as of 1989. The median size of new single family houses in the Northeast did not become greater than 1,800 square feet until 1987.[1] In Medfield and Canton, the house must be at least 2,000 square feet. In Weston, the house must have 3,000 square feet of floor area.

***Lot size.*** The third way municipalities restrict the properties that can qualify for ADUs relates to the size of the lot the house is on. Sixteen of the 37 municipalities have such restrictions.

- In all districts of Manchester except one, the lot size needs to be twice the minimum lot size listed for single-family houses in the zoning bylaw.
- In Dedham, the lot needs to be 10 percent greater than the minimum lot area of the district.
- In Ipswich, ADUs can be added to non-conforming lots (smaller than zoning requires for single family houses) if the lot is bigger than 15,000 square feet.
- In Medfield and Weston, the lot needs to meet the minimum lot area requirements.
- In Carlisle, the lot needs to be at least two acres, unless the ADU's occupancy gets restricted to low-income residents, in which case there is no listed minimum lot size.
- In Stow, ADUs are allowed by right if the lot is bigger than 1.5 acres, and by special permit for smaller lots.
- In Concord, the lot must be at least 10,000 square feet.
- In Canton, the lot must be at least 10,000 square feet, or the minimum lot size for the district, whichever is greater.
- In Duxbury, the lot must be 20,000 square feet.
- In Wenham, the lot must be 20,000 square feet excluding wetlands and floodplain, and for ADUs in a detached structure, the lot must be 40,000 square feet, excluding wetlands and floodplain.

1. Median and Average Square Feet of Floor Area in New Single-Family Houses Completed by Location **https://www.census.gov/const/C25Ann/sftotalmedavgsqft.pdf**

## Caps on ADU Production

Seven municipalities cap the number of ADUs that could be added, either in general or over a certain period of time:

- Hamilton: No more than 10 permits for ADUs can be issued in any 12-month period.
- Dover: No more than 10 percent of single-family homes can have ADUs.
- Cohasset: No more than 10 percent of single-family homes can have ADUs, and no more than 10 permits can be issued annually.
- Carlisle: No more than 75 permits for ADUs can be issued.
- Sudbury and Southborough: No more than 5 percent of single-family houses can have ADUs.
- Westwood: Permits for ADUs shall not exceed 2 percent of the number of single-family and two-family houses.

## Restrictions that Relate to the Accessory Units Themselves (As Opposed to the Single-Family House or Lot or Location)

***Parking.*** Most municipalities require one off-street parking space for an ADU. A few of the regulations vaguely specify that adequate off-street parking should be provided. Bedford, Burlington, Hudson, Manchester, Stow, and Waltham require two off-street spaces for the ADU. Cohasset requires one space per bedroom. Scituate requires two spaces, but the requirement can be waived to one space. Newton is the only municipality that specifically requires no additional off-street parking for the ADU.

***Bedrooms.*** Fifteen of the municipalities regulate the number of bedrooms that can be in an ADU. The most frequent requirement is no more than two bedrooms. In Acton, ADUs included in the same building as the primary dwelling unit can have no more than two bedrooms, but ADUs in detached structures can have three bedrooms. In Carlisle, on lots less than three acres, the maximum number of bedrooms in an ADU is two. In Littleton, ADUs can have no more than two bedrooms, except by special permit. For ADUs attached to the primary dwelling in Hamilton and Ipswich, there can be no more than one bedroom.

***Number of Occupants.*** Six municipalities limit the number of ADU occupants. Dedham and Waltham limit them to two occupants. Hudson, Reading, and Swampscott limit occupancy to three people. Sudbury limits occupancy to four people.

Newton does not limit the number of occupants in an ADU per se, but "the total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone." Occupancy of single family houses in Newton is

limited to one family and three unrelated individuals. In theory, a single person might live in the primary house and rent the ADU to a large family.

***Maximum Floor Area.*** More than half the municipalities limit the maximum floor area of accessory dwelling units. The most common limit is 900 square feet, in Cambridge, Cohasset, Dover, Hamilton, Hudson, Ipswich, and Westwood. The smallest limit is 700 square feet in Stow. Acton and Swampscott limit to 800 square feet, but Acton allows up to 2,000 square feet for ADUs in detached structures. Duxbury and Sudbury limit to 850 square feet. The second most common limit is 1,000 square feet, in Dedham, Newton, Lexington, Reading, and Wenham. Newton allows up to 1,200 square feet in ADUs within the house by special permit, and up to 1,500 square feet for ADUs in detached structures. Lexington also grants special permits for bigger ADUs, up to 40 percent of the house's floor area. Lincoln, Littleton, and Carlisle allow up to 1,200 square feet, and Wilmington allows 1,250.

