

This Draft (5) has been reviewed by KP-Law attorney Amy Kwesell and includes her edits.

There will be two warrant articles for Town Meeting:

1. For the minor changes in 14.3.1 and .14.3.2, 14.3.4, and 14.6 which will require a 2/3 majority vote
2. For the new section 14.4 which will require a majority vote.

## 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. **An Accessory Apartment shall be larger in Gross Floor Area than an Accessory Dwelling Unit as defined in 760 CMR 71.02 and Zoning Bylaw Section 14.4.1(a) with a maximum Gross Floor Area of 1,200 square feet.**

(b) Affordable Accessory Apartment: An Accessory Apartment **as defined in 14.3.1 (a) above** that is affordable to low and moderate income households, as defined by the Executive Office of Housing and Livable Communities (EOHLC), and that meets EOHLC requirements for accessory apartments under the Local Initiative Program ("LIP") and 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

For the purpose of providing additional housing options to rent that will not substantially alter the appearance and character of the Town and/or the purpose of enabling owners of single-family dwellings to share space and the burdens of homeownership, Accessory Apartments will be permitted according to this section.

A building permit shall be granted for one accessory dwelling unit within a single-family dwelling provided that the unit meets the requirements of this section.

The Board of Appeals may grant a Special Permit for an Accessory Apartment in a detached structure provided that the unit meets the requirements of this section.

~~In either case, the existing number of accessory apartments (not including any Affordable Accessory Apartments as defined in Section 14.3.4 below) shall not exceed 5% of the number of residential units as stated in the most recent Federal Census.~~

In all cases, if the addition of an Accessory Apartment triggers the Calculated Gross Floor Area threshold for site plan review pursuant to Sections 4.6 or 6.0.2, then a recorded copy of such approval must be submitted to the Building Department as part of the building permit application.

(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) 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.

(d) Legal Ownership: The Accessory Apartment unit shall not be legally separated or conveyed apart from the single-family dwelling.

(e) Plans: Dimensional floor plans of the Accessory Apartment shall be filed with the building permit or special permit application. In addition, a site plan at measurable scale, shall be submitted with the application to the Building Inspector or the Board of Appeals showing the location of the Accessory Apartment, the setbacks, the height, and the location of the parking space on the property.

(f) Setback and Height:

An Accessory Apartment within the primary structure shall meet the setbacks and height requirements of the Zoning Bylaw for primary structure.

An Accessory Apartment within a detached structure shall meet the setbacks and height requirements of the Zoning Bylaw for accessory structures.

(g) 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.

(h) Access and Parking: adequate provision has been made for ingress and egress to the Accessory Apartment from the outside of the structure. One parking space shall be provided for the Accessory Apartment on the lot.

(i) 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".

(j) Appearance: The principal structure, after the creation of the Accessory Apartment, shall retain the appearance of a single-family structure.

(k) Minimal Rental Period: Where the Accessory Apartment or the principal dwelling is occupied as a rental unit, the minimum occupancy or rental term shall be seven days.

#### 14.3.3 Procedures for Accessory Apartments in Accessory Structures

- (a) The Board of Appeals shall hold a public hearing on the application, in accordance with the procedures specified in MGL Chapter 40A, Section 9.
- (b) The Board of Appeals shall approve the special permit if it finds that the construction and/or occupancy of the Accessory Apartment will not be substantially detrimental to the neighborhood in which the lot is located and without derogating from the intent and purpose of the Bylaw.

#### 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 be approved by LIP and comply with LIP requirements, including but not limited to those contained within the Comprehensive Permit Guidelines: M.G.L. Chapter 40B Comprehensive Permit Projects - Subsidized Housing Inventory, in effect on the date of application for a Special Permit and as may be amended from time to time thereafter;

(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 for Affordable Accessory Apartment Rental ("Regulatory Agreement"), enforceable by EOHLC and the Town, or other form of affordable housing restriction as may then be in effect under the Local Initiative Program. 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;

(i) The Agreement shall terminate upon sale of the property, which, for purposes of this subsection, shall not include:

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

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

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

(ii) An owner may voluntarily terminate the Regulatory Agreement prior to its expiration with 60 days' notice, in accordance with the restrictions in such agreement. The owner shall notify the Town and EOHLC, 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.

(d) Upon termination of the 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 EOHLC regulations and guidelines as a parent, grandparent, son, daughter, uncle, aunt, niece, nephew, or sibling);

(f) The Affordable Accessory Apartment shall be subject to EOHLC regulatory requirements, including 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 LIP affordable accessory apartment program guidelines and other applicable state regulations and requirements.

(g) The Lincoln Housing Commission, or other entity designated by the Select Board, shall act as the Local Project Administrator if approved by EOHLC in accordance with EOHLC guidelines and requirements.

#### 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.

(iv) A transfer to a new owner where the new owner applies to and obtains from the Board of Appeals approval of the transfer of the Special Permit.

(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. Any transfer or extension of a Special Permit for an Accessory Apartment or Affordable Accessory Apartment shall not be denied 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.

(c) In granting Special Permits under this Section 14.3, the Board of Appeals may impose restrictions as to manner and duration of use, in accordance with (and without limiting) Section 20.2(e).

