THE PLANNING & ZONING ADVISORY COMMISSION
FOR THE TOWN OF DEWEY-HUMBOLDT
WORK SESSION MEETING NOTICE
Thursday, March 28, 2013 6:00 P.M.

P&Z WORK SESSION MEETING **COUNCIL CHAMBERS, TOWN HALL**
2735 S. HWY 69 **DEWEY-HUMBOLDT, ARIZONA**

AGENDA

The issues that come before the Planning & Zoning Advisory Commission are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Commission believes that the meeting be a safe place for people to speak. With this in mind, the Commission asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Agenda items may be taken out of order .Please turn off all cell phones. The Commission meeting may be broadcast via live streaming video on the internet in both audio and visual formats. A quorum of Council may be present. One or more members of the Commission may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

NO LEGAL ACTION IS SCHEDULED FOR THIS AGENDA.

1. **Call To Order.**
2. **Roll Call.** Commissioners Chris Berry, Dee Parker, Jeff Siereveld and Chair Claire Clark.
3. **Study Agenda.** No legal action to be taken.

Page 3 **3.1. Accessory Dwelling Units.**

Page 33 **3.2. Illegal Lot Divisions.**

4. **Comments from the Public**. The Commission wishes to hear from Citizens at each meeting. Those wishing to address the Commission need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Commission. Individuals may address the Commission on any issue within its jurisdiction. At the conclusion of Comments from the Public, Commissioners may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Commissioners are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Comments from the Public is ***20*** minutes. A 3-minute time limit may be imposed on individuals within this total. The audience is asked to please be courteous and silent while others are speaking.
5. **Adjourn.**

For Your Information:
Next Town Council Meeting: Tuesday, April 2, 2013 at 6:30 p.m.
Next Town Council Work Session: Tuesday, April 9, 2013 at 2:00 p.m.
Next Planning & Zoning Commission Meeting: Thursday, April 4, 2013 at 6:00 p.m.
If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and

type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

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By: _____, Town Clerk's Office.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.

TOWN OF DEWEY-HUMBOLDT
P.O. BOX 69
HUMBOLDT, AZ 86329
Phone 928-632-8562 ▪ Fax 928-632-7365

MEETING OF THE TOWN PLANNING & ZONING ADVISORY COMMISSION

March 28, 2013 6:00 p.m. Town Council Meeting Chambers

Agenda Item
To: Planning & Zoning Advisory Commission
From: Warren Colvin, Community Development Coordinator
For: Chair Claire Clark

Date Submitted: March 18, 2013

Agenda Item: Accessory Dwelling Units

Recommendation: Discussion and possible action on Accessory Dwelling Units, Secondary Medical Dwelling Units and Guest Homes.

Summary: ADU's are allowed in R1L and R1 zoning districts as long as they meet the required setbacks and stay under the maximum lot coverage. The Town's General Plan goals specifically state to maintain low-density, rural small town characteristics. Is allowing an additional full-time occupied dwelling-unit on a parcel in compliance with the General Plan? Although staff believes there should be some provisions to allow an additional dwelling unit, I believe that setting certain criteria based on lot size would be the most effective way to deal with this issue.

Secondary Medical Dwelling Units: The current Town Code only has this term in the definition section of the code. Nowhere in the Code does it say where they can be located. Staff believes that during an earlier code rewrite this was to be taken out of the code entirely but was not removed from the definitions. Staff's recommendation is to remove this definition and not pursue allowing SMDU's as they are almost impossible to enforce.

Guest Homes: After researching with other jurisdictions this seems to be the way most incorporated areas in our county are dealing with any additional dwelling unit. Some allow kitchens and others do not. Guest homes are very difficult to enforce based on time allowed to stay and making sure they do not turn into rental units.

Staff's recommendation is to allow an ADU attached or detached in R1L and R1 zoned districts as long as the parcel is a minimum of 3.5 acres. This would stay consistent with the provisions of the General Plan allowing 1 dwelling unit per 70,000 square feet of property and maintaining the low-density, rural small town characteristics. Furthermore, staff feels that with the provisions of the ADU that the need for guest homes and secondary medical dwelling units in the code would be confusing and contradict this provision and would recommend these be removed from the code.

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TOWN OF DEWEY-HUMBOLDT

PLANNING & ZONING ADVISORY COMMISSION
JOINT MEETING WITH TOWN COUNCIL MINUTES
APRIL 5, 2012, 6:00 P.M.

A JOINT MEETING OF THE DEWEY-HUMBOLDT PLANNING AND ZONING COMMISSION AND TOWN COUNCIL WAS HELD ON THURSDAY, APRIL 5, 2012, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. CHAIR BOB BOWMAN PRESIDED.

1. **Call To Order.** The meeting was called to order at 6:10PM. Chair Bob Bowman presided.
2. **Opening Ceremonies.**

   2.1. Pledge of Allegiance. Made.
3. **Roll Call.** Commissioners Arlene Alen, Chris Berry, Claire Clark, Andy Peters, Mel Scarbrough, and Chair Bob Bowman were present. Commissioner Glen Allen was absent.
4. **Disclosure of Ex Parte Contacts. None.**
5. **Announcements Regarding Current Events. None.**
6. **Consent Agenda.**

   6.1. Minutes. Minutes from the February 9, 2012 Meeting.

   Arlene Alen made a motion to approve the February 9, 2012 minutes, seconded by Chris Berry. No vote was taken therefore these minutes will be on the agenda for approval at the next Planning & Zoning meeting.
7. **Joint Session.** Discussion and Possible Action between Town Council and Planning and Zoning Commission.

   7.1. Roll Call. Councilmembers John Dibble, David Hiles, Dennis Repan, Denise Rogers and Mayor Terry Nolan were present. Councilmember Nancy Wright and Vice Mayor Mark McBrady were absent.

   7.2. Joint Meeting with Council to discuss direction on projects for Planning and Zoning Commission to work on. Mayor Nolan read the listed topics from the agenda and opened it up to the joint session for discussion. There was discussion on the medical marijuana issue being resolved through Ordinance 11-83 and Arizona Revised Statute. Chair Bowman stated medical marijuana is on the Planning & Zoning agenda for later this meeting.

   Enforcing parking requirements on Main Street. There was discussion about striping the road diagonally, commercial loading zones, red, zones, parking in the middle/driving on the sides; crosswalks; increase in traffic; Town-owned vs. private ownership; determining right-of-way; uniformity. Priority - middle.

   Transient Merchants. Business licenses are not currently required for any business. This particular item should be prioritized low until the Town establishes a regular business license. Councilman Dibble clarified that a home-based business permit covers the zoning issues and is not the same as a business license. There was discussion about defining a home-based business. Priority: Low.

Home-based Businesses. Mayor Nolan suggested combining the transient merchant and home-based business topics when discussing. Priority - Low.

Outside Storage. Commissioner Peters stated that when this topic came up originally, there was a lot of interest. Councilman Hiles stated the code has more restrictive language so it needs to be addressed; not currently enforced. He stated it was the intent to provide more information and less regulation. Prioritization: Medium-High.

Accessory Dwelling Units. Councilmember Dibble asked the definition of an accessory building; Mayor Nolan explained it is a residential-only guest-type quarters. There was discussion about the details of accessory dwelling units and County requirements. Chair Bowman stated this was discussed at Planning & Zoning at great length and a recommendation made to Council; need to research. Commissioner Scarbrough suggested working on one of these items per agenda; Mayor Nolan agreed. Priority: Medium-High.

