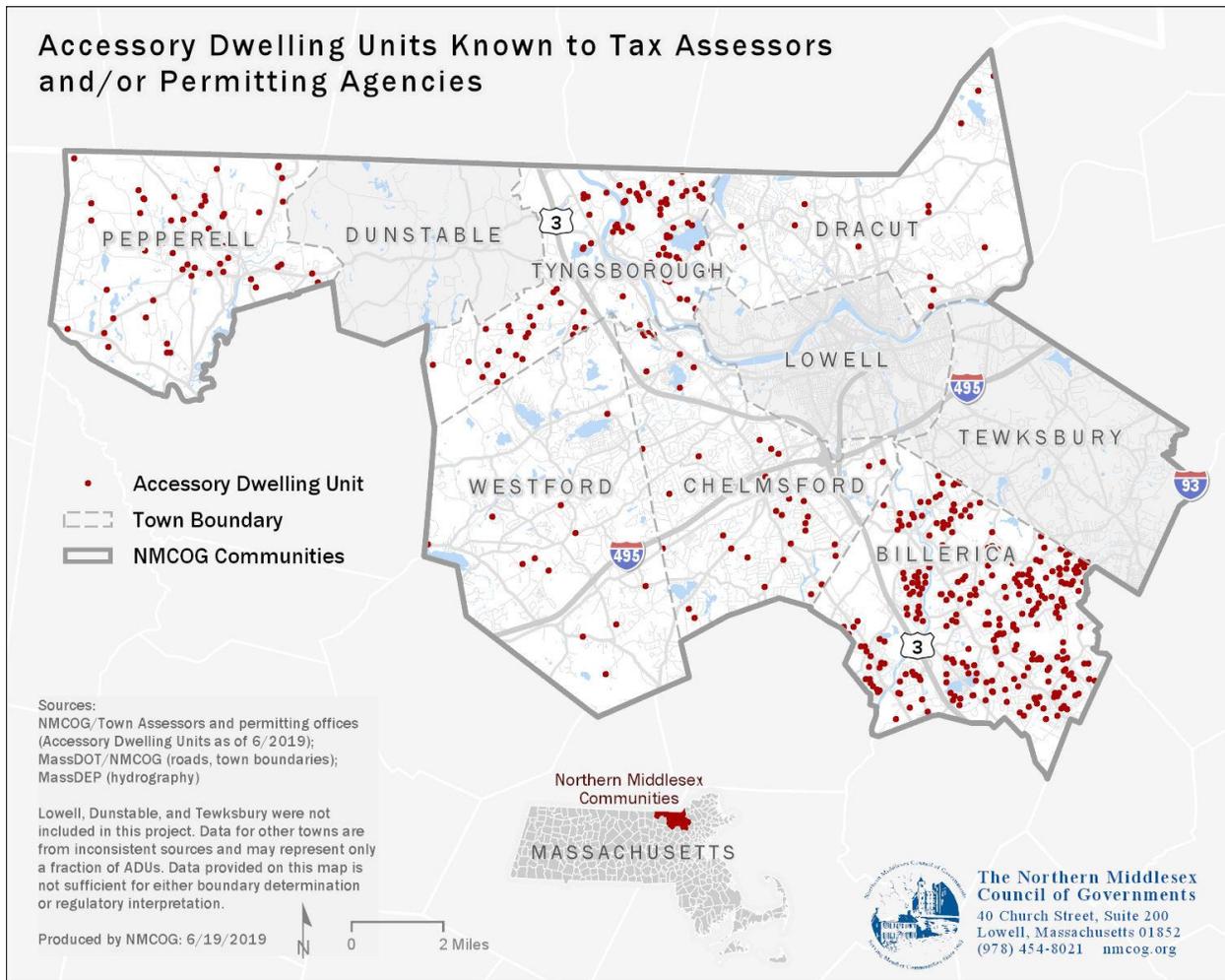


ADUs in Our Neighborhoods

How six Massachusetts towns treat – or could treat – accessory apartments in zoning, permitting, and property taxation

Prepared by: Northern Middlesex Council of Governments



Map Data Details:

- Billerica:** points are homes assessed with more than one unit and may include some duplexes
- Chelmsford:** points show ADUs permitted since 2013 and probably exclude older units
- Dracut:** points show ADUs permitted since 2012 and probably exclude older units
- Pepperell:** points show all single-family homes assessed with two living units
- Tyngsborough:** points show all single-family homes assessed with two living units
- Westford:** points show ADUs permitted since 2014 and probably exclude older units

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I. Executive Summary: ADUs in Our Neighborhoods

Accessory apartments or “in-law suites” have been part of our neighborhoods for generations but their place in our communities is changing as families change, people live longer and independently, and young people delay purchasing a home and having children. Municipal regulations across Massachusetts are not changing as fast as the housing market, however. This potential supply of modest, privately financed, apartments for small households is artificially constrained. Most municipalities act as if Accessory Dwelling Units or ADUs are a problem, rather than a solution: a tool to help young singles, retired elders, and growing families create and sustain vital neighborhoods.

In the Northern Middlesex region, where there are hundreds of homes with accessory apartments, municipalities have adopted a range of policies for managing ADUs. Two towns—Chelmsford and Tewksbury—allow homeowners to create an accessory apartment in their home “by right.” The six other towns require special permits. Two towns—Pepperell and Westford—allow homeowners to rent ADUs to anyone. The six other towns tell homeowners the only occupants they may allow are family members or their care-givers.

These family-only restrictions are embedded in municipal zoning bylaws. They suggest that the apartments are ephemeral and must disappear when the in-law tenants die or move to a nursing home. That mandated impermanence upsets mortgage lenders and tax assessors who have to assume that an otherwise rentable apartment will have to be converted to ordinary living space.

Craigslist and zoning board minutes show that homeowners ignore these constraints and rent out their apartments to non-family members anyway. Neighbors don’t seem to be calling in the enforcement squads, suggesting that they either don’t know or don’t care that there’s a tenant living in the house across the street.

This report looks closely at zoning and permitting requirements for ADUs in the towns of Billerica, Chelmsford, Dracut, Pepperell, Tyngsborough, and Westford.

Findings:

- Differences in the towns’ ADU policies are significant but pretty much invisible to anyone driving around their neighborhoods.
- Variations in the towns’ bylaws and populations cannot explain variations in ADU production, which ranges from about 0.2 per year in Tyngsborough to 15 per year in Billerica.
- The “problem” with ADUs seems to be less that they degrade single-family neighborhoods than that towns have trouble keeping track of “temporary” permits.
- In all six towns, the median assessed value of homes with an ADU exceeds \$400,000.
- The region’s tax assessors are inconsistent across towns and even within towns in their treatment of ADUs. The Commonwealth could help by requiring town assessors to use a standard code to characterize a home with an accessory apartment.

II. ‘Accessory’ is the Key

In Seattle, Washington, and Portland Oregon, they’re “granny flats.” In San Diego, they’re “junior units.” Billerica calls them “in-law apartments”; Dracut calls them “in-law suites” and Tewksbury calls them “family suites.” Tyngsborough calls them “temporary independent living quarters” and Chelmsford calls them “limited accessory apartments.” Pepperell drops the limitation and calls them “accessory apartments.” Dunstable and Westford use the term in this report’s title: “Accessory Dwelling Units” or ADUs.

In all these cases, the apartment is a small, subordinate, “accessory” to the main house, but the terms are *not* synonyms. The things they refer to may look pretty much the same – one or two bedroom apartments with small kitchens, a bathroom, and a living area, all built into or beside a larger single-family home—but the towns treat them differently.

The towns whose zoning defines them as *temporary*, *limited*, or exclusively for *family* mean it. They want homeowners to dismantle the apartments when their in-laws die or move to a nursing home. To discourage homeowners from renting an accessory apartment to an unrelated couple, Dracut’s zoning prohibits their family suites from having doors directly to the outdoors, forcing the occupants to use the front door with the rest of the family.

At the other end of the local regulatory spectrum, Westford allows homeowners to build apartments within their homes, provide separate access doors, and rent the units to anyone they choose, provided they have received a special permit to build the apartment from the Zoning Board of Appeals.

Nationally, and within New England, there is a movement to reform zoning ordinances to be more like Westford’s. A New Hampshire statute went into effect in 2017 forbidding towns from restricting a homeowner’s *right* to build an ADU in his or her house and to rent that apartment to anyone. Massachusetts includes permits by-right for ADUs among its list of best housing-policy practices. Within the region, however, only Chelmsford and Tewksbury allow ADUs by right.

This report examines those differences and ultimately encourages changes to municipal and state policies that would allow ADUs to become a larger part of the region’s housing solution. Along the way, this report will refer to these things as ADUs except when a town’s more restrictive term is relevant.

The Massachusetts Executive Office of Energy and Environmental Affairs made this work possible with a grant to NMCOG. Six communities in the region chose to participate in the project. The others, Dunstable, Tewksbury, and Lowell, are referenced only occasionally in the analysis.

III. Why ADUs and Why Now

Accessory Dwelling Units (ADUs) may be built into a home or a structure detached from the main home (perhaps over a detached garage), but they are always an *accessory* use to the primary residence. By definition, ADUs include a bathroom, a kitchen area, and a place to sleep. They usually include at least one entrance that provides separate access from the home. A home

with an ADU is *not* a duplex because the accessory apartment is clearly subordinate to the main house. An ADU is, by definition, *not* a condominium that can be bought and sold independently from the primary house. There may be two homes on the lot, but only one owner.

