

## Town of Chatham Accessory Apartment Analysis

The report examines accessory bylaws and programs that are being used in other communities, describing the current zoning and/or special program and providing some analysis regarding their effectiveness.

Accessory units are helpful in meeting a number of public policy objectives including the following:

- Provide homeowners with additional income, which is particularly important for elderly homeowners, single parents, and others who are spending too much of their income on housing and for whom such income may be critical to remaining in their homes. Also, without the flow of income from the rent of an accessory apartment, some young families or moderate-income households might not be able to afford homeownership.
- Offer appropriately sized units for growing numbers of smaller households.
- Provide a fairly inexpensive means of increasing the supply of year-round rental units at lower cost than new construction and without significant impact on the surrounding neighborhood. The creation of accessory units does not require additional Town services such as new streets or utilities and involves little or no loss of open space.
- Potentially provide companionship, security and services for the homeowner.
- Offer good opportunities for keeping extended families in closer contact and have often been referred to as “in law” apartments.
- Generate increased tax revenue in a locality because accessory units add value to existing homes.

This analysis starts with a summary of Chatham’s current bylaw and then moves to other communities on the Cape that have implemented special zoning or initiatives to promote affordable accessory apartments including:

- Barnstable’s Accessory Affordable Apartment Program (AAP)
- Dennis’ Affordable Housing Bylaw that includes Affordable Housing Apartment provisions
- Sandwich’s by-right accessory apartment bylaw
- Wellfleet’s Affordable Accessory Dwelling Unit (AADU) Program
- Yarmouth’s Affordable Accessory Apartment Program (AAP)

This report also summarizes the efforts of a few off-Cape communities which have some relevant experience including:

- Carlisle’s attempt to implement an affordable accessory apartment program under state LIP requirements
- Nantucket’s Housing Covenant Program (a for sale version of accessory apartments)
- Newton and Lexington’s two-tier approach to approving accessory apartments
- Scituate’s provisions for including accessory apartments in properties with commercial uses

Some conclusions from this analysis are included at the end of the descriptions.

## Chatham

### Description of Existing Zoning/Program

The *Affordable Apartment Incidental to a Single-Family Dwelling* bylaw was adopted to meet the needs of the town's residents and workers by promoting year-round affordable rental units that are part of an existing single-family dwelling or in a separate building that is accessory to the single-family home, often referred to as accessory or in-law apartments. The owner of the property must reside in either the apartment or the principal dwelling unit. A Special Permit is required and the property must include at least 20,000 square feet of buildable upland. A total of four (4) parking spaces must be provided on site, two (2) for the apartment as well as the principal dwelling unit. The accessory units must meet all requirements under the state's Local Initiative Program (LIP), where the Chatham Housing Authority coordinates eligibility.

To promote the use of this bylaw the Town introduced the Affordable Accessory Unit (AADU) Technical Assistance Grant Program in 2008 to increase the availability of affordable year-round rental housing by encouraging property owners to convert part of their property to an affordable unit. The program offered financial assistance to property owners to bring the accessory unit into compliance with building, health and safety codes. It was expected that funding applications would be accepted on a rolling basis, and \$60,000 in CPA funding was initially made available to launch the program.

Given state changes in state LIP requirements for accessory units, this program never took hold and the funding was returned to the Community Preservation Fund and reallocated. To comply with state LIP regulations and guidelines, the Town would have to require that owners of all "affordable" accessory apartments select tenants from a lottery-ranked list of interested and eligible tenants, a Ready Renters List, following an affirmative marketing process. Also all accessory units would have to be deed restricted to insure the long-term affordability.

Additionally, the bylaw allows *Apartments Incidental to a Commercial Use or Industrial Use* in the GB and I districts as long as the lot includes at least 10,000 square feet for each apartment and no more than four (4) apartments per building in the GB district and no more than a single two-bedroom apartment incidental to a commercial or industrial use in the I district.

Because accessory apartments provide small rental units that diversify the housing stock within the confines of existing dwellings or lots, the Town's Housing Production Plan recommended that the Town revisit the bylaw to promote accessory units even if they were not eligible for inclusion in the Subsidized Housing Inventory (SHI), considering the following possible provisions:

- Reconsideration of parking requirements currently including a total of four (4) parking spaces to be provided on site, two (2) for the apartment as well as the principal dwelling unit (as units are small they are likely to be occupied by single individuals with only one car),
- Possible by-right provisions,
- Insurance of enforcement provisions,
- Design guidelines to insure that structures still resemble single-family homes, and
- Possible granting of approvals for existing accessory apartments that do not have the necessary permits after appropriate inspections.

## **Cape Communities**

### **Barnstable**

#### **Description of Existing Zoning/Program**

Approved by the Barnstable Town Council on November 16, 2000 as a means of creating affordable housing within existing structures, the Accessory Affordable Apartment Program (AAAP), also sometimes referred to as the “Amnesty Program”, is viewed as both a preservation and production initiative. The program is modeled on the Chapter 40B “Comprehensive Permit” process for existing, non-conforming dwelling units and for new units accessory to single-family dwellings. The main objective of the program is to use existing housing, which may currently violate the Town’s zoning laws, to provide desirable, legal and affordable housing for eligible citizens within the community while maintaining a positive working relationship between the Town and property owners. In bringing these properties up to code, the Town increases the number of year-round rental units affordable to low- and moderate-income households which count toward meeting the Commonwealth’s 10% affordable housing goal.

