Massachusetts Department of Environmental Protection
Division of Watershed Management
Title 5 Program

Guidance on Title 5 (310 CMR 15.000) Compliance for Accessory Dwelling Units

April 7, 2025

Introduction

This document serves as MassDEP Title 5 Program guidance on the application of 310 CMR 15.000 (Title 5) to the use of land or structures for an Accessory Dwelling Unit (ADU).

Background

On August 6, 2024, Governor Maura Healey signed into law the Affordable Homes Act (AHA), Chapter 150 of the Acts of 2024. Section 8 of the AHA allows the construction of Accessory Dwelling Units by right in single-family residential zoning districts. Section 8 took effect on February 2, 2025, and, in relevant part, reads as follows:

SECTION 8. Section 3 of said chapter 40A, as so appearing, is hereby amended by adding the following paragraph:

> *No zoning ordinance or by-law shall prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district; provided, that the use of land or structures for such accessory dwelling unit under this paragraph may be subject to reasonable regulations, including, but not limited to, 310 CMR 15.000 et seq., if applicable,...*

Section 7 of the AHA defines an "Accessory Dwelling Unit" as "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 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short-term rental, as defined in section 1 of chapter 64G; provided, however, that no municipality shall unreasonably restrict the creation or rental of an accessory dwelling unit that is not a short-term rental."

Discussion

The AHA specifically identifies Title 5 as reasonable regulations that may be applied to the use of land or structures as ADUs. Title 5 does not explicitly reference or define ADUs. Therefore, the Department issues this Guidance to describe how Title 5 applies to the construction and use of ADUs in the Commonwealth.

The following Title 5 provisions are relevant to the creation of ADUs:

- 310 CMR 15.002 defines a Dwelling as "[a] building which is used, intended, or designed for human habitation, including but not limited, to houses, hotels, motels, apartments, mobile and modular homes and condominiums and cooperatives." The definition of an ADU in Section 7 of the AHA is compatible with the Title 5 definition of a Dwelling because both are defined as self-contained units for human habitation.
- 310 CMR 15.002 defines a Facility, in part, as "[a]ny real property (including any abutting real property) and any buildings thereon, which is served, is proposed to be served, or could in the future be served, by a system or systems…" An ADU is part of the Facility currently served by a septic system.
- 310 CMR 15.002 defines New Construction as "[t]he construction of a new building for which an occupancy permit is required or an increase in the actual or design flow to any system or an increase in the actual or design flow to any nonconforming system or an increase in the design flow to any system above the existing approved capacity…"
- 310 CMR 15.002 defines an On-site System (or Disposal System or On-site Subsurface Sewage Disposal System or System) as a system or series of systems for the treatment and disposal of sanitary sewage below the ground surface on a Facility (also referred to as a septic system).
- 310 CMR 15.002 defines a Nonconforming System as "[a]ny system which is not in full compliance with the standards and requirements of 310 CMR 15.000 and for which a variance or local upgrade approval has not been obtained. Nonconforming systems include, but are not limited to, cesspools, privies, failed systems, and systems with a design flow above 10,000 gpd."
- 310 CMR 15.002 defines an Upgrade as "[t]he modification of one or more components of an on-site system or the design and construction of a new on-site system which is intended to bring an existing system, including a nonconforming system, into conformance with 310 CMR 15.000…"

Based on the foregoing:

- The addition of an ADU to an existing Facility meets the definition of New Construction if it increases the design flow to the Facility's septic system (calculated at 110

gpd/bedroom)[1] regardless of whether sanitary sewage from the ADU is discharged to the existing septic system, or to a newly proposed septic system serving only the ADU. This is because both the ADU and the existing principal dwelling will be located on the same Facility and both septic systems are deemed to be one septic system serving the Facility in accordance with the definition of On-site System in 310 CMR 15.002 (a system or series of systems).

- If an ADU is proposed to discharge to an existing septic system serving a Facility that was constructed in full compliance with Title 5 and there will be an increase in the Facility's approved design flow (i.e., an increase in the number of bedrooms on the Facility), then:

    - The existing septic system must meet New Construction standards (i.e., be in full compliance with Title 5) for the total number of bedrooms on the Facility. This is because 310 CMR 15.204 requires that any Upgrade (modification of one or more components) of a septic system to accept increased design flow be performed in full compliance with the requirements applicable to New Construction.

    - A multi-compartment tank or two tanks in series is required because 310 CMR 15.223(1)(b) [2] requires a multi-compartment tank or two tanks in series for systems serving Facilities other than a single-family dwelling unit (the septic system will serve both the principal dwelling and the ADU).

- If an ADU is proposed to discharge to an existing septic system serving a Facility that was constructed in full compliance with Title 5 and there will be no increase in the Facility's approved design flow (i.e., no increase in the number of bedrooms due to a reconfiguration of the existing dwelling to eliminate bedrooms), then:

    - A multi-compartment tank or two tanks in series is required.

- If an ADU is proposed to discharge to its own newly constructed septic system on a Facility and the existing septic system serving the principal dwelling was constructed in full compliance with Title 5, then:

    - The proposed system must meet New Construction standards for the number of bedrooms in the ADU.

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[1] 310 CMR 15.203(2) assigns a design flow of 110 gpd/bedroom for both single-family and multiple-family dwellings. There is no design flow assigned for ADUs. A design flow of 110 gpd/bedroom should also be used for ADUs because they are dwellings intended for human habitation.

[2] There may be case specific circumstances in which a proposed ADU connecting to an existing septic system may not trigger the need for a multi-compartment tank or two tanks in series such as when the ADU will have its own dedicated septic tank with the effluent pipe connected to the effluent line of the septic tank serving the principal dwelling. In this case each dwelling structure is served by its own septic tank which negates the need for a multi-compartment tank or two tanks in series.

- If an ADU is proposed to discharge to an existing Nonconforming System serving the principal dwelling and there will be an increase in the Facility's approved design flow (i.e., an increase in the number of bedrooms on the Facility), then:

    - The existing septic system must meet New Construction standards for the total number of bedrooms.

    - A multi-compartment septic tank or two tanks in series is required.

- If an ADU is proposed to discharge to an existing Nonconforming System serving the principal dwelling and there will be no increase in the Facility's approved design flow (i.e., no increase in the number of bedrooms on the Facility), then:

    - The existing septic system must be inspected and upgraded in accordance with the terms and provisions of 310 CMR 15.401 through 15.405 if a failure criterion is discovered. This is because 310 CMR 15.301(5) requires system inspection prior to any expansion in use of the Facility for which a building or occupancy permit from the local building inspector is required.

    - A multi-compartment septic tank or two tanks in series is required.

- If an ADU is proposed to discharge to its own septic system on a Facility, the septic system serving the existing principal dwelling is Nonconforming, and there will be an increase in the Facility's approved design flow (i.e., an increase in the number of bedrooms on the Facility), then:

    - The existing septic system must meet New Construction standards for the number of bedrooms in the principal dwelling.

    - The proposed septic system must meet New Construction standards for the number of bedrooms in the ADU.

- If an ADU is proposed to discharge to its own septic system on a Facility, the septic system serving the principal dwelling is Nonconforming and there will be no increase in the facility's approved design flow (i.e., no increase in the number of bedrooms on the Facility), then:

    - The existing septic system shall be inspected and upgraded in accordance with the terms and provisions of 310 CMR 15.401 through 15.405 if a failure criterion is discovered.

    - The proposed system must meet New Construction standards for the number of bedrooms in the ADU.

Additional Considerations:

310 CMR 15.203(2)** prohibits the construction of a single-family dwelling with only one bedroom. The prohibition against constructing a one-bedroom single-family dwelling does not apply to the construction of an ADU on a Facility containing a principal dwelling because the overall Facility will contain more than one bedroom.

If a proposed ADU will trigger New Construction on a Facility designated as nitrogen sensitive under 310 CMR 15.214(1)(a) (Public and Private Water Supply Protection Areas), the nitrogen loading limitations of 310 CMR 15.215(1) shall apply.

If a proposed ADU will trigger New Construction on a Facility designated as nitrogen sensitive under 310 CMR 15.214(1)(b) (Natural Resource Nitrogen Sensitive Areas), the Facility must comply with the requirements of 310 CMR 15.215(2)(b).

If a proposed ADU will not trigger New Construction on a Facility designated as nitrogen sensitive under 310 CMR 15.214(1)(b), the Facility must comply with the requirements of 310 CMR 15.215(2)(a).

The regulations at 310 CMR 15.410(1) allow the Local Approving Authority to vary the application of any provision of Title 5 in accordance with the limitations and requirements of 310 CMR 15.410, 15.411, 15.413, 15.414, 15.415, and 15.416. This includes the need for a two-compartment septic tank. The local approving authority is reminded that it may grant variance only after:

- The person requesting a variance has established that enforcement of the provision of Title 5 from which variance is sought would be manifestly unjust. In the case of new construction, the applicant must demonstrate that enforcement of the provision from which a variance is sought would deprive them of substantially all beneficial use of the property; and
- The person requesting a variance has demonstrated that an equal level of environmental protection can be achieved without strict application of the provision from which variance is sought. Boards of Health may entertain whether, for example, the use of a MassDEP approved effluent tee filter installed in a one compartment tank may provide an equal level of protection as a two-compartment tank or two tanks in series for scenarios other than New Construction.