

BERKSHIRE PLANNING TOOLS



One in a series of “toolbox” items to accompany the Regional Plan for the Berkshires

June 2002

Accessory apartments

What is an Accessory Apartment?

An accessory apartment is a self-contained living unit, which is built into or attached to an existing single family dwelling. The apartment is private and generally smaller than the primary unit and usually contains one or two bedrooms, a bathroom, sitting room, and kitchen. However, the two units may share an entrance, yard, parking spaces, and/or utilities.

Accessory apartments can be located in any part of a house depending on the availability of usable space. Spaces that could have the potential for conversion into an accessory unit include attics, a basement portion of a split foyer house, a walk-out basement area, attached garages, and any finished living area in any portion of a house that could physically and aesthetically accommodate a small room addition.

An accessory apartment is not a duplex unit or a structure tacked to the side of a house. An accessory apartment is customarily considered incidental to the existing principal structure or use of the premises. Municipalities typically regulate the location, size, floor ratio, number of bedrooms, etc., either by “by-right” or special permit zoning ordinances or bylaws.

Accessory apartments can also be referred to as accessory dwelling units (ADU), “in-law apartments”, “secondary units”, “single-family conversions”, or a “garage apartment”.

Who Benefits from Accessory Units?

A diverse range of people can benefit from having the option of accessory apartments. These are examples of people who may benefit from having an accessory apartment:

- Accessory units can provide extra income to help homeowners meet their mortgage payments and other housing costs.
- Older singles or couples living in a large home with unused space who might want to share the space and help offset costs.
- Middle aged couples or “empty-nesters” whose children have grown up and moved out of the household leaving empty bedrooms.
- Middle aged children who desire private living corridors while maintaining a place for elderly parents who can also have privacy, but live within close proximity.
- Young singles or couples who need additional income to help pay the mortgage.
- People who spend a significant amount of time traveling or who maintain a second home in another region of the country, but who do not want to leave their primary home unattended.
- Single working parents who can have tenants help with the maintenance of residences and

who are available to provide babysitting.

- Accessory apartments allow the elderly additional companionship and other family members to be close to the elderly person, if an accident were to occur.
- Accessory apartments can also provide a means for adult children to give care and support to a parent in a semi-independent living arrangement. This can reduce the costs of medical care for the elderly who can receive less expensive, in-home care services while living in an accessory apartment, rather than having to move to a more costly nursing home or long term health care facility.

How Can Accessory Apartments Be Beneficial To a Community?

Accessory Apartments can benefit a community in the following ways.

- Accessory units can provide a cost-effective way to serve development needs through the use of existing infrastructure, rather than requiring the construction of new infrastructure.
- Accessory apartments can also be beneficial because they can increase the supply of affordable housing in a community without the use of government subsidies.
- Accessory apartments can integrate affordable housing more uniformly in the community.
- They can foster better housing maintenance and neighborhood stability.
- Accessory apartments protect property values and the single-family residential character of a neighborhood.
- Accessory apartments encourage a more balanced and diverse population and income mix.

- Accessory apartments can fit into residential neighborhoods without significant negative impacts because these areas are typically designed for households with more persons than are presently occupying these areas.
- Accessory apartments can enhance job opportunities for individuals by providing housing nearer to employment centers and public transportation.
- Accessory apartments can help to meet goals of protecting farmland and environmental resources by creating more housing opportunities within existing developed areas.
- Accessory apartments can add to the local property tax base.
- By keeping more residents within the concentrated developed areas, accessory apartments can reduce capital costs for the provision of municipal services and ultimately reduce sprawl.

Accessory apartments, like the houses in which they are located, come in a wide variety of shapes and configurations. To the extent feasible, the creation of an accessory unit in a house should not compromise the visual integrity of the single-family home and neighborhood.

Steps in Launching an Accessory Apartment Project

For those community leaders who think accessory apartments may pose an opportunity to benefit the community, the first step is to gather a group of interested persons who can shepherd the process of program development in an organized manner. It is important that the group include representatives from the private, public and non-profit sectors.

The group will be responsible for building a strong foundation for the program – gathering information, analyzing and interpreting data,

documenting need and sharing the results of the “fact-finding” mission with a broad cross-section of the community. Basic information about the status and nature of the housing stock is essential. This study may include the following:

- Estimating the amount and relative quality of existing housing stock that lends itself to inexpensive conversions.
- Determining whether elderly persons whose homes contain excess living space would be willing to consider making a conversion.
- Identifying the distribution of homeowners who are having financial difficulty in maintaining their home.
- Calculating the aggregate demand for smaller housing units based upon the existing housing composition and expected rates of new household information.
- Evaluating the overall physical condition of the existing housing stock.
- Determining if any illegal apartments already exist in single-family zones and neighborhoods.
- Evaluating community and neighborhood support or resistance to accessory apartment conversions.

