Zoning Act Reforms in Housing Bond Bill of 2024

Compiled by Jeff Lacy, Rural Planning Associates

Definition and Exemptions for Accessory Dwelling Units

SECTION 7. Section 1A of chapter 40A of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by striking out the definition "Accessory dwelling unit" and inserting in place thereof the following definition:-

"Accessory dwelling unit", 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.

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, site plan review, regulations concerning dimensional setbacks and the bulk and height of structures and may be subject to restrictions and prohibitions on short-term rental, as defined in section 1 of chapter 64G. The use of land or structures for an accessory dwelling unit under this paragraph shall not require owner occupancy of either the accessory dwelling unit or the principal dwelling; provided, that not more than 1 additional parking space shall be required for an accessory dwelling unit; and provided further, that no additional parking space shall be required for an accessory dwelling located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station. For more than 1 accessory dwelling unit, or rental thereof, in a single-family residential zoning district there shall be a special permit for the use of land or structures for an accessory dwelling unit. The executive office of housing and livable communities may issue guidelines or promulgate regulations to administer this paragraph.

Renumbering

SECTION 9. Section 3A of said chapter 40A is hereby amended by striking out the words “section 27”, as appearing in section 152 of chapter 7 of the acts of 2023, and inserting in place thereof the following words:- section 27½.

Exemption to the “Merger Doctrine” for Certain Lots in Common Ownership

SECTION 10. Section 6 of said chapter 40A, as appearing in the 2022 Official Edition, is hereby amended by inserting after the fourth paragraph the following paragraph:-

Adjacent lots under common ownership shall not be treated as a single lot for local zoning purposes if, at the time of recording or endorsement, the lots: (i) conformed to then existing requirements of area, frontage, width, yard or depth, where each such lot has not less than 10,000 square feet of area and 75 feet of frontage; and (ii) are located in a zoning district

that allows for single-family residential use. Any single-family residential structure constructed on said lot shall not exceed 1,850 square feet of heated living area, shall contain not less than 3 bedrooms and shall not be used as a seasonal home or short-term rental.

Making Appeals of Zoning Decisions More Difficult

SECTION 11. The first paragraph of section 17 of said chapter 40A, as so appearing, is hereby amended by inserting after the fourth sentence the following sentence:-
If the complaint is filed by someone other than the original applicant, appellant or petitioner, then each plaintiff, whether or not previously constituting parties in interest for notice purposes, shall also sufficiently allege and must plausibly demonstrate that measurable injury, which is special and different to such plaintiff, to a private legal interest that will likely flow from the decision through credible evidence.

SECTION 12. Said section 17 of said chapter 40A, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The court, in its discretion, may require a plaintiff in an action under this section appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than $250,000 to secure the payment of and to indemnify and reimburse damages and costs and expenses incurred in such an action if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs. The court shall consider the relative merits of the appeal and the relative financial means of the plaintiff and the defendant. Nothing in this section shall require bad faith or malice of a plaintiff for the court to issue a bond under this section.

SECTION 13. Said section 17 of said chapter 40A, as so appearing, is hereby further amended by striking out the sixth paragraph and inserting in place thereof the following paragraph:-

Costs, including reasonable attorneys' fees, in an amount to be fixed by the court may be allowed against the party appealing from the decision of the board or special permit granting authority if the court finds that the appellant or appellants acted in bad faith or with malice in making the appeal to court.

Option for Preferences for Veterans in Certain Housing Developments

SECTION 14. Said chapter 40A is hereby further amended by adding the following section:-

Section 18. (a) Notwithstanding any general or special law to the contrary, a city or town that permits or adopts inclusionary zoning, incentive zoning, a density bonus ordinance or by-law pursuant to this chapter or a housing production plan submitted to the executive office of housing and livable communities may enter into an agreement with a housing developer or residential development owner to provide a preference for affordable housing to low- or moderate-income veterans, as defined in clause Forty-third of section 7 of chapter 4. The preference shall be for up to 10 per cent of the affordable units in a particular development.
(b) The preference under this section shall be established in the applicant selection process for available affordable units. Applicants who are veterans and who apply within 90 days of the initial marketing period of the development shall receive preference for the rental of up to 10 per cent of the affordable units. After the first 90 days of the initial marketing period, if any of the units subject to the preference remain available, applicants from the general public shall be considered for occupancy. Following the initial marketing period, qualified applicants who are veterans shall be placed on a waiting list for the preference-occupied units for veterans and on any general waiting list. The veterans on the preference-occupied waiting list shall be given

preference for affordable units, as the units become available, whenever the percentage of preference-occupied units falls below 10 per cent.

(c) Any agreement to provide affordable housing preferences for veterans pursuant to this section shall not affect a municipality's ability to receive credit for the unit for affordable housing pursuant to chapter 40B or any other law. The agreement may be monitored by a third party assigned by the municipality.

(d) This section shall not require an increase in the existing amount of affordable units set by the city or town.

(e) The city or town may require proof of veteran status and income eligibility as the city or town.