Of course, any homeowner can invite a parent, an adult child, or even a stranger to live in his or her home, taking over a spare bedroom or a corner of the cellar and sharing the bathrooms. Shared rooms are *not* a separate apartment or ADU. The presence of an aging mother or exchange student renting a room does not endow the house with an ADU. These are physical spaces with clear boundaries, doors, and toilets. They are also *not* tiny houses on wheels.

Craigslist still calls them “in-law apartments,” a reminder that ADUs have often been considered places for family members to reside when they get older and need to be near their adult children. Some Massachusetts jurisdictions, including most of the towns in the Northern Middlesex region, still specifically require that ADUs be occupied *only* by family members or their caregivers.

Increasingly, though, ADUs are serving a much wider range of uses. Many jurisdictions encourage them as a means to expand the supply of relatively low-cost rental housing for smaller households of any kind. In the Pacific Northwest, particularly around Portland, there is a political and social movement to create ADUs as a way to prevent sprawl and to encourage density in urban neighborhoods.¹ Small detached houses tucked into the back of a lot are the norm there.

The State of New Hampshire responded to its shortage of rental housing and sagging market for big old houses by passing a law in 2016 that grants all single-family homeowners permission to add an ADU to their home *by right*. That law explicitly forbids towns from restricting ADUs’ tenancy to relatives. Owners may rent the units freely.²



A fully furnished one bedroom garden level with its own separate entrance and parking space. Rent includes: electric, heat, basic cable and internet access. Kitchen, living room, bedroom and computer area. Fully furnished with king-size bed. Perfect for student or professional. Easy commute to Rt 3 and Rt 495. \$1250.

■ CRAIGSLIST, January 2019
 ■ for an apartment that is not supposed to be rented outside the family.

¹ *The Backdoor Revolution: The definitive guide to ADU development*, by Kol Peterson, Accessory Dwelling Strategies LLC, 2018. See also San Diego’s *The Companion Unit Handbook*, www.sandiego.gov/sites/default/files/2019-companion-unit-handbook.pdf

² See New Hampshire Housing Finance Authority’s guide for municipalities at www.nhhfa.org/ADU.

Massachusetts has nothing comparable on the books.³ The term “accessory dwelling unit” appears in a handful of statutes. One statute sets aside state funding for ADUs built for the elderly or disabled. On the whole, Massachusetts law is at odds with the state’s own preferred housing policy, and both are at odds with tax policy. These contradictions will be examined in a later section.

But first, consider why homeowners build ADUs:

- As a place for an older parent to live independently but with close connection to adults.
- As a place for adult children, perhaps with a disability—to live independently but close to adults.
- As a place for a caregiver—a nanny or a nurse—to live independently but close to the family he or she serves.
- As a source of rental income.
- As an investment that makes a home more valuable because of its flexibility and income potential.

The final bullet acknowledges that a home with an ADU can play different roles over a series of decades: a young person or couple buys or builds the home with an ADU and lives in the apartment while renting out the home for income to cover the mortgage. When the couple has children and needs more bedrooms, they move into the home and rent the ADU to help cover the mortgage, or they use the space themselves as an office or guestroom. When the kids move out, the couple might move back into the ADU and rent the home for retirement income, or they might keep the ADU open for the kids and grandchildren when they come home for visits. Or they might move into the ADU while one of their kids’ family moves into the larger space. The ADU will make it easier—physically and financially—for the original owners to age in place.

The point is that people’s housing needs change over time and a home with an ADU allows an owner to use a home through many of those changes.

Encouraging ADUs is also a way to encourage private investors to create rental units without public subsidies and without significantly changing the appearance or fabric of a residential neighborhood. Indeed, by making some of those huge older homes useful to smaller households, an ADU strategy could help preserve the look and purpose of established residential areas. Why carve up a Victorian home into law-office condominiums if it is close to schools and might again house children, their parents, and their grandparents?

The counter arguments to ADUs are straightforward, if not always well-founded:

- They disrupt the look of a single-family home and degrade the aesthetics of suburban residential areas.
- They add cars, sewage, and people, degrading residential areas.

³ *The State of Zoning for Accessory Dwelling Units*, by Amy Dain, Pioneer Institute White Paper No. 184, July 2018.

- They add the “wrong kind” of people – renters, transients, divorced people, young couples, single moms with their kids: the kind of people who don’t want to or can’t afford to buy a home—degrading residential areas.
- They erode property values.

The town-by-town sections of this report quote from Zoning Board hearings where these issues are debated and where elected and appointed volunteers balance the pros and cons. The sections include photographs of properties and schematics of floor plans to show how boards deal with aesthetic concerns.

The following observations are based on a review of scores of hearing summaries, property “tax cards” on town websites, and real-estate ads looking for renters for “in-law” apartments:

- ADUs are ubiquitous in the region, and often unnoticed by neighbors for decades.
- They are in homes of all styles, sizes, condition, age, and value.
- Town officials rarely reject permit requests for ADUs, though they do adhere closely to the letter of their zoning bylaws, even when that leads to perverse results.
- Neighbors rarely appear at hearings over ADU permits, and when they do they seem to be as likely to support the project as to oppose it.
- The “problem” with ADUs in the region seems to have less to do with their aesthetics and their tenants than the ability of towns to keep track of “temporary” permits.

IV. ADUs in the Northern Middlesex Region

There are hundreds of ADUs across the region, but because towns don’t have to keep track of them there is no list by address nor count of them by town. Table 1 summarizes the most relevant data drawn from lists of specific properties with ADUs or permits for ADUs. (Details about data sources are included in the town summaries later in this document.) There are significant differences in the rates at which the towns are approving permits for new ADUs, but in most other respects the range of properties and apartments are similar in size, value, and cost. The cost figures are derived from building permits and may include not just the renovation of a few rooms but also significant additions, of which the ADU is a minor part.

Table 1 Summary of ADU data by town

	Billerica	Chelmsford	Dracut	Pepperell	Tyngsborough	Westford
Count of permitted ADUs						
Avg new ADU/year, 2014-2018	15	5.8	2	0.62	0.2	0.8
Total # ADU permits, 2014-2018	76	33	11	8	1	9
Estimated number of ADUs in tow	300+	?	?	48+	94	?
ADU size (square feet)						
minimum	nd	390	nd	nd	352	360
maximum	nd	1345	nd	nd	1,080	1251
median	nd	750	nd	nd	728	744
ADU project cost (bldg permit total)						
minimum	nd	\$ 10,000	nd	nd	\$ 16,000	\$ 11,500
maximum	nd	\$ 372,000	nd	nd	\$ 212,800	\$ 406,000
median	nd	\$ 139,861	nd	nd	\$ 87,100	\$ 64,500
Property Appraisal (land+house)						
minimum	\$ 226,600	\$ 259,900	\$ 274,500	\$ 236,500	\$ 238,300	\$ 303,800
maximum	\$ 928,200	\$ 773,600	\$ 651,000	\$ 598,800	\$ 671,800	\$ 980,300
median	\$ 449,600	\$ 447,900	\$ 401,200	\$ 416,550	\$ 401,300	\$ 485,600
Lot Size (acres)						
minimum	0.16	0.30	0.29	1.20	0.14	0.44
maximum	1.36	2.50	3.20	6.80	30.00	4.14
median	0.55	0.92	0.65	2.90	1.04	1.04
nd = no data were available for this study						

For this paper, the key line in Table 1 is the top one: the number of permits for ADUs approved each year.⁴ Population differences account for some of the variation here; Billerica has the largest population and the most houses so it could be expected to have the most ADU requests. Chelmsford allows ADUs by right, if the homeowner is simply renovating existing space within the home, so perhaps the ease of approvals has encouraged relatively robust ADU development.

Westford and Pepperell have dropped the family-only constraint but have seen no increase in demand for permits. Tyngsborough has been the site of many new multi-family apartments; but virtually no new ADUs.

The differences in ADU numbers across the region are probably related to differences in the towns' past and current zoning bylaws, but the bylaws do not explain the differences in Table 1. The housing market is more complex and dynamic than we can capture here.

Table 2 summarizes the ADU-related sections of each of the towns' zoning bylaws. This report grew out of a request by participating towns to review their zoning for accessory apartments. The work was possible because the Commonwealth decided to permit grant funds to be used to for this purpose, presumably to encourage towns to reduce their restrictions. Zoning should flow from each community's goals for its future.

⁴ Some of the permits counted in Table 1 are for units built long ago but only now being "made legal."

