RE117R25: Protected Use Accessory Dwelling Units (ADUs)

Course objectives:
The passage of the 2024 Affordable Homes Act includes the ability to add one Accessory Dwelling Unit (ADU) by right on a residential property in a single family zoning district, with some general requirements. The regulations 760 CMR 71.00 further clarify the parameters for an ADU. While not a zoning expert or attorney, the real estate licensee will need to understand the key factors associated with ADUs to properly market, advertise and value properties they are associated with.

1. Overview of the Act
    a. Amends M.G.L. c. 40A, s. 3 to encourage accessory dwelling units (ADU) production statewide with the goal of increasing the production of housing to address statewide, local and individual housing needs for households of all income levels and at all stages of life.
    b. The Executive Office of Housing and Livable Communities (EOHLC) is the regulatory agency that is authorized to promulgate the regulations and accompanying guidelines that establish rules, standards and limitations that aim to balance municipal regulation and property owner empowerment in the administration of the act.
    c. Purpose: The regulation aims to encourage the production of Protected Use ADUs to address housing needs across Massachusetts. It balances municipal interests with property owners' rights to add housing stock.
    d. Core Objectives
        - Protect ADU use in single-family zoning districts from unreasonable restrictions.
        - Prohibit owner-occupancy and excessive parking requirements for ADUs.
        - Supplement regulations with additional guidelines as necessary.
        - Encourage the production of Accessory Dwelling Units (ADUs) to address housing needs
        - Balance municipal interests with empowering property owners
        - Prohibit unreasonable restrictions and special permits for Protected Use ADUs.
        - Establish definitions, standards, and guidelines for implementation.
    e. Regulatory Authority
    Governed by 760 CMR 71.00: M.G.L. c. 40A, s. 3, para. 11; St. 2024, c. 150, s. 8.

2. Definitions (760 CMR 71.02)
    a. Key Terms:
        i. Accessory Dwelling Unit (ADU): Requirements for self-contained housing units. A self-contained housing unit on the same lot as a principal dwelling inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that:
            - 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;

        - 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
    ii. Principal Dwelling: Main structure containing at least one housing unit
    iii. Municipality: Any city or town under M.G.L. c. 40A.
    iv. Transit Station: Includes subway, commuter rail, bus, and ferry terminals.
    v. Design Standards and Dimensional Standards: Clear, measurable criteria for ADUs.
b. Special Definitions:
    i. Protected Use ADU: ADU on a single-family residential lot protected from unreasonable regulations.
    900 sq. ft or under is allowed by right, all others will require a special permit.
    ii. Prohibited Regulation: Restrictions municipalities cannot impose.
    iii. Unreasonable Regulation: Excessive or restrictive rules that hinder ADU development. Specific examples of unreasonable regulations include overly restrictive design standards, dimensional standards, and utility requirements.

3. Importance of ADU legislation
    a. Benefits of an ADU
        i. Affordable Housing
            - fixed income
            - employee housing
        ii. Extended family Accommodation
            - Aging parents
            - Young workers
        iii. Aging in place
        iv. Rental income
        v. Protecting the environment from urban sprawl
        vi. Home Office
        vii. Neighborhood Stability
    b. Benefits to Municipality
        i. Increases in Tax Revenue
        ii. Minimizes subsidies required for affordable units
        iii. Maximizes use of existing infrastructure and services
        iv. Keeps growing and aging families together
        v. Preserves existing homes and historic structures
        vi. Promotes safe and stable neighborhoods
    c. Characteristics that support Accessary Dwelling Units
        i. Affordable housing stock
        ii. Preservation goals
        iii. Aging Demographics
        iv. Entry Level Job Growth
        v. Supportive neighborhoods
        vi. Supportive local public policies

4. Detail of the regulations (760 CMR 71.03)
    a. Municipal Prohibitions
        i. Cannot require special permits for Protected Use ADUs.
        ii. Cannot impose:
            - Owner-occupancy requirements.
            - Excessive parking requirements.
                - More than one additional on-street or off-street parking space for each Protected Use ADU on a Lot if all portions of such Lot are located outside a 0.5-mile radius of a Transit Station; or
                - Any additional on-street or off-street parking space for each Protected Use ADU on a Lot if any portion of such Lot is located within a 0.5-mile radius of a Transit Station.
            - Unit caps or density limits.
              Any limit, quota or other restriction on the number of Protected Use ADUs that may be permitted, constructed, or leased within a Municipality or Zoning District. Protected Use ADUs shall not be counted in any density calculations.
            - Use and occupancy restrictions.
            - Requirements on attachment or detachment to principal dwellings.
            - No deed restrictions
    b. Reasonable Regulations
        i. Must serve legitimate municipal interests.
        ii. Cannot subdivide must be accessorily to primary dwelling
        iii. The ADU cannot exceed 900 square feet or 50% of the size of the primary dwelling, whichever is smaller
        iv. Must be compliant with MA Building Code, egress, smoke and access. This includes dimensional setbacks and height restrictions.
        v. Must be compliant with MA State Sanitary Code (health, safety and number of occupants)
        vi. Cannot be used as a short-term rental (under 31 days)
        vii. Compliant with Title 5 and site plan review (guidance issued by MA DEP April 7, 2025)
        viii. Minimum of +1 parking space unless the home is within .5 of a mile from public transit or high density
        ix. Restrictions deemed unreasonable if they:
            - Nullify or excessively burden ADU development.
            - Do not advance municipal interests.
    c. Considered unreasonable:
        i. Design Standards. Any Design Standard that (i) would not be applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or (ii) is so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU.