Illegal Lot Divisions. Mayor Nolan stated this should be one of the top priorities. County can split property up to five ways; the Town can split three ways so there has been confusion between the two. Councilmember Repan stated there is a procedure in place now and the Town signs off before it goes to the County. There was discussion about the zoning and size of properties determining lot splits going forward; and enforcement. Priority: High.

Historic Buildings. There was discussion about whether to adopt historic code before registering historical building or vice-versa. Chair Bowman asked if there were any registered historic buildings in the Town; none registered. There was discussion about old buildings that were built before a certain time and historical buildings that could be registered as such. Commissioner Berry stated it is going to become a topic for Planning & Zoning to address. He stated there will be a request for a historic district designation as opposed to registering a historic building(s), as there is a difference in requirements and restrictions. There was discussion about the International Building Code in regards to historic buildings and requirements. Priority: High

Commissioner Berry added another item to the prioritization list. For commercial buildings, when one business closes and another business occupies it after the allotted time period of two years, currently they would have to go back to square one to open their business with drawing building plans, engineering, plumbing, design review, etc. He suggested the Commission look at the process, clarify and make it uniform. There was discussion about the importance of safety, building and technical issues. There was further discussion about building permits and considering tiered permits for commercial building as well; make it less restrictive; require inspection by Fire Department and Town for safety; and whether there is a requirement for private citizens to hire licensed contractors to do the work.

Annexation of Northern 200-foot strip. Mayor Nolan indicated the strip of land on the map and explained when the Town incorporated they had to leave a boundary for the County so they created a 200-foot wide strip along the northern border. The suggestion is that the Town annex that property; more than 51% of the people affected have to agree to the annexation. There was discussion and it was agreed that this may be an administrative issue rather than a Planning & Zoning issue.
There was discussion about Planning & Zoning training and Mayor Nolan encouraged the Commission to attend trainings, if funding is available.

Town Council and Planning & Zoning prioritized the top three items to begin to address:
1. Illegal Lot Divisions - Establish enforcement policies
2. Accessory Dwelling Units (handle consecutively with lot divisions)
3. Historic Buildings - Possible adoption of 2009 International Building Code.

Ms. Kimball stated Staff was tasked with looking into the permit process as a whole, to include the commercial aspect.

7.3. Adjourn Joint Session. Mayor Nolan adjourned the joint session at 7:29PM. Chair Bowman called a five minute recess.

8. Return to Regular Session - Discussion Agenda – Unfinished Business.

Chair Bowman called the regular meeting to order at 7:35PM. There was no unfinished business to discuss.

9. Discussion Agenda – New Business.

9.1. Election of Vice Chair. Chair Bowman stated there were six members present and he would abstain from the vote. Commissioner Scarbrough nominated Andy Peters, Commissioner Berry seconded. The nomination failed by a 1-2 vote; Commissioner Scarbrough voted aye; Commissioners Berry and Clark voted nay; Commissioners Alen, Peters and Chair Bowman abstained.

Commissioner Peters nominated Arlene Alen, Commissioner Clark seconded. The nomination passed by a 3-1 vote; Commissioners Berry, Peters and Clark voted aye; Commissioner Scarbrough voted nay; Commissioner Alen and Chair Bowman abstained. Commissioner Alen was elected as Vice Chair of the Planning and Zoning Committee. Commissioner Peters thanked Commissioner Scarbrough for the nomination and thanked Commissioner Alen for accepting.

9.2. Medical Marijuana. [Chair Bowman request]

Chair Bowman stated this item was put on the agenda at his request and felt there should be a separate zoning classification for medical marijuana, both cultivation and retail.

There was discussion about current federal law outlawing cultivation, sale, or use of marijuana and prosecuting growers and sellers; lack of immunity from federal prosecution; State law; Town deferring to Federal law and possibility of tabling this item until Federal law reaches a decision.

Commissioner Peters noted the Town has some history with an application if it is necessary to review. He stated this item should be addressed by the Town Attorney so as not to deny any rights to which an applicant may be entitled.

There was discussion about the effect on the community and abiding by State and Federal law regardless of personal opinion.

Vice Chair Alen made a motion to table this item until such time that the federal government makes a decision and there is precedent set and then bring it back for discussion. Commissioner Peters seconded. Chair Bowman amended the motion to add asking the Town Attorney for an opinion about the Federal law superseding any Town decision. After further discussion, Chair Bowman withdrew his amendment to the motion and the Commission voted on the original motion. The vote passed unanimously. Staff will ask the Town Attorney's opinion about Federal law relating to this item.

9.3. Mortimer Farm's Special Event Permit. Discussion on a possible Special Event for shooting antique guns.

Ms. Kimball informed the Commission that Mortimer Farms was planning a special event and submitted an application for a permit to support a shooting activity on their property. Ms. Kimball stated the Town does not have an ordinance to regulate the discharge of firearms and consulted the Sheriff's Office for insight. The Sheriff's Office was concerned and requested more details. Since Town Ordinance does not regulate it and State law is vague the Sheriff's Office could not make a decision based on the information presented. The Town then communicated with Mortimer Farms and they decided not to proceed with the permit. Staff wanted to bring this item to the Commission because many municipalities have Ordinances to regulate the discharge of firearms.

Chair Bowman suggested looking at two different aspects: discharge of firearms in the community and special events of this nature by studying the ordinances of adjacent communities. There was discussion about the noise factor and this area being "animal country", and being sensitive to that fact.

Chair Bowman made a motion to table this issue until the Commission studies surrounding communities' ordinances and state law, seconded by Commissioner Scarbrough. The vote passed unanimously.

10. Public Hearing Agenda. None.

11. Commissioners' Forum.

Chair Bowman stated there are already three items that the Town Council wants the Commission to look at immediately and asked if there were any other items. Commissioner Berry stated he recently attended the museum opening and lease signing and recommended all to attend the April 14th official opening of the beta test for running the museum. He stated there will be a car show, dinner and dance on the 14th at the old bank building and encouraged everyone to participate.

12. Comments from the Public. None.

13. Town Planner's Report. Update on Current Events. None.

14. Adjourn. The meeting was adjourned at 8:35PM.

_____
Robert Bowman, Chairman

ATTEST:

_____
Mandi Garfield, Administrative Assistant

Accessory Dwelling Units: Case Study

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

Visit PD&R's website

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Accessory Dwelling Units: Case Study

Prepared for:
U.S. Department of Housing and Urban Development
Office of Policy Development and Research

Prepared by:
Sage Computing, Inc.
Reston, VA

June 2008

The contents of this report are the views of the contractor and do not necessarily reflect the views or policies of the U.S. Department of Housing and Urban Development or the U.S. Government.

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Accessory Dwelling Units: Case Study

Introduction

Accessory dwelling units (ADUs) — also referred to as accessory apartments, second units, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence.[1] This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs.