In August of 2002 the Barnstable Town Council adopted two amendments to the program. Under the Comprehensive Permit process, dwelling owners may create accessory apartments within existing detached structures and newly constructed accessory apartments attached to existing single-family houses. These new provisions made it easier for owners to create new affordable units to help the Town increase its overall affordable housing stock.

The Growth Management Department makes CDBG funding available for grants of up to \$5,000 per unit to correct code, health and sanitary violations. The one time comprehensive permit application fee for the program is \$250 per unit. The homeowners must also pay for the legal ad to run twice in the local paper (about \$125) and provide the stamps for the abutters’ notices, which the owners pay directly. Staff of the Growth Management Department will provide, at no cost to the homeowner, a site inspection conducted by a licensed housing inspector, research into Town records on the applicant’s property, assistance preparing the comprehensive permit application and recording the deed restriction at the Registry of Deeds.

#### **Outcomes to Date**

Because property owners can choose to rescind the deed restrictions, the number of accessory units varies from time to time, but at present about 170 affordable accessory apartments have been permitted through the program with approximately another 25 applications in various stages in the application, approval and construction process. On average they permit from five to ten accessory units per year.

#### **Issues for Consideration**

A few years ago DHCD expressed concern about the eligibility of the units for inclusion in the SHI, particularly because Barnstable’s Program was not meeting all of the state’s LIP requirements for accessory apartments. One significant departure was that the comp permit site eligibility letters were being signed by the Town Manager instead of being processed through DHCD. A compromise was reached and with annual reporting to DHCD Barnstable’s accessory units continue to be included in the SHI.

Barnstable does require tenants to be selected through a Ready Renters List that had been managed by the Cape Cod Commission (CCC) until relatively recently. The Commission determined that it could no

longer assume this role and the Housing Assistance Commission (HAC), which administers a Cape-wide Ready Buyers List, has turned down the opportunity as well. Several towns had been contributing to the management of the Ready Renters List for a total allocation of about \$10,000. MHP is trying to identify an entity or consultant to administer the List but without success to date.

Barnstable has found that a significant portion of those on the Ready Renters List are very low income households, typically middle-aged or older individuals who are hard-pressed to find a place to live that they can afford. Some have lost their jobs for example, and given their age are encountering great difficulty in finding another job on the Cape. The Accessory Apartment Program meets a pressing need for housing this very vulnerable population.

Barnstable had been providing up to \$5,000 in CDBG funds to support the costs of making the necessary improvements to create the accessory apartments, although this amount of funding has typically not been sufficient unless the owners can perform the work themselves. They are now offering up to \$20,000 in CPA funding to support improvements that is in the form of a zero percent deferred loan that is repaid when the property is transferred or when the accessory apartment is eliminated.

With substantial decreases in CDBG and HOME funding, it is difficult for Barnstable to support greater funding and has had to eliminate the Program Coordinator position. Consequently, the responsibility for managing the program has been split among a number of existing staff. This has been challenging, particularly in light of the fact that the Program is extremely labor intensive.

Also, unlike most accessory unit provisions in local zoning, the Barnstable Zoning Ordinance does not allow the owner to live in the accessory unit. Some seniors, who require less space if they are living alone, might opt to attract a family as tenants and choose to relocate to the accessory apartment. In that way, they could receive a somewhat higher rent, still keep their home and continue to live independently, potentially even receiving some assistance (e.g., shopping, property maintenance, good company, etc.) from their tenant. Such an amendment would also create opportunities for additional rental units for families.

Enforcement is an important issue and the Building Department plays a key role in the program. They are even posing as potential tenants when illegal units are advertised to determine if there are violations. If the owner does not participate in the program they will require that the owner pull out the kitchen.

**Contact:** Arden Cadrin, Housing Coordinator

## **Dennis**

### **Description of Existing Zoning/Program**

#### *Affordable Housing Bylaw<sup>1</sup>*

The Town of Dennis' Zoning Bylaw includes a number of provisions to encourage the development of affordable housing by creating incentives that would help people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and to maintain a stable economy by preventing the out-migration of residents who provide essential services. The Planning Board was designated the Special Permit Granting Authority for all Affordable Housing Development and

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<sup>1</sup> Dennis Zoning By-law, Section 4.9.

Affordable Housing Apartment applications under the bylaw.

