



To: Town Council

Fr: Paul Bockelman
Town Manager

Dt: May 17, 2021

Re: Amendments to Zoning Bylaw Article 5: Accessory Uses
Section 5.011: Supplemental Dwelling Units

Executive Summary

I request that the Town Council review and adopt amendments to Article 5: Accessory Uses, Section 5.011: Supplemental Dwelling Units of the Amherst Zoning Bylaw. These amendments have been drafted by Town staff, led by Planning Director Christine Brestrup and Building Commissioner Robert Morra, who also produced the content of this memorandum. The proposal is to repeal the existing Section 5.011: Supplemental Dwelling Units and replace it with a new Section 5.011: Accessory Dwelling Units

The purpose of this zoning amendment is to ease the permitting requirements for supplemental dwelling units by increasing the maximum square footage allowed to 1,000 square feet, creating a more streamlined permitting pathway, and adding design guidelines.

Background

During the entire year of 2020 the Planning Board and the Community Resources Committee (CRC) of the Town Council worked together on a list of zoning priorities that they hoped to develop to present to Town Council. This work culminated in a list of zoning priorities. On January 4, 2021, the Town Council voted to direct the Town Manager to present zoning amendments to the Town Council.

At the same time, the Planning Department and Building Commissioner had developed a list of zoning priorities, some of which overlapped with those developed by the Planning Board and the CRC.

Since February 2021, Planning Department staff and the Building Commissioner have been working with the Community Resources Committee and the Planning Board to develop zoning amendments to address these zoning priorities, along with priorities of the Planning Department and the Building Commissioner.

Revising Supplemental Dwelling Units (also known as Accessory Dwelling Units) was one of the Town Council priorities. It is now ready to be presented to Town Council.

History

In 1968, Town Meeting amended the Zoning Bylaw to allow Supplemental Apartments within single-family homes in the R-O (Outlying Residence) zoning district. Subsequent amendments expanded this accessory use to all residential zoning districts, except R-F (Fraternity Residence).

In 2014, Town Meeting amended the Zoning Bylaw to add new categories of Supplemental Dwelling Units, including Supplemental Apartment I, Supplemental Apartment II and Supplemental Detached Dwelling Units. Existing requirements and limitations remained in effect:

- Owner occupancy required
- Only one supplemental dwelling unit allowed on the property of a single family house
- No additional lot area per dwelling unit needed
- Limitation on the number of adults who could occupy the unit (3)
- Property may not be used simultaneously for accessory lodging, under Section 5.010 of the Zoning Bylaw
- Units limited in size to a minimum of 350 square feet and a maximum of 800 square feet, or 900 square feet if fully accessible under ADA requirements.

Property owners who were interested in constructing Supplemental Dwelling Units began to complain to the Planning Department staff about the maximum size limitation. These property owners found that 800 square feet was not large enough for their elderly relatives to live comfortably, to have enough storage space and a guest room.

In the spring of 2018 Town Meeting considered a zoning amendment that would have increased the size of Supplemental Detached Dwelling Units to 1,000 square feet (or 1,100 square feet if fully ADA accessible). The amendment received a majority of Town Meeting members' support, but did not receive the 2/3 required to pass. Some Town Meeting members who did not vote in favor of the amendment stated that they did not vote for it because Town Council would be taking its seat in December 2018, and these Town Meeting members felt that adoption of non-urgent zoning amendments should be left up to the new Town Council.

In 2021, the state passed the Massachusetts Housing Choice Act, which included efforts to boost the supply of housing in the state. It included a provision to allow Accessory Dwelling Units of up to half the floor area of the principal dwelling, or 900 square feet, whichever is smaller, that could be approved "as of right" or without the need for a special permit, to be adopted by a simple majority of a legislative body, in Amherst the Town Council. Although the proposed zoning amendment does not fall under the Housing Choice Act allowance for passage by a simple majority because it proposes units of up to 1,000 square feet, it is important to recognize the strong support that Accessory Dwelling Units have at the state level.

Rationale

Accessory Dwelling Units (ADUs) are small-scale dwelling units that allow homeowners the opportunity to provide housing for relatives and others associated with a household and for the generation of income from tenants.

ADUs are an important tool to meet the housing needs of Amherst. This Zoning Bylaw change will make it easier to develop ADUs in Amherst.

ADUs promote affordability by:

- Generating income to help homeowners cover mortgage payments;
- Allowing a dwelling unit to be built on land that is already owned by the homeowner;
- Providing small-scale housing in majority single-family neighborhoods;
- Allowing the development of “middle housing” between apartments and large homes.