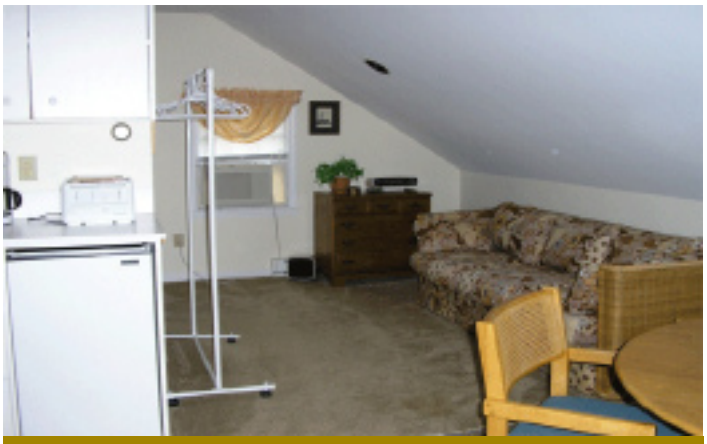
History of ADUs

Development of accessory dwelling units can be traced back to the early twentieth century, when they were a common feature in single-family housing.[2] After World War II, an increased demand for housing led to a booming suburban population. Characterized by large lots and an emphasis on the nuclear family, suburban development conformed to Euclidean-type zoning codes, a system of land-use regulations that segregate districts according to use.[3]

Suburbs continued to be a prevalent form of housing development throughout the 1950s and 1960s. The rapid growth of suburbs reinforced the high demand for lower-density development, and ultimately led most local jurisdictions to prohibit ADU construction. In spite of zoning restrictions, illegal construction of ADUs continued in communities where the existing housing stock was not meeting demand; San Francisco was one such community. During World War II, the Bay Area experienced a defense boom that created a high demand for workforce housing, resulting in a large number of illegally constructed second units. By 1960, San Francisco housed between 20,000 to 30,000 secondary units, 90 percent of which were built illegally.[4]

In response to suburban sprawl, increased traffic congestion, restrictive zoning, and the affordable housing shortage, community leaders began advocating a change from the sprawling development pattern of suburban design to a more traditional style of planning. Urban design movements, such as Smart Growth and New Urbanism, emerged in the 1990s to limit automobile dependency and improve the quality of life by creating inclusive communities that provide a wide range of housing choices. Both design theories focus on reforming planning practices to create housing development that is high density, transit-oriented, mixed-use, and mixed-income through redevelopment and infill efforts.[5]

In the late 1970s to the 1990s, some municipalities adopted ADU programs to permit the use and construction of accessory units. Many of these programs were not very successful, as they lacked flexibility and scope. Although a number of communities still restrict development of accessory dwelling units, there is a growing awareness and acceptance of ADUs as an inexpensive way to increase the affordable housing supply and address illegal units already in existence.



Interior ADU – located in attic space
Photo credit: Town of Barnstable, Massachusetts

[1] Municipal Research and Services Center of Washington, *Accessory Dwelling Units*, October 1995, http://www.mrsc.org/Publications/textadu.aspx#tenant.
[2] Transportation and Land Use Coalition, *Accessory Dwelling Units*, http://www.transcoalition.org/ia/acssdwel/01.html#body.
[3] Transportation Research Board, *The Costs of Sprawl Revisited,* 1998, http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_39-a.pdf.
[4] San Francisco Planning and Urban Research Association, *Secondary Units: A Painless Way to Increase the Supply of Housing,* August 2001, http://www.spur.org/newsletters/0801.pdf.
[5] New Urban News, *The New Urbansim – An alternative to modern, automobile-oriented planning and development,* July 2004, http://www.newurbannews.com/AboutNewUrbanism.html.

Types of Accessory Dwelling Units

Depending on their location relative to the primary dwelling unit, ADUs can be classified into three categories: interior, attached, and detached.[6] Interior ADUs are located within the primary dwelling, and are typically built through conversion of existing space, such as an attic or basement.

Attached ADUs are living spaces that are added on to the primary dwelling. The additional unit can be located to the side or rear of the primary structure, but can also be constructed on top of an attached garage. Detached ADUs are structurally separate from the primary dwelling. They can be constructed over existing accessory structures, such as a detached garage, or they can be built as units that are separate from accessory and residential structures.

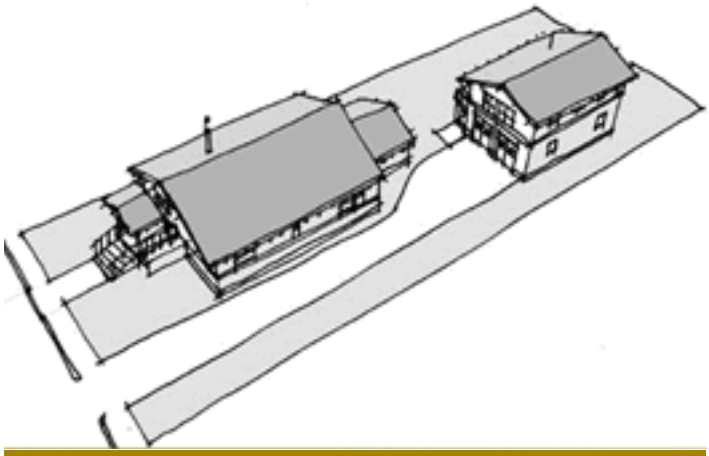
ADU attached to the side of a garage addition
Illustration: RACESTUDIO and city of Santa Cruz

Benefits of Accessory Dwelling Units

Accessory dwelling units offer a variety of benefits to communities. They help increase a community's housing supply, and since they cost less than a new single-family home on a separate lot, they are an affordable housing option for many low- and moderate-income residents.[7] Elderly and/or disabled persons who may want to live close to family members or caregivers, empty nesters, and young adults just entering the workforce find ADUs convenient and affordable.[8] In addition to increasing the supply of affordable housing, ADUs benefit homeowners by providing extra income that can assist in mitigating increases in the cost of living.

Attached ADU
Photo credit: http://mass.gov

Accessory dwelling units have other advantages as well. They can be designed to blend in with the surrounding architecture, maintaining compatibility with established neighborhoods and preserving community character. Furthermore, there is no need to develop new infrastructure, since ADUs can be connected to the existing utilities of a primary dwelling. Allowing ADUs facilitates efficient use of existing housing stock, helps meet the demand for housing, and offers an alternative to major zoning changes that can significantly alter neighborhoods.[9]



Detached two-story ADU over garage
Illustration: RACESTUDIO and city of Santa Cruz

[6] Transportation and Land Use Coalition.
[7] Atlanta Regional Commission, *Accessory Dwelling Units*, August 2007, http://www.atlantaregional.com/documents/Accessory_Dwelling_Units_.pdf.
[8] Ibid.
[9] Municipal Research and Services Center of Washington.

Examples of ADU Ordinances and Programs

The following section of the case study provides an overview of ADU ordinances that have been adopted by five communities from across the nation. To gain a wider understanding of ADU programs in practice, the five communities have been chosen to represent a diverse range of geographic, demographic, and socioeconomic characteristics with different land use and growth control policies.

Lexington, Massachusetts

Lexington, Massachusetts is an affluent historic town, located 11 miles northwest of Boston, with a population of 30,355.[10] According to the town's 2002 Comprehensive Plan, Lexington has largely exhausted its vacant unprotected land supply and is a highly built-out suburb with less than 1,000 acres of land available for new development.[11] Approximately 18 percent of the households in Lexington are eligible for affordable housing of some sort, and with a median home sales price of over $600,000, many residents are being priced out of the housing market.[12] This limited growth potential and strong demand for affordable housing has led to the adoption of accessory apartment programs. The town implemented its first accessory unit bylaw in 1983, resulting in the construction of 60 units. In February of 2005, Lexington amended its bylaws to improve the clarity and flexibility of its ADU program.[13] The town affirmed that the purpose of promoting ADUs is to increase the range of housing choices, encourage population diversity, and promote efficient use of the housing supply while maintaining the town's character.

The amended bylaws reduce or eliminate minimum lot size requirements, allow ADUs 'by-right' in homes built as recently as five years ago, and allow second units by special permit in new construction, or as apartments in accessory structures. The Lexington Zoning Code allows two ADUs per lot, provided the primary dwelling is connected to public water and sewer systems.[14] Provisions allow absentee ownership for two years under special circumstances. In addition, a minimum of one off-street parking space must be provided for every accessory unit. The by-right accessory apartments must be located within the primary dwelling and are allowed on lots that are at least 10,000 square feet. The maximum gross floor area of a by-right accessory apartment is 1,000 square feet and the unit cannot have more than two bedrooms.[15]

Increased flexibility in the program has proven beneficial to Lexington in the development of ADUs. According to Aaron Henry, Senior Planner for Lexington, the town's Housing Partnership Board is launching an education and outreach campaign for their ADU program to raise public interest.