In addition to provisions to encourage the inclusion of affordable units in new development and on nonconforming lots, Dennis' Affordable Housing Bylaw promotes *Affordable Housing Apartments* to produce rental units that are accessory to a residential or commercial use that has been in existence for at least five (5) years in residential and commercial districts and meet the other following requirements:

- The units cannot be divided from the principal structure.
- The units must comply with minimum area requirements that include 250 square feet for studio apartments, 700 square feet for one-bedrooms, 900 square feet for two-bedrooms, 1,200 square feet for three-bedrooms, and 1,400 square feet for four-bedrooms.
- Reduced off-street parking requirements can be approved given compelling information that the parking will be sufficient to address needs.
- Properly screened areas must be provided for the storage of trash and recyclable materials.
- Only those basements with walkout capabilities may be converted into living space and garage-parking stalls may be converted to living space only if the applicant can demonstrate an efficient and cost-effective method of providing heat and other utilities to the unit created.
- The second unit created, and every fourth unit after that must be deed restricted as permanently affordable units with no fewer than 25% of the units thus restricted.
- All units must be for year-round use.
- Accessory units in residential structures must be on a lot of at least 20,000 square feet.
- The footprint of a residential structure cannot be expanded to accommodate the accessory apartment.
- One unit in the residential dwelling must be owner-occupied on a year-round basis.
- Affordable apartments can be created by converting an existing accessory structure or space within an existing hotel or motel into dwelling units but the new units cannot be less than 250 square feet in size and cannot be in areas that have not been intended for human habitation in the past. Also, no less than 25% of the units created must be one-bedroom units with a minimum floor area of 700 square feet and no more than 25% of the units created may have a minimum floor area of less than 400 square feet. The Planning Board may require up to 10% of the units in a hotel/motel conversion be two-bedroom units with at least 900 square feet. The existing building cannot be expanded to accommodate the apartment(s).

### **Outcomes to Date**

Approximately ten (10) affordable accessory apartments have been permitted through the bylaw but none have yet been included on the SHI, largely due to problems associated with pulling together all of the necessary documentation. The Town is hoping to bring on a part-time Housing Coordinator with CPA funding who will report to the Town Planner and staff the Affordable Housing Trust. It is anticipated that this person will be able to obtain the necessary documentation to get some of the units included on the SHI and insure that any new units will be eligible for inclusion. The Town Planner also indicated that this position may be able to assume the management of the Regional Ready Renters List on a fee for service basis at some point in the future.

### **Issues for Consideration**

Insuring that affordable accessory apartments are eligible for inclusion in the SHI is a labor intensive process that requires an understanding of the state's Local Initiative Program and strict oversight of local policies and procedures to meet all state and local requirements with essential supportive documentation.

**Contact:** Dan Fortier, Town Planner

## Sandwich

### Description of Existing Zoning/Program

Sandwich's accessory apartment bylaw allows such units by-right in owner-occupied single-family dwellings in residential zoning districts under the following requirements:<sup>2</sup>

- Maximum floor area of 800 square feet with only one bedroom.
- Lots must have at least 10,000 square feet.
- Are not allowed in single-family homes subject to a comprehensive permit, an Affordable Housing Conditional Density Special Permit or an Accessory Dwelling Unit Special Permit.
- A deed rider (acceptable to the Building Inspector and Town Counsel) limiting the unit to one bedroom and as a non-rental unit (need to find out what this means) in perpetuity is required to be recorded at the Registry of Deeds.
- May be located in an accessory structure no more than 80 feet from the primary dwelling or attached and within the single-family dwelling.
- Any structural addition to the single-family home to accommodate the accessory unit must meet all applicable front, side and rear setbacks as well as height and lot coverage requirements.
- A minimum of one off-street parking space must be provided and separate driveways are prohibited.
- Only one accessory apartment per single-family home is allowed.
- Accessory apartments are not allowed on lots where there are more than one single-family, one or more two-family or one or more multi-family dwelling units.
- The owner must occupy the primary dwelling or the accessory unit except for bona fide temporary absences.
- Accessory apartments are prohibited from use as rental units on a yearly, monthly, weekly or daily basis.?

Sandwich's zoning also has provisions related to affordable accessory apartments which have not been used due to changes in state requirements for including the units in the SHI.

### Outcomes to Date/ Issues for Consideration

Have left several messages with the Building Inspector.

**Contact:** Paul Spiro, Building Inspector

## Wellfleet

### Description of Existing Zoning/Program

This Program does not require deed restrictions nor does it include mandates for tenants to be selected from a pre-qualified Ready Renters List, and consequently the units, although affordable based on specified income and rent limits, would be ineligible for inclusion in the Subsidized Housing Inventory. Wellfleet has established the following process for approving Affordable Accessory Dwelling Units (AADU):

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<sup>2</sup> Sandwich Zoning Bylaw, Section 4115.

- Property owner applies for a Special Permit.
- Building Inspector and Board of Health visit and inspect the unit to determine if there are any health and safety violations that must be corrected prior to the owner obtaining the Special Permit.
- The ZBA reviews the application and the reports submitted by the Building Inspector and Board of Health, holds a public hearing, and grants the Special Permit.
- The Building Inspector issues a Certificate of Occupancy.
- Prospective tenants must submit income information to the Assistant Town Administrator who documents that they qualify for the units. Once qualified, property owners will be officially notified of the monthly rent they are able to charge based on HUD Fair Market Rents (FMRs). A list of qualified tenants is available to property owners, or owners may be able to select their own.
- The Town Assessor issues a tax abatement to the property owner based on a specified formula, without the need for the owner to submit to a separate application process (this requires state legislative approval).
- The property owner annually submits forms that document the continued eligibility of the tenant and use of HUD Fair Market Rents.
- They leave the marketing of the units and parking issues up to the owners.
- The program does not involve any fees.