***Percent of Floor Area.*** Most municipalities also restrict the floor area of the ADU as a percent of floor area of the house. The most common requirements are in the range of 30-to-35 percent of the gross floor area. In Hamilton, an ADU cannot cover more than 15 percent of the gross floor area. In Cohasset, Dover, Hudson, Ipswich, Southborough, and Weston, the maximum is 25 percent. Littleton and Marshfield allow up to 40 percent. Acton allows for ADUs to take up half the floor area. Carlisle allows up to 50 percent only for ADUs that are restricted to low-income occupants; otherwise the ADU cannot be more than 35 percent of the house.

***Expansion***. Several municipalities restrict how much a house can be expanded to accommodate an ADU. In Reading, ADUs are permitted by right as long as there is no expansion of the house, but homeowners can apply for a special permit to expand the house for an ADU. In Duxbury, the house cannot be expanded for an ADU: "The accessory apartment does not require alteration or addition to the single family dwelling in such a manner that there is any exterior change to the dwelling, so that the accessory apartment is located wholly within the building footprint in existence at the time of the special permit application." In Ipswich, the house's footprint can only be expanded by 25 percent or 500 square feet, whichever is less, on non-conforming lots. In Manchester and Medfield, the house can be expanded up to 10 percent; in Wayland, 20 percent; in Littleton 15 percent.

## Detached ADUs

Many municipal master plans have recommended that the city or town allow ADUs in detached structures, and several have recently amended zoning to allow ADUs in detached structures. Carlisle and Newton, for example, revised zoning in 2017 to allow ADUs in detached structures.

Sixteen municipalities now allow ADUs in detached structures. Some, like Weston, allow detached ADUs only in a pre-existing structure such as a garage, barn, or gatehouse. Belmont does not allow ADUs within the single-family house, but allows them in historic structures. Municipalities such as Newton and Lexington allow new construction of detached ADUs. In Sudbury, the detached structure needs to have existed for at least five years.

Detached ADUs are allowed in Acton, Dedham, Hamilton, Newton, Scituate, Stow, Wenham, Canton, Belmont, Lexington, Littleton, Weston, Hudson, Sudbury, Ipswich, and Carlisle.

## By Right Versus By Special Permit

Most municipalities require special permits for ADUs. Acton, Bolton, Burlington, Lexington, Littleton, Newton, Reading, Stow, Wilmington, and Bedford allow ADUs by right, at least in some circumstances. Some of those municipalities require special permits for detached ADUs, larger ADUs, or ADUs in certain districts. Rockport allows them by right in the downtown district, but otherwise by special permit.

Many the municipal master plans and housing production plans recommend that the municipality consider allowing ADUs by right, instead of by special permit. In general, special permits can create a barrier to development, where property owners decide not to risk time and money on a permitting process that might not yield a permit.

To assess how discretionary the special permits are, the researcher asked if any applications have been rejected in the last five years, and for what reasons. Many municipalities did not reject any. In every case except one, those that did said the application did not comply with written requirements. For example, the unit was detached from the main structure where that is not allowed, or it did not meet specified dimensional requirements. The only municipality where planners indicated any discretion in the process for special permits was Newton. Recently, Newton received two applications for detached units that met the written requirements, but one application was granted a special permit and the other was not. Neighbors showed up to oppose the ADU application that got rejected.

In Newton, the Special Permit Granting Authority is the City Council, so the process for approving special permits can be particularly political. According to the 2004 study, the special permit granting authority for ADUs is typically the Zoning Board of Appeals. In 2004, 81 municipalities had designated the ZBA as the SPGA, 14 designated the planning board, and Newton and Peabody designated City Council.

Another issue with special permits is that they take more staff time to process. If a municipality receives few applications, that time might not be a critical factor. But the special

permit process could become burdensome for those that receive a dozen or more. In Newton, by right permits for ADUs take approximately eight hours of staff time total to process, while special permits average about 25 hours of staff time.

## In-Law Apartments

Thirty-one municipalities allow ADUs as long as residency is restricted to relatives, caregivers, or in a few cases, people with low incomes. It can be hard for the municipality to enforce the residency restrictions.

Some comments by planners and building inspectors:

"They are supposed to be for family members or for caregivers, and we don't really have a process for keeping up certification that a family member is using the unit. We are discussing a process to register the information."