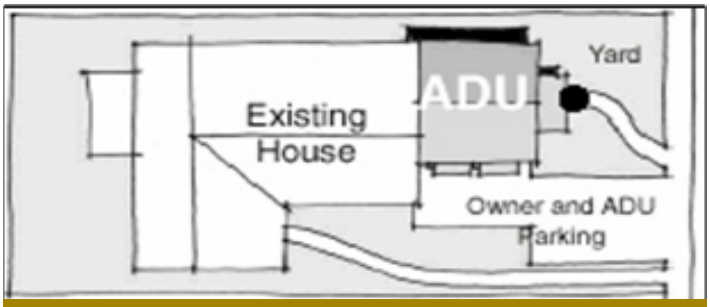
Santa Cruz, California

Santa Cruz, California is a seaside city with a population of 54,600; it is one of the most expensive cities in the country in which to live. In 2006, the median price for a single-family home in Santa Cruz was $746,000, which only 6.9 percent of the city residents could easily afford.[16] In spite of the high cost of living, the city continues to be a desirable destination on account of its scenic location and proximity to San Francisco and the Silicon Valley. The location of a campus of the University of California — the area's largest employer — also adds to the demand for housing in Santa Cruz.[17] Another contributing factor is the limited amount of land allowed for development within the city's

Detached ADU over garage – design by Boone/Low Architects and Planners
Illustration: RACESTUDIO and city of Santa Cruz

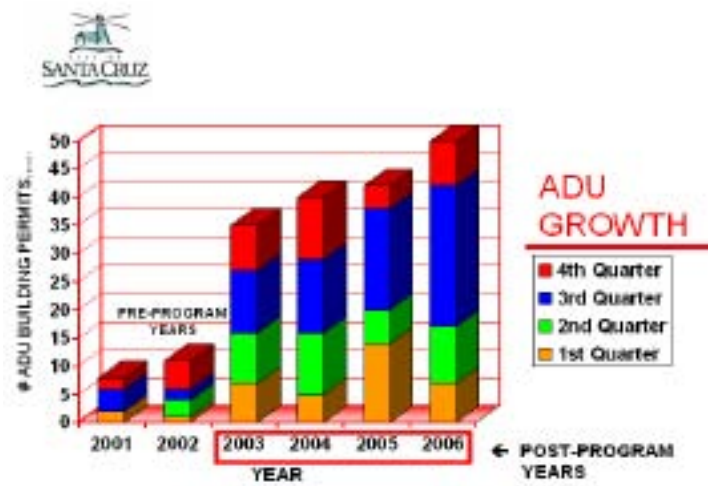
[10] U.S. Census 2000, www.census.gov.
[11] Town of Lexington, *Comprehensive Plan,* 2002, http://ci.lexington.ma.us/Planning/CompPlan.htm.
[12] Town of Lexington, *Lexington Housing Strategy*, October 2007, http://ci.lexington.ma.us/Planning/Documents/Housing%20Strategy%20(Oct%202007).pdf.
[13] The Massachusetts Smart Growth/Smart Energy Toolkit, *Accessory Dwelling Units (ADU) Suburban Case Study*, http://www.mass.gov/envir/smart_growth_toolkit/pages/CS-adu-lexington.html.
[14] See Appendix A.
[15] Town of Lexington, http://ci.lexington.ma.us.
[16] City of Santa Cruz, http://www.ci.santa-cruz.ca.us.
[17] Fred Bernstein, *Granny Flats for Cool Grannies*, February 2005, http://www.fredbernstein.com/articles/display.asp?id=91.

greenbelt. In order to preserve the greenbelt while accommodating new growth, promoting public transportation, and increasing the supply of affordable housing, the city adopted a new ADU ordinance in 2003.



Prototype site layout for attached ADU – ADU Manual
Illustration: RACESTUDIO and city of Santa Cruz

This ordinance sets forth regulations for the location, permit process, deed restrictions, zoning incentives, and design and development standards for ADUs. Accessory dwelling units are permitted in designated residential zones on lots that are at least 5,000 square feet in area. No more than one ADU per lot is allowed and the property owner must occupy the primary or accessory dwelling unit. ADUs that do not meet the permitting requirements stipulated in the ordinance must undergo a public hearing process. Development fees are waived for ADUs made available for low- and very-low-income households.[18]



ADU Permits approved for the city of Santa Cruz
Source: City of Santa Cruz

In addition to the ordinance that regulates the development of ADUs, Santa Cruz has established an ADU development program with three major components: technical assistance, a wage subsidy and apprentice program, and an ADU loan program.[19] As part of the technical assistance program, the city published an ADU Plan Sets Book that contains design concepts developed by local and regional architects. Homeowners can select one of these designs and receive permits in an expedited manner. In addition, the city offers an ADU Manual, which provides homeowners with information on making their ADU architecturally compatible with their neighborhood, zoning regulations relevant to ADUs, and the permitting process.

Santa Cruz's ADU Development Program has won numerous awards and has been used as a model by other communities. According to Carol Berg, who is the housing and community development manager for the city, an average of 40 to 50 ADU permits have been approved every year since the start of the program. She attributes the program's success primarily to zoning changes that were adopted to facilitate development of ADUs, such as the elimination of covered parking requirements.

Portland, Oregon

With a population of approximately 530,000, Portland is the most populous city in the state of Oregon, and is noted for its strong land use control and growth management policies. Although Portland has had an ADU program in place for several years, ADU development was not effectively promoted until 1998, when the city amended its laws to relax the regulations governing ADUs.[20] The amendments eliminated the minimum square footage and owner-occupancy requirements. ADUs are now allowed in all residential zones with relaxed development standards.

Portland's regulations permit the construction of ADUs on lots with a single-family home, as long as they are smaller, supplementary to the primary residence, and no more than 800 square feet.[21] They can be created by conversion of an existing structure or by construction of a new building. An early assistance process is available to help with project development for ADUs created through the conversion of an existing structure. ADUs that meet all the standards are permitted by right and do not require a land use review. No additional parking is required for accessory

[18] See Appendix B.
[19] City of Santa Cruz, *Accessory Dwelling Unit Development Program*, http://www.ci.santa-cruz.ca.us.
[20] Barbara Sack, city of Portland.
[21] See Appendix C.

units. Portland's ADU program guide outlines ways to bring existing nonconforming units into compliance.

The city considers ADUs to be more affordable than other housing types because of the efficiency of the units in using fewer resources and reducing housing costs. City planner Mark Bello notes that allowing more ADUs did increase the housing supply, and that city residents viewed ADUs positively and were satisfied with the changes made. He also added, "There were no significant negative issues that arose from liberalizing Portland's code."

ADU on lower level of primary dwelling
Photo credit: Town of Barnstable

Barnstable, Massachusetts

With seven villages within its boundaries and a total population of 47,821, the town of Barnstable is the largest community in both land area and population on Cape Cod.[22] Approved in November 2000, Barnstable's Accessory Affordable Apartment or Amnesty Program is a component of its Affordable Housing Plan.[23] The program guides creation of affordable units within existing detached structures or new affordable units within attached structures. Eligibility for the program is limited to single-family properties that are owner-occupied and multifamily properties that are legally permitted.