#### 14.4 Accessory Dwelling Units in a Single Family Residential Zoning District

*14.4.1 Definitions: For purposes of this section 14.4, the following definitions shall apply.*

- (a) Accessory Dwelling Unit (ADU). A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in Gross Floor Area than ½ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller; and (iii) is subject to additional restrictions as may be imposed by this bylaw.
- (b) Gross Floor Area. The sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of the exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhangs and similar features.
- (c) Principal Dwelling. A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is, or will be, located on the same Lot as a Protected Use ADU.
- (d) Protected Use ADU. An attached or detached Accessory Dwelling Unit that is located, or is proposed to be located, on a Lot and which is protected from Prohibited Regulations and or Unreasonable Regulations pursuant to M.G.L. c. 40A, s. 3, para.11 and 760 CMR 71.00.
- (e) Single Family Residential Zoning District. Any Zoning District where Single-Family Residential Dwellings are a permitted or an allowable use, including any Zoning district where Single-Family Residential Dwellings are allowed as of right or by special permit.
- (f) Transit Station: A subway station, commuter rail station, ferry terminal, or bus station as defined in EOHLC regulations 760 CMR 71.00.

#### 14.4.2 Requirements for Accessory Dwelling Units (ADUS).

A building permit shall be granted for one Protected Use ADU on a Lot within a Single-Family Residential District whether attached or detached provided that the Protected Use ADU meets the requirements of this section.

In all cases, if the addition of a Protected Use ADU triggers the Calculated Gross Floor Area threshold for Site Plan review pursuant to Sections 4.6 or 6.0.2, then a recorded copy of such Site Plan Approval must be submitted to the Building Department as part of the building permit application.

Notwithstanding the threshold required for Site Plan Review pursuant to Sections 4.6 or 6.02, all proposed Protected Use ADUs that are detached from the Principal Dwelling shall be subject to Site Plan review pursuant to Section 17.7 and a recorded copy of such Site Plan Approval must be submitted to the Building Department as part of the building permit application.

- (a) Floor Area: the Protected Use ADU shall not exceed ½ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller.
- (b) Legal Ownership: The Protected Use ADU shall not be legally separated or conveyed apart from the Principal Dwelling.
- (c) Plans: Dimensional floor plans of the Protected Use ADU shall be filed with the building permit application. In addition, a site plan at measurable scale shall be submitted with the application to the Building Inspector showing the location of the Protected Use ADU, the setbacks, the height, and the location of parking if required.
- (d) Setback and Height: A Protected Use ADU within the Principal Dwelling unit shall meet the setbacks and height requirements of the Zoning Bylaw for primary structures.

A Protected Use ADU within a detached structure shall meet the setbacks and height requirements of the Zoning Bylaw for accessory structures.

- (e) Sewage: Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of such Protected Use ADU in accordance with the requirements

- of the Board of Health, as certified by a written report from the Board of Health.*
- (f) *Access and Parking: Adequate provision shall be made for ingress and egress to the Protected Use ADU from the outside of the structure or by a separate entrance through an entry hall or corridor shared with the Principal Dwelling as required by the Building Code. One parking space shall be provided for the Protected Use ADU on the lot except where the Lot is located within a .5-mile radius of a Transit Station.*
  - (g) *Number of Units: There shall be no other ADU or Accessory Apartment on a Lot on which the Protected Use ADU is to be located except by Special Permit from the Board of Appeals pursuant to Section 14.3.3 above.*
  - (h) *Appearance: The Principal Dwelling, after the creation of an attached Protected Use ADU shall retain the appearance of a single-family structure.*
  - (i) *Minimal Rental Period: Where the ADU or the Principal Dwelling is occupied as a rental unit, the minimum occupancy or rental term shall be seven days.*

#### 14.5 Development Bonus.

14.5.1 An owner or owners of land in an R-1, R-2 or R-3 District may, in connection with the submission of an application for a special permit to the Board of Appeals or of a plan to the Planning Board, pursuant to the requirements for particular uses within such districts, apply to the Board of Appeals for a special permit to increase the number of dwelling units which would otherwise be permitted under this By-law up to a maximum of the lesser of 20% of the units otherwise permitted on the tract under this By-law or ten (10) units, provided that the applicant demonstrates to the satisfaction of the Board of Appeals that at least 50% of such additional dwelling units to be constructed in the development will be made available on a continuing basis to persons of low or moderate income.

14.5.2 No development shall take place pursuant to a special permit granted by the Board of Appeals under this **Section 14.5** until and unless a site plan is submitted to and approved by the Planning Board under **Section 17** below.

14.5.3 In the event that a special permit for a development bonus is granted under this **Section 14.5**, the lot area, frontage, width of lot at building and yards of the development shall be as shown by a site plan submitted to and approved by the Planning Board under **Section 17** below, which site plan shall conform generally to the pattern of development permitted in the district in which the land lies with such deviations as are reasonable, in the judgment of the Planning Board, to permit the increased density.

#### 14.6 Inclusionary Housing

14.6.1 Purpose and Intent – The purpose of this Bylaw is to increase the supply of housing in the Town of Lincoln that is available to and affordable by low or moderate income households who might otherwise have difficulty in finding homes in Lincoln, and to ensure that such housing is affordable in perpetuity and provided in accordance with the Town of Lincoln Consolidated Housing Plan, M.G.L. Chapter 40B Sec. 20-23 as amended and other ongoing programs within the Town. It is intended that the affordable housing units that result from Special Permits issued under this Bylaw subsequently be approved as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the (EOHLC) or its successor and that such units count toward the Town's Subsidized Housing Inventory (SHI) in perpetuity. It is intended that this bylaw provide a mechanism to compensate for those decreases in the Town's percentage of affordable housing that are directly caused by increases in the Town's overall housing stock.

14.6.2 Applicability – Beginning with the effective date of this Bylaw, any development or division of land subject to M.G.L. Chapter 40A Section 9 or M.G.L. Chapter 41