ADUs provide opportunities for multi-generation housing and flexibility because they:

- Offer young people and young families entry-level housing choices;
- Enable families to expand beyond their primary home;
- Provide empty-nesters the option of moving/downsizing into a smaller space and renting out their larger home;
- Offer grandparents a place to live close to their children and grandchildren.

ADUs provide a way to help with the housing crisis by:

- Offering a way to include smaller, relatively affordable homes in established neighborhoods with minimal visual impact and without adding to sprawl;
- Requiring fewer resources to build and maintain;
- Using much less energy for heating and cooling (especially in contained units).

Process

The proposed zoning amendment would repeal the existing Section 5.011 from Article 5: Accessory Uses, of the Zoning Bylaw. It would insert a new Section 5.011 into Article 5: Accessory Uses, of the Zoning Bylaw.

The proposed zoning amendment would do the following:

- Change the name from Supplemental Dwelling Units to Accessory Dwelling Units to be more consistent with Federal, State, Industry and other municipalities’ terminology.
- Simplify the bylaw structure to identify three discrete types of ADUs (Contained, Attached, and Detached).
- Rename the types of Supplemental Dwelling Units allowed in Amherst:
 - Rename Supplemental Apartment I to Contained Accessory Dwelling Unit;
 - Rename Supplemental Apartment II to Attached Accessory Dwelling Unit;
 - Rename Supplemental Detached Dwelling Unit to Detached Accessory Dwelling Unit.
- Increase the maximum square footage to 1,000 square feet and eliminate the minimum square footage.
- Eliminate the requirement related to Attached Accessory Dwelling Units that states that they may not increase the size of the primary structure by more than 10% (although the ADU must still be equal to or less than 1,000 square feet).
- Change the permitting requirements as follows:

- Allow Contained ADUs by-right if they meet general requirements;
- Allow Attached ADUs by right if they meet general requirements;
- Allow Detached ADUs with Habitable Space less than 50% of the primary structure's Habitable Space by-right if they meet general requirements;
- Allow Detached ADUs with Habitable Space more than 50% of the primary structure's Habitable Space by Special Permit from the ZBA;
- Habitable Space is defined in Section 12 of the Zoning Bylaw.
- Add design guidelines requiring that architecture and scale of any ADU is compatible with the primary structure.
- Require, to the extent feasible, that newly constructed detached ADUs be built behind the front building line of the primary structure.
- Remove the Special Permit pathway for ADUs that do not meet General Requirements. (In other words, all ADUs must meet the General Requirements. There is no waiver or modification available through the granting of a Special Permit.)

Existing requirements and limitations remain in effect as follow:

- Owner occupancy required;
- Only one supplemental dwelling unit allowed on the property of a single family house;
- No additional lot area per dwelling unit needed;
- Limitation on the number of adults/unrelated residents who can occupy the unit (3);
- Property may not be used simultaneously for accessory lodging, under Section 5.010 of the Zoning Bylaw.

Proposal

The Town Manager, led by the Planning Department, is requesting that the Town Council review and adopt the attached amendments to repeal the existing Section 5.011 from Article 5: Accessory Uses, of the Zoning Bylaw, and insert a new Section 5.011 into Article 5: Accessory Uses.

The purpose of this change is to make it easier to develop Accessory Dwelling Units to help to meet expanding housing needs in Amherst.

We anticipate the Town Council will refer the proposed amendments to the Planning Board and Community Resources Committee for a public hearing. Town staff stand ready to assist the Planning Board and CRC in their deliberations.

See the following pages for existing language proposed to be repealed and new language proposed to be inserted into the Zoning Bylaw.

EXISTING SECTION OF THE ZONING BYLAW TO BE REPEALED

ARTICLE 5: ACCESSORY USES

SECTION 5.011: SUPPLEMENTAL DWELLING UNITS

5.011 Supplemental Dwelling Units

Supplemental dwelling units as defined under this section are intended to meet the changing housing needs of owner-occupied households, including housing for relatives and others associated with the household, and the provision of small, individual rental units. As accessory uses, supplemental dwelling units are exempt from the additional lot area/family requirements of Table 3. Only one (1) supplemental dwelling unit shall be permitted as accessory to a one family detached dwelling.

5.0110 Supplemental Apartment

A supplemental apartment is a small accessory dwelling unit incorporated as part of and subordinate to an existing one family detached dwelling.