Table 2: Summary of zoning bylaws

Key elements of zoning bylaws' treatment of accessory dwelling units.								
	Billerica	Chelmsford	Dracut	Pepperell	Tyngsborough	Westford	Dunstable	Tewksbury
Term	In-Law Apartment	Limited Accessory Apartment	In-Law Suite	Accessory Apt	Temporary Independent Living Quarters	Accessory Dwelling Unit	Accessory Dwelling Unit	Family Suite
Minimum size								
Maximum size	800 sf	750 sf	700 sf or 20% of res whichever is larger	800 sf	1,200 sf	800 sf or 33% of res whichever is larger	1200 sf or 35% of res whichever is larger	800 sf by right; 1000 sf with special permit
Max bedrooms			1		1		2	1 by right; 2 w SP
Max occupants	2	2						3
Family only?	yes (or caregiver)	yes (or caregiver)	yes (or caregiver)	no	yes	no	no	yes (or caregiver)
Exterior Door		required, but not on front	not allowed		required	allowed	required (but subtle)	allowed (but not on front)
Detached?	not allowed	not allowed	not allowed	not allowed	not allowed	allowed if structure at least 10 years old	allowed if structure at least 10 years old	not allowed
approval process	Special Permit ZBA	By right if reno.; SP ZBA if addition	Special Permit PBd	Special Permit ZBA	Speical Permit PBd	Special Permit ZBA	Special Permit ZBA	By right or SP ZBA
zones?	any residential	any single-family home	any single-family home	any single-family home	residential zone	any single-family home	single fam res distr	R40, R80, FA, TR and LB zones including Cluster Developments
Zoning link	https://www.town.billerica.ma.us/DocumentCenter/Home/View/5930	https://www.ecode360.com/8274487	https://www.dracutma.gov/sites/dracutma/files/uploads/in-law_suite_by-law.pdf	https://town.pepperell.ma.us/DocumentCenter/View/2442/Zoning-Bylaw-rev-7-28-14-ATM-5-5-14?bidId=	http://www.tyngsboroughma.gov/download/government/planning/planbrd_zoning_bylaws.pdf	https://www.westfordma.gov/DocumentCenter/View/5023/2016-Zoning-Bylaw	6.2.1	https://www.tewksburyma.gov/sites/upload/s/zbl_january_2019.pdf
Notes	use shall not continue...	use shall not continue...	upon sale, return to former use	not included in table of uses	"...the design of the proposed living quarters be engineered to be easily assimilated or reincorporated into the primary structure for use once the need for the use ceases	Renew at sale or transfer	Renew at sale or transfer	owner has option to seek special permit; text includes provisions for dealing with banks and mortgages

Zoning Options Defined

Municipalities may leave their zoning relating to ADUs as is. The Commonwealth is not forcing a change. Demographic changes and shifting housing preferences, however, are making rental ADUs more appealing to homeowners and potential renters alike. A first step in revising an ADU bylaw would be to consider the following options.

Where

Let's assume that any zone that allows single-family residences is worth considering for ADUs and that zones that do not allow single-family residences are not. Most towns have several residential zones, and each should be considered separately, even if ADUs will be permitted in all of them. Zones with municipal water and sewer but constrained parking may need different regulations from a rural residential area with relatively large lots but no connections to sewer lines. Infill might be particularly appropriate within walking distance to schools or employers. Encouraging ADUs in a neighborhood that is transitioning to offices might be desirable or undesirable, depending on the town's goals. If a home is a non-conforming use in a non-residential area, should it be able to add an ADU?

How

The municipality has choices in how to review and permit ADUs, and different approaches may be appropriate for different zones. In most residential zones, for example, towns may choose to allow permits by right with only a building inspector's review. In more sensitive zones—perhaps historic districts or water-supply protection areas—towns might want to require special permits with planning board or zoning board of appeals review.

Attached/Detached

ADUs can be added to a home in several ways. Most are built into the home by converting a basement, attic, or a corner of the existing home. Others are added on to a home as a new wing or an extension. An ADU could be built into a new breezeway connecting the home and an existing barn or garage. Others are built into or over an *existing* detached garage. Still others are built into or over a *new* detached garage. Others are simply free-standing detached small homes sharing the lot with the primary house.

Bylaws should provide clear guidelines on whether “detached” ADUs are allowed. Does it make a difference whether an existing structure is being renovated or a *new* structure is being added to the lot? Does it make a difference if the new structure shelters cars as well as people? In the Pacific Northwest, many ADUs are being built as small houses tucked into back yards in already dense neighborhoods. This increases density without replacing traditional homes with three- or four-story apartments.

The tradition of detached “carriage houses” serving homes in New England may inform this decision. Likewise, the classic 19th century farm was described by Thomas Hubka in *Big House, Little House, Back House, Barn: The Connected Farm Buildings of New England* (UPNE, 1984). In rural areas with large lots, towns may want to allow detached ADUs but require that they be built close to the main house rather than in a remote corner of the property. The New Hampshire statute forbids towns from requiring larger lots for *attached* ADUs, but

allows towns to require larger lots for *detached* units. In any case, a proposal for a detached ADU in some zones might merit more intense review than one attached to the home.

How Large and How Many

Municipalities should be clear about the dimensions of permissible ADUs and also about how many a home may have. ADUs seem to run between 350 and 1,000 square feet. The regional data captured in Table 1 show that ADUs here are typically about 700 to 750 square feet. Table 2 shows towns allowing maximums between 750 and 1,200 square feet. A survey of municipal zoning ordinances in New Hampshire shows towns typically allowing ADUs of no less than 350 square feet and no more than 1,200 square feet. A few towns allow larger units if they are converting existing space within a home, such as a particularly large cellar. The default regulation in New Hampshire, set in statute for those towns that don't adopt their own zoning regulations for ADUs, gives homeowners a right to an ADU of at least 750 square feet.

The other standard indication of size in housing is the number of bedrooms. A Massachusetts town could restrict its ADUs to one bedroom, or allow more. The New Hampshire statute requires towns to allow at least two bedrooms.

In some areas, towns may want to permit more than one ADU per lot. The busy tourist town of Conway, NH, for example, allows with special exception multiple ADUs in neighborhoods with large older houses that it wants to maintain as residences.

Appearance

The bylaw may include requirements that the ADU not significantly alter the visual character of the home or that it use materials and styles consistent with the existing building and neighborhood. Most homeowners seem to want that anyway because it will maintain the value of their home, but clarity is a good idea.

There may be public apprehension about ADUs wrecking the look of a neighborhood but some exposure to real ADUs should calm those fears. The photo shows a home in Belmont, NH, whose owner wanted to add an ADU for his mother. The house had no garage so he graded his lot, added a two-car garage and a 20 by 32 foot apartment over it. Then he re-sided the whole house. The only clue that there's an ADU here is the access door on the right of the garage. (There's a stair-lift behind it to help the resident up and down.) The apartment also has a door leading into the main home's living room.



Access points and occupancy

One of the features of an ADU that keeps it from being just a home addition is the independent entrance for its residents. Towns may require an internal door connecting the two living spaces but requiring an external access is more important. Towns may require that door to be on the side or back of the home to make the ADU less obvious in the neighborhood. Dracut's bylaws forbid any separate exit, even off a back deck.

When ADUs were thought of strictly as in-law apartments, some municipalities required that any interior doors connecting the units remain unlocked and that the homeowner had to be able to prove (annually) that the ADU occupant was an immediate family member. Massachusetts allows those requirements but they clearly discourage homeowners from adding ADUs and reduce the value of the whole home when that family member dies. The New Hampshire statute forbids towns from requiring the unlocked door or a familial relationship with the tenants. The law does allow towns to require that the homeowner live in either the main house or the ADU. The owner cannot rent out both units. That requirement helps maintain the single-family nature of the neighborhood.

Accessibility: universal design

To be most useful to older occupants, including in-laws, ADUs should be designed and built to accommodate wheelchairs; doorknobs should be levers; walls around toilets should be reinforced for grab bars and showers should have low edges. These principals of universal design make sense for any new construction and towns should ensure that their zoning does not preclude them in ADUs. Requirements that the ADU doors be on the side or rear of the house may be at odds with the potential need for a wheelchair ramp.

Water, sewer, septic, parking

Towns may require homeowners to demonstrate that their proposed ADU will function without causing environmental problems or hardships for the tenants. Generally, the same standards for water, sewer, and septic that apply to building permits for single-family residences will be adequate for homes with ADUs, but town bylaws should be clear about their standards. The same is true of parking. It would be imprudent to assume that ADU residents will be too old to drive or own a car just as it would be imprudent to assume that each 350-square foot apartment will need parking spaces for three minivans.

Property taxes

ADUs become part of the taxable value of a home. As noted above, Wellfleet and Truro have successfully petitioned the legislature to keep some ADUs tax free as an inducement to homeowners to build. Elsewhere the picture is unclear. Home appraisers and property tax assessors haven't really caught up with the slow growth in the number of ADUs and they aren't consistently valuing them in the market or the tax rolls. Over time, there will be more home sales involving ADUs, appraisers will have more comps, banks will have more mortgages, and assessors will have a more solid foundation for tax assessments. How municipalities handle these issues may affect the development of the market.

The property-tax question is just one of the financial impacts homeowners make when considering creating an ADU. The cost of construction and potential to earn rent come first.

ADUs are expensive to build – perhaps \$50,000 to \$150,000 – so they are not an immediate cash cow, even in a town that allows open rentals. Compared to the cost of an assisted living facility, though, they can be financially preferable for an “in-law,” particularly if that parent is selling his or her own home and has cash to invest in the new apartment.

The responsibilities of being a landlord will discourage most homeowners from considering adding an ADU. Even the most encouraging zoning is unlikely to result in as rapid a proliferation of ADUs as housing advocates might wish. That’s certainly the experience to date in New Hampshire.⁵

Municipal bylaws that effectively dismantle ADUs by extinguishing their permit when they are no longer occupied by family members create a disincentive to their creation and reduce their long-term value to the investor and the community.

Short-term Occupancy: Airbnb

Some of the public anxiety about ADUs is over the potential that they might become short-term rental units or even Airbnbs. This apprehension persists even when municipal bylaws require the homeowner to reside in one of the units and thus keep a close watch on the tenants. At the end of 2018, Massachusetts adopted a statute addressing municipal concerns with Airbnbs and other short-term rentals. Owners have to register and insure their units and pay a lodging tax to the Commonwealth. Municipalities may collect their own 6 percent lodging tax as well. It remains to be seen if the statute and the economic benefit it promises towns will have any impact on ADU development.