If a property owner decides at some point to opt out of the Special Permit, they must inform the Building Inspector and remove the kitchen in the accessory unit. They are allowed to convert the space to other uses such as a “private guest house” or office.

### **Outcomes to Date**

18 units have been permitted and 13 units remain as a few have dropped out. The occupants tend to include both older and younger single adults. They experience an average turnover rate of only about 10% of the units per year.

### **Issues for Consideration**

The Town should review the following issues if it was to consider adapting the Wellfleet model:

- There was some discussion in the past about the Town providing no interest deferred loans to support necessary improvements for those whose incomes were below 100% of area median, however this program was never implemented. Establishing a Revolving Loan Program with CPA and/or Housing Trust funds makes sense. There are good models to use in implementing such a program but the maximum amount provided per participant is an important decision. Tim King suggested that at least \$50,000 is necessary but some properties could even use as much as \$100,000 to meet all health and safety codes.
- The actual administration of the program did not require a great deal of time but it does involve the participation and coordination of the Building Inspector, Board of Health, and Town Assessor with respect to inspections and tax status.
- It is useful to do the annual recertification (to recertify income and lease terms/rents) in the summer to insure that owners are not renting their units for market prices in the summer and that the same tenants who signed the lease are occupying the apartment.
- Should the program enable investor-owners to participate?

- Can family members qualify to rent the affordable accessory apartment? If the family member had income within the maximum allowed they should be able to qualify, but there may be different rules regarding the son in college versus the disabled daughter.
- If the owner qualifies for the affordable accessory unit can he/she occupy the accessory unit and rent the primary dwelling at market price?
- How long can the owner leave the accessory unit vacant before he/she loses the tax benefit?
- The state legislative approval for the tax exemption involved a relatively quick turnaround process but the timing of the submission to the state is very important. It would be useful to meet with your state representative to discuss when the legislature's schedule would be most responsive to the local bill.

**Contact:** Tim King, Former Assistant Town Administrator and current Town Administrator for Westport  
**Tim lives in Harwichport and would be happy to attend a Housing Committee meeting to discuss the Wellfleet Program and answer questions!**

## Yarmouth

### Description of Existing Zoning/Program

Yarmouth, through its Department of Community Development, introduced a Family Related Accessory Apartment Program in 2005, which created accessory apartments for occupancy by family members of the participating owners. While these units cannot currently be counted as part of the SHI, the Town will allow participating owners to rent to a family member under Zoning Bylaw 407. Tenants however must be certified as income eligible prior to occupying the unit and recertified as eligible on an annual basis. Owners must still sign a one-year lease and the lease must reference the Special Permit that is required.

This Family Related Program still operates but was modified a few years later to comply with changes in state LIP requirements regarding affordability as family members were no longer eligible to rent accessory apartments if the units were to be included in the SHI.

The Affordable Accessory Apartment Program (AAP) includes the following major requirements:

- Tenants must meet state Local Initiative Program requirements.
- Maximum rents are set by HUD Fair Market Rents (FMRs) and all utilities are included in the rent or if they are separately metered they may be paid by the tenant and a Section 8 utility allowance is deducted from the FMR.
- Construction loans of up to \$5,000 are provided through CDBG funds to support any construction costs associated with creating the apartment. This funding is in the form of a zero percent (0%) deferred loan that is payable at the time of the sale or transfer of the property or if the apartment is removed.
- Property lot size must be at least 10,000 square feet.
- Four parking spaces are required – two for the principal dwelling and two for the apartment.
- The septic system must have sufficient capacity to accommodate the additional bedroom(s).
- Only one apartment is allowed per lot.
- The apartment may be located in or attached to a single-family home or constructed as a detached accessory structure/unit on the same lot.
- The accessory unit must be subordinate to the principal unit.

- The property owner must occupy either the principal dwelling unit or the accessory apartment of their primary residence.
- The apartment should be designed so that the appearance of the building remains that of a single-family residence.
- The apartment must be a separate housekeeping unit from the primary dwelling and contain a stove, kitchen cabinets, plumbing fixtures, a washer/dryer or washer/dryer hook-up.
- The apartment cannot be more than 800 square feet in size or have less than 400 square feet.

The program includes the following application and approval process:

1. Apply to the Board of Appeals for a Special Permit
2. Record and execute the required legal documents that include
  - Special Permit of the Board of Appeals\*
  - Declaration of Covenants Accessory Apartment\* (Town document)
  - Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for the Affordable Accessory Apartment Rental Project\* (state documents)
  - Summary and Statement of Understanding of the LIP Regulatory Agreement
  - One-year Lease

\* Indicates documents that must be recorded at the Barnstable County Registry of Deeds
3. Apply for a Building Permit
4. Construct the unit
5. Select the tenant from the Regional Ready Renters List (\$250 fee)
6. Report annually to the Town regarding continued eligibility
7. Annual monitoring
  - Owner arranges the annual certification of the tenant's income
  - Owner registers the apartment annually with the Board of Health
  - Building Department inspects the unit once every two years
  - Board of Health inspects unit

The Yarmouth bylaw also included provisions related to amnesty for several years that expired on July 1, 2011. Owners of unpermitted accessory apartments that were in existence before April 8, 2008 could apply to the Board of Appeals for a Special Permit to legally continue the use as an accessory apartment.