Barnstable's amnesty program is seen as a way to bring the high number of existing illegal ADUs into compliance with current requirements. In order to bring a unit into compliance, the property owner must agree to rent to low-income tenants — those earning 80 percent or less of the area median income — with a minimum lease term of one year. The amnesty program offers fee waivers for inspection and monitoring of units and designates town staff to assist homeowners through the program's administrative process. The town can access Community Development Block Grant funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade of an affordable ADU. Homeowners are also offered tax relief to offset the negative effects of deed restrictions that preserve the affordability of the units.[24]

ADU over detached garage
Photo credit: Town of Barnstable

Through its Amnesty Program, the town of Barnstable has successfully brought many of its illegal accessory units into compliance, with the added benefit of increasing the supply of affordable housing. Since the start of the program, Barnstable has approved 160 affordable ADUs. Beth Dillen, Special Projects Coordinator for the town's Growth Management Department, noted that "the ADU program has been very well received and there has been no neighborhood opposition." The program has been successful in converting existing illegal accessory apartments into code-compliant ADUs. According to Building Commissioner Tom Perry, "The benefit to this program is twofold. It is increasing the affordable housing supply and it also makes units, that before were unsafe and illegal, safe and legal."

Wellfleet, Massachusetts — Home of Oysters...and ADUs

Wellfleet is located in Barnstable County, Massachusetts. Located on Cape Cod, Wellfleet is a tourist town with a

[22] U.S. Census 2000, www.census.gov.
[23] See Appendix D.
[24] Town of Barnstable, *Accessory Affordable Apartment Program,* http://www.town.barnstable.ma.us/GrowthManagement/CommunityDevelopment/AssessoryHousing/AAAP-BROCHURE_rev041206.pdf.

year-round population of 3,500, which increases to 17,000 in the summer months. Sixty-one percent of the land area in Wellfleet is part of the Cape Cod National Seashore and about 70 percent of the entire land area is protected from development.[25] Wellfleet also has a growing concentration of elderly residents 65 years and older. A housing needs assessment study conducted by the town in 2006 recommended the adoption of an affordable ADU program to meet elderly housing needs and to increase the supply of affordable multifamily rental units.[26]

Interior ADU – Town of Wellfleet
Photo credit: Town of Wellfleet

The affordable ADU bylaw for Wellfleet allows up to three ADUs per lot in any district, but requires approval of a special permit from the Zoning Board of Appeals. Secondary units may be within, attached to, or detached from a primary structure, and may not be larger than 1,200 square feet. Homeowners with pre-existing attached and nonconforming accessory apartments may only make changes that increase the conformity of the structures.[27]

Detached ADU – Town of Wellfleet
Photo credit: Town of Wellfleet

Unless the provisions are specifically waived, the construction of new ADUs must conform to all zoning bylaw provisions and the owner of the property must occupy either the ADU or the primary dwelling. Detached units must comply with all setback requirements. Owners are required to rent to low- or moderate-income households. Maximum rents follow the Fair Market Rental Guidelines published by HUD and the property owners must submit annual information on rents to be charged.

To encourage participation in the ADU program, Wellfleet has instituted a new affordable accessory dwelling unit loan program.[28] The program offers interest-free loans for homeowners to develop affordable accessory units. The funds can also be used by homeowners to bring their ADU up to code. Wellfleet offers tax exemptions to homeowners on the portion of the property that is rented as an affordable unit. According to Nancy Vail, Assessor for the Town of Wellfleet, the combined tax savings for all ADU property owners totaled $7,971.17 for fiscal year 2008. Sixteen units have been approved since the start of the program in November 2006.

Fauquier County, Virginia

Fauquier County is a largely rural county located about 50 miles outside of Washington, D. C. Beginning in 1967, Fauquier County adopted strict zoning regulations to limit growth to nine defined areas as a means of preserving farmland and open space; in effect, establishing growth boundaries.[29] However, the county population is rapidly increasing. The 2006 U.S. Census population estimate for Fauquier County was 66,170, a 20 percent increase from 2000. A needs assessment study by the Fauquier County Affordable Housing Task Force found that between 2000 and 2006, the median housing price in Fauquier County increased 127 percent, while the median household income increased 21 percent. To accommodate its growing population, especially the need for workforce housing, the county encourages infill development within the nine defined areas, and is active in reducing barriers to affordable housing.

[25] Town of Wellfleet, http://www.wellfleetma.org
[26] Town of Wellfleet, *Housing Needs Assessment,* 2006, http://www.wellfleetma.org/Public_Documents/WellfleetMA_LocalCompPlan/Appendix8.pdf.
[27] See Appendix E.
[28] Town of Wellfleet, *Affordable Accessory Dwelling Unit Program*, http://www.wellfleetma.org/Public_Documents/WellfleetMA_WebDocs/AADU.pdf.
[29] Keith Schneider, *New Approaches to Shaping Community Futures,* March 1997, Michigan Land Use Institute, http://www.mlui.org/growthmanagement/fullarticle.asp?fileid=3862.

Fauquier County recognizes three different types of accessory units: family dwellings, efficiency apartments, and tenant houses.[30] Family dwelling units are detached accessory units constructed for use by the homeowner's family member(s); they must be occupied by no more than five people, at least one of them related to the owner. Family dwelling units may be as large as 1,400 square feet in size and are permitted in both rural and many residentially zoned areas. Efficiency apartments are alternatives to family dwelling units and are attached to either the primary residence or to an accessory structure, such as a garage. The size is limited to 600 square feet or 25 percent of the gross floor area of the main dwelling, whichever is greater. Efficiencies may not be occupied by more than two unrelated people and are allowed in rural and residential-zoned areas. Tenant houses are detached dwellings built on the property for the purpose of supporting agricultural land uses. At least one person occupying the tenant house must work on the property. Tenant houses have no size limits. They are allowed only on rurally zoned areas or properties of at least 50 acres, with one tenant house for every 50 acres of a property.

Development of ADUs in Fauquier County depends on the zoning, the size of the property, and availability of septic/sewer and water services. Each of the unit types is approved by the Fauquier Office of Zoning Permitting and Inspections, with a building permit, provided that the units meet zoning requirements. According to the county's zoning office, 155 accessory dwelling units and 37 efficiency apartments were permitted from 1997 to 2007.

Conclusion

At the height of the suburbanization of the United States in the 1950s and 1960s, high-density development became undesirable. Instead, communities favored low-density development defined by large-lot single-family homes. Accessory apartments that were once a common feature in many homes were excluded from zoning ordinances. However, growing demand for affordable housing (coupled with the limited amount of land available for development in many communities) has led to changing attitudes about the use and development of accessory apartments. An increasing number of communities across the nation are adopting flexible zoning codes within low-density areas in order to increase their affordable housing supply.

Communities find that allowing accessory dwelling units is advantageous in many ways. In addition to providing practical housing options for the elderly, disabled, empty nesters, and young workers, ADUs can provide additional rental income for homeowners. ADUs are smaller in size, do not require the extra expense of purchasing land, can be developed by converting existing structures, and do not require additional infrastructure. They are an inexpensive way for municipalities to increase their housing supply, while also increasing their property tax base. By providing affordable housing options for low- and moderate-income residents, communities can retain population groups that might otherwise be priced out of the housing market.

The examples provided in the previous section involve communities that have to rely on existing housing stock to meet rising demand, either due to lack of developable land or strict growth management regulations. Portland and Fauquier County have adopted ADU ordinances to increase housing supply within their growth boundaries. Communities that are built out or have limited available land benefit from allowing the development of accessory units, as in Lexington and Wellfleet. Barnstable's amnesty program shows how to successfully bring a large number of existing illegal accessory units into compliance. In addition to allowing ADUs in all residential zones, Santa Cruz has attracted interest in ADU development by publishing an ADU Manual and Plan Sets Book with seven prototype designs for accessory units.