How Can Accessory Apartments Be Allowed In a Community?

Many communities have permitted and regulated the use of accessory apartments. The following are mechanisms that can be used to permit and regulate accessory apartments. A sample bylaw is also attached at the end of this toolbox.

“By Right” Zoning Bylaw or Ordinance: Town meeting or the City Council passes a specific zoning bylaw or ordinance, which allows the creation of an accessory apartment in specified zones as part of an owner-occupied single-family dwelling unit at any time with

approval of the Building Inspector and/or Board of Health Inspector.

Special Permits: Town meeting or City Council passes a zoning regulation to review each application for an accessory apartment by special permit. After a public hearing, the Special Permit Granting Authority makes a decision to allow or deny an application based upon an established set of criteria or conditions designed to judge the impact upon the neighborhood. The permit is usually granted to the applicant and not the property.

Other Considerations

Communities that prohibit accessory units often already have them in their residential neighborhoods. Some communities, in fact, adopt accessory apartment ordinances or bylaws in part to bring homeowners with pre-existing non-conforming or illegal units within the law. This allows the municipality the ability to check on a unit’s safety without evicting the tenants.

In order to bring these units into compliance, a municipality should consider the adoption of basic accessory apartment zoning regulations that provide criteria for which the Building Inspector can make a determination of compliance with the conditions and regulations as set forth. In many instances these new regulations allow homeowners with illegal units grace periods for complying with local regulations. However it should be clear that failure to apply for a permit during the designated grace period deems the unit as illegal and in violation of the codes.

Communities that desire to incorporate further refinements and safeguards into the conversion review process can also, in some instances, place the following types of specific optional provisions into the regulations¹:

¹ Cram, Leo L. “Accessory Apartments,” Missouri Gerontology Institute, University of Missouri-Columbia.

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- Requiring that a homeowner reside in one of the living units within the house.
- Restricting the conversion option to senior citizens over a specified age.
- Restricting the conversion to home which were constructed prior to a given date.
- Requiring a minimum square footage as a prerequisite for house to be considered eligible for a conversion.
- Specifying the particular zoning districts where conversions may be considered eligible.
- Permitting conversions only by homeowners who have resided in the home for a designated number of years prior to making an application for a conversion.
- Prohibiting exterior modifications to the house.
- Specifying minimum floor sizes for accessory apartments requiring that a conversion not exceed a designated percentage of the total floor space of the house.
- Encouraging barrier-free design considerations for persons with handicaps or limited mobility.

Summary

Despite the community and personal benefits of allowing accessory apartments, there is often resistance by the greater community or individual homeowners. Multi-family housing and especially rental housing is often perceived as threatening to an area's appearance due to concerns over increased density and bringing in "less desirable" people into established neighborhoods.

While accessory apartment conversions may not be for everyone, nor is it appropriate for all neighborhoods and communities, it is important for a municipality to recognize the diverse housing needs of their communities. The overriding objective of any housing program should be to provide creative, flexible and cost-effective housing options to a diverse array of individuals and families.

In the Berkshires, several municipalities have been successful in preparing and adopting regulations related to accessory dwelling units. Currently, the Towns of Adams, Alford, Great Barrington, Otis, Richmond, Tyringham and West Stockbridge have varying zoning mechanisms in place to provide for the development of accessory apartments.

This publication is one in a series of "toolbox" items to support the Regional Plan for the Berkshires. If you would like to receive additional copies of this or other toolbox items, please contact the Berkshire Regional Planning Commission, 1 Fenn St., Pittsfield, MA 01201 or call (413) 442-1521. Copies of the toolbox items are also available on the web. Visit www.berkshireplanning.org

**ACCESSORY RESIDENTIAL USE
MODEL BYLAW
June 2002**

COMMENTS

I. Introduction

Accessory apartments shall be permitted in all districts [note 1] as noted in the Table of Use Regulations only upon a Special Permit from the Special Permit Granting Authority [note 2] and in accordance with the additional requirements specified herein.

II. General Description [note 3]

An accessory apartment shall mean a separate housekeeping unit, complete with its own sleeping, cooking and sanitary facilities, that is contained within the structure of a single-family dwelling, but functions as a separate unit. An accessory apartment shall have not more than one bedroom. It shall be contained within an existing single-family dwelling, or if added to the exterior of a single-family dwelling, shall be designed to maintain the appearance of a single-family dwelling with a separate entrance located on the side or rear of the building.

III. Purpose

The purposes [note 4] of the accessory apartment bylaw are to:

- a. Provide older homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- b. Add inexpensive rental units to the housing stock to meet the needs of smaller households, both young and old;
- c. Make housing units available to low and moderate income households which might otherwise have difficulty finding homes within the town;
- d. Protect stability, property values and the residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses and under such additional conditions as may be appropriate to further the purposes of this bylaw; and
- e. Legalize conversion to encourage compliance with the State Building Code.