1. Supplemental Apartment I - A supplemental apartment which is located entirely within an existing one family detached dwelling and requires no significant external changes to the dwelling or site beyond entrances and windows required by the building code. A Supplemental Apartment I shall be permitted in all residential zoning districts except the R-F District following review of the proposed accessory use by the Building Commissioner and verification that it meets the requirements of this Bylaw, including but not limited to the following:
 - a. One of the dwelling units shall be occupied by the owner(s) of the principal one family detached dwelling as their principal residence. Neither unit may be used for accessory lodging under the provisions of Section 5.01.
 - b. The supplemental apartment shall not be occupied by more than three (3) adult residents.
 - c. The supplemental apartment and property shall be operated in accordance with a Management Plan submitted to and approved by the Building Commissioner. Upon any change in ownership, a new Management Plan shall be filed in a timely manner with the Building Commissioner for review and approval.
 - d. Any dwelling unit on the property being rented shall be registered and permitted in accordance with the Residential Rental Property Bylaw.
 - e. Parking shall be provided and designed in accordance with Article 7 of this Bylaw.
 - f. All exterior lighting shall be designed and installed so as to be shielded or downcast, and to avoid light trespass onto adjacent properties.

- g. On-site storage and management of waste and recycling shall occur on the interior of the dwelling or within an attached garage or other accessory outbuilding. There shall be no freestanding dumpster or storage unit associated with a property regulated under this section, except on a temporary basis in association with construction or similar temporary purposes.
- h. A reflective street address sign for each unit shall be installed at the street in a manner ensuring their visibility for public safety personnel from any approach.

Any Supplemental Apartment I which in the judgment of the Building Commissioner does not meet these requirements shall require a Special Permit from the Zoning Board of Appeals.

- 2. Supplemental Apartment II - A supplemental apartment which involves significant changes to the existing one family detached dwelling, including but not limited to external fire escape structures, exterior additions not exceeding ten percent (10%) of the footprint of the habitable portions of the existing building, and other similar changes which result in a significant alteration to the appearance and function of the building or site. A Supplemental Apartment II shall require a Special Permit granted by the Zoning Board of Appeals in the R-G, R-VC, R-N, R-O, and R-LD Districts.

5.0111 Supplemental Detached Dwelling Unit

A supplemental detached dwelling unit shall be a small freestanding accessory one family detached dwelling permitted to co-occur on a residential property as supplemental and incidental to a one family detached dwelling. A supplemental detached dwelling unit may be the result of new construction or rehabilitation of an existing structure resulting in a unit meeting the general requirements of this section.

Supplemental detached dwelling units shall require a Special Permit from the Zoning Board of Appeals in the R-G, R-VC, R-N, R-O, and R-LD Districts.

5.0112 General Requirements. The following standards shall apply to supplemental dwelling units (supplemental apartments and supplemental detached dwelling units):

- 1. There shall be not less than 350 square feet nor more than 800 square feet of habitable space in any supplemental dwelling unit, except that any such dwelling unit built and maintained as fully accessible under the provisions of the Americans with Disabilities Act (ADA) may include a maximum of 900 square feet in habitable space.
- 2. No one family detached dwelling in which a supplemental apartment is constructed or upon the property of which a supplemental dwelling unit is built may be used simultaneously for accessory lodging under any provision of Section 5.010, nor shall any supplemental dwelling unit built upon the property of such a one family dwelling be so used.
- 3. One of the dwelling units on the property shall be occupied by the owner(s) of the principal one family residence, which requirement shall be made a condition of any Special Permit issued under this section.

4. Notwithstanding the provisions of Article 12, a supplemental dwelling unit shall be occupied by a total of no more than three (3) adult residents.
5. The design review principles and standards established under Section 3.204 shall be applied to all accessory uses under this section, and the review and recommendation of the Design Review Board may be sought by the Building Commissioner, Permit Granting Board, or Special Permit Granting Authority.

PROPOSED NEW SECTION OF THE ZONING BYLAW TO BE INSERTED

ARTICLE 5: ACCESSORY USES

SECTION 5.011: ACCESSORY DWELLING UNITS

5.011 Accessory Dwelling Units

Accessory dwelling units, as defined under this section, are intended to meet the changing housing needs of owner-occupied households, including housing for relatives and others associated with the household, and the provision of small, individual rental units. As accessory uses, accessory dwelling units are exempt from the additional lot area/family requirements of Table 3. Only one (1) accessory dwelling unit shall be permitted as accessory to a one-family detached dwelling.

5.0110 **Contained Accessory Dwelling Unit** - An accessory dwelling unit which is contained entirely within an existing or new one family detached dwelling and requires no significant external changes to the dwelling or site beyond entrances and windows required by the building code.

