



## RECOMMENDATION

Elisa Tinti  
City Clerk  
420 Broadway  
Kingston, N.Y. 12401

REFERRAL NO: 2021-073  
DATE REVIEWED: 05/05/21

### Re: Resolution 50 of 2021 – Zoning Statute Amendment

#### Summary

The City is proposing to amend its Zoning Statute concerning accessory dwelling units (ADUs).

The following materials were received for review:

- Referral Form
- Vote Record
- Resolution 50 of 2021
- Draft Law Language

#### Discussion

The Ulster County Planning Board (UCPB) supports and commends the City on its efforts to look for ways to provide for additional as well as affordable housing choices for its residents. The proposed law removes restrictions from the RRR zone as it relates to house and apartment size and permits ADU's in accessory structures. The law also removes the requirement for parking to be determined by the number of bedrooms and requires a single space for an accessory dwelling unit. The amendment still provides for the planning board to review ADU's

It should be noted that the UCPB has a long history of supporting the liberalization of community policies regarding ADU's and has worked in its reviews of both local zoning statutes and comprehensive plans to ensure that they were included in a community's regulatory scheme. The reasons are straightforward and are even more applicable in today's housing market and the changing demographics of family size. In 2008 a HUD User Case study outlined the advantages of ADU's as follows:

*"Accessory dwelling units offer a variety of benefits to communities. They help increase a community's housing supply, and since they cost less than a new single-family home on a separate lot, they are an affordable housing option for many low- and moderate-income residents. Elderly and/or disabled persons who may want to live close to family members or caregivers, empty nesters, and young adults just entering the workforce find ADUs convenient and affordable. In addition to increasing the supply of affordable housing, ADUs benefit homeowners by providing extra income that can assist in mitigating increases in the cost of living. Accessory dwelling units have other advantages as well. They can be designed to blend in with the surrounding architecture, maintaining compatibility with established neighborhoods and preserving community character. Furthermore, there is no need to develop new infrastructure, since ADUs can be*

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*connected to the existing utilities of a primary dwelling. Allowing ADUs facilitates efficient use of existing housing stock, helps meet the demand for housing and offers an alternative to major zoning changes that can significantly alter neighborhoods.”*

We would also note the language in the City’s zoning statute that states that the purpose of ADU’s is *“to provide the opportunity and encouragement for the development of small, rental housing units designed, in particular, to meet the special housing needs of single persons and couples with limited income, both young and old, and of relatives of families presently living in the City. Furthermore, it is the purpose and intent of this provision to allow the more efficient use of the City’s existing stock of dwellings to provide economic support for present resident families of limited income and to protect and preserve property values.”*

The UCPB wholeheartedly agrees with these observations by HUD and the City concerning ADU’s and while it supports the changes proposed by the City we urge the City to go beyond the relatively minor changes to consider how a substantially more liberal policy concerning ADU’s can help the City meet its housing needs. Areas that should be explored include allowing ADU’s in most if not all the City’s residential zoning districts and removing the need for planning board oversight in most cases. The City may also wish to consider the legislation that is pending at the state level regarding ADU’s in crafting how best to provide for the regulation of ADU’s within the City.

The UCPB’s recommendations regarding the proposed amendments will focus on key changes it believes will provide for the construction of more ADU’s within the City.

**Recommendations**

**Definition**

The proposed law does contain a definition for accessory apartment and/or accessory dwelling units (ADU).

**Required Modification**

Given the focus of our recommendations that city-wide changes are to provide for more housing choice options there is a need to specifically define an ADU in the City’s zoning statute. It is recommended that this definition include where they may be allowed such as attics, basements, accessory structures, including existing structures such as garages to be converted or to even be expanded to include a second story, all of course in compliance with the NYS Building Code. Greater specificity not only increases the placement of ADU opportunities in principal and secondary structures but also leaves less room for interpretation should a challenge arise. We would add that such a definition should include the need for the owner to occupy one of the units on the lot.

**Permit by Right**

The City currently, including with the amendments proposed, requires accessory apartments or ADUs to go through the special permit review process.