### **Outcomes to Date**

The Program has generated about eight (8) actual affordable accessory apartments, almost all of which involved some waiver of requirements and thus were not eligible for inclusion on the SHI. At one point they were able to get a unit on the SHI but the owner sold the unit soon after and it was eliminated.

### **Issues for Consideration**

The loss of the Regional Ready Renters List is another problem for the Yarmouth Program as the intention is for the units to comply with state requirements and be included on the SHI. However, almost all of the units to date involved some type of waiver such as one owner who restricted the unit to a single person, owners who want to rent to family members, owners who insist on charging a somewhat higher but still below market rent, owners wanting to select their own tenant, etc.

As part of complying with state requirements, the Town must provide DHCD with an annual compliance report that documents that the affordable accessory apartments remain occupied by income-eligible

tenants and that there are leases that include rents within federal Fair Market Rents (FMRs).

The \$5,000 construction loans are typically inadequate to support the necessary improvements unless the owner can do the work. Moreover, because Yarmouth uses Community Development Block Grant (CDBG) funding for the improvements, federal Fair Market Rents (FMRs) must be used which many property owners consider too low.

Owners cannot rent their accessory units to family members and the Town has decided to maintain its Family-related Accessory Apartment Program in place which preceded the program described above. They are aware that these units will not be counted in the SHI. State requirements also prohibit the inclusion of already occupied accessory apartments in the SHI even though the tenants would otherwise qualify.

Yarmouth acknowledged that the program takes considerable staff time and that the Building Department has to be on board to support permitting and enforcement.

**Contact:** Mary Waygan, Administrative Assistant and Community Housing Specialist

## Off Cape Communities

### Carlisle

#### Description of Existing Zoning/Program

In May of 1989, the Town passed an accessory apartment bylaw that allowed such units through a Special Permit based on the following conditions:

- No more than a total of 75 accessory units will be allowed in Carlisle.
- The floor area of the accessory unit cannot exceed 1,200 square feet and comprise more than 35% of the floor area of the principal residence.
- The principal dwelling must be owner-occupied with the exception of temporary absences.
- The appearance of the property must be that of a single-family dwelling with any new entrances located on the side or rear of the building.
- The lot must be at least two acres (!) in size or at least three acres if the accessory unit has more than two bedrooms.
- Adequate provision must be made for the disposal of sewage, waste and drainage generated by the occupancy of the accessory unit in accordance with state requirements or those of the Carlisle Board of Health, whichever is applicable.
- Adequate provision must be made for off-street parking in a fashion consistent with the character of a single-family residence.

To date, 16 permits for accessory apartments have been granted although it is generally recognized that there are also a number of unpermitted accessory units that exist in town as well.

The Town completed a Housing Plan in 2005 which included a recommendation for incorporating accessory apartments in the SHI. Several years later the Town began to work on this initiative at about the same time that DHCD made changes to its Local Initiative Program (LIP) guidelines that significantly altered the requirements for creating affordable accessory apartments. The Town continued to pursue a special affordable accessory apartment initiative despite the determination by many other

communities, Chatham included, that such a program no longer made sense given the shift in state requirements.

### **Outcomes to Date**

Town representatives worked with DHCD for years to develop the program under state requirements, finally obtaining state approval. Despite this approval, the Town decided not to implement the program and did not take the next step of carrying out the Affirmative Fair Housing Marketing Plan to establish a Ready Renters List.

### **Issues for Consideration**

The general consensus was that the implementation of the program was going to be extremely time-consuming and unlikely to produce many affordable units, particularly due to the following issues:

- That the Town could not process applications from owners with existing tenants of accessory apartments. An owner had come forward to participate in the program as he had an existing accessory apartment occupied by a former Vet who lived on disability income and was income eligible. Under the state requirements the owner would have to evict the tenant and choose another one from the Ready Renters List.
- That deed restrictions in combination with the Ready Renters List would diminish any interest from property owners.
- The estimated time and red tape involved in the administration of the program would be disproportionately high compared to the anticipated low number of program participants.

**Contacts:** Elizabeth Barnett, Housing Coordinator

## **Nantucket**

### **Description of Existing Zoning/Program**

The Covenant Program is a for sale version of the accessory apartment concept that was approved by Nantucket Town Meeting in 2001 as Article 36. The program was established to create a housing option for residents earning less than 150% of area median income (\$139,200 in 2014) but still priced out of Nantucket's pricey housing market and provide permanently affordable housing.<sup>3</sup> The Nantucket Housing Authority is the entity which signs the covenants with Housing Nantucket, a non-profit organization, operating the program on behalf of the Housing Authority.