V. How ADUs Fit into Massachusetts Housing Policy

The Commonwealth of Massachusetts officially encourages municipalities to allow homeowners to build Accessory Dwelling Units but the key statutes driving housing development are largely blind to ADUs. Massachusetts’ **Housing Choice** program focuses on increasing the production of a wide range of housing types. To earn Housing Choice designation, communities have to show an increase of 500 housing units or 5 percent over five years. Alternatively, they can demonstrate a combination of production growth (300 units or 3 percent over five years) *and* the adoption of various planning and zoning policies. One of those “best practices” is:

“Have zoning that allows for accessory dwelling units by right (or can demonstrate a pattern of approving ADUs over the last 5 years).”⁶

Ironically, most permits for ADUs do not count towards the production targets. The Housing Choice program relies on the US Census’ Building Permits Survey (BPS) to measure towns’

⁵ *A New Hampshire Homeowner’s Guide to Accessory Dwelling Units*, NH Housing Finance Authority, 2018, www.nhhfa.org/ADU.

⁶ <https://www.mass.gov/files/documents/2019/01/30/2019%20HCI%20handouts.pdf>

housing production. Census methodology counts ADUs only if they are *detached* from the main house.

The definitions section for the U.S. Census' Building Permits Survey⁷ is explicit (emphasis added):

Housing Unit:

– A housing unit, as defined for purposes of these data, is a house, an apartment, a group of rooms, or a single room intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and which have a direct access from the outside of the building or through a common hall.

In accordance with this definition, each apartment unit in an apartment building is counted as one housing unit. Housing units, as distinguished from "HUD-code" manufactured (mobile) homes, include conventional "site-built" units, prefabricated, panelized, sectional, and modular units.

Housing unit statistics also **exclude**: group quarters (such as dormitories and rooming houses), transient accommodations (such as transient hotels, motels, and tourist courts), moved or relocated buildings, and **housing units created in an existing residential or nonresidential structure**.

Units in assisted living facilities are considered to be housing units, however, units in nursing homes are not considered to be housing units.

The Housing Choice program recognizes ADUs as a “best practice” and encourages communities to pursue and expand ADUs. To qualify as a Housing Choice Community, municipalities must employ at least five of 11 designated best practices, and one of those must be in an affordable category. The Housing Choice program does not include the ADU zoning policy among the six best practices that count as *affordable* best practices. (These include inclusionary zoning, designating local resources for affordable housing, having achieved 10 percent or higher on the Subsidized Housing Inventory, adopting one of many tax incentive or urban renewal programs for affordable housing, approving a 40R smart growth or starter homes district, or having a certified housing Production Plan.)

Chapter 40B of the Commonwealth’s regional planning statute motivates communities to allow developers to build affordable housing. Unless a municipality can demonstrate that 10 percent of its housing units meet the definition of “affordable,” then developers can essentially bypass local zoning restrictions and build multi-family units with a state “comprehensive permit.”

The equation looks like this for towns meeting the threshold:

$$\frac{\text{affordable housing units}}{\text{total year round housing units}} \geq 10 \text{ percent}$$

⁷ <https://www.census.gov/construction/bps/definitions/>

Adding units that aren't considered affordable increases the denominator and drives *down* the percentage of affordable units. Adding affordable units increases both the numerator and the denominator and drives *up* the percentage of affordable units.

Where do ADUs fit into the equation?

Not in the numerator. Although Accessory Dwelling Units are likely to be relatively inexpensive rentals, they only count as “affordable” if the owners attach deed restrictions and meet other constraints allowing them to be added to the Subsidized Housing Inventory. If this happens at all, it is rare. Municipalities should not assume that a homeowner will adopt covenants that will permanently reduce the market value of an ADU if it is permitted. Liberalizing zoning to allow more ADUs is not a useful strategy to avoid 40B challenges.

ADUs do end up in the denominator. Although the US Census excludes ADUs from its buildings permits survey (unless they are detached), it does include ADUs in its much broader definition of a “housing unit” for purposes of the decennial census, which is the basis for the Commonwealth’s calculation:

“**A housing unit** is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.”⁸

So adding an ADU to a town’s census of housing units reduces the percentage of units in town that will be considered affordable, but not by much. Because the denominator in the equation is large adding a few units to it makes only a small change. Pepperell, for example, had 4,346 households in 2018 according to the American Community Survey of the US Census. If it added four ADUs—an uncharacteristically large increase by Massachusetts standards—the denominator would increase by less than 0.1 percent and the ratio of affordable units to total units would be nearly unchanged.

VI. Data and Decisions from Six Towns

During a discussion with the region’s town planners in February 2019, it became clear that each town was experiencing ADUs differently. Some perceived a problem, primarily of enforcement. Some had sat through hours of permit hearings but didn’t have a sense of what had resulted from those hearings over the years. This project set out to gather data from each town and then provide a clear picture of how many ADUs there are in the region and how many ADUs towns are permitting today.

The map on the cover of the report depicts the result from that research, and it isn’t particularly clear. As the title suggests, the map shows the data for the ADUs “known to tax assessors and/or permitting agencies.” Officials in every town made a serious effort to provide the best

⁸ <https://www.census.gov/programs-surveys/popest/about/glossary/housing.html>

data they could to inform this research effort. The researcher tried to fill in the data gaps, usually drawing from on-line minutes of zoning boards of appeals and planning boards. The property rolls provided the best information about the *number* of ADUs, though, as the Billerica section below explains, there are problems with some of those counts. To understand the rate at which ADUs are being created in towns, Zoning Board of Appeals and Planning Board “special permits” were key, and the towns helped with providing data on recent permit actions. For details, the published minutes of board meetings were helpful, but ADUs were being built and permitted long before minutes were able to be posted on a website, so much information was not visible online. Only Chelmsford, Tyngsborough and Westford provided enough online access to building permits to generate data about the cost of ADU remodeling projects.

As a result of these limitations and the incentive many homeowners have felt over the years to keep their accessory apartments hidden from the towns, there are gaps in all of these fields.

The sections that follow present each town’s ADU data. Occasionally a paragraph in each  section relates a point that might be important to all of the towns. These are highlighted with a sofa.

ADUs in Billerica

Billerica has hundreds of accessory dwelling units and hundreds more duplexes. As the region’s largest town and the town with the highest population density, that makes sense.

The town’s zoning bylaw allows homeowners to petition the Zoning Board of Appeals for a permit to build or maintain an “in-law” apartment of up to 800 square feet, although the apartment must be attached to the owner’s house and occupied by a relative of the owner or a caregiver.

The value that an ADU adds to a home is suggested by the number of people who buy homes with an ADU and then go to the trouble of making the apartments legal again. In Billerica’s minutes of the Zoning Board of Appeals, the following entry⁹ from 2013 is typical:

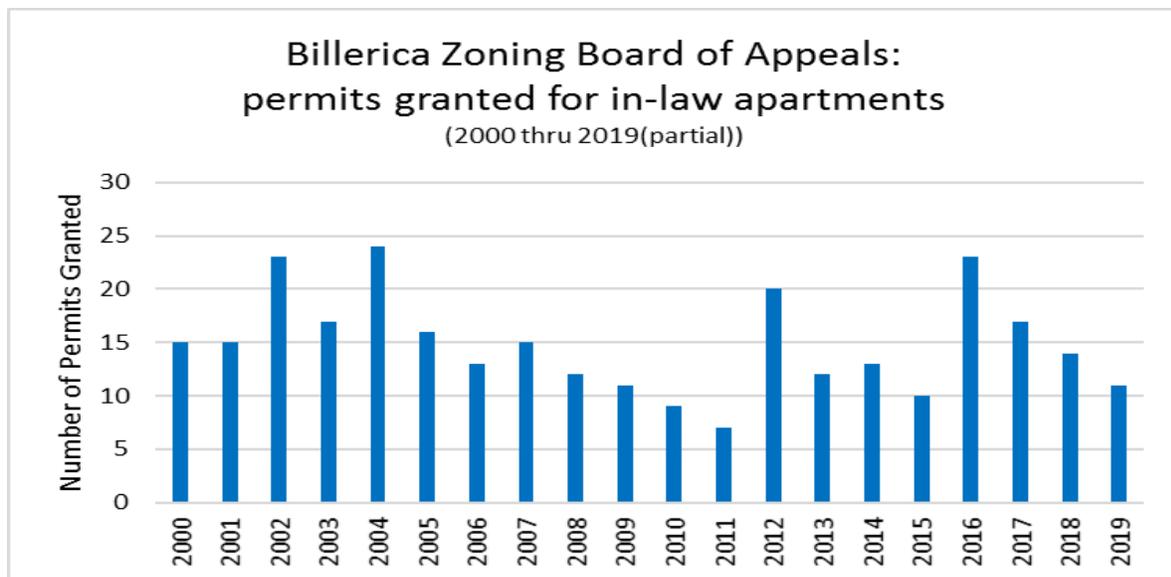
HEARING #5: [The owners] appeared before the Board of Appeal for a SPECIAL PERMIT pursuant to Sections 5.C.1.(2)(c) (In-law Apartments) and 5.C.2 (Neighborhood Residence) of the Zoning By-law to allow the petitioners to maintain an existing in-law apartment onto their house located in a Neighborhood Residence Zone. [The owners] purchased their house in 2005 with an in-law apartment. They were never informed that the change of ownership required a Board of Appeal Special Permit. [The owners] and their family live in the existing house. Their aunt lives in the in-law apartment that is in the upper level only of the house addition. The in-law apartment does not exceed the 800 square foot requirement. There is sufficient space for the additional residential vehicles in their existing driveway. Mr. Colantuoni [ZBA chairman] said you bought the house with the in-law apartment. [The owner] said the previous owners did obtain a Special Permit for the in-law apartment in 1998, but they never informed us that we would have to apply for a new Special Permit. We found out

⁹ The address and owners’ names are included in the minutes but redacted here.

when we recently applied for refinancing. Mr. McKenna [ZBA member] asked, who lives in the in-law apartment. [The owner] said his elderly aunt. Mrs. Pearson [ZBA member] asked, how big is the in-law apartment? [The owner] said it's 20 feet to 24 feet. There is an upstairs and a down stairs, but his aunt lives in the upstairs portion only. Mrs. Sargent [ZBA member] asked, if anyone lives in the lower level of this addition? [The owner] said no. They use it only when company family comes to visit. ... Doris M. Pearson made a motion to Grant the petitioners a Special Permit pursuant to the legal ad, plan submitted and testimony given, second by Salvatore A. Dampolo. All in favor. Motion granted.