**Required Modification**

If the City’s purpose is to provide for additional housing options, the burdens placed on homeowners to create these opportunities need to be reduced. With that in mind, it is recommended that approvals of ADUs be conducted via an administrative process whereby if water and sewer are adequate and the unit is being placed within the principal structure, they should be allowed by right. ADUs in accessory structures or included as part of an expansion of the principal structure should be afforded the same treatment. In all cases, the City could reserve the right for the building inspector to recommend specific modifications, depending on site constraints, historic status, etc.

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The Board does not object to site plan review by the planning board in certain instances where such as historic districts or structures.

**Affordability**

Fostering additional opportunities for creating ADUs is a path to potentially creating more affordable, or at least, less expensive housing, but there is an opportunity again for the City to take this initiative a step further by including accessory dwelling units as part of their new affordable housing standards.

**Required Modification**

To ensure that the changes to the ADU regulations result in the increased availability of housing, The City should restrict both the principal structure and the ADU from being used as short-term rentals. The City may also wish to consider an affordability restriction on ADU's such as requiring initial rents to be set to no more than HUD Fair Market Rent, for at least five years.

**Health Department Review – Required Modifications**

Where not served by City sewer the County Health Department should be involved in the approval if additional bedrooms are added such as the conversion of an accessory building to an ADU.

**Location**

The City's zoning statute, 405-10 & 11 for the RR and R-1 zoning districts both refer to 405-9(B)(9) as allowing ADUs. The zoning statute is silent, however, on single-family homes that may exist outside of those zoning districts.

**Required Modifications**

For all lots with single-family homes in the R-2, R-4, R-6, and any other district containing a single-family home, ADUs should be allowed.

Reviewing Officer



Robert A. Leibowitz, AICP  
Principal Planner

Cc: Gio Gagliardi, UCPB  
Mayor Steve Noble, City of Kingston  
Suzanne Cahill, City of Kingston Planning



CITY OF KINGSTON  
Kingston Planning  
planning@kingston-ny.gov



Suzanne Cahill, Planning Director  
Kyla Dedea, Assistant Planner

Steven T. Noble, Mayor

May 18, 2021

Ald. At Large Andrea Shaut, President  
City of Kingston Common Council  
City Hall – 420 Broadway  
Kingston, New York 12401

Re: ZONING REFERRAL of Common Council to Kingston Planning Board (Resolution #50 of 2021)  
Zoning Amendment – Accessory Dwelling Units (ADU's) Requirements

Dear Pre. Shaut:

This is to advise you that at the regular meeting of the City of Kingston Planning Board ("Board"), held remotely on May 17, 2021, the Board addressed the above referenced referral. It was noted by the Board that the recommendations made herein are based only on the original, official referral as made by the Common Council, through the City Clerk. It was further recognized that the Board only just received a revised draft of the zoning text amendment language on the afternoon of May 17, 2021 as transmitted via email by the Assistant Corp. Counsel to all Board members. Neither staff nor Board members had been apprised of the changes in the proposed legislation until that time making a complete review difficult, if not impossible.

However, in light of these issues, the Board discussed the legislation to the best of their ability and ultimately voted unanimously to RECOMMEND DENIAL of the proposed amendments to the Zoning Ordinance as referred, recognizing all comments of staff as provided, and referring them as part of their official recommendation back to the Common Council for consideration. The staff recommendations are as follows:

***"RECOMMENDATIONS on current proposal:***

- ***Staff has no objection to the removal of the building age before January 1, 1982 under sub paragraph (c), however staff would recommend against the second portion of change to this paragraph and would keep the minimum size dwelling requirement. A minimum size of 2,000 SF for a single family, as a primary occupant, would be reasonable to preserve the integrity of the housing stock if an accessory dwelling were to be added within.***
- ***Staff recommends against the change proposed for sub-paragraph (d) altogether. The purpose of an accessory dwelling is not to create a duplex in a one family district. An accessory dwelling is meant to be secondary to the primary housing unit, not to exceed it or to be established as a unit which becomes more prominent. The square footage is basic to defining a single family residence and also what truly is an accessory dwelling unit. Without a minimum standard smaller homes may converted into 2 units, each being a studio unit or of equal size and that does not really imply an ADU. The impact of the increase demand for services and infrastructure on existing neighborhoods should be considered.***
  - ***Staff has had conversation with the new City Housing Director and would strongly recommend his input here. In conversation he also expressed concern over removing and/or leaving the square footage out of the regulations.***