Covenant homes are created when a property owner puts an affordability covenant or deed restriction on a lot, allowing for separate ownership of two units on that lot, consequently establishing a secondary condo or separate home on the existing lot. The primary dwelling is the market rate unit and the secondary unit is referred to as the covenant unit that includes the affordability restriction that insures the property will be affordable in perpetuity. As such the sale of the covenant unit is restricted to income-qualified applicants and the price must be below specified limits (\$626,721 in 2014).<sup>4</sup> Covenant

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<sup>3</sup> The average of the applicant's income from the previous two years must be less than the qualifying income. Additionally, financial assets are multiplied by the passbook savings rate (.06%) to determine the annual income for each asset that is added to the applicant's total income for purposes of determining eligibility.

<sup>4</sup> The maximum sales price is based on 10% down and annual debt service (30-year fixed rate financing) equal to 30% of gross annual income of a household earning 125% of median family income on Nantucket. This price is dependent upon the prevailing interest rate and is recalculated in January of each year. The prevailing interest rate

sellers pay ½% of the maximum sales price (\$3,133 in 2014) as an administrative transfer fee to Housing Nantucket, the non-profit organization that administers the program. There are no increases for appreciation built into the program, but it is possible to realize some appreciation on the sale of the home if it was purchased at less than the maximum sales price and/or if the maximum sales price increases. The maximum sales price formula does not include costs of any upgrades to the covenant home.

The Covenant Program includes two types of covenants:

1. *Condominium*: Involves one lot with separate owners of the primary and secondary units with a condo association that is established between them to address shared areas (such as septic, well, driveways, potential expansion, etc.). This covenant does not require Planning Board approval.
2. *Secondary Lot*: In this covenant scenario the lot is split into two lots under separate ownership where shared areas are addressed in a homeowners agreement. Zoning, setback and Planning Board restrictions and approvals apply.

The maximum resale price is the greater of the maximum sales price or the price the current covenant house owner paid for the covenant house.

Additionally, buyers must be a Nantucket resident or intend to become one. Moreover, buyers can not own a residential property at the time of sale. First-time homebuyers may be eligible for a waiver of the Land Bank fee of up to \$400,000.<sup>5</sup> Buyers must also occupy the covenant unit for at least 10 months of the year but may rent rooms.

The process for participation as a buyer in the Covenant House Program is as follows:

1. Complete and submit Qualified Purchasers Application to Housing Nantucket
2. Meet with Housing Nantucket staff to complete the application process and obtain approval
3. Housing Nantucket issues a Qualified Purchaser's Certificate which is valid for a year
4. Work with a lender to obtain financing
5. Find and negotiate a covenant home
6. Work with an attorney and Housing Nantucket to complete the sales transaction

The process for participation as a condo seller in the Covenant House Program is as follows:

1. Complete and submit Qualified Sellers Application to Housing Nantucket
2. Meet with Housing Nantucket staff to complete the application process
3. Work with an attorney to place a covenant on the property and create condo documents to address shared areas
4. Pay the transfer fee to Housing Nantucket
5. Work with an attorney and Housing Nantucket to complete the transaction

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is based on the local bank rates for a 30-year fixed jumbo loan. If the rates differ among Island banks, the higher rate is chosen.

<sup>5</sup> The Nantucket Land Bank collects 2% of the sales price from purchasers at closing for all real estate transfers on Nantucket. First-time homebuyers are entitled to the "M" exemption of up to \$400,000 of the purchaser price. If the buyer sells the property within five years, this fee will be due to the Land Bank with interest and penalties.

(Steps 2 and 3 are not necessary in the case of a resale)

The process for participation as a secondary lot seller in the Covenant House Program is as follows:

1. Complete and submit Qualified Sellers Application to Housing Nantucket
2. Meet with Housing Nantucket staff to complete the application process
3. Obtain Planning Board and/or ZBA approval if necessary
4. Place a covenant on the property
5. Create a Homeowners Agreement to address shared areas
6. Pay the transfer fee to Housing Nantucket
7. Work with an attorney and Housing Nantucket to complete the transaction

Once the seller is qualified, Housing Nantucket will send an email blast to qualified buyers to inform them of the new covenant home with contact information.

### **Outcomes to Date**

Over 50 covenant units have been created on the Island.

### **Issues for Consideration**

For buyers, the covenant market is a less volatile and more affordable alternative to the open market while sellers benefit as they can sell a piece of their land which they would not otherwise be able to subdivide.

While promoting accessory apartments to increase the supply of year-round rental units should be the priority, it may make sense to explore the adaptation of Nantucket's for sale version at some point in the future. While Nantucket's maximum sales price would need to be lowered to be more in sync with Chatham's housing market, property values remain high and the market is rebounding from the recent recession with the median single-family house price of \$560,500 as of July 2014 up from \$519,000 in 2013. Additionally, many homes are built on lots that could easily be subdivided under a Covenant Program and/or have multiple houses on lots that could be converted to affordability under the program. For example, Assessor's data indicated that there were 325 properties that included more than one house on the same parcel.

**Contact:** Anne Kuszpa, Executive Director, and Randi Allfather, Administrative Assistant

## **Lexington**

### **Description of Existing Zoning/Program**

Section 6.7 of Lexington's Zoning Bylaw allows the following three (3) categories of accessory apartments:

1. By-right accessory apartments
2. Special Permit accessory apartments
3. Special Permit accessory structure apartments

The following general standards apply to accessory apartments:

- No more than two (2) dwelling units per structure or lot.

- No roomers are allowed in either unit.
- The structure must be connected to the public water and sewer systems.
- The owner must occupy one of the units, except for temporary absences.
- The accessory apartment must be designed so the appearance of the structure maintains that of a single-family residence such that –
  - All stairways to the second and third stories are enclosed in exterior walls.
  - Any new entrance must be located on the side or rear of the dwelling.
  - Where two (2) or more entrances exist on the front façade of the dwelling, modifications made to any of the entrances must result in one entrance appearing to be the principal one and the other(s) appearing secondary.
- Each parking space and the driveway must be paved or have an all-weather gravel surface, and no motor vehicles can be regularly parked off of these parking spaces.
- No more than two (2) parking spaces can be located in the front yard and all other parking spaces must be located in the side or rear yards or in a garage or carport.
- No more than four (4) parking spaces are allowed on the lot.
- Parking spaces must be located so that both the principal dwelling unit and accessory apartment can have at least one (1) parking space with direct and unimpeded access to the street without passing through a parking space designated to serve the other dwelling unit.
- Suitable screening, either by fencing or landscaping, is required when there are more than one (1) outdoor parking spaces per unit to minimize the visual impact on abutters and to maintain the single-family appearance of the neighborhood.

The accessory apartment can be approved by-right when the unit meets the above requirements and the following additional ones:

- The lot must be at least 10,000 square feet in size.
- The apartment is located in the principal structure.
- The gross square footage of the apartment does not exceed 1,000 square feet.
- There are no more than two (2) bedrooms.
- The entire structure containing the accessory apartment must have been in legal existence for a minimum of five (5) years at the time of application, except for minimal additions which were necessary to comply with building, safety or health codes or for the enclosure of an entryway or a stairway to the second or third story.

Accessory apartments are also allowed under a Special Permit under the following conditions:

- The lot contains the minimal area required for the zoning district in which it is located.
- The gross floor area of the accessory apartment does not exceed 40% of the gross floor area of the dwelling, excluding areas of the structure used for parking.
- The apartment must be located in the principal structure.
- The architectural character of a detached single-family dwelling is maintained.
- The structure is consistent with the typical size of nearby single-family detached structures.

Accessory apartments are also allowed by Special Permit in detached structures on the same lot as the principal dwelling under the following conditions:

- The lot has at least 18,000 square feet in designated districts (RS, RT or CN) and at least 33,000 square feet in a less dense district (RO).
- The structure containing the accessory structure apartment was in legal existence for at least five (5) years and had a minimum of 500 square feet of gross floor area.
- The maximum gross floor area does not exceed 1,000 square feet and cannot include floor area that has been designed, intended or used for required off-street parking.
- The Special Permit Granting Authority (SPGA) determines that the exterior appearance of the accessory structure maintains the essential character of the purpose for which it was originally constructed and is compatible with the principal dwelling on the same lot and with other dwellings on adjoining lots.

### **Outcomes to Date**

Lexington approves about a handful of accessory apartments each year.

### **Issues for Consideration**

The Town has not encountered particular problems with the bylaw and have no plans to amend it at this time.

**Contact:** Aaron Henry, Assistant Planning Director

## **Newton**

### **Description of Existing Zoning/Program**

Section 30-8(d) of Newton's Zoning Ordinance provides for two types of review in regard to accessory apartments:

1. By-right administrative review in which the staff Planner reviews and signs-off on the application, referring the applicant to the Building Department for the building permit. This review is for accessory apartments that meet the following criteria:
  - Unit located in a single-family dwelling where the owner occupies the primary unit or accessory apartment.
  - The single-family dwelling was constructed at least ten years prior to the date of application.
  - The accessory unit must be at least 400 square feet in size and no more than 1,000 square feet or 33% of the total building size.
  - No more than one accessory unit is allowed per lot.
  - Lodgers are not allowed to occupy either the primary unit or the accessory apartment.
  - One off-street parking space for the accessory unit is required but the parking must include a fence or a landscaped buffer.
  - Exterior alterations that are required to meet applicable building, fire or health codes are permitted but cannot be within the setback area.
  - The accessory units cannot be held in separate ownership.
2. Board of Alderman review and approval of a Special Permit for an accessory apartment as a use accessory to an owner-occupied single-family dwelling for applications where the accessory apartments do not meet the dimensional or exterior alteration requirements under the by-right review including units in detached structures.

Newton's zoning also includes several Overlay Districts where stricter provisions apply. These areas tend to have larger lots and more detached structures, such as carriage houses, and/or are near colleges where there is a greater expectation of student occupancy. Such provisions include that the lot be at least an acre in size before it can be processed through staff review and 15,000 square feet for Special Permit review.

### **Outcomes to Date**

Unfortunately the City of Newton does not track accessory units and could not provide a total figure. The Chief Planner indicated that the City typically approves from about six to ten such units per year.

