



To: Paul A. Croce, Chairman
Planning Board members

From: Ron Wolanski, Town Planner

Date: December 6, 2022

Re: Proposed Zoning Ordinance Amendments – Accessory Dwelling Units

During the last legislative session, the Rhode Island General Assembly passed a law which modifies provisions of the state zoning enabling act regarding accessory dwelling units (ADUs). Sections 45-24-73 thru 76 of the act now require the following if a municipality chooses to allow ADUs. Note that towns are not required to allow ADUs, except when proposed for an elderly, disabled, or other family member:

- If the town chooses to allow ADUs, they must be allowed by right in residential zoning districts with minimum lot sizes of 20,000 sq.ft. or larger.
- Occupancy of ADUs cannot be restricted to family members only.
- ADUs must be allowed by right within a principal structure or accessory structure, except that a special use permit may be required if the ADU is proposed within a nonconforming structure.
- ADUs must be allowed in single-family as well as multi-family structures.
- Reasonable regulation of ADUs is permitted.

Please see the attached memo from the Town Solicitor's office for more detailed discussion of the new law.

Attached for Planning Board consideration is a draft document identifying proposed amendments to Article 16 of the current zoning ordinance, which if adopted, would result in the following:

- ADUs would be a permitted use in the R-20, R-30, R-40, and R-60 zoning districts.
- Allowed in principal or accessory structures
- ADUs would be limited to no more than 35% of the floor area of the principal dwelling, with a minimum floor area of 400 sq.ft.
- Limit of one ADU per parcel.
- ADUs limited to two bedrooms.
- One additional parking space required for each ADU bedroom.
- Short-term rentals on parcels with a ADU would be limited to what was allowed prior to establishment of the ADU.
- If proposed in an accessory structure, the structure must meet setbacks required for a principal structure, except that the rear setback must be a minimum of 15 feet.
- ADUs may be established in a legal pre-existing nonconforming structure with the issuance of a special use permit.

Once the Board has considered the proposed amendments, and if the Board is in favor of proceeding with the amendments, the Board should consider forwarding them to the Town Council for consideration. The Board may choose to hold a public workshop meeting to present the proposed amendments and accept public input prior to taking action. If forwarded to the Town Council, the Town Council will then hold the required public hearing before the amendments are finally considered for adoption. In support

of its recommendation to the Town Council on a zoning ordinance amendment the Planning Board must make the following findings in accordance with the requirements of Section 45-24-52 of the Rhode Island General Laws:

(1) The proposed amendment is generally consistent with the Middletown Comprehensive Community Plan, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and

(2) This recommendation is made in recognition and consideration of each of the applicable purposes of zoning, as presented in § 45-24-30 RIGL

Thank you for your consideration. Please contact me with any questions.

Cc: Town Solicitor

MEMORANDUM

From: Michael Monti
To: Ronald Wolanski
Cc: Peter Brent Regan
Date: 11.09.22
Re: Impact of ADU Legislation on Middletown Ordinance

I. Introduction

In June of this year, the Rhode Island General Assembly amended Chapter 24 of Title 45 (§ 45-24) of the General Laws related to municipal zoning ordinances.¹ In particular, the Assembly broadened the definition of an “Accessory Dwelling Unit” or “ADU.” Formerly, ADUs were reserved for the use of family members of the residents of the primary dwelling or in instances where the primary residence was owner occupied. Under the new definition, ADUs are permissible whether or not the primary residence is owner occupied and notwithstanding the lack of a familial relationship between the ADU occupant and the occupants of the primary residence. The General Assembly also added several new provisions to § 45-24 which provide new standards for municipal regulation of ADUs.

As a result of these changes, the Middletown Ordinance now conflicts with state law. In this Memorandum, I present the changes that were made to § 45-24 and provide guidance on how the Town might proceed in revising the Ordinance. Before I begin, however, it should be stated from the outset that the Town still maintains discretion as to whether to permit ADUs at all. Indeed, § 45-24 states that the new standards for consistent treatment of ADUs across municipalities apply only when a “municipality chooses to permit accessory dwelling units[.]” In other words, Middletown can ban ADUs outright, but if it chooses to permit ADUs, it must abide by the new provisions.