The ZBA conducted at least 292 similar hearings between January 1, 2000 and May 20, 2019. The graph illustrates the frequency of in-law permit approvals over that period.

Figure 1: Billerica ADU permits 2001 to 2019



One of the most recent permits granted by the ZBA, in January 2019, was issued to a couple who plan to give the home they bought in 1955 to their son, a Billerica policeman. The ZBA approved a plan by which the son will raze the house and build a new home for his family with an in-law apartment built into it to house the current owners, his parents.



Advocates of more permissive ADU laws and regulations use examples just like this case to illustrate new trends in housing. Given changes in demographics (people living much longer without income) and all types of housing becoming increasingly expensive, there is likely to be increasing market demand for new homes designed and built with accessory dwelling units that allow property owners to move back and forth between the main home and the accessory apartment as their needs change.

The ZBA's minutes show that the board adheres strictly to the zoning by-law's requirements that in-law apartments be no more than 800 square feet and that they be permitted exclusively for family members or caregivers.

Billerica does not have the kind of on-line system that allows public review of building permits, so this analysis has no information about the estimated costs of the ADU construction projects nor the actual size of the units. A random sample of 41 homes with in-law suites showed that the assessed value of the properties ranged from \$226,600 to \$928,200, with a median assessment of \$449,600. Lot sizes ranged from 0.161 acres to 1.36 acres, with a median lot size of 0.547 acres.

The Billerica Building Department's web page offers a final piece of evidence about the public's interest in ADUs. In the posted list of 10 "Frequently Asked Questions," number 8 reads: "Are in-law apartments allowed?"

Pinpointing the number of ADUs in Billerica, however, is impossible.

For this study, the Clerk of the Zoning Board of Appeals generated a list of 287 permits for in-law apartments granted by the board since January 2000. These locations are shown in the map of the region on the cover. ADUs built before 2000 are not included in this list unless the house has changed hands and the new owner has gone through the Zoning Board of Appeals to revive a permit for the unit. An additional five in-law approvals are mentioned in on-line minutes that did not make it into the clerk's list. That suggests that there are far more than 292 homes in town with apartments, though many of these units may no longer be occupied by an "in-law."

The Chief Assessor helped with this research by providing access to Billerica's property database and filtering out the 540 properties that were classified as "two-family," a classification that presumably includes all of the houses with in-law apartments as well as all of the duplexes. After making on-site reviews of properties, the assessors occasionally add notes to the property records that refer to the presence of an in-law apartment. Many of these properties were not among the 287 permits from the ZBA's office. They might be ADUs built before 2000 or they might be something else. They indicate that there are more than 300 accessory apartments in Billerica.

The assessors' notes on the tax cards are not always definitive. One note reads: "owner showed me 1/2 of BMT [basement] - from outside it looks like an apartment - saw kitchen and bath from window... "

It appears that the assessors who have built the town's database of properties over the years have used inconsistent definitions of "one family" vs. "two family" and one "unit" vs. two "units." A random sample of 41 properties drawn from the ZBA list of permitted units found some definitional problems. The table below sorts those 41 properties into six groups. Most of the time, homes with ADUs are shown as one-family houses with 1 living unit but in four of the 41 cases, they are shown as one-family houses with *two* living units. In nine cases, they are shown as two-family homes. One of those nine is categorized (implausibly) as a two-family home with a single living unit.

This apparent inconsistency about definitions is probably not consequential for tax assessments and fairness across town, but it suggests one of the problems that arises from the state policy of omitting ADUs from formal counts of housing units. Scanlon explained the problem of classifying properties in an email:

“Some of the problem is that the state (Department of Revenue’s Bureau of Local

Configurations			Count of properties
1 Family	1 unit	1 kitchen	15
1 Family	1 unit	2 kitchens	13
1 Family	2 units	1 kitchen	2
1 Family	2 units	2 kitchens	2
2 Families	2 units	2 kitchens	8
2 Families	1 unit	2 kitchens	1
Total sample			41

Assessment) does not have a state property class code for an in-law. A single family is a 101, residential condo is a 102, a two family is a 104. Nothing for an in-law. We classify in-laws as 104’s, and they are mixed in with our duplexes and other two families.”

That ambiguity is compounded by local policies that define ADUs as ephemeral installations. Billerica’s zoning bylaw, like

most of the towns’, asserts that an ADU exists legally only as long as a member of the homeowner’s family or a caregiver occupies it. If the permit – and the apartment -- is supposed to disappear when the in-laws are no longer in residence, then maybe the apartment should not be assessed as anything more than habitable space. However, if a homeowner invests tens of thousands of dollars in an apartment that clearly has value and structural permanence, shouldn’t its value be captured in an appraisal and a tax assessment? Alternatively, should that only happen in towns whose bylaws grant the apartments permanence, regardless of the tenants’ relationship to the homeowner?

These are among the questions that Billerica and the other towns participating in this planning process are working to answer.

ADUs in Chelmsford

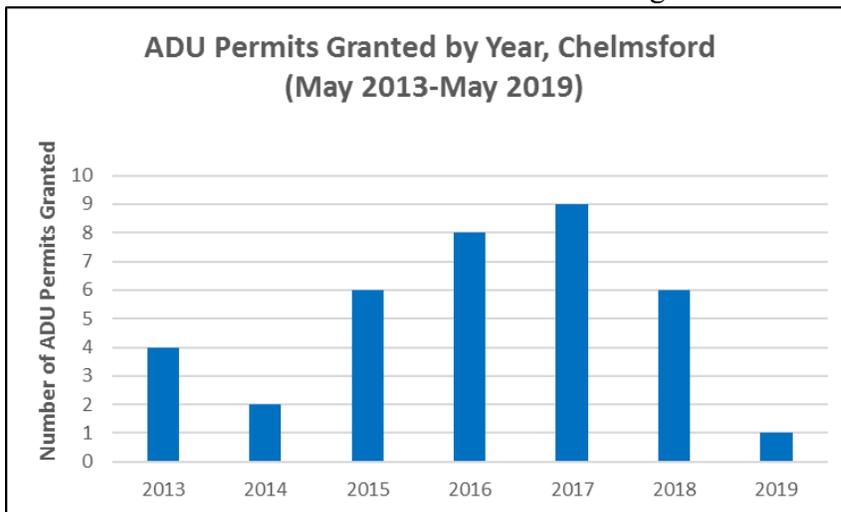
Chelmsford has been approving an average of 5.8 Accessory Dwelling Units (ADUs) per year since 2013. The town’s zoning bylaw refers to ADUs as “Limited Accessory Apartments,” and restricts their occupancy to relations of the homeowner.

Unlike most of the communities in the NMCOG region, Chelmsford allows ADUs by right, though only if the apartments are built within the existing walls of a home or garage. If the ADU requires an addition, the applicant needs a special permit from the Zoning Board of Appeals. If the ADU is to exceed the bylaw’s maximum size of 750 square feet, it needs a separate special permit. Of the 36 permitted ADUs since 2013, six have been permitted by right and 11 have exceeded the size limit.

Chelmsford does not allow ADUs in freestanding structures, such as detached garages. There appear to have been no exceptions to that rule in the last six years.

The data for this summary are from several sources: a list of ADUs provided by the Chelmsford Community Development Department, the minutes from ZBA meetings that the town posts on line, building permits and back-up data as posted on line, and property tax assessment data, also posted on line. Those four sources don't always agree (the tax assessments may be a year or two behind construction, and not every project approved by the ZBA gets built). With that caveat, the analysis below characterizes all of the ADU permit and construction activity in Chelmsford between May 2013 and the ZBA's meeting scheduled for May 9, 2019.

The graph suggests a relatively steady flow of requests for permits over the last few years but it doesn't offer any insight into how many ADUs—permitted or otherwise—were created before 2013 and are still tucked into Chelmsford's housing stock. Three of the 36 permits granted by



the ZBA were retroactive approvals: one homeowner explained that his family had used the ADU since 2003 although the unit had not been recorded by the town; another had just purchased a house with an unpermitted ADU and needed to get its status cleared up with the town to satisfy the bank.

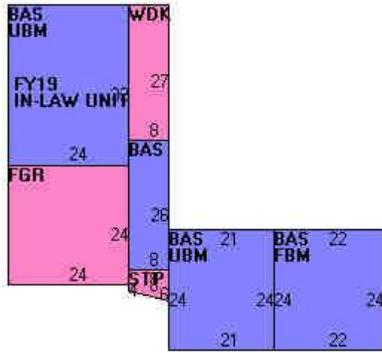
In addition to the 36 permits the ZBA granted, one proposal was withdrawn by the applicant, one was denied by the board, and another appears to have been denied. The latter appeared on the board's agenda at three successive meetings (Sept 14, 28, and October 5, 2017), but no minutes of those meetings are available on line. No building permit was issued for the project and there is no mention of it on the assessor's page. The applicant had proposed adding a second story to a one-story ranch house and creating a 24- by 56-foot ADU (1,345 square feet).