ii. Dimensional Standards. Any requirement concerning dimensional setbacks, lot size, lot coverage, open space, and the bulk and height of structures that are more restrictive than what is required for a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located.
iii. Utilities, Safety, and Emergency Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than state requirements.
iv. Environmental Regulation. Any regulation for the protection of public health, safety, welfare and the environment pursuant to Title 5, 310 CMR 15.000 that is more restrictive than is required for a Single-Family Residential Dwelling in the Zoning District in which the Protected Use ADU is located.
v. Site Plan Review. Any requirement under Site Plan Review concerning the Protected Use ADU that is more restrictive than those applied to the Principal Dwelling.
vi. Impact Analysis and Studies. Any requirement under Zoning or Site Plan Review for any impact analysis, study, or report that is not required for the development of a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located.
vii. Modular Dwelling Units. Any requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as a Protected Use ADU that is more restrictive than the Massachusetts state building code.
viii. Short-term Rentals. Any restrictions or prohibitions on Short-Term Rentals that are not consistent with M.G.L. c. 64G.

d. Historic District Exceptions
Stricter standards allowed but must not be overly restrictive.
e. Enforceability on Pre-Existing ADUs
Prohibited and unreasonable regulations cannot apply retroactively.
f. Special Permits for Additional ADUs
Required for more than one ADU on the same lot
g. Does not apply to the City of Boston – creating their own regulations
i. ADU Guidebook
ii. Financial Assistance Program

5. Characteristics of ADUs
a. Examples of internal/attached ADUs
i. Basement conversions
ii. Garage conversions
iii. Attic remodel
iv. Home addition
b. Advantages of internal/attached ADUs
i. Cost -Effective
ii. Space Efficiency
iii. No additional foundation needed

iv. No rental income restrictions on units created
v. Market rate v low income

c. Examples of external/detached ADUs
i. Backyard cottages
ii. Above-garage units
iii. Detached tiny homes

d. Advantages of external ADUs
i. Privacy
ii. Increased Property Value
iii. Flexibility
iv. No rental income restrictions on units created
v. Market rate v low income

6. Annual updates requirements (760 CMR 71.04)
a. Data Collection by Municipalities
i. Number of ADU permits (approved and denied).
ii. Occupancy permits issued.
iii. Additional data as specified by EOHLC guidelines.

b. Annual Reporting to EOHLC
i. Submission by March 31 each year.
ii. Use EOHLC-prescribed forms and include all required data.

7. Impact for the real estate licensee and on the real estate market
a. Advertising by licensee
Must comply with the advertising requirements as defined in 254 CMR 3:00
i. Cannot be false or misleading
ii. Must identify the brokerage
iii. Fee disclosure for rentals
iv. Include language as required by regulations

b. Benefits to consumers – value consideration
i. Families looking for extra space for parents, grandparents and children
ii. Potential increased in property value
iii. Investors can purchase one property and add an additional rental space

c. Example of questions a licensee should ask
i. # bedrooms and size of bedrooms (state sanitary code)
ii. Permits
iii. Lot size/ set back constrains
iv. Parking
v. Utility connections
vi. Egress/ingress
vii. Septic (Title 5)

d. What to watch out for!
i. Many towns are pushing back on this law and looking for exemptions and will apply building codes, septic and parking requirements strictly.

ii. Many sellers with illegal units will now suddenly say they have a “legal” ADU.
iii. If no permits were pulled, this would be a red flag.
iv. Check with the town to be sure they have not added additional “reasonable” requirements

e. Remember that you are not a zoning expert, attorney or building code expert, etc. Please refer the buyer or seller to the proper person for information. Be the source of the source and not the source!

References

- 760 CMR 71.00
- DEP Guidance on Title 5 (310 CMR 15.000) issued April 7, 2025
- Boston – ADU Guidebook (https://storymaps.arcgis.com/collections/3c200fb878524d21a7afaee4c1d144b9)

Other courses

- RE16R13: Zoning and Building Codes
- RE41R05: Real Estate Advertising Compliance and the Law