II. Changes to the ADU Laws

Previously, RIGL § 45-24-31(2) defined ADUs as dwelling units “rented to and occupied either by one or more members of the family of the occupant or occupants of the principal residence”—otherwise known as *accessory family dwelling units*—or dwelling units rented to any person or family “where the principal residence is owner occupied” and that meet certain other standards, such as inclusion of independent cooking and sanitary facilities. This section was amended to define ADU in broader terms. An ADU is now defined as:

A residential living unit on the same parcel where the primary use is a legally established single-unit or multi-unit dwelling. An ADU provides complete independent living facilities for one or more persons. It may take various forms including, but not limited to: a detached unit; a unit that is part of an accessory

¹ For your convenience, the text of the amended § 45-24 is attached hereto as is the existing provision of the Middletown Zoning Code related to ADUs.

structure, such as a detached garage; or a unit that is part of an expanded or remodeled primary dwelling.

The new definition allows for more expansive use of ADUs because it does not restrict ADUs to family members or to owner-occupied residences, and it clearly applies to both single and multi-family dwellings. It is no secret that the General Assembly's intent in amending the definition of ADU was to provide additional housing inventory.

The General Assembly also added several new provisions to § 45-24. The first, § 45-24-73, is entitled "Consistent statewide treatment of accessory dwelling units required" and sets forth eight restrictions on municipalities authority to regulate ADUs. Perhaps most importantly, § 45-24-73, forbids municipalities from:

Restrict[ing] tenants based on familial relationship or age ... ; ... Requir[ing] infrastructure improvements, including, but not limited to, separate water or sewer services lines or expanded septic system capacity ... ; ... Impos[ing] unreasonable dimensional requirements on ADUs that effectively preclude their development or utilization ... ; [or] ... Requir[ing] a larger minimum lot size for a property with an ADU over that required for a property without an ADU in the same zone ...

In other words, while a municipality is not required to permit ADUs, if it does it must play by the above rules.

The second addition to § 45-24 is § 45-24-74, entitled "Additional zoning provisions for applications for accessory dwelling units". There are two very significant subsections to this new provision. First, § 45-24-74(a) states that ADU applications not associated with "a larger development proposal" must "be reviewed through an administrative officer or development plan review process" and such applications "shall not, by themselves, be reviewed as minor land development, major land development, or special use permits." Second, § 45-24-74(b) mandates that "ADUs shall be a permitted use in any residential district with a minimum lot size of twenty thousand square feet (20,000 sq. ft.) or more, and where the proposed ADU is located within the existing footprint of the primary structure or existing secondary attached or detached structure and does not expand the footprint of the structure."² Although this provision suggests that municipalities have no discretion with respect to permitting such ADUs, reading § 45-24-74(b) in context with the rest of the statute makes clear that this section applies only in the event the municipality allow applications for ADUs in the first place. Nevertheless, this is a significant mandate should Middletown permit ADUs.

The third and fourth new additions to § 45-24 require less clarification. Section 45-24-75 allows ADUs to count toward the municipality's affordable housing goals when certain income thresholds are met and § 45-24-76 creates an annual reporting requirement for municipalities to provide information to the division of statewide planning with respect to ADUs in their jurisdiction.

² All of Middletown's Zoning Districts have a minimum lot size requirement of 20,000 sq. ft. except for the R-10 Zone, which has a 10,000 sq. ft. minimum lot size requirement.

One important piece of the legislation has remained constant, that is: ADUs must be permitted in situations where the living situation amounts to a reasonable accommodation for certain family members. This is the case even if the municipality otherwise bans ADUs outright. In fact, the legislation actually expands the circumstances under which such reasonable accommodations must be granted. Previously, § 45-24-27(e) stated, in pertinent part, that “[n]otwithstanding any other provision of this chapter, an *accessory family dwelling unit* in an owner-occupied, *single-family residence* shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members. ...” Now, § 45-24-27(e) provides that “[n]otwithstanding any other provision of this chapter, an accessory dwelling unit in an owner-occupied residence that complies with §§ 45-24-31 and 42-24-73 shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members.” Importantly, under the new statute, reasonable accommodations must be granted even in multi-family homes, and the use of the term *accessory family dwelling unit* is no longer utilized to account for the definitional change to ADU.

