

APPENDIX D: REVISED

Proposed Zoning By-law Amendment: Accessory Dwelling Units

5.11.0.0. Accessory ~~Apartment~~ Dwelling Units

The provisions of this Section 5.11.0.0. outline the considerations and requirements for approval of ~~Accessory Apartments (“AA”)~~ Accessory Dwelling Units (ADUs). The intent and purpose of this Section 5.11.0.0. is as follows:

- 5.11.0.1. Provide for flexibility within the existing zoning By-Law to afford an opportunity to accommodate additional living arrangements
- 5.11.0.2. ~~A~~ Plan for changing demographics and economic climate;
- 5.11.0.3. Increase ~~supply of affordable housing~~ diversity of housing options while respecting the residential character and scale of existing neighborhoods;
- 5.11.0.4. Provide a form of housing that is generally less costly to produce and more affordable than similar units in multifamily buildings;
- 5.11.0.5. Provide housing options for extended family and households with disabled persons, and homeowners seeking to age in place;
- 5.11.0.6. Permit the owner to create one additional dwelling unit; and
- 5.11.0.7. Ensure compliance of new and existing ~~AA’s~~ ADUs with building, safety, fire code standards and zoning provisions.

5.11.1.0. Definitions

- 5.11.1.1. ~~Accessory Apartment or AA: an area contained within an owner occupied single family dwelling unit that maintains internal access and circulation to the dwelling unit, restricted to not more than two (2) bedrooms and no more than three (3) occupants, consisting of provisions for bathing, cooking and sleeping. The inclusion of an AA within a single family dwelling unit does not create a two family dwelling. Furthermore, internal walls and doors, for purposes of privacy, and additional means of access / egress are not precluded. The AA shall be ancillary / subordinate in size, location and function to the dwelling unit. An AA shall only be permitted within a single family dwelling and not within a detached accessory building.~~

Accessory Dwelling Unit or ADU: a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities located on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains separate entrances, 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 and (ii) is not larger in floor area than 50% of the floor area of the principal dwelling or 900 square feet, whichever is smaller.

5.11.2.0. *Applicability / Eligibility*

~~The Board of Appeals may issue a special permit to allow an AA in a single family home or for an expansion of an existing lawfully existing AA.~~ Subject to compliance with the requirements of Section 5.11.0.0., an ADU shall be permitted within a single-family dwelling or, within an existing (as of 5/15/23) detached Accessory building, as of right. All relevant provisions of this Zoning Bylaw shall apply to ADUs and lots on which they are located, except as otherwise specified in Section 5.11.0.0.

5.11.3.0. *Design Standards for Accessory ~~Apartment~~s Dwelling Units*

- 5.11.3.1.** Only one (1) AA ~~ADU~~ may be ~~created per~~ located on a Lot.
- 5.11.3.2.** ~~All new entrances shall be located on the side or rear of the structure, if proposed.~~ Where two or more entrances exist on the front façade of a dwelling, one entrance shall appear to be the principal entrance, and the other entrances shall appear to be secondary. All exterior stairways to the ADU, above the first floor, shall be located on the rear or side of the dwelling.
- ~~**5.11.3.3.** The AA shall not have more than three (3) occupants.~~
- 5.11.3.3.** The AA ~~ADU~~ shall not have separate or independent utilities, such as water, sewer, and electricity, from the principal dwelling unit.
- 5.11.3.4.** The owner(s) of the residence in Lot on which the AA ~~ADU~~ is located must continue to occupy either the ~~primary~~ principal dwelling unit or the AA ~~ADU~~ as their primary residence, except for bona fide temporary absences.
- 5.11.3.5.** Preexisting detached structures eligible for conversion to an ADU may be demolished and reconstructed in accordance with Section 2.2.7.3 of the Zoning Bylaw.
- 5.11.3.6.** In addition to the minimum parking requirement for the principal dwelling, the ADU shall have one (1) dedicated off-street parking space.
- 5.11.3.7.** There shall not be a reduction in the amount of pervious area, or the removal of trees on the property for the sake of constructing the ADU.

~~5.11.4.0. Use Restriction~~ To ensure continued compliance with owner occupancy and other By-Law requirements by current as well as by any subsequent owners, AA's permitted under this By-Law shall be subject to a Use Restriction, to be recorded in the Essex Registry of Deeds. The Use Restriction, to be provided by the Inspector of Buildings, shall be the only form acceptable and shall include the following:

- ~~a. Notice that the existence of the AA is predicated upon occupancy by the owner, to whom the permit has been issued;~~
- ~~b. Notification to a buyer of the AA By-Law~~
- ~~c. Upon sale of the property, the new owner shall be required to file an application for a new special permit to maintain the AA;~~
- ~~d. Within thirty (30) days of receipt of a letter from the Inspector of Buildings determining a violation, a special permit shall be sought for the continuation of the AA. Failure to apply for the Special permit within thirty (30) days shall result in the AA being discontinued and the special permit shall automatically lapse and be null and void;~~
- ~~e. Require that current and future property owners notify the Inspector of Buildings in the event the AA has been or will voluntarily be discontinued; and~~
- ~~f. The dwelling unit remains a single family dwelling unit and the AA cannot be used except in accordance with the requirements of this By-Law and any conditions set forth in the applicable special permit.~~

~~5.11.5.0. Procedural Requirements~~

~~The Board of Appeals shall hold a public hearing, in accordance with M.G.L Chapter 40A, Section 9, for AA's allowed by special permit. Prior to the issuance of a building permit, the property owner shall file a copy of the executed use restriction required pursuant to Section 5.11.4.0. above, and submit to the Inspector of Buildings evidence that it has been recorded in the Essex Registry of Deeds.~~

5.11.64.0. Application Requirements

Prior to a building permit being issued for an AA ADU, the applicant shall provide the following to the ~~Inspector of Buildings~~ **Building Commissioner**:

- a. A completed application **for a building permit** and filing fee as required.
- b. Adequate information to determine compliance with the provisions set forth herein. This shall include, but not be limited to, a site plan, interior floor plans and building elevations.
- c. A copy of the **any** recorded Use Restriction in accordance with Section ~~5.11.4.0. above~~ **relevant special permit or finding granted by the Zoning Board of Appeals.**
- d. **A copy of any Certificate of Appropriateness or Certificate of Non-Applicability granted by the Historic District Commission, if applicable.**

~~**5.11.7.0. Criteria for Approval** The Board of Appeals may grant a special permit for an AA based upon making findings set forth in Section 5.3.2.0. and upon determining that the proposed AA otherwise complies with the requirements of this By-Law. In order to provide adequate dwelling units for disabled and handicapped individuals, the Board of Appeals will allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons in addition to any requirements in accordance with the Mass. State Building Code and as exempt pursuant to M.G.L. Chapter 40A, Section 3.~~

~~**5.11.8.0. Monitoring, Inspections & Enforcement** The following methods are available to ensure continued compliance with these regulations as set forth:~~

- ~~1. In accordance with Section 5.11.4.0.(c), upon the sale of the property, the new owner shall be required to file a new application with the Inspector of Buildings. Upon filing, the Inspector of Buildings shall conduct an inspection of the AA for purposes of verifying compliance.~~
- ~~2. The Inspector of Buildings shall keep a cumulative list of all lawfully existing AAs in the Town of Swampscott and shall conduct annual inspections of each such AA to confirm its compliance with the requirements of this By-Law, the applicable special permit and all applicable legal requirements. The Inspector of Buildings shall impose a inspection fee to be paid annually by each owner of an AA, provided, however, (i) such fee shall in no event be less than \$100.00, (ii) such fee shall be due and payable on or before February 1st of each year, and (iii) failure of an owner of an AA to pay such fee within thirty (30) days of the date required shall be deemed a violation of this By-Law and a violation of the applicable special permit. If a complaint is filed with the Inspector of Buildings with regard to an unauthorized AA, the Inspector of Buildings shall inspect the AA for purposes of determining whether there is a violation. If a violation exists, the owner shall apply to the Board of Appeals,~~

~~within thirty (30) days from the receipt of letter from the Inspector of Buildings for a special permit for the continuation of the AA. Failure to apply for the special permit within thirty (30) days shall result in the AA being discontinued.~~

~~**5.11.9.0** — *Pre Existing AA's.* AA's that were in existence prior to January 1, 2007 may be continued regardless of whether it complies with the Design Standards set forth in Section 5.11.3.0. and without the requirement of a Special Permit as set forth in Section 5.11.2.0 above, provided that the following conditions are fulfilled:~~

- ~~1. Said AA was in existence prior to January 1, 2007 and has been occupied for at least six (6) months since January 1, 2007 (The owners shall have the burden of proof to demonstrate such by furnishing evidence the existence of said AA); and~~
- ~~2. Provided that an application to the Building Commissioner Inspector of Buildings is submitted within 90 days from the date of approval of these regulations by the Attorney General, together with an non-refundable application fee in the amount of \$350.00; and~~
- ~~3. Provided that the applicant otherwise complies with the requirements set forth in Section 5.11.4.0. and 5.11.8.0.~~

~~The owner of any AA that was in existence prior to January 1, 2007 that does not comply with the requirements of this Section 5.11.9.0. shall not be entitled to the protections of this Section 5.11.9.0. and must within 90 days from the date of approval of these regulations by the Attorney General comply with enforcement regulations set forth by the Building Department. either (i) immediately vacate and discontinue the use of such AA, or (ii) apply to the Board of Appeals for a Special Permit pursuant to Sections 2.2.3.0. and 5.11.2.0. of this By Law and the AA will be subject to all of the requirements of Section 5.11.0.0. of this By Law.~~

2.2.0.0. Use Regulations.

2.2.1.0. General. No structure shall be erected or used or land used except as set forth in Section 2.2.3.0., "Table of Principal Uses", or as otherwise provided in this By-Law or by statute. Uses not expressly provided for herein are prohibited. Not more than one principal structure shall be placed on a lot, except in accordance with Section 2.3.4.0. Multiple principal uses shall be allowed in a single structure subject to the provisions of Section 2.2.3.0. below.

Symbols employed below shall mean the following:

Y - A permitted use as a matter of right.

N - An excluded or prohibited use.

SP - A use authorized under special permit from the Board of Appeals in accordance with Section 5.3.0.0. of this By-Law.

2.2.2.0. Applicability. When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

2.2.3.0. Table of Principal Uses. See definitions in Article VI.

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
A.	<u>RESIDENTIAL</u>										
1.	Single-family dwelling	Y	Y	Y	Y	SP	N	N	N	N	A
2.	Two-family dwelling	N	N	Y	Y	SP	N	N	N	N	A
3.	Multi-family dwelling containing not more than 8 dwelling units	N	N	N	SP	SP	SP	SP	SP	N	A-MF
3A.	Multi-family dwelling containing more than 8 dwelling units	N	N	N	N	SP	SP	SP	SP	N	A-MF

[illegible]