A community can tailor ADU ordinances to suit its demographic, geographic, and socioeconomic characteristics. The communities discussed in this case study provide loan programs, tax incentives, streamlined permitting, and reduced development fees as part of their ADU programs. In order for an ADU program to succeed, it has to be flexible, uncomplicated, include fiscal incentives, and be supported by a public education campaign that increases awareness and generates community support.

[30] See Appendix F.

Appendix A — Town of Lexington, Massachusetts, Article V, 135-19, Accessory Apartments

§ 135-19. Accessory apartments. [Amended 5-2-1988 ATM by Art. 41; 4-10-1989 ATM by Art. 41; 4-4-1990 ATM by Art. 36; 4-4-2005 ATM by Art. 10]

An accessory apartment is a second dwelling subordinate in size to the principal dwelling unit on an owner-occupied lot, located in either the principal dwelling or an existing accessory structure. The apartment is constructed so as to maintain the appearance and essential character of a one-family dwelling and any existing accessory structures. Three categories of accessory apartments are permitted: by-right accessory apartments, which are permitted as of right, and special permit accessory apartments and accessory structure apartments, which may be allowed by a special permit.

A. General objectives. The provision of accessory dwelling units in owner-occupied dwellings is intended to:

(1) Increase the number of small dwelling units available for rent in the Town;

(2) Increase the range of choice of housing accommodations;

(3) Encourage greater diversity of population with particular attention to young adults and senior citizens; and

(4) Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods.

B. Conditions and requirements applicable to all accessory apartments.

(1) General.

(a) There shall be no more than two dwelling units in a structure, and no more than two dwelling units on a lot.

(b) There shall be no boarders or lodgers within either dwelling unit.

(c) No structure that is not connected to the public water and sanitary sewer systems shall have an accessory apartment.

(d) The owner of the property on which the accessory apartment is to be created shall occupy one or the other of the dwelling units, except for temporary absences as provided in Subsection B (l) (e). For the purposes of this section, the "owner" shall be one or more individuals who constitute a family, who hold title directly or indirectly to the dwelling, and for whom the dwelling is the primary residence…

(2) Exterior appearance of a dwelling with an accessory apartment. The accessory apartment shall be designed so that the appearance of the structure maintains that of a one-family dwelling….

(3) Off-street parking. There shall be provided at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the accessory apartment….

C. By-right accessory apartments shall be permitted so long as the requirements set forth in the §135-19B are satisfied and the following criteria in this section are met:

(1) The lot area shall be at least 10,000 square feet.

(2) The apartment shall be located in the principal structure.

(3) The maximum gross floor area of the by-right accessory apartment shall not exceed 1,000 square feet.

(4) There shall not be more than two bedrooms in a by-right accessory apartment.

(5) There shall be no enlargements or extensions of the dwelling in connection with any by-right 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.

(6) The entire structure containing the by-right accessory apartment must have been in legal existence for a minimum of five years at the time of application for a by-right accessory apartment.

D. Special permit accessory apartments. If a property owner cannot satisfy the criteria for by-right accessory apartments that are set forth in § 135-19C above, the property owner may apply for a special permit from the Board of Appeals….

E. Accessory structure apartments. Notwithstanding any provisions of this Zoning By-Law that state an accessory apartment shall be located in a structure constructed as a detached one-family dwelling and the prohibition in § 135-35D against having more than one dwelling on a lot, the Board of Appeals may grant a special permit as provided in § 135-16, Table 1, line 1.22C, to allow the construction of an accessory apartment in an existing accessory structure which is on the same lot in the RS, RT, KO, RM or CN District as an existing one-family dwelling provided:

(1) Lot area is at least 18,000 square feet if in the RS, RT, or CN District, at least 33,000 square feet if in the RO District, and at least 125,000 square feet if in the RM District;

(2) The structure containing the accessory structure apartment was in legal existence for a minimum of five years and had a minimum of 500 square feet of gross floor area as of five years prior to the time of application;

(3) The maximum gross floor area of the accessory structure apartment does not exceed 1,000 square feet. An addition to an accessory structure may be permitted, but no addition shall be allowed which increases the gross floor area of the structure to more than 1,000 square feet. The gross floor area for the accessory apartment shall not include floor area used for any other permitted accessory use. The accessory apartment cannot contain floor area that has been designed, intended or used for required off-street parking to serve the principal dwelling;…

Appendix B — City of Santa Cruz, California, Title 24, Zoning Ordinance, Chapter 24.16, Part 2: ADU Zoning Regulations

24.16.100 Purpose.

The ordinance codified in this part provides for accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings are allowed because they can contribute needed housing to the community's housing stock. Thus, it is found that accessory units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities that are compatible with single-family development…

24.16.120 Locations Permitted.

Accessory dwelling units are permitted in the following zones on lots of 5000 square feet or more…

24.16.130 Permit Procedures.

The following accessory dwelling units shall be principally permitted uses within the zoning districts specified in Section 24.16.120 and subject to the development standards in Section 24.16.160.

1. Any accessory dwelling unit meeting the same development standards as permitted for the main building in the zoning district, whether attached or detached from the main dwelling.

2. Any single story accessory dwelling unit.

   Any accessory dwelling unit not meeting the requirements above shall be conditionally permitted uses within the zoning districts specified in Section 24.16.120 and shall be permitted by administrative use permit at a public hearing before the zoning administrator, subject to the findings per Section 24.16.150 and the development standards in Section 24.16.160…

24.16.160 Design and Development Standards.

All accessory dwelling units must conform to the following standards:

1. Parking. One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)

2. Unit Size. The floor area for accessory units shall not exceed five hundred square feet for lots between 5000 and 7500 square feet. If a lot exceeds 7500 square feet, an accessory unit may be up to 640 square feet and, for lots in excess of 10,000 square feet, a unit may be up to 800 square feet. In no case may any combination of buildings occupy more than thirty percent of the required rear yard for the district in which it is located, except for units which face an alley, as noted below. Accessory units that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall have the unit square footage size measured similar to the interior square footage of a traditional frame house.

3. Existing Development on Lot. A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.

4. Number of Accessory Units Per Parcel. Only one accessory dwelling unit shall be allowed for each parcel…

24.16.170 Deed Restrictions.

Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:

1. The accessory unit shall not be sold separately.

2. The unit is restricted to the approved size.

3. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence…

26.16.180 Zoning Incentives.

The following incentives are to encourage construction of accessory dwelling units.

1. Affordability Requirements for Fee Waivers. Accessory units proposed to be rented at affordable rents as established by the city, may have development fees waived per Part 4 of Chapter 24.16 of the Zoning Ordinance...

2. Covered Parking. The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided…

24.16.300 Units Eligible for Fee Waivers.

Developments involving residential units affordable to low or very-low income households may apply for a waiver of the following development fees:

1. Sewer and water connection fees for units affordable to low and very low income households.

2. Planning application and planning plan check fees for projects that are one hundred percent affordable to low and very-low income households.

3. Building permit and plan check fees for units affordable to very-low income households.

4. Park land and open space dedication in-lieu fee for units affordable to very low income households.

5. Parking deficiency fee for units affordable to very-low income households.

6. Fire fees for those units affordable to very-low income households.
(Ord. 93-51 § 6, 1993).

24.16.310 Procedure for Waiver of Fees.

A fee waiver supplemental application shall be submitted at the time an application for a project with affordable units is submitted to the city.
(Ord. 93-51 § 6, 1993)

Appendix C — City of Portland, Oregon, Title 33, Chapter 33.205: Accessory Dwelling Units

333.205.010 Purpose
Accessory dwelling units are allowed in certain situations to:

- Create new housing units while respecting the look and scale of single-dwelling development;
- Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- Allow more efficient use of existing housing stock and infrastructure;
- Provide a mix of housing that responds to changing family needs and smaller households;
- Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
- Provide a broader range of accessible and more affordable housing.

33.205.020 Where These Regulations Apply
An accessory dwelling unit may be added to a house, attached house, or manufactured home in an R zone, except for attached houses in the R20 through R5 zones that were built using the regulations of 33.110.240.E, Duplexes and Attached Houses on Corners.

33.205.030 Design Standards...

C. Requirements for all accessory dwelling units. All accessory dwelling units must meet the following:

1. Creation. An accessory dwelling unit may only be created through the following methods:

   a. Converting existing living area, attic, basement or garage;

   b. Adding floor area;

   c. Constructing a detached accessory dwelling unit on a site with an existing house, attached house, or manufactured home; or

   d. Constructing a new house, attached house, or manufactured home with an internal or detached accessory dwelling unit.

2. Number of residents. The total number of individuals that reside in both units may not exceed the number that is allowed for a household…

5. Parking. No additional parking is required for the accessory dwelling unit. Existing required parking for the house, attached house, or manufactured home must be maintained or replaced on-site.

6. Maximum size. The size of the accessory dwelling unit may be no more than 33% of the living area of the house, attached house, or manufactured home or 800 square feet, whichever is less…

D. Additional requirements for detached accessory dwelling units. Detached accessory dwelling units must meet the following.

1. Setbacks. The accessory dwelling unit must be at least:

a. 60 feet from the front lot line; or

b. 6 feet behind the house, attached house, or manufactured home.

2. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.

3. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site…

33.205.040 Density

In the single-dwelling zones, accessory dwelling units are not included in the minimum or maximum density calculations for a site. In all other zones, accessory dwelling units are included in the minimum density calculations, but are not included in the maximum density calculations.

Appendix D — Town of Barnstable, Massachusetts, Chapter 9, Article II - Accessory Apartments and Apartment Units

§ 9-12. Intent and purpose.

A. The intent of this article is to provide an opportunity to bring into compliance many of the currently unpermitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.

B. This article recognizes that although unpermitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied.

C. It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called unpermitted and illegal dwelling units can achieve lawful status, but only in the manner described below.

D. It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in MGL c. 40B, §§ 20 to 23, the so-called "Comprehensive Permit" program. This provision of state law encourages the development of low- and moderate-income rental and owner-occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.

E. The Local Comprehensive Plan states that the Town should commit appropriate resources to support affordable housing initiatives. Under this article, the Town commits the following resources to support this affordable housing initiative:
   (1) Waiver of fees for the inspection and monitoring of the properties identified under this article;

   (2) Designation of Town staff to assist the property owner in navigating through the process established under this article;

   (3) To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment; and

   (4) To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this article.

F. The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing…

§ 9-14. Amnesty program.
Recognizing that the success of this article depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town, Editor's Note: See Ch. 240, Zoning. the Town hereby establishes the following amnesty program:

A. The threshold criteria for units being considered as units potentially eligible for the amnesty program are:
   (1) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, nonconforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or

(2) Real property containing a dwelling unit or dwelling units which were in existence as of January 1, 2000, and which have been cited by the Building Department as being in violation of the Zoning Ordinance; and…

B. The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:

(1) The unit or units must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently unpermitted;

(2) The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;

(3) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

(4) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA)…

§ 9-15. New units accessory to single-family owner-occupied dwellings.

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit, accessory to an owner-occupied single-family dwelling, to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

A. The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;

B. The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agrees that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

C. The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA)...

Appendix E — Town of Wellfleet, Massachusetts, 6.21 Affordable Accessory Dwelling Units

Purpose: For the purpose of promoting the development of affordable rental housing in Wellfleet for year-round residents, a maximum of three affordable accessory dwelling units per lot may be allowed subject to the requirements, standards and conditions listed below:

6.21.1 Up to three affordable accessory dwelling units per lot may be allowed in any district by Special Permit from the Zoning Board of Appeals.

6.21.2 Affordable accessory dwelling units created under this by-law shall be occupied exclusively by income-eligible households, as defined by the guidelines in numbers 6.21.4 and 6.21.5 below. The affordability requirements of this by-law shall be imposed through conditions attached to the Special Permit issued by the Zoning Board of Appeals. No accessory apartment shall be constructed or occupied until proof of recording is provided to the Inspector of Buildings.

6.21.3 Requirements and Standards

A. Affordable accessory dwelling units may be located within or attached to a principal dwelling, principal structure, a garage or constructed as a detached unit.

B. Affordable accessory dwelling units shall not be larger than one thousand two hundred (1,200) square feet of Livable Floor Area as that term is defined in Section II of this Zoning By-law.

C. Affordable accessory dwelling units within or attached to a principal dwelling, principal structure or garage that is pre-existing nonconforming shall not increase the nonconforming nature of that structure, except that any pre-existing accessory building may be eligible for conversion to an affordable accessory dwelling unit.

D. Newly constructed detached accessory units shall comply with all applicable provisions of the Zoning By-law unless they are specifically waived by this by-law. Newly constructed detached accessory units shall comply with all setback requirements listed in Sections 5.4.2 of this Zoning By-law.

E. Owners of residential property may occupy as a primary residence either the principal or accessory dwelling. For the purposes of this section, the "owner" shall mean one who holds legal or beneficial title.

F. Septic systems are required to meet current Title 5 standards and shall be reviewed and approved by the Health Agent.

G. The Inspector of Buildings and Health Agent shall inspect the premises for compliance with public safety and public health codes.

H. No affordable accessory dwelling unit shall be separated by ownership from the principal dwelling unit or principal structure. Any lot containing an affordable accessory dwelling unit shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the affordable accessory dwelling unit, except leasehold estates, for the term of the restriction.

6.21.4 All occupants of the affordable accessory dwelling unit shall upon initial application and annually thereafter on the first of September, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate-income

family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Wellfleet median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Wellfleet median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.

6.21.5 Maximum rents shall be established in accordance with HUD published Fair Market Rental Guidelines. Property owners are required to submit to the Town or its agent information on the rents to be charged. Each year thereafter on the first of September, they shall submit information on annual rents charged to the Town or its agent. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.

6.21.6 Procedure

A. The property owner shall complete and submit an application for a Special Permit to the Zoning Board of Appeals in accordance with the Wellfleet Zoning Board of Appeals Rules and Procedures.

B. The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures and requirements set forth in Section 9 of Massachusetts General Law, Chapter 40A and the Wellfleet Zoning By-law, Section 8.4.2 .

C. Appeal under this section shall be taken in accordance with Section 17 of Massachusetts General Law, Chapter 40A.

D. The property owner shall complete and submit to the Inspector of Buildings an application for a Building Permit to allow a change in use.

E. The property owner shall obtain a Certificate of Occupancy from the Inspector of Buildings prior to the affordable accessory dwelling unit being occupied.

Penalty – Failure to comply with any provision of this section may result in fines established in Section 8.3 of the Wellfleet Zoning By-laws.

Appendix F — Fauquier County, Virginia Zoning Ordinance

ARTICLE 5 — ADMINISTRATIVE PERMITS, SPECIAL PERMITS AND SPECIAL EXCEPTIONS

5-104 Standards for an administrative permit for an Efficiency Apartment

1. Such a unit shall not be occupied by more than two persons.

2. Not more than one such unit shall be located on a lot.

3. Such a unit shall contain no more than 600 square feet of gross floor area or 25% of the total gross floor of the dwelling, whichever is greater.

4. Such a unit shall be located only on the same lot as the residence of the owner of the lot.

5. Architectural features of such a unit shall conform with the single family character of the neighborhood (e.g., no additional front doors).

5-105 Standards for an administrative permit for a Family Dwelling Unit

1. Such a unit shall not be occupied by more than five (5) persons, at least one of whom must be the natural or adopted parent, grandparent, child, grandchild, brother or sister of the owner and occupant of the single family residence on the same lot. Or, the lot owner may live in the family dwelling unit and allow such family members to reside in the main house. In either case, the lot owner must reside on the property.

2. Such a unit may be 1,400 square feet of gross floor area.

3. No dwelling units other than the principal structure (a single family dwelling) and one such family dwelling unit shall be located on one lot...

ARTICLE 6 - ACCESSORY USES, ACCESSORY SERVICE USES AND HOME OCCUPATIONS

6-102 Permitted Accessory Uses

Accessory uses and structures shall include, but are not limited to, the following uses and structures, provided that such uses or structure shall be in accordance with the definition of Accessory Use contained in Article 15…

9. Guest house or rooms for guests in an accessory structure, but only on lots of at least two (2) acres and provided such house is without kitchen facilities, is used for the occasional housing of guests of the occupants of the principal structure and not as rental units or for permanent occupancy as housekeeping units...

14. Quarters of a caretaker, watchman or tenant farmer, and his family, but only in the Rural Districts at a density not to exceed one (1) unit per fifty (50) acres...

31. The letting for hire of not more than two rooms to not more than two persons for periods no shorter than one month...

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MEETING OF THE TOWN PLANNING & ZONING ADVISORY COMMISSION

March 28, 2013 6:00 p.m. Town Council Meeting Chambers

Agenda Item

To: Planning & Zoning Advisory Commission
From: Warren Colvin, Community Development Coordinator
For: Chairperson Claire Clark

Date Submitted: March 18, 2013

Agenda Item: Illegal Lot Divisions

Recommendation: Discussion and possible action for establishing rules on how to handle illegal lot divisions.

Summary: After researching this topic, it is not an isolated problem that we in Arizona deal with - it is an issue all over the country. Most jurisdictions find themselves in a policing problem and do not discover an illegal lot division until an application for a building permit is filed. Then the jurisdiction faces the issue of not issuing a permit until the owner of the property has filed the necessary paperwork with the jurisdiction to make the lot comply with the zoning code. This creates a problem for the owners of the property because they did not do proper background on the property prior to purchase and then find themselves in this situation; they did not create the problem and now are forced to rectify it. Staff recommends that the P&Z Commission and staff work to come up with a procedure for handling illegal lot divisions.

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JANUARY 2003

Illegal lot sale spurs lawsuit

By JoAn Bjarko
North Forty News

A Colorado native with dreams of living simply on a piece of rural land is instead living in a nightmare of financial complications because Larimer County says he purchased an illegal lot.

By definition, an illegal lot is less than 35 acres that was split off after 1972 without approval of the county commissioners. Such lots can still be recorded by the clerk and recorder's office. They can be placed on the assessor's tax roles as separate parcels. They cannot, however, get a building permit from the planning department.

That's what Richard Warner, a Buckeye area resident, learned when he went to get a permit to move a mobile home onto his seven-acre parcel purchased in 1999.

That's what Loveland residents Max and Stephanie Bernhardt found when they wanted to build a new home on 20 acres their family had purchased in 1975.

"I could graze a goat," Warner said about his predicament of owning a parcel too small for anything but a homesite.

Unwitting buyers of illegal lots are not that unusual in Larimer County. According to Russell Legg, chief of planning, three or four times a year people come in for building permits only to learn they own an illegal lot.

"The planning department regulates the process of land division, but not how to record and sell lots," Legg explained.

"Anybody can record anything, whether it's legal or not," added planning director Larry Timm.

While the county land use code says it is unlawful to transfer or sell lots not approved by the county commissioners, the county takes no action against those who do, other than sometimes forcing the reunification of illegally split parcels.

As a result, buyers like the Bernhardts and Warner have to work through the county's minor land division process to make their lots legal.

Max Bernhardt said he discovered the problem with his lot when he applied for a well permit. Faced with a "mass of confusion," he said he had no choice but to hire a professional surveyor to handle the land division process with the county.

Warner also needed a professional survey and a lot size variance for his land division. To recover his costs, he has sued the real estate agency and the property sellers. In the meantime, he and his fiancée have been living in a camper on the property for the past 16 months, and that has spurred a neighbor to file a zoning violation complaint.

Because of health problems, Warner said, he no longer has the earning potential he had when he purchased the land three years ago. He has run out of money, he said, and is hoping a favorable court ruling will pay costs of the minor land division in addition to compensating for lost time and opportunities. If he loses the court case, however, he will likely lose the land, he said.

Lawsuit undecided

At press time, Larimer County Court Judge Ronald Schultz had Warner's case under advisement. Shultz has already dismissed the seller, Cheyenne attorney Anthony Ross who represented the estate of his father, Vincent Ross, from the lawsuit. That leaves the real estate agency, Cabin Country, broker William McClelland and agent Scott Jennrich as defendants.

In making his ruling, Schultz said at a Dec. 19 hearing that the Rosses had relied on experts to sell their Colorado land. "The Rosses had no idea how the county would proceed," the judge said.

Attorney Ken Levinson of Denver, representing Cabin Country, contended at the same hearing that the county subdivision laws do not apply to this case because the property was split by a 1911 railroad deed. He said Warner should be angry with the county for not recognizing a railroad deed as legal.

The seller's attorney, Russell Sinnett, added that this railroad deed is more than an easement or a right of way - it transferred the land. The resulting lot should be grandfathered as legal, he said.

"This case starts and ends with the county," Levinson said, adding that the planning department told real estate agent Jennrich prior to the sale that the lot was buildable.

Warner's attorney, Stewart Olive, argued that Cabin Country had a duty to warn his client that the county could have concerns about the lot's legality. He said Warner checked on whether the acreage could be used for a mobile home with a septic system, but he never knew about issues with illegal lots.

"Even if the county is wrong, it does not relieve Cabin Country to disclose the problem," Olive said.

At the same hearing, Warner told the judge he had counted on professionals to handle the real estate transaction. He has since filed complaints with appropriate regulatory commissions, but no one is being held accountable, he said.

"For the defendants to not have to suffer consequences would send a bad message," Warner said. "There is no incentive for people not to sell illegal lots."

After the county denied Warner a building permit, the Ross estate offered to buy back the land and give Warner $2,000. Warner made a counteroffer that he wanted to keep the land and get $5,000 to pay for the minor land division. Ross and Cabin Country did not accept the counteroffer, and Warner contends his losses far exceed $5,000.

Legal vs. usable

Legg said the county planning department is governed by state law that prohibits issuing building permits for lots that have not been legally subdivided. Situations such as bankruptcies and divorce settlements sometimes create the illegal lots, which owners don't discover until they are ready to build.

"A road, river or railroad does not make a lot until it gets county approval," Legg said.

For example, Timm added, if the county accepted roads as ways to create subdivisions someone could build a road to bypass the subdivision review process.

Timm suggested that would-be buyers and sellers need to ask two questions of the planning department: Is the lot legal? Is the lot usable for housing? The latter, he said, refers to issues such as floodplains and engineering constraints.

The problems caused by illegal lots have more to do with real estate law than planning law, Timm contended. The real estate community needs to lobby the state Legislature for solutions, he said.

"The planning department of Larimer County does not enjoy withholding a building permit from a guy who thought he had a legal lot," Legg added.

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