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## Kingston Planning

planning@kingston-ny.gov



Suzanne Cahill, Planning Director  
Kyla Dedea, Assistant Planner

Steven T. Noble, Mayor

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- *Staff would encourage reaching out to the Building Department and obtaining feedback from that agency who would ultimately be responsible for administering and addressing not only the issuance of permits, but also potential complaints which are received.*
  - *Staff recommends against the off-street parking amendments as proposed:*
  - *Section 405-34 (j) proposed changes would change the requirement for all residential and multifamily proposals. This should not be changed without discussion on what this would mean for all proposals going forward. This section does not impact ADU's and should be addressed separately.*

*Staff reminds the Council that they should think about how the removal of on-street parking and the introduction of bike lanes with all of the new infrastructure improvements play into these plans?*

*Staff has a concern over placing too much weight on making decisions based on laws which have yet to be adopted and are speculative, subject to changes as they go through the process of discussion at the State level. Staff recommends requiring future discussion with acknowledgement that many of these contradict the current NYS legislation which is currently only in committee:*

- *Any change to the proposed legislation should be re-referred to the Board for discussion unless the state legislation is passed and the changes are adopted as required under the legislation. The Common Council should consider requesting input from the Building Department, Department of Public Works, and the City Assessor. Changes to zoning often have a direct impact on other departments with regard to permitting responsibility, requirements to issue permits within a certain time, and services to be provided. (i.e. building permit timeframes, inspections, garbage pickup, utilities, etc.)*
- *One of the units on the property should be owner occupied for the life of the ADU (Current proposal for State legislation includes owner occupancy for only the first year and then no ownership requirements after the fact)*
- *Inclusion of a maximum percentage of the structure (i.e. Accessory Dwelling shall not occupy square footage equal to more than 50% of the principal dwelling unit)*
- *ADU's should be (and already are) allowed in all single family zoning districts and on lots that currently have or are proposed to have single family homes. Multifamily districts allow for more than 1 residential unit. Staff would not recommend permitting ADU's in multifamily zoning districts that contain multifamily structures. This would essentially be converting 2 family districts to 3 family, and so on. This would have a greater impact on parking and services.*
- *If the Council pursues permitting without Planning Board approval, this should be limited to ADU's that are created within the principal dwelling unit or above an existing garage. The Board may wish to recommend accessory dwelling units that are constructed as standalone structures to require site*

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Suzanne Cahill, Planning Director  
Kyla Dedca, Assistant Planner



Steven T. Noble, Mayor

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*plan approval. (as discussed at Laws and Rules Committee) New units may be erected that don't meet other sections of the Code (lot and Bulk requirements)*

- *ADU's should be subject to Landlord Registration in compliance with current City codes for rental units.*
- *Parking requirements for the principal dwelling should be required. The CC may want to consider no additional space required for the ADU, however, staff recommends requiring the minimum 2 spaces for the primary unit. (Parking requirements potentially contradicts State legislation)*
- *Any changes that effect properties in Historic Districts should be required to obtain a preservation notice of action from HLPC prior to obtaining a building permit.*
- *Set back requirements should be considered and should not be less than the 6ft in the side yard as required for all accessory structures. No Accessory dwelling or other accessory structures should be permitted in the front yard. (contradicts State proposal of 4ft)*
- *Legislation should not include a requirement for the Building Department to approve a permit within a certain timeline. This adds a burden on the already overtaxed department. The Building Department processes permits as they come in and should not be required to pass other permits in order to meet requirements. (contradicts state proposal of 60 days) If the Council insists on following the State guideline, the Building Department should be provided with additional staff accordingly.*
- *ADU's should be restricted from short term rentals. If the goal is to provide more housing for the current population at affordable or market rate, there are no requirements that are being discussed which will ensure these provisions.*

*Additional recommendations not related to ADU's but related to increasing housing stock and affordability.*

- *Staff and the Board have previously recommended and staff continues to recommend elimination (to allow for uses permitted by site plan)/or expansion of the Mixed Use Overlay District by allowing for residential in all commercial and manufacturing zones if they meet certain criteria. All commercial properties should be permitted to have residential on the upper floors without being limited by location. Staff would add to this that in certain situations it may be appropriate to allow residential on ground floors or as another structure on the site. This should not be permitted in the business districts but may be considered for properties that are commercial and outside of business districts. MUOD currently requires a Special Permit by the Planning Board. The Council may wish to require site plan only, with a list of requirements to be met prior to issuance.*