- a. A Contained Accessory Dwelling Unit shall be permitted in the R-G, R-VC, R-N, R-O, and R-LD Districts, following review of the proposed accessory use by the Building Commissioner and verification that it meets the requirements of this Bylaw and the General Requirements found below in Section 5.0113.

5.0111 **Attached Accessory Dwelling Unit** – An accessory dwelling unit which is attached to and involves significant changes to the existing one-family detached dwelling, including but not limited to, external fire escape structures, exterior additions, and other similar changes which result in a significant alteration to the appearance and function of the building or site.

- a. An Attached Accessory Dwelling Unit shall be permitted in the R-G, R-VC, R-N, R-O, and R-LD Districts, following review of the proposed accessory use by the Building Commissioner and verification that it meets the requirements of this Bylaw and the General Requirements found below in Section 5.0113.

5.0112 **Detached Accessory Dwelling Unit** - A Detached Accessory Dwelling Unit shall be a small, freestanding, accessory, one-family, detached dwelling permitted to co-occur on a residential property as accessory and incidental to a one family detached dwelling. An accessory detached dwelling unit may be the result of new construction or rehabilitation of an existing structure resulting in a unit meeting the general requirements of this section.

- a. A Detached Accessory Dwelling Unit resulting from new construction with Habitable Space greater than 50% of the Habitable Space of the primary one-family dwelling, is allowed by a Special Permit from the Zoning Board of Appeals in the R-G, R-VC, R-N, R-O, and R-LD Districts.
- b. A Detached Accessory Dwelling Unit with Habitable Space less than 50% of the Habitable Space of the primary one-family dwelling, shall be permitted in the R-G, R-VC, R-N, R-O, and R-LD Districts, following review of the proposed accessory use by the Building Commissioner and verification that it meets the requirements of this Bylaw and the General Requirements found below in Section 5.0113.

5.0113 General Requirements. The following standards shall apply to all accessory dwelling units:

- a. Only one (1) accessory dwelling unit shall be permitted as accessory to a single-family detached dwelling.
- b. There shall be not more than 1,000 square feet of Habitable Space in any accessory dwelling unit.
- c. One of the dwelling units on the property shall be occupied by the owner(s) of the principal one family residence, which requirement shall be made a condition of any Special Permit or approval by the Building Commissioner issued under this section
- d. No one family detached dwelling in which an accessory dwelling unit is constructed or upon the property of which an accessory dwelling unit is built may be used simultaneously for accessory lodging under any provision of Section 5.010, nor shall any accessory dwelling unit built upon the property of such a one family dwelling be so used.
- e. Notwithstanding the provisions of Section 12, a supplemental dwelling unit shall be occupied by a total of no more than three (3) unrelated residents.
- f. The accessory dwelling unit shall meet the definition of a Dwelling Unit as defined in Section 12.
- g. The accessory dwelling unit and property shall be operated in accordance with a Management Plan submitted to and approved by the Building Commissioner. Upon any change in ownership, a new Management Plan shall be filed in a timely manner with the Building Commissioner for review and approval.
- h. Any dwelling unit on the property being rented shall be registered and permitted in accordance with the Residential Rental Property Bylaw.
- i. To the extent feasible, newly constructed Detached Accessory Dwelling Units shall be located behind the front building line of the primary structure.
- j. Adequate parking shall be provided to ensure proper maneuverability and parking on paved surfaces.
- k. All exterior lighting shall be designed and installed so as to be shielded, downcast, and dark-sky compliant to avoid light trespass onto adjacent properties.
- l. On-site storage and management of waste and recycling shall occur on the interior of the dwelling, within an attached garage or other accessory outbuilding, or screened appropriately from public view. There shall be no freestanding dumpster or storage unit associated with a property regulated under this section, except on a temporary basis in association with construction or similar temporary purposes.
- m. A reflective street address sign for each unit shall be installed at the street in a manner ensuring their visibility for public safety personnel from any approach.

- n. The accessory dwelling unit shall be designed so that the appearance and scale of the building is compatible with the primary single-family dwelling unit. Detached Accessory Dwelling Units shall be clearly accessory to the primary dwelling unit.
- o. The Building Commissioner or Permit Granting Authority shall determine the applicability of any provision of Section 10.38 when reviewing Accessory Dwelling Unit applications.
- p. For Contained and Attached Accessory Dwelling Units, to the extent feasible, any new entrances shall be located on the side or rear of the building and any exterior changes must conform to the character of the neighborhood.
- q. The design review principles and standards established under Section 3.204 shall be applied to all accessory uses under this section, and the review and recommendation of the Design Review Board may be sought by the Building Commissioner, Permit Granting Board, or Special Permit Granting Authority.