Almost all votes by the Zoning Board of Appeals are recorded as unanimous, but the requested permit for an ADU that the board *denied* was on a 3-2 vote. The minutes of the September 2018 meeting note that the planned ADU was larger than the bylaws allow, included some infringements on setback requirements, would have required moving a sewer line, and included an access door on the front of the house. The minutes do not indicate the primary reason for the denial. The applicants returned a month later with a proposal for an addition to the house that was somewhat smaller, didn't extend as far into required setbacks, and had no new door on the front of the house. The board approved the modified request.

Maintaining the appearance of single-family housing is important to the ZBA and is required by the zoning bylaw. The minutes of the April 2017 ZBA meeting include an unusual note

commenting on a proposal that more than doubled the size of a small 1959 home on .52 acres. The proposal added a 24 by 24-foot two-car garage and a 24 by 32-foot accessory apartment, as shown in the diagram and photograph from the tax assessor’s website. The minutes show: “The

 Board stated that they liked the way the in law apartment was tucked behind the garage.”



The building permit for the project included an estimate that the addition would cost \$180,000. The tax assessment for the house (excluding the land) rose from \$135,300 in FY 2018 to \$235,600 in FY 19, an increase in the value of the home of \$100,300.

Home additions and renovations of any kind are expensive and ADUs by definition include adding a kitchen and probably a new bathroom. The least expensive building permit associated with the ADU projects was just \$10,000. The most expensive was \$372,000. The median was \$138,861. One of the most recent projects involved remodeling existing living space over a garage, adding a kitchen, and adding an exterior staircase for a total of \$20,000.

ADUs vary in size, features, and extravagance. Of the 36 in Chelmsford, the smallest was 360 square feet and only one other was under 500 square feet. Fifteen were between 500 and 750 square feet, the maximum normally allowed in the bylaws. (Eight of the permitted ADUs had unspecified dimensions.) The largest unit permitted was 1,345 square feet.



creating a formal dwelling unit within this Melrose “mansion,” the owners have not included a stove. The on-line add says: “It does not have a stove but there is a full coffee / snack bar with sink,  refrigerator, microwave, toaster oven and other appliances with dishes, silverware and glassware... Whole Foods is just two blocks away.”

The Melrose apartment was offered at \$2,000/month for 1,200 square feet including a marble bathroom.

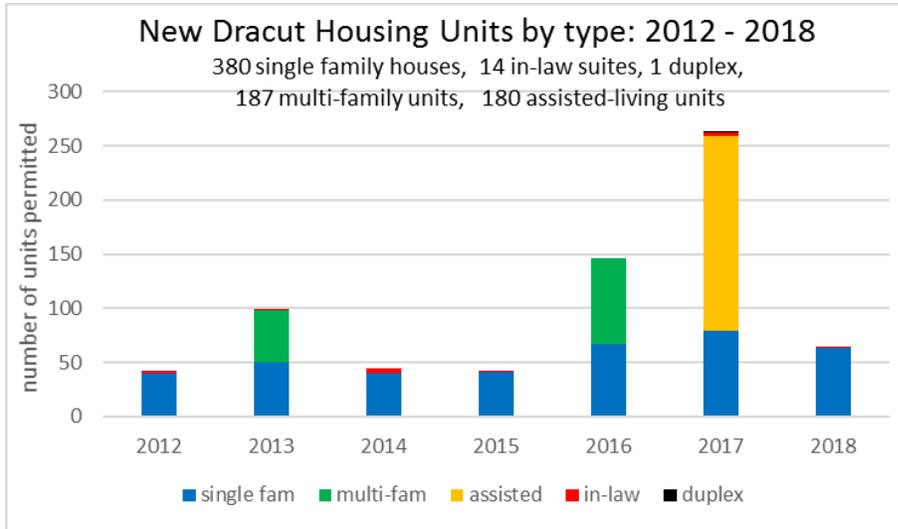
Hidden apartments are clearly an enforcement challenge. Those that were legally permitted for the owner’s parents may slip into the broader rental market without much notice, despite a  town’s best efforts to require annual recertification that their inhabitants are family, not renters. The fact that neighbors don’t turn in the landlords may indicate that ADUs as rental properties isn’t much of a problem. On the other hand, a home with two living spaces – and certainly with two kitchens – should be assessed as such in the interest of tax fairness. That might be easier to achieve if zoning regulations didn’t force these ADUs underground.

ADUs in Dracut

The Town of Dracut’s treatment of Accessory Dwelling Units in its zoning bylaws is the most restrictive among the NMCOC communities. Dracut does not allow ADUs to have their own  door to the outside, even to the back yard. Although this may decrease the safety of the occupants of the apartments, it also discourages homeowners from renting out the units to unrelated tenants and keeps the structures consistent with the stated purpose of the zoning: “to provide a non-rental housing alternative for family members or care givers.”

Dracut’s bylaws use the term “in-law suite” to describe this type of housing. The town requires all applicants to get a special permit from the Planning Board (most towns put that authority in their Zoning Board of Appeals). Units may be up to 700 square feet, may have only one bedroom, and may be occupied only by family members of the homeowner or caregivers. No detached units are permitted.

Since the start of 2012, Dracut has granted 15 special permits for in-laws suites. One of those 15 was a renewal of a permit for an apartment in a home that changed hands. As in most Northern Middlesex towns, Dracut considers the special permit terminated when a property is sold. In this case, the home’s new owner wanted to house her daughter in the suite. (This analysis does not include that unit in the count of new ADUs in Dracut.) The 14 permitted in-law suites are 1.74 percent of all of the housing units approved in those seven years. They are barely discernable in the graph below.



The town has not provided statistics on how many ADUs approved before 2012 are still being used as in-law suites.

The oldest home on the list of permits was built in 1954; two large homes built in the last few years appear to have been designed and built with

ADUs as part of the original construction. The assessed values of the 14 homes on this list run from a low of \$274,500 to a high of \$651,000. The median value of homes with ADUs in 2019 was \$401,200.¹⁰

Four of the 14 homes with ADUs are on lots of a half-acre or less. Nine are on lots of half to one acre. One of the homes is on a 3.2 acre lot.

Three of the 14 homes with permitted in-law suites



Dracut maintains a strict policy of terminating in-law suites when the relative or caregiver leaves the home. Homeowners have a choice of finding a new family member to move into the space or removing the stove from the accessory unit, making it something less than a rentable dwelling.

In most respects, Dracut’s zoning for in-law suites is similar to the surrounding towns, but Dracut is unique in its treatment of access to the apartments. Other towns prohibit adding a door to the apartment on the *front* of the house or insist that staircases to new upstairs units be enclosed. Dracut is worried not only about maintaining the illusion of single-family housing but also about discouraging homeowners from illegally renting the units

¹⁰ This report is based on a list of permits granted between 2012 and April 2019, provided by the Dracut Community Development Department. Details on the properties are from the town’s on-line tax assessor’s database; details on the permitting process are from minutes of the Planning Board. Minutes on-line go back only to 2014. Building permit data showing plans or the expected cost of the construction have not been available.

to unrelated tenants. Dracut's bylaws state that the suites have to be contained within the main house, share a wall, and not be separated by a hall or foyer. Moreover, they:

“Must be entered through the main dwelling unit and may not have an exit directly to outside, unless otherwise permitted by the Special Permit Granting Authority.”

These requirements ensure that the tenants of the home and the suite are *not* independent of each other. The Planning Board has taken that constraint very seriously, allowing direct access only from basement units, as the following excerpts from Planning Board minutes demonstrate:

May 2014:

[The owner] appeared before the Board seeking an in-law unit in his walkout basement for his mother-in-law. Chairman Forcier asked if there is a common entrance and the square footage of the unit. Mr. Thompson stated the entrance is from the garage and the unit has 671 square feet. Mr. Donnelly inquired about the sliding door shown on the plan and noted the unit may not have an exit directly to the outside, as specified in the By-Law requirements. Mr. Thompson indicated it goes directly to the backyard. Mr. Edwards noted the Board does have the authority to permit an entrance or exit.

Mr. Greene commented that in this case, he does not have a problem with the sliding door. Mr. Donnelly asked if the sliding door exits only to the backyard, which Mr. Thompson confirmed it goes directly to the backyard. Mr. Pease mentioned an email from the Homeowner's Association that gives consent for the in-law unit, but there should be no parking on the public way, which he felt should be a condition of approval.

Mr. Greene motioned to grant the special permit for the in-law unit and to waive the sliding door exit to the backyard. Mr. Nangle seconded for discussion. Mr. Greene noted the Homeowner's documents indicate in-law units are not allowed, however; there are several in the development. Motion passed unanimously.

Aug 2014:

[The owner] appeared before the Board along with her contractor, Greg Looney and is seeking a special permit for a 700 square foot in-law unit for her parents. Mr. Looney stated the existing garage will be converted to the in-law and a new 2-stall attached garage will be constructed.

Chairman Forcier inquired whether there are stairs off the proposed deck from the bedroom of the in-law. Mr. Looney indicated there are not.

Chairman Forcier asked if anyone in attendance had a question or comment.

[A neighbor] questioned whether the in-law can be accessed from the garage and if this is considered an exit. [The owner] stated the in-law is entered from the main house. Mr. Pease noted the Building Inspector's letter refers to the exit from the in-law to the garage, which the Board can approve under requirement #5 of the by-law. [The neighbor] felt the door to the garage would be considered an exit and the owner could

block their doorway to rent the unit. Mr. Looney mentioned the owners will be accessing the garage from the in-law, as well and the unit is for [the owner's] parents. Mr. Nangle asked about requirement #5. Chairman Forcier noted requirement #5 states:

“Must be entered through main dwelling unit and may not have an exit directly to outside unless otherwise permitted by the Special Permit Granting Authority.”