III. Implications on Existing Ordinance and Revision Considerations

Middletown’s existing Ordinance relating to ADUs is contained in Article 1600 of the Zoning Code.³ Article 1600 now conflicts with the new legislation in multiple ways. First, the existing Ordinance only permits accessory family dwelling units; that practice is proscribed by the new § 45-24-73. If ADUs are permitted, they cannot be limited to family members of the primary residence. Second, Article 1600 permits such accessory family dwelling units only within the principal dwelling and only when the principal dwelling is single-family; that restriction now violates § 45-24-74(b) and § 45-24-31 respectively. And third, Article 1600 requires the homeowners to apply for and be granted a special use permit from the Zoning Board of Review to gain ADU approval; this conflicts with § 45-24-74(a), which states that approval for use of an ADU, when not part of a larger project, cannot be made contingent upon a special use permit.

In light of the fact that Article 1600 now conflicts with state law, the Town should consider either amending or removing that article from the Ordinance. As the Town Council determines how it would like to proceed, it should keep in mind the following:

³ At least one question has arisen with respect to whether the changes to the state law impact Article 1600 (which uses the term “accessory family dwelling”) or whether ADUs are simply dwelling units subject to Article 702 of the Middletown Zoning Code, which states that “[i]n any residential zoning district other than Residential Multifamily (RM) and Mobile Home/Transient Trailer (MT), not more than one dwelling unit or principal building shall be permitted on a lot, except in the case of motels or hotels, and multifamily dwelling projects in conservation developments[.]” To clarify, Article 702 governs dwelling units generally and does not apply with respect to ADUs. ADUs are accessory to the dwelling units referenced in Article 702. Therefore, 702 should not be read to act as an independent ban on ADUs. The reason Article 1600 refers to “accessory family dwelling units” is because the old definition of ADU provided for accessory dwelling units in two cases: (1) in certain owner-occupied situations; and (2) in family situations. The municipality chose to permit only the latter, thus the use of the term. Under the new statute, as explained *supra*, it is not permissible to permit accessory *family* dwelling units if accessory dwelling units for non-family members is also prohibited.

- The Town can prohibit all ADUs except for those that are granted as reasonable accommodations for elderly or disabled family members.
- If the Town permits ADUs beyond those granted as reasonable accommodations, the Town cannot restrict ADUs to family members, require the primary residence to be owner occupied, or limit ADUs to single-family homes.
- If ADUs are permitted, they must be a permitted use in residential districts with a minimum lot size of 20,000 sq. ft. or more and where the ADU is located within the existing footprint.
- If ADUs are permitted, they cannot be subject to a special use permit (unless part of a larger development project where a special use permit is otherwise necessary).
- If ADUs are permitted, the Town must provide an annual report to the division of statewide planning.
- If ADUs are permitted, they can count towards the minimum affordable housing target.

IV. Conclusion

The General Assembly's changes to the law governing zoning ordinances are significant. Municipalities are no longer allowed to distinguish between family members and non-family members for purposes of ADUs. Notwithstanding, the municipality still maintains the right to bar all ADUs outright (excepting those that must be granted as reasonable accommodations for certain elderly or disabled family members). The Town Council therefore has a significant policy choice in front of it. Generally speaking, it must decide whether to ban outright ADUs or to allow the use of ADUs much more expansively: in single and multi-family situations where the primary unit is non-owner occupied.

Should you have any questions, please do not hesitate to ask.

ARTICLE 16 ACCESSORY ~~FAMILY~~ DWELLING UNIT

§ 1600 PURPOSE.

The purpose of this subchapter is to allow establishment of an Accessory Dwelling Unit within the principal dwelling or within an accessory structure located on the same parcel as the principal dwelling, parent(s), grandparent(s), children or grandchildren of owner-occupant of single-family dwellings to live in a separate dwelling unit within the principal dwelling, without converting the principal dwelling into a two-family dwelling from it's classification as a single-, two-, or multi-family dwelling.

§ 1601 REQUIREMENTS.

~~—(A)—~~ No part of any dwelling or parcel shall be used as an Accessory family Dwelling Unit until ~~the Zoning Board of Review has granted a special use permit under Article 9;~~ all requirements of this subchapter are satisfied; and the Zoning Officer has issued a certificate of zoning compliance under § 311.

An Accessory Dwelling Unit may be contained within the principal single-, two-, family or multi-family dwelling structure or in an accessory structure on a parcel that contains a single-, two-, or family or multi-family dwelling structure as the principal use.