"One of our internal challenges is that when you get the special permit it is for three years and it is renewable every three years. Many people don't renew, and they don't realize that they have to renew."

"Inadvertently, I can guarantee, they turn into rentals. They are intended to be converted back to normal living space."

## Short Term Rentals (Like Airbnb)

In Bedford there was recently a case of an ADU listed on Airbnb or a similar site. The town bylaw reads "There shall be no boarders or lodgers within either unit of a dwelling with an accessory apartment." The same wording is in Burlington and Canton's bylaws. Newton's ordinance requires a minimum occupancy or rental term of 30 days. A couple of planners mentioned that the planning board will simultaneously address reforms to the ADU regulation and regulation of short-term rentals.

## Municipalities with No Zoning For Adus

Thirty-two municipalities have no provisions for ADUs. In Arlington, a bylaw was proposed to Town Meeting in 2012, but did not pass. Marblehead's planning board is now considering the matter, and it will likely go to Town Meeting in 2019. In Somerville, the lowest-density residential districts allow two-family houses, but the city is thinking about allowing ADUs as well; they could be put on properties that do not meet the requirements for a two-family house. Some of the municipalities that do not allow ADUs do allow two-family houses, at least in some districts.

Some building inspectors in municipalities that do not allow ADUs mentioned that they permit ADUs as part of the single-family house, because a single family house can have multiple kitchens, per the building code.

## Permitting Numbers

The survey of local planners and inspectors includes a question about how many ADUs their municipality has permitted in each of the last three years. Based on responses thus far, 2.5 units on average are permitted annually per municipality that allows ADUs (including those that are restricted to relatives). Three municipalities reported permitting as many as 12 or 15 in a single year.

The survey also asks the total number of ADUs that have been permitted town-wide, or city-wide. The answers are mostly in the range of 20 to 60. Scituate and Ipswich are each at 100 total and Marshfield might have 150.

The appendix includes a chart of permitting numbers reported in the survey.

Fourteen of the municipalities that provided annual permitting data allow ADUs with residency restrictions (such that only a relative of the homeowner or caretaker can live in the ADU), and 20 of the municipalities that provided annual permitting data allow ADUs without residency restrictions (such that the ADU can be rented out). The 14 municipalities with residency restrictions ('family dwelling units') on average permitted five units per municipality for the three-year period. The 20 municipalities without residency restrictions averaged nine permitted units per municipality over three years. The difference in permitting levels holds when controlling for the number of single-family houses (both detached and attached because the U.S. Census includes townhouses in its single-family house definition). The municipalities with residency restrictions granted one permit for every 1,000 houses during the three-year period. The municipalities without residency restrictions granted 1.8 permits for every 1,000 houses during the three years. Across all municipalities that reported permitting ADUs, with or without residency restrictions, the rate was 1.4 permits granted per 1,000 single-family residences in those municipalities over the three-year period.

Carlisle saw an uptick in applications after a 2017 revision. Newton and Lexington also received more applications after revising their laws. Newton permitted eight units in the first five months of 2018.

If the region were to allow ADUs more liberally, how many rentals could be expected to be added? Could the region average five per municipality per year for the 100 municipalities? Over a decade, that would mean five thousand new rentals, on less than one in 100 properties with single family houses.

## Recommendations

The adoption of less-restrictive municipal ADU bylaws and ordinances has proven to be a very slow process. Planners and housing advocates have been promoting ADUs as a solution to the region's housing crunch for decades. Almost half the local master plans and housing production plans adopted in the last decade have included recommendations to allow ADUs more liberally. Still, only 37 out of 100 municipalities allow ADUs to be added and rented out, and most of the municipalities significantly restrict the universe of properties that could qualify for an ADU.

Given how challenging it has proven to be to change local laws and allow ADUs more liberally, state legislators could consider allowing ADUs in single family houses, even where local bylaws and ordinances lack the provisions. Then local planners and housing advocates could focus on even more difficult challenges, such as zoning for multi-family housing.

In the absence of state legislation that would allow ADUs, voters in cities and towns can make many revisions to their local zoning bylaws and ordinances to allow more ADUs in the region. Some aspects of the zoning they might consider include:

***By right versus special permit:*** Sometimes allowing ADUs only by special permit reassures local voters that each case will be carefully reviewed and there will be opportunities for neighbors to get involved when an ADU project appears inappropriate to them. If the choice is between allowing ADUs by special permit or prohibiting them, special permits are the better option. Special permits, however, might be seen by homeowners as too risky to bother with, even if in practice the permitting boards (typically the ZBA) grant permits to all projects that meet the regulatory requirements. Moreover, by-right permitting takes less staff time.