Mr. Nangle did not have an issue with the exit to the garage and Mr. Pease commented the Board can allow it. Mr. Greene stated there is a separate entrance or doorway to the garage. Chairman Forcier noted the Board is essentially granting a waiver for the exit. Mr. Pease finds that providing for a loved one is a noble gesture.

Mr. Pease motioned to grant the special permit for the in-law unit with the provision to allow direct access from the in-law unit to the garage. Mr. Donnelly seconded. Motion passed by a majority vote (4-1). Mr. Greene opposed.

Aug 2014:

[The owner] appeared before the Board seeking a special permit for an in-law apartment for his parents. Chairman Forcier noted the Building Inspector submitted a letter stating the plan appears to conform to the By-law except for the exterior door, which can be permitted by the Board. Liam Leary, the building contractor pointed out the door that leads to a deck in the backyard. Mr. Donnelly inquired if there are stairs off the deck. Mr. Leary confirmed there are 2 stairs off the deck. Mr. Donnelly stated the Board can allow the door if the stairs are removed from the deck.

Mr. Donnelly motioned to grant the special permit for the in-law unit without the stairs off the deck. Mr. Pease seconded. Motion passed unanimously.

Sept 2015:

[The owner] appeared before the Board seeking a special permit for an in-law unit for his mother. [The owner's mother], the intended occupant of the in-law unit asked if a door could be allowed because the exit is located on the other side of the home, down the hall and through the kitchen. [The owner] added the door could be installed on the side of the unit or in the rear. Chairman Forcier stated a waiver would be required and the Board has a long history of not permitting a door in the in-law unit, as it essentially creates a 2-family. Mr. Donnelly added the home needs to appear like the single-family homes in the neighborhood.

Mr. Greene motioned to grant the special permit for an in-law unit [without the waiver for the independent exit]. Mr. Nangle seconded. Motion passed unanimously.

Sept 2017:

During a hearing for a special permit for an in-law suite in a basement, “Mr. Dooley asked if the basement has walkout access.” The owner confirmed that it does. “Mr.

Greene was in favor of the egress door so as not to trap anyone in the basement.” The Board approved the permit with the access unanimously.

Apr 2018:

“Mr. Green added there are no stairs off the deck and he is in favor of this in-law unit.”

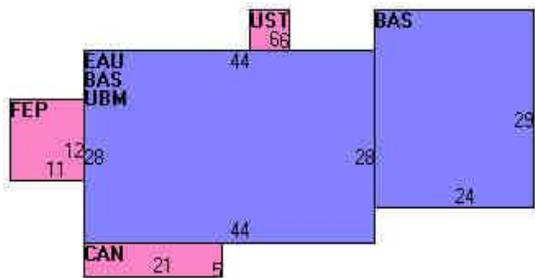
May 2018:

“Chairman Pease noted that there is an exterior door, which the board can waive, however, it has only been done in the past for basement units.”

The Board asked the owner to revise the plan; he returned with a smaller unit and removed the stairs off the back deck.

Dracut’s adherence to the letter of its zoning bylaws is probably one reason there are relatively few ADUs permitted in the town. Families don’t need a special permit to include multiple generations in one home, unless there is more than one kitchen in the house. Building an ADU is an expensive proposition (data from other towns show expenses typically between \$50,000 and \$150,000) and much of that cost is typically tied up in the new kitchen.

The kitchen is really what triggers the need for a special permit and it is also what bestows upon the suite’s occupants a degree of independence. If the homeowners’ goal in building an ADU is to create a pleasant place for an aging family member to be close but still independent—sleeping, living, and cooking in his or her own place—then they will need the kitchen and probably want a door that allows the occupant to come and go without walking through the homeowner’s living room.



Dracut’s tax assessors seem to take no notice of in-law suites, although this is not consistently the case. Each parcel in town has its own tax assessment and those are available on line. A search for each of the 14 properties with permitted in-law suites showed that only two of them were coded “1015: single family inlaw.” The rest were coded “1010: single family.” Where other towns note “extra kitchen” and add a \$5,000 value to an assessment, Dracut does neither. The diagrams that

illustrate the tax cards in several towns show where the in-law suites are with labels and lines. Dracut’s do not, as shown in this diagram of one of the houses discussed here. The suite is as invisible to the public online as it is from the street.

ADUs in Pepperell

The Town of Pepperell is aware of at least 48 ADUs within its borders, but there are probably more.

Pepperell's Zoning Board of Appeals has been hearing one or two requests per year for the special permits that make existing accessory apartments, previously unknown to the town, duly permitted units. Since 2014, the permit requests have been split evenly between homeowners seeking permission to add an apartment and homeowners trying to get an existing apartment legally recognized by the town.

Compared to the other towns in the region, this level of permit activity is low. The ratio of

Year	New	Existing	Pending	No Info
2013				1
2014	1			
2015		1		
2016	2			
2017		1		
2018	1	2		
2019			4	

prospective permits to retroactive permits, however, is unusually heavy on the retroactive side. Town officials are aware that there are probably many unpermitted accessory apartments in Pepperell. Those units were either built before permits were required or in violation of the town's zoning bylaw.

Pepperell's zoning allows ADUs in any residential property with a special permit granted by the ZBA. The apartments must be no more than 800 square feet. Homeowners may rent them to anyone, in contrast to most towns in the region that allow occupancy only to the homeowners' family or caregivers. To help enforce that restriction, those towns may require annual filings by the homeowner and formally terminate the permit if the family member leaves the apartment or when the home is sold. Pepperell does not do that. A permitted apartment stays permitted.

But an unpermitted accessory apartment in any town can create problems for the homeowner if the unit is discovered by the tax assessor, a building inspector, or banker deciding whether to approve or refinance a mortgage. Those events send people back to the ZBA for a (retroactive) special permit. The process may be expensive and unpleasant.

For example, the minutes of the Pepperell ZBA's meeting in February 2018 describe the start of a process that took at least three months to resolve.

The Chairman opened the hearing regarding the application submitted by [the homeowners], requesting a Zoning Board of Appeals SPECIAL PERMIT... to allow an existing accessory apartment consisting of 987 square feet, which is in excess of the maximum 800 square feet allowed, thus Applicant is also requesting a VARIANCE in the amount of 187 square feet...which if granted, would allow an existing accessory apartment consisting of 987 square feet.

... [The homeowner] said that they purchased the home in 1999, and that the apartment was already in existence. She stated that the accessory apartment is located in the

basement of the home. The Chairman asked if the Applicant could reduce the size of the accessory apartment. The Applicant stated that she would have to get rid of almost 200 square feet. The Applicant reviewed the floor plan of the apartment with the Board to see if there is any way to reduce the square footage/size of the apartment. The Applicant stated that the apartment is the entire basement of the house. Discussion ensued as to whether reducing the size of the apartment is even possible. Robert Kelly (Town of Pepperell Building Inspector/Zoning Officer), addressed the Board and stated that the bedroom size cannot be changed. Discussion ensued regarding dimensions of the house, square footage of the apartment and what can be deducted. The Applicant again stated that the apartment was already there when they bought the house in 1999 and they thought it was legal.... Discussion ensued regarding hallways and closets.... The Board discussed the option of continuing the hearing to allow the Applicant time to have a plan drawn to scale of the accessory apartment floor layout.

The hearing resumed in April. , at which time the building inspector “proposed a wall and door and that the space in the front is unheated basement space... and that the new plan (Exhibit C1)  reduced the square footage of the accessory apartment to 788 square feet.” The homeowners agreed to the plan, thus eliminating the need for a variance. The board approved the permit.

The board and building inspector can’t be faulted for following the letter of the zoning bylaws, but it’s hard to see how the process improved life in Pepperell. The two hearings cost the homeowners \$295 for the legal notice and postage. The required renovations in the basement would add considerably to the cost, and the result would be a smaller, less valuable apartment that would generate less rental income and theoretically, at least, reduce the value of the whole property. From the outside, there would be no change for the better or worse.

This story is included here to illustrate the wisdom of some towns’ zoning for ADUs that allows  for larger units if they are built into existing spaces. If a home has a 900 square foot basement, it makes sense to allow a renovation that creates a 900 square foot ADU.

The minutes of the same April meeting include the following record of another retroactive application:

The Chairman invited the Applicant to address the Board. [The homeowner] explained that he lives in the house. He stated that he built the house and the apartment in 2000, with the intention that his Mom would live in the apartment, however his Mom passed away before moving in and the apartment has remained vacant. He stated that he would like to rent out the apartment to get some income. He stated that the square footage of the apartment is under 800 square feet. He further stated that when he built the house in 2000, the Town of Pepperell did not allow accessory apartments.

The board approved the permit.

With the exception of the basement apartment described above, the board’s posted minutes show no rejections or special conditions imposed on applicants for accessory apartments. The

board attends to the details of each proposal but there is rarely comment from other neighbors. In April 2017 an abutter opposed a proposal to convert a guest suite in a brand new home into an apartment:

[The abutter] asked the following:

- How is occupancy granted with the accessory apartment already built into the house?
- How is someone going to insure it if it may, or may not get rented out?
- Who will the renters be?
- Is it going to be an Air BNB environment?
- Explained that he has two young children and is concerned with transient people.
- Has concern with the traffic on Prescott Street.
- Is there a maximum number of people who could live in the apartment?
-

When will the house construction be completed? There are still big piles of dirt outside.

- Neighborhood does not have apartments and he did not spend a lot of money for his house to live in a neighborhood with apartments.

The board patiently answered all of these questions and others posed by another neighbor then approved the request.