### **Issues for Consideration**

The Chief Planner indicated that they are considering a proposal to shift the review of accessory apartments in carriage houses from the Special Permit to the by-right review in an effort to promote historic preservation. They rarely receive complaints about the accessory apartments. Moreover they are actively trying to legalize unpermitted units based on health and safety concerns.

**Contact:** Alexandra Ananth, Chief Planner

## **Scituate**

### **Description of Existing Zoning/Program**

Scituate's Zoning Bylaw allows the Planning Board to grant a Special Permit for an accessory apartment if it meets a number of requirements including but not limited to the following:

- Limit of 25 permits per calendar year.
- Units must be complete and separate housekeeping units in the primary dwelling.
- Accessory units within structures used for business purposes must be located above the first floor or street level and no more than three accessory units can be created in any one building.
- In Business Districts, one affordable unit may be located on the first floor if it is entered from a side of the building other than that facing the street, has direct access to associated parking, and is accessible to persons with disabilities.
- Only one accessory unit can be created in a single-family house and must comply with all zoning requirements for the district except for legal, pre-existing, nonconforming structures.
- The accessory unit must not involve the expansion of the pre-existing structure, must clearly be a subordinate part of the single-family house or business, and designed so that the appearance of the building remains unchanged (new exterior stairs must be located on the side or rear of the building).
- The accessory unit cannot exceed the maximum of either 750 square feet or 40% of the total square footage of the primary dwelling.
- Two parking spaces per accessory unit are required.
- The dwelling must comply with all building codes and regulations including Title V.

In 2004, the Town added an affordability component to the bylaw that included these requirements in addition to the basic accessory unit provisions mentioned above through the site plan review process:

- No more than 15 affordable accessory dwellings per calendar year.

- The affordable unit must comply with the state’s Local Initiative Program (LIP).
- The Scituate Housing Authority will monitor the affordability restrictions and annually certify the eligibility of the unit for inclusion in the Subsidized Housing Inventory.
- Affordability restrictions were to be in effect for a minimum of 15 years, but for units created in a Residential Zoning District the use restrictions may be revocable upon sale of the primary dwelling after a minimum of five years of occupancy of the accessory unit.
- The accessory unit cannot contain more than two bedrooms.
- The primary residence must be owner-occupied as a primary residence.

The Planning Board may also grant a Special Permit for an affordable accessory apartment under the following conditions:

- Affordable accessory units in a detached structure on the same lot, such as a barn or garage, in the Residence A-1 and A-2 Zoning Districts.
- Affordable accessory apartments on a nonconforming lot in the Residence A-1 and A-2 Zoning Districts.
- In Business Districts, the Planning Board may allow more than three affordable accessory apartments in one building or waive the requirements that first floor units be entered from a side of the building other than that facing the street, have direct access to associated parking, and be accessible to persons with disabilities.

#### **Outcomes to Date**

As of June 30, 2014, Scituate had approved 69 accessory apartments and of these two were deed-restricted as affordable to those earning within 80% of area median income. However, because of changes to the state’s Local Initiative Program (LIP) that required the use of the Ready Renters List to be counted as part of the Subsidized Housing Inventory (SHI), neither of these units can now be counted.

#### **Issues for Consideration**

The photo below shows a mixed-use property with apartments that were permitted through the accessory apartment bylaw which was well-received by the community and considered an effective use of the bylaw.

**Contact:** Laura Harbottle, Town Planner



## Conclusions

This analysis suggests that it is not worth developing an accessory apartment program that would involve counting the units on the SHI for the following primary reasons:

- The Affordable Accessory Apartment approaches that comply or largely comply with state requirements under the Local Initiative Program (LIP) are very labor intensive.
- It is extremely difficult to get affordable accessory apartments included on the SHI, particularly because of the need for deed restrictions and that tenants be selected from a Ready Renters List. The Regional Ready Renters List that was administered by CCC is currently in limbo without an identified management entity.
- Units with existing tenants or family members, even qualifying ones, cannot be included on the SHI.

Other considerations for amending Chatham's existing accessory apartment bylaw include the following:

- Consider as-of-right provisions. The two or three-tier approaches used by Lexington and Newton represent useful models for adaptation.
- Reduce off-street parking to one space or have the owners make any parking determinations as is the case in Wellfleet.
- Consider reducing the minimum lot size to 10,000 square feet.

- There must be some buy-in from the Building Department and the Board of Health given permitting and enforcement issues. Coordination of the Assessor is also essential if the Wellfleet model with the tax exemption is used.
- Better promote accessory apartments in commercial structures (have any ever been created in Chatham to date?).
- Enable investor owners to participate in the program.
- Consider implementing an amnesty period.
- Provide CPA or Housing Trust funds to implement a deferred loan program to support the costs of creating the accessory unit and meeting all health and safety codes.
- Explore adapting the covenant home strategy at some point in the future.
- If there is some concern about the tenant income and rent levels, the Wellfleet Program is worth serious consideration. Ask Tim King, the former Wellfleet Town Administrator, to come to a Housing Committee meeting and discuss the program.