***No residency restrictions:*** Occupancy of the ADUs should not be restricted to caretakers or relatives of the homeowner. It is hard to enforce the restriction, and the region needs rental housing. When units are legally rentable, the building inspectors can make sure the housing is safe. Secret apartments do not get the review that legal ones get.

***Houses/properties that qualify:*** By restricting ADUs to large older houses on large lots, cities and towns reduce the universe of properties that qualify to have ADUs added. Requirements for large lots can mean that houses built in the era of new railroads and streetcars, when lots were narrow to maximize the number of people living within walking distance of transit, do not qualify. Ideally, many ADUs would be added in railroad and streetcar-era neighborhoods, because those are the neighborhoods where residents can still walk to shops and public transportation.

***Detached ADUs:*** Many homeowners would prefer to put an accessory apartment above a garage or in a new detached structure, as opposed to adding it to the single-family house. To significantly increase production, it would be wise to allow detached ADUs more liberally.

***Parking:*** Requiring two off-street parking spaces per ADU is excessive. It makes sense to have a flexible policy for parking, or not to require parking, as in Newton's case.

***Dimensional requirements:*** Less onerous requirements around bedrooms, floor area, and other dimensional specifications translate to more ADUs being added, and more people housed in them.

## Appendix

While some of the permitting numbers collected in the research are exact, others numbers provided represent vague estimates. (Note that "By Right" here means that at least some kinds of ADUs in some part of the municipality are allowed by right. For example, in one district the use might be by right, while it is by special permit in other districts.)

| Municipality | By Right or Special Permit | Residency Restrictions? | Three Years of Permits (2017, 2016, 2015, unless otherwise specified) | Total Permitted | Comments |
|---|---|---|---|---|---|
| Acton | By Right | No | 1 or 2 in 2016, other years not reported | | |
| Ashland | By Right | Yes | 0,1,0 (2016, 2015, 2014) | Not tracked | |
| Bedford | By Right | No | 1,2,0 | 56 | |
| Bellingham | By Special Permit | Yes | 18*,4,3 (2016, 2015, 2014) * mostly renewals | 60 | |
| Belmont | By Special Permit | No | 0,1,1 (2016, 2015, 2014) | | |
| Beverly | By Special Permit | Yes | 0,0,0 | "I would guess fewer than 25" | |
| Boxborough | By Right | Yes | 0,0,0 | 4 | "Never reached the five-per-year limit." |
| Carlisle | By Special Permit | No | 8,1,1 | 24 | "Probably in the last three years there have been ten. Most of those in the last year. Before that, we were averaging one per year, or less." |
| Concord | By Special Permit | No | 5,2,5 (2016, 2015, 2014) | Unknown | "The [total] number is believed to be fairly constant because the permits for accessory dwelling units are tied not to the property, but to the owner." |
| Dedham | By Special Permit | No | Two to five per year | "If I were to make a guess": 25 to 30 | |
| Dover | By Special Permit | No | 0,0,0 (2016, 2015, 2014) | "Very few" | |
| Foxborough | By Right | Yes | 2,2,5 (2016, 2015, 2014) | 45 | |
| Franklin* | By Special Permit | Yes | 5,5,5 (2016, 2015, 2014) | Estimates 45 | * Franklin is a special case. It does not have an ADU bylaw, but ADUs restricted to relatives get permitted under provisions for two-family conversion. |
| Halifax* | By Special Permit | Yes | 1,3,3 (2016, 2015, 2014) | Approximately 46 | * Halifax is not in the MAPC region, but data collected from it |
| Hamilton | By Special Permit | No | 2,0,0 (2016, 2015, 2014) | | |
| Holliston | By Right | Yes | 0,1,1 | Not tracked; "Fewer than 30?" "Yes" | |
| Hopkinton | By Special Permit | Yes | 1,3,2 | More than 30 | Researcher suggested ranges, 1–10, 11–30, 31–100, more than 100. "31–100" |
| Hudson | By Special Permit | No | 3,1,0 (2016, 2015, 2014) | "Would take too much time to delve into" | |