(A) —(B)— Size. The total floor space devoted to an Accessory family Dwelling Unit shall not exceed 35% of the floor area of the ~~entire principal~~ dwelling exclusive of porches, decks or basements, and shall be a minimum of 400 square feet in gross floor area. Only one accessory ~~family~~ dwelling unit is permitted ~~in a principal dwelling unit on a parcel, and the~~ The Accessory family Dwelling Unit shall have no more than ~~eneto~~ two bedrooms and shall not have a separate outside door on the front of the building if contained in a principal dwelling structure. ~~The property containing an accessory family dwelling unit shall retain the appearance and character of a single-family property.~~

(B) Setbacks. Should the Accessory Dwelling Unit be located in an accessory structure, said accessory structure must conform with the setback requirements as that of the primary structure as set forth in § 603 provided, however, that in no case shall the rear setback for an accessory structure used as an Accessory Dwelling Unit be less than 15 feet.

(C) Parking. One off-street parking space must be provided for the Accessory Dwelling Unit, per bedroom, in addition to the number of off-street parking spaces required by this chapter for the principal dwelling and any other uses on the property.

(D) Short-Term Rentals. Where an Accessory Dwelling Unit is established, short-term rentals as defined in Chapter 98 of the Town Code are prohibited on the property beyond that which would be permissible prior to the establishment of the Accessory Dwelling Unit.

~~—(C)—~~ ~~The right to use part of a single-family dwelling as an accessory family dwelling unit shall automatically be terminated when the accessory unit is no longer occupied by parent(s), grandparent(s) children or grandchildren of the primary dwelling occupant.~~

§ 1602 PROCEDURE.

In addition to satisfying the requirements of § ~~305311~~, a certificate of zoning compliance for an accessory ~~family~~ dwelling unit shall not be issued until the following requirements are satisfied:

(A) In the R-20, R30, R-40, and R-60 zoning districts Accessory Dwelling Units are allowed as a permitted use on properties containing a single-, two-, or multi-family dwelling use, and where the property conforms to all use, dimensional, and all other requirements of this chapter.

(B) In the R-20, R30, R-40, and R-60 zoning districts, Accessory Dwelling Units may be permitted by special use permit in primary or accessory structures that are lawfully established, pre-existing, non-conforming structures without a variance.

(A)(C) Accessory Dwelling Units are prohibited in all other zoning districts, except that, an accessory dwelling unit in an owner-occupied residence that complies with §§ 45-24-31 and 42-24-73 shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members.-

~~—(A) The owner-occupant shall sign an affidavit stating that the accessory unit will be occupied only by one or both parent(s), grandparent(s), children or grandchildren of an occupant of the principal dwelling unit. The affidavit shall also identify such parent(s), grandparent(s), children or grandchildren by name and identify the principal occupant whose parent(s), grandparent(s), children or grandchildren will occupy the accessory unit. Such affidavits shall be filed in the Town Clerk's records and shall be available for public inspection; and~~

~~—(B) The foregoing affidavit shall be accompanied by a surety deposit of \$100 which shall be refunded if and when the owner-occupant gives proper notice to the town pursuant to § 1603 that the use of part of the principal dwelling for an accessory family dwelling unit has been abandoned. Such security deposit shall be forfeited if the owner-occupant fails to give proper notice to the town pursuant to § 1603 that no parent(s), grandparent(s), children or grandchildren identified in the affidavit continues to occupy the accessory unit. If such notice is not given and the accessory family dwelling unit is occupied by one or more persons who are not parent(s), grandparent(s), children or grandchildren, the owner-occupant, in addition to forfeiting the surety deposit, shall be subject to the enforcement provisions of § 316.~~

§ 1603 CHANGE OF OCCUPANCY.

~~—If an accessory family dwelling unit is no longer occupied by parent(s), grandparent(s) children or grandchildren of an adult occupant of the principal dwelling unit, an adult owner-occupant of the principal dwelling unit shall within 30 days sign an amended affidavit. The amended affidavit shall either identify the current occupants of the accessory unit, in accordance with § 1602, or state that the use of part of the principal dwelling for an accessory family dwelling unit has been abandoned. This division shall not prohibit a transfer of ownership and/or occupancy of the primary dwelling provided that at approximately the same time the accessory unit is occupied by one or both parent(s), grandparent(s), children or grandchildren of the new owner-occupants of the primary unit.~~