*On a last note, the City has just engaged a professional zoning consultant to re-write the entire zoning code. Now while that may not get accomplished before the need arises to address the issue of ADU's, at a minimum,*

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***the Council should reach out to this consultant for opinion. The County has provided an opinion why not utilize our own resources to understand the impacts to this community. The Council is encouraged to seek out surrounding communities as well to question how they are addressing the current situation. The City of Kingston is not alone in facing this housing challenge."***

As the Planning Director, I would like to say that both this department and the Board recognize the housing crisis. However, in light of what some might perceive as a flawed referral process, the Board did their best to take a hard look at the issues, but ultimately felt the need to deny the proposal at this time. It is hoped that the Council understands their reasoning why and focuses on the potential impacts of any ultimate legislation which is adopted. I also believe that the Board would be happy to address revisions or future renditions of the language if appropriately referred back.

If there are any questions, please do not hesitate to contact our office to discuss.

Be well and stay safe.

Sincerely,

Suzanne Cahill  
Planning Director

CC: S. Noble, Mayor  
W. Platte, Chairman Planning Board  
Ald. J. Ventura-Morell, WI, Chairman L&R's  
E. Tinti, City Clerk  
Kingston Common Council  
D. Gartenstein, Assistant Corp. Counsel



## ACCESSORY DWELLING UNITS

I. Definitions. As used in this article, unless the context otherwise requires, the following terms shall have the following meanings:

1. "Accessory dwelling unit" shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons which is located on a lot with a proposed or existing primary residence and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same lot as the single family or multi-family dwelling is or will be situated.

2. "Accessory structure" shall mean a structure that is accessory and incidental to a dwelling located on the same lot.

3. "Living area" shall mean the interior habitable area of a dwelling unit, including basements, cellars, and attics but does not include a garage or any accessory structure.

4. "Nonconforming zoning condition" shall mean a physical improvement on a property that does not conform with current zoning standards.

5. "Passageway" shall mean a pathway that is unobstructed and extends from a street to one entrance of the accessory dwelling unit.

6. "Proposed dwelling" shall mean a dwelling unit that is the subject of a permit application and that meets the requirements for permitting.

7. "Impact fees" shall mean any payment imposed by a local agency for the purpose of providing new or expanded public capital facilities or infrastructure required to serve a new development.

II. Accessory dwelling unit regulations and ordinances

1. This Ordinance shall facilitate and remove current barriers to the creation of Accessory Dwelling Units by:

- a. Designating areas within the jurisdiction of the local agency where accessory dwelling units shall be permitted. Designated areas shall include all areas zoned for single family or multi-family residential use, and all lots with an existing residential use.
- b. Authorizing the creation of at least one accessory dwelling unit per lot in designated areas.
- c. Providing reasonable standards for accessory dwelling units that include, but are not limited to height, landscape, architectural review and maximum size of a unit.
- d. In no case shall such standards unnecessarily impair the creation of accessory dwelling units.

### III. Requirements for Accessory Dwelling Units

- a) All Accessory Dwelling Units shall comply with the following:
  - i. Such unit must comply with all applicable New York State standards of habitability, including but not limited to square footage. Accessory dwelling units shall comply in all respects with the New York State Building Code, Construction Code, Plumbing Code and other applicable Codes and Regulations.
  - ii. Such unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence
  - iii. Such unit shall be located on a lot that includes a proposed or existing residential dwelling
  - iv. Such unit shall not be rented for a term less than thirty days;
  - v. Such unit shall either be:

- 1) attached to or located within the proposed or existing primary dwelling, including but not limited to attached garages, storage areas, basements, cellars, similar spaces, or
  - 2) be an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling
- vi. If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed fifty percent of the existing primary dwelling, unless such limit would prevent the creation of an accessory dwelling unit that is no greater than six hundred square feet.