| | | | | | |
|---|---|---|---|---|---|
| Ipswich | By Special Permit | No | 6,12,5 | 101 (76 in single family houses, 25 in detached structures.) | |
| Lexington | By Right | No | 3,5,6 (approximately) | Less than a hundred | Started tracking the permits in 2015. "Back in the day we did an amnesty program for illegal apartments." The amnesty program brought in about 90 apartments out of an estimated 200. Those apartments would not all qualify under the current provisions, but were permitted as "pre-existing." The town does not know how many of the 90 currently exist. Some have been decommissioned, but the homeowner is not required to report the removal of an ADU to the town. |
| Lincoln | By Special Permit | No | 0,2,1 (2016, 2015, 2014) | Approximately 57 to 67 | |
| Littleton | By Right | No | 1,2,2 | 67 (31 expired) | |
| Manchester | By Special Permit | No | 0,0,0 | "Very rare" | "Unsure of the number without doing considerable research." |
| Marshfield | By Special Permit | No | "Average 15 per year." | "We are probably in the 150 range." | |
| Maynard | By Special Permit | Yes | Approximately two permits every three years. | "No current way of knowing" | |
| Medfield | By Special Permit | No | Maybe six units in the last three years, all family units | | The town permits both family units and ADUs. ADUs are only allowed in pre-1938 buildings, bigger than a certain size. Nobody has applied to add an ADU, only family apartments. |
| Medway | By Special Permit | Yes | 4,2,1 | 27 | |
| Melrose | By Special Permit | Yes | 2,2,1 | 20 | |
| Milton | By Special Permit | Yes | "Not more than one per year" | | |
| Newton | By Right | No | 9,5,7 | 44 confirmed. | The permitting database goes back to 2005. They are scanning old files now. |
| Norwell | By Special Permit | Yes | "My guess is one or none." | | |
| Scituate | By Right | No | | 98 | |
| Stoneham | By Special Permit | Yes | 6,5,1 | 50 to 60 | There have been 50 – 60 approvals, but the special permit is no longer valid when the family member moves out, so not all of those units are currently permitted. |
| Swampscott | By Special Permit | No | 0,0,1 | 5 to 10 | |
| Wenham | By Special Permit | No | 3,2,0 | 24 as of 2008 | |
| Westwood | By Special Permit | No | | At least 45. | |
| Wilmington | By Right | No | 0,6,12 | | The 2001 Master Plan mentions 27 permitted ADUs. |

The following lists are up-to-date as of the time the zoning was reviewed by the researcher during 2017 and 2018. In some cases, the zoning might have been amended in the time period between the data collection and publication of the paper. For example, municipalities surveyed in the fall of 2017 might have amended their zoning at Town Meeting in the spring of 2018, and the change would not be reflected here.

Municipalities that allow ADUs without restricting occupancy to relatives of the homeowner:

Acton
Bedford
Belmont
Bolton
Burlington
Cambridge
Canton
Carlisle
Cohasset
Concord
Dedham
Dover
Duxbury
Hamilton
Hudson
Ipswich
Lexington
Lincoln
Littleton
Manchester
Marshfield
Medfield
Milford
Newton
Reading
Rockport
Scituate
Southborough
Stow
Sudbury
Swampscott
Waltham
Wayland
Wenham
Weston
Westwood
Wilmington

Municipalities that allow ADUs but restrict residency to relatives of the homeowner, caretakers, elderly people, or qualifying low-income households.

Ashland
Bellingham
Beverly
Boxborough
Brookline
Danvers
Foxborough
Gloucester
Hanover
Holbrook
Holliston
Hopkinton
Lynnfield
Maynard
Medway
Melrose
Millis
Milton
Norwell
Peabody
Pembroke
Randolph
Rockland
Sharon
Sherborn
Stoneham
Stoughton
Topsfield
Wakefield
Walpole
Weymouth

Municipalities that lack zoning for ADUs (although in some of the municipalities, building inspectors do grant permits for ADUs):

Arlington
Braintree
Chelsea
Essex
Everett
Framingham
Franklin
Hingham
Hull
Lynn
Malden
Marblehead
Marlborough
Medford
Middleton
Nahant
Natick
Needham
Norfolk
North Reading
Norwood
Quincy
Revere
Salem
Saugus
Somerville
Watertown
Wellesley
Winchester
Winthrop
Woburn
Wrentham

## About the Author

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## About Pioneer

Pioneer Institute is an independent, non-partisan, privately funded research organization that seeks to improve the quality of life in Massachusetts through civic discourse and intellectually rigorous, data-driven public policy solutions based on free market principles, individual liberty and responsibility, and the ideal of effective, limited and accountable government.

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