IV. Standards and Requirements

The SPGA may authorize a Special Permit for a use known as a Accessory Apartment in an Owner-Occupied, Single-Family Dwelling, provided the following standards and requirements are met:

1. The Town should determine if Accessory Apartments will be allowed in all zoning districts or just specific zones and either by right or by special permit.
2. The Town must specify whether the Planning Board, Zoning Board of Appeals or Select Board will act as the Special Permit Granting Authority (SPGA).
3. Either include a general description in the bylaw section or in the Zoning Bylaw's definition section.
4. The Purpose section should be customized to reflect the Town's goals as outlined in any recent comprehensive plan.

- a. The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the original unit [note 5].
- b. Only one apartment will be created within a single-family house.
- c. The lot on which the single-family house is located must meet the minimum lot size requirement and must comply with other applicable zoning requirements for its district.
- d. The owner of the residence in which the accessory apartment is located shall occupy at least one of the dwelling units on the premises [note 6].
- e. The accessory apartment shall be designed so that the appearance of the building remains that of a single-family residence as much as feasibly possible. In general, any new entrances shall be located on the side or rear of the building. Any exterior changes made must conform with the single-family character of the neighborhood.
- f. All stairways to second or third stories shall be enclosed within the exterior walls of the dwelling, to the extent feasible.
- g. There shall be no enlargements or extensions of the dwelling in connection with any accessory apartment except for minimal additions necessary to comply with building, safety or health codes, or for enclosure of an entryway, or for enclosure of a stairway to a second or third story.
- h. An addition to the original building is permitted, provided that the addition does not increase the floor area or volume of the original building by more than ten (10) percent [note 7] and the addition will not alter the character of the building.
- i. The accessory apartment shall be clearly a subordinate part of the single-family dwelling. It shall not have more than one (1) bedroom [note 8].
- j. At least two off-street parking spaces per dwelling unit shall be available for use by the owner-occupant(s) and tenant(s). Parking spaces shall be located to the side or rear of the structure, to the extent feasible.
- k. The Health Officer shall certify [note 9] that the means of water supply and sanitary disposal shall be adequate to support both dwelling units [note 10].
- l. The construction of any accessory apartment must be in conformity with the State Building Code requirements.

V. Application Procedure

- 1. The procedure for the submission and approval of a Special Permit by the SPGA for an Accessory Apartment in an Owner-Occupied,

5. The units may share some items such as heat, water, sewer, electricity, etc.

6. These criteria continue to stress that an accessory apartment use is *Incidental* to the primary use as a single-family dwelling unit.

7. The Town should determine what is an appropriate allowed percent or total square feet increase based on the character of their community.

8. The Town should determine the total number of bedrooms to be allowed.

9. Evidence of the Board of Health's certification must accompany any special permit or building permit application.

10. The Town may restrict accessory apartments to only those single-family dwelling units that are served by municipal sewer and water.

Single-Family Dwelling shall be the same as prescribed in the Special Permit section of this bylaw, except it shall include a notarized letter of application from the owner(s) stating that he/they will occupy one of the dwelling units on the premises.

2. A non-refundable fee shall be included with the application for an accessory apartment to cover the cost of processing the application. The applicant shall be responsible for the costs of legal notices. As part of the public hearing process, parties of interest, as defined in M.G.L. Chapter 40A, §11 must be notified.
3. In order to provide for the development of housing units for disabled and handicapped individuals, the SPGA will allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

VI. Special Permit for Pre-Existing Non-Conforming Unit

1. Upon presentation of evidence of construction prior to [date of the first publication of notice of the public hearing of the new zoning bylaw], the owner may apply to the SPGA for a special permit for maintenance of a pre-existing non-conforming apartment unit [note 11].
2. The SPGA shall ordinarily grant a special permit for the existing non-complying second dwelling unit unless specific evidence is submitted supporting any claim that the unit has caused a deterioration of the single-family neighborhood or has caused any other substantial detrimental effect on the public welfare and convenience. In weighing such claims and evidence, the SPGA shall consider whether any changes required to bring the second dwelling unit into compliance are sufficient to counteract any prior negative impact.
3. In granting a special permit, the SPGA may impose such additional conditions as it may deem necessary to protect the single-family appearance of the dwelling, and to bring the dwelling as close to conformity with the conditions and requirements for new accessory apartments, as is feasible.
4. If a special permit is granted and corrective changes are required, they must be completed within 90 days of the date of granting the permit. When required changes are completed, the Building Inspector will issue a certificate of occupancy.
5. If a special permit is denied, the second dwelling unit shall be terminated within one year of the date of the denial.

11. A zoning ordinance or bylaw shall not apply to structures or uses *lawfully* in existence or *lawfully* begun, or to a building or special permit issued before the first publication of a notice of the public hearing to adopt new or amendments to such zoning ordinance or bylaw.