#### IV. Parking

**No parking requirement shall be imposed on an accessory dwelling unit and property owners shall not be required to replace off street parking spaces if a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit.**

#### V. Administrative Review

- i. **Notwithstanding any existent local ordinance regulating the issuance of variances or special use permits, a permit application to create an accessory dwelling unit in conformance with the local ordinance shall be considered ministerially without discretionary review or a hearing.**
- ii. **In the case of a property subject to the jurisdiction of the Historic Landmarks Preservation Commission, an initial ministerial determination shall be made by the Building Safety Division as to whether the Accessory Dwelling Unit will result in a substantial material alteration to the external appearance of the primary dwelling. In the event that no substantial material alteration will result, a building permit will be granted without the need for a preservation notice of action.**

- iii. **If there is an existing single family or multi family dwelling on the lot, the Building Safety Division shall act on the application to create an accessory dwelling unit within sixty days from the date the local agency receives a completed application.**
- iv. **If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new residential dwelling on the lot, the Building Safety Division may delay acting on the permit application for the accessory dwelling unit until the permitting agency acts on the permit application to create the new dwelling, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing.**
- v. **If the applicant requests a delay, the sixty-day time period shall be tolled for the period of the delay.**

#### **VI. Pre-existing Non-Conforming Uses**

A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit, the correction of non-conforming zoning conditions.

#### **VII. Utility Connections – Impact Fees**

Where an accessory dwelling unit requires a new or separate utility connection directly between the accessory dwelling unit and the utility, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures upon the water or sewer system. Such fee or charge shall not exceed the reasonable cost of providing such utility connection. A local agency shall not impose any other impact fee in connection with an accessory dwelling unit.

#### **VIII. Owner Occupancy**

**The first lawful occupancy of an accessory dwelling unit shall occur at a time when a unit in the primary dwelling is owner occupied, and such owner occupation must continue for at least one -year following the first**

**legal occupancy of the accessory dwelling unit. Thereafter, the property owner shall comply in all respects with the provisions of the Landlord Registration provisions set forth in City Code Section 332. There shall be no other owner occupancy requirement for either the primary dwelling or the accessory dwelling unit.**

IX. Health and Safety Requirements

A local agency shall not impose any health or safety requirement on accessory dwelling units that is not necessary to protect the health and safety of the occupants of such a dwelling.

X. Certificates of Occupancy

A local agency shall not issue a certificate of occupancy or its equivalent for an accessory dwelling unit before the local agency issues a certificate of occupancy or its equivalent for the primary dwelling.

XI. Multiple Dwelling Law

No provision of the multiple dwelling law shall apply to an accessory dwelling unit, irrespective to whether such provisions of such law apply to the primary dwelling, and a dwelling otherwise exempt from the provisions of the multiple dwelling law shall not fall under the provisions of such law as a result of the addition of an accessory dwelling unit.

XII. Pre-existing Zoning Regulations

- a) Any pre-existing provision of the City Code that imposes any of the following shall be unenforceable and are, as of the effective date of this ordinance, declared null and void:
  - i. minimum square footage requirement for either an attached or detached accessory dwelling unit greater than two hundred square feet;
  - ii. a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than fifteen hundred square feet;
  - iii. Any other minimum or maximum size for an accessory dwelling unit, based upon a percentage of the proposed or existing primary dwelling;

- iv. Limits on lot coverage, floor area ratio, open space, and minimum lot size, for either an attached or detached dwelling that do not permit at least an eight hundred square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with other local development standards;
- v. A ceiling height requirement greater than seven feet;
- vi. If an accessory dwelling unit or a portion thereof is below curb level, a requirement that more than two feet of such unit's height be above curb level;
- vii. Any requirement that a passageway exist or be constructed in conjunction with the creation of an accessory dwelling unit;
- viii. Any additional or different setback requirements for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit;
- ix. Any setback requirement of more than four feet from the side and rear lot lines for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure;
- x. Any requirement of more than one point of exterior access by door from the proposed or existing residential dwelling.

### XIII. Appeals

- a) When a permit to create an accessory dwelling unit pursuant to an ordinance adopted pursuant to this section is denied, the Building Safety Division shall issue a notice of denial which shall contain the reason such permit application was denied and instructions on how the applicant may appeal such denial.

- b) **The denial of an application for a permit to construct an Accessory Dwelling Unit shall be heard by the Zoning Board of Appeals**
- c) **All appeals shall be submitted in writing within thirty days of such denial.**