The posted ZBA minutes generated a list of eight properties granted special permits for accessory apartments. The Town Assessor's Office supplied a more comprehensive list generated by asking the assessor's database to identify every house classified as a single family  home with two dwelling units. That list has 48 properties on it, but it does not yet include two of the most recently permitted units. That list of 48 also does not include a house whose owner received an accessory apartment permit in 2015 from the ZBA for a previously unpermitted apartment below the family room. The assessor's office has the property classified as a two-family house, rather than a single-family house with an accessory apartment. This appears to be another example of the challenge towns have consistently applying state definitions that no longer fit the housing market. (Given the ambiguity, that property is not included in the data summary table below.)

Pepperell's 48 Properties with ADU Permits		
	Acres	Assessed Value
Minimum	0.3	\$ 244,500
Maximum	14.6	\$ 675,900
Median	1.9	\$ 402,150
Total	121.6	\$ 19,833,800

ADUs in Tyngsborough

The Town of Tyngsborough has 94 Accessory Dwelling Units (ADUs), according to notes on the town’s property tax assessment cards. The houses to which they are attached date from as far back as 1733 and continue through 2006. The homes are assessed in a range from \$238,300 to \$671,800 and have a combined assessed value of \$39.5 million.

They are found throughout the town’s neighborhoods, though most blend into the fabric of single-family homes that characterize Tyngsborough.

Tyngsborough’s zoning bylaw refers to ADUs as Temporary Independent Living Quarters. Most people refer to them as “in-law apartments.” Tyngsborough’s zoning holds to the traditional requirement that the residents of these “in-law” apartments have to be related to the owner of the home—an aging parent, typically—and hence “temporary.” These “TILQs” are not supposed to be rented to unrelated tenants.

Tyngsborough’s current zoning also allows no more than 1 bedroom in an ADU and sets a maximum size of 1,200 square feet.

Because the town is responsible for making sure that its property taxes are fair, the Town Assessor keeps close tabs on every property. Each house has a tax card (now stored in a database) that tracks many details about the property: its address, size, shape, condition, heating systems, solar panels, purchase price(s), and a list of building permits that the town has granted over the years. These cards are the basis for this analysis.

The Town Assessor identified 96 properties that showed houses with two “units.” Two of them appear to be ADUs no longer. One card included the note: “former temp living quarters, now extended liv space No stove.” The other listed only one kitchen, and without a kitchen an “apartment” is just a couple of rooms, not an independent dwelling unit. Presumably, the remaining 94 two-unit homes continue to include an ADU, though the property cards contain no information about their occupancy. It seems unlikely that every apartment added 20 or 30 years ago to house aging in-laws is still occupied by those in-laws. Some may be empty or used for the occasional guest. Some may be rented to unrelated households, although that is prohibited by town ordinance.

Tyngsborough’s tax cards and public data bases are exceptionally thorough and informative, but even these do not consistently present the full range of data about the town’s ADUs. There is building permit information for only 34 units; descriptions of where the ADU sits in the house (or garage) for only 74 units; square footage for 39, and a count of rooms for 71. Nevertheless, there are enough cards with enough data to convey a useful picture of the how Tyngsborough homeowners have redefined single-family homes built over the last 286 years, as summarized in  the tables and graphs below. The sizes and styles of ADUs defined in these tables are probably typical across the region.

Count of ADUs by “type” or location within a home

1 st floor (often a new wing)	31
Lower level or basement	21
Over the garage (often built with the garage)	18
2 nd floor	2
Two-story addition	2
Detached (a separate structure)	0
Unspecified	20

Count of ADUs by number of bedrooms

One bedroom	60
Two bedrooms	10
Three bedrooms	1
Unspecified	23

Count of ADUs by square footage

Less than 400 sq ft	1
400 to 799 sq ft	25
800 to 999 sq ft	11
1000 to 1200 sq ft	2
Over 1200 sq ft	0
Unspecified or unable to calculate	55

Count of ADUs by lot size (acres)

Less than .25 acres	4
.25 to .4 acres	9
.5 to .9 acres	26
1.0 to 1.9 acres	42
2 to 3 acres	12
More than 3 acres	9

The cards specify that 28 of the ADUs are on town water and 15 are on town sewer. Only a handful of cards note when the property has its own well or septic so these counts should not be used to evaluate the relationship between accessory units and sewerage issues.

Count of ADUs by assessed property value (house + land)

Less than \$250,000	2
\$250,000 to \$299,999	3
\$300,000 to \$349,999	19
\$350,000 to \$399,999	22
\$400,000 to \$449,999	14
\$450,000 to \$499,999	15
\$500,000 to \$549,999	11
\$550,000 to \$599,999	4
More than \$600,000	4

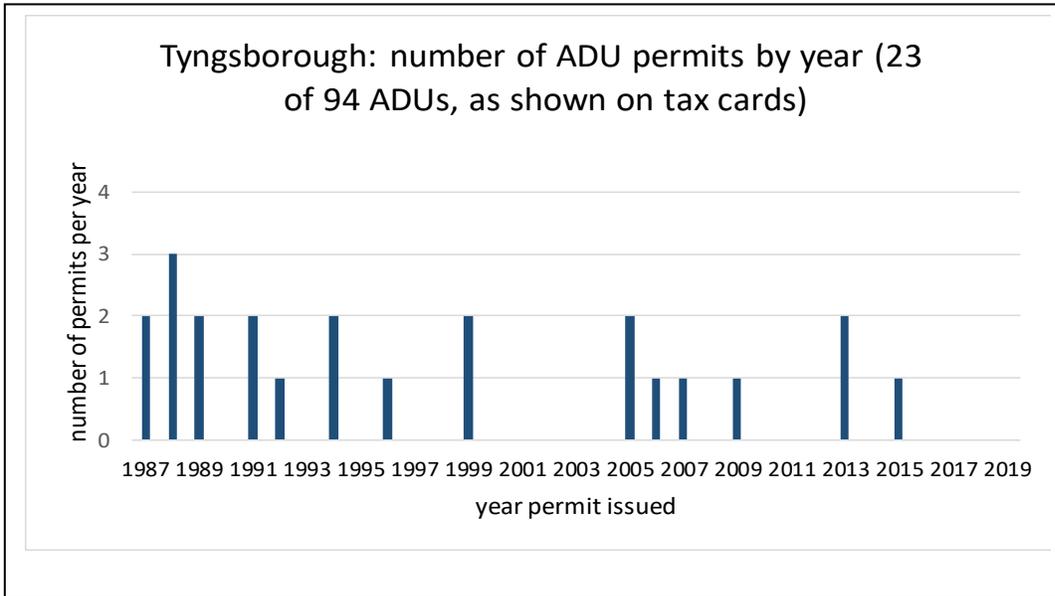
The tax assessors include the additional square footage of an ADU in their calculations of the value of the house. The ADU's bedrooms, bathrooms, and kitchens also bump up the assessed value of the home (and the resulting tax bill). The cards do not break out the ADU value, however, and they do *not* factor in the rental potential or increased functional value the apartment provides the homeowner. The median assessment value of the 94 homes with an ADU is \$401,300 (in 2019). The U.S. Census reports that the median value of all homes in Tyngsborough in 2017 was \$348,300.

Adding an ADU is expensive. The cards hint at the costs associated with building an addition containing an ADU or remodeling existing space. Twenty of the cards have building permit entries that either mention "in-law" apartment or construction related to spaces identified elsewhere as containing an ADU (usually a new garage). Clearly, the costs tied to those projects include more than the basic apartment and its utilities. Since many of the permits were granted decades ago, to equalize the entries, we have applied a basic inflation factor of 2 percent per year.

Count of ADUs by inflation-adjusted project costs

Less than \$50,000	4
\$50,000 to \$99,999	8
\$100,000 to \$149,999	4
\$150,000 to \$199,999	3
\$200,000 to \$225,000	1
Unspecified	74

Where building permits are listed, the card includes the year the project was completed. The graph shows their distribution over time, but captures only 23 of the 94 units. It is likely that some of the ADUs were designed as integral parts of the houses and built as part of the original construction. These projects don't show up in the graph.



Taken in the context of Tyngsborough’s total housing stock, are these ADUs or TILQs important? The U.S. Census estimates that in 2017 there were 4,431 housing units in Tyngsborough, so the ADUs catalogued here represent only 2.1 percent of the units in town. The Census reports that there were 582 occupied units paying rent and 30 occupied rental units paying no rent, so ADUs are approximately 15 percent of the rental housing available in town. According to the Census, in 2017 the median rent paid in Tyngsborough was \$1,266 per month.

Between 2013 and 2017, Tyngsborough issued 144 permits for new residential buildings, many for duplexes and multi-unit buildings. Among the projects are 10 buildings with 10 units of rental housing each.

Tyngsborough may want to consider whether this influx of large multi-unit rental apartments makes it timely to allow owners of homes with ADUs to rent them openly to unrelated tenants or if it suggests that it is time to enforce vigorously the relatives-only clause and potentially require homeowners to evict renters and remove kitchens.

ADUs in Westford

The Town of Westford’s zoning bylaw calls them Accessory Dwelling Units (ADUs), apartments with a kitchen, bedroom, and living space built into or beside a single-family residence. Often called “in-law suites,” many towns prohibit the homeowner from renting the apartments to anyone who isn’t a close relative. Westford has no such restriction. The town is also unusual in that it allows “detached” ADUs: free-standing structures built on the same lot as the main home. These can’t be built from scratch but rather may be part of a conversion or addition to a structure that’s been on the property for at least 10 years.

All ADU projects require a special permit from the Zoning Board of Appeals as well as a building permit. Some can only be built when the ZBA approves a variance. These tend to be needed because a literal interpretation of the bylaw's size constraints for ADUