

Annotated January 2017

14.3 Accessory Apartments in an R-1 District

14.3.1 Definitions

(a) Accessory Apartment: a distinct portion of a single-family dwelling, or a unit in an accessory structure on a single-family lot, having its own kitchen, sleeping, and bathroom facilities, and subordinate in size to the principal part of the dwelling or structure.

(b) Affordable Accessory Apartment: An Accessory Apartment that is affordable to low and moderate income households, as defined by the Massachusetts Department of Housing and Community Development (“DHCD”), and that meets DHCD requirements for inclusion in the Town’s Subsidized Housing Inventory.

(c) Multiple Accessory Apartments: More than one accessory apartment per lot.

14.3.2 Requirements for an Accessory Apartment

The Board of Appeals may grant a Special Permit for an Accessory Apartment, provided that the unit meets the following requirements:

(a) Floor Area: the Accessory Apartment shall not exceed 1200 square feet, and (for a unit included in a single-family dwelling) shall not exceed 35% of the floor area of the principal dwelling unit and Accessory Apartment combined.

(b) Lot Size: the lot on which the Accessory Apartment and principal dwelling unit are located shall contain at least 40,000 square feet. .

(c) Age of Structure: The residential dwelling or the accessory structure in which the Accessory Apartment is to be located shall have been constructed at least ten (10) years prior to the date of application for the Special Permit. Any addition less than ten (10) years old shall be deemed to be part of the building(s), provided that the addition does not increase the floor area or volume of the original building(s) by more than 10% and does not alter the character of the building.

(d) Occupancy: either the Accessory Apartment or the principal residence is occupied by the owner of the lot on which the Accessory Apartment is to be located, except for bona fide temporary absences. If the lot on which the Accessory Apartment is to be located is owned by the Town of Lincoln, the owner-occupancy requirement of this paragraph shall not be applicable as long as the lot and the structures thereon continue to be owned by the Town of Lincoln.

(e) Sewage: Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of such Accessory Apartment in accordance with the requirements of the Board of Health, as certified by a written report from the Board of Health, submitted to the Board of Appeals before or at the public hearing.

(f) Access and Parking: adequate provision has been made for ingress and egress to the Accessory Apartment from the outside of the structure, and for off street parking of motor vehicles in such a fashion as is consistent with the character of a single family residence.

(g) Number of Units: There shall be no other apartment on the lot on which the apartment is to be located except as provided under Section 14.3.5, "Multiple Accessory Apartments".

(h) Appearance: The principal structure, after the creation of the Accessory Apartment, shall retain the appearance of a single-family structure. In general, any new external entrances shall be located on the side or rear of the building.

(i) Effect on Adjacent Properties and the Neighborhood: the Board of Appeals shall find that the construction and/or occupancy of the Accessory Apartment will not be detrimental to the neighborhood in which the lot is located or injurious to persons or property.

14.3.3 Procedures

(a) The applicant shall consult with the Planning Board prior to the hearing and the Planning Board shall submit, in writing, prior to the hearing, its recommendation and report to the Board of Appeals. The report of the Planning Board shall include as a minimum:

(i) a determination of the area of the lot on which the apartment is located;

(ii) a general description of the neighborhood in which the lot lies and the effect of the proposed apartment on the neighborhood;

(iii) the Planning Board's recommendations as to the advisability of granting the Special Permit and as to any restrictions which should be imposed as a condition of such permit.

(b) The applicant shall obtain and submit to the Board of Appeals a written report of the Board of Health, certifying that the conditions of Section 14.3.2(e) have been met.

(c) The Board of Appeals shall hold a public hearing on the application, in accordance with the procedures specified in MGL Chapter 40A.

(d) The Board of Appeals shall give due consideration to the report of the Planning Board and, where its decision differs from the recommendation of the Planning Board, shall state the reasons therefor in writing.

14.3.4 Affordable Accessory Apartments

The intent of this section of the bylaw is to increase the availability of moderately priced housing that qualifies for inclusion on the Town's Subsidized Housing Inventory, thus developing a variety of housing to meet the needs of low and moderate income families, town employees, the young and the elderly.

The Affordable Accessory Apartment Program is a public/private partnership to maintain local control over housing development and to increase the town's supply of low and moderate income housing.

The Board of Appeals may approve a Special Permit for an Affordable Accessory Apartment, according to the same procedures as in Section 14.3.3, above. An Affordable Accessory Apartment shall meet the requirements set forth in Section 14.3.2 above, with the following conditions:

(a) The Affordable Accessory Apartment shall comply with the low and moderate income housing regulations and guidelines of the Local Initiative Program, 760 CMR 45.00 et seq., in effect on the date of application for a Special Permit;

(b) Before the Affordable Accessory Apartment may be occupied, the owner(s) of the property shall execute a Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement"), enforceable by DHCD and the Town, or other form of affordable housing restriction as may then be in effect under the Local Initiative Program, so as to ensure that the unit is eligible for inclusion in the Town's Subsidized Housing Inventory. The Regulatory Agreement shall be recorded with the Middlesex South Registry of Deeds;

(c) The Regulatory Agreement shall have a minimum term of 15 years. The Agreement shall terminate upon sale of the property, which, for purposes of this subsection, shall not include:

(i) A mortgage deed to secure repayment of a loan; or

(ii) An inter-spousal transfer for nominal consideration where the transferor retains at least a fifty-percent ownership interest in the property; or

(iii) A transfer to a trust for minimal consideration where the owner holds at least a fifty-percent beneficial interest in the property.

(iv) An owner may voluntarily terminate the Regulatory Agreement with 60 days' notice prior to its expiration, in accordance with the restrictions in such agreement. The owner shall notify the Town and DHCD, and record a notice of cancellation of the Special Permit at the Registry of Deeds. The termination of the Regulatory Agreement shall not take effect until the expiration of the current lease between the owner and the tenant occupying the Affordable Accessory Apartment. Upon the expiration of the tenancy, the Special Permit shall be deemed to no longer be in effect, and further use of the unit as a rental shall cease, unless the owner applies for, and receives, a Special Permit for an Accessory Apartment under Section 14.3.4.

(d) Upon termination of this Agreement, additional restrictions shall apply regarding repayment to the Town of any funds received from the Town pursuant to a grant or loan agreement.

(e) An Affordable Accessory Apartment may not be rented to an owner's family member (currently defined in DHCD regulations and guidelines as a parent, grandparent, son, daughter, uncle, aunt, niece, nephew, or sibling);

(f) The Affordable Accessory Apartment shall be subject to DHCD regulatory requirements relative to pricing, tenant income eligibility, affirmative fair housing marketing and tenant selection plan, and maintenance. In particular, the Affordable Accessory Apartment shall be rented to income-qualified tenants selected through an open process established in accordance with the affirmative fair housing marketing plan, and the monthly rent shall not exceed the maximum affordable rent for a household of the appropriate size, as prescribed in the Local Initiative Program affordable accessory apartment program guidelines and other applicable state regulations.

(g) The Lincoln Housing Commission, or other entity designated by the Board of Selectmen, shall act as the Local Project Administrator provided for by DHCD regulations and guidelines.

14.3.5 Multiple Accessory Apartments

The Board of Appeals may issue a Special Permit under this section for more than one Accessory Apartment per lot (in which case Section 14.3.2(g) shall not apply) provided that, as a condition of the Special Permit:

(a) for each Accessory Apartment in excess of one, the owner shall designate a tract of land as "Open Space" contiguous to the lot on which the Accessory Apartments are to be constructed;

(b) the Open Space shall contain a minimum of 80,000 square feet for each Accessory Apartment in excess of one;

(c) prior to the commencement of any construction with respect to the Accessory Apartment, the Open Space shall be:

(i) designated as a separate lot and conveyed to the Town of Lincoln or the Lincoln Land Conservation Trust; or

(ii) placed under a conservation easement running to and enforceable by the Town or the Lincoln Land Conservation Trust.

(d) the Open Space shall be restricted to any one or more of the uses allowed in the C-Open Space District except that, subject to the approval of the Board of Health, the Board of Appeals may permit the Open Space to be used for subsurface waste disposal where it finds that such use would not be detrimental to the character or quality of the Open Space.

(e) the owner shall demonstrate to the satisfaction of the Board of Appeals that the Open Space meets all the applicable requirements to permit a dwelling to be constructed if the tract were subject to the restrictions of the R-1 Single Family Residence District for each apartment in excess of one.

14.3.6 Termination of Accessory Apartment Special Permits upon Sale of the Property

(a) The rights granted under the Special Permit for either an Accessory Apartment (including Multiple Accessory Apartments) or, an Affordable Accessory Apartment shall terminate upon sale of the property, which, for purposes of this subsection, shall not include:

(i) A mortgage deed to secure the repayment of a loan; or

(ii) An inter-spousal transfer for nominal consideration where the transferor retains at least a fifty-percent ownership interest in the property; or

(iii) A transfer to a trust for nominal consideration where the owner holds at least a fifty-percent beneficial interest in the property.

(b) A sale or transfer of title shall not dispossess the then-tenants of the Accessory Apartment or Affordable Accessory Apartment for the duration of their current tenancy.

(c) In the event of sale of the property, if the new owner wishes to continue to use the accessory unit as an Accessory Apartment or an Affordable Accessory Apartment, the new owner must apply to the Board of Appeals for a new Special Permit. The approval of a Special Permit for a new owner shall not be denied for a unit previously authorized as an Accessory Apartment or Affordable Accessory Apartment solely for the reason that the unit or property fails to comply with amendments made to Section 14.3 after the granting of the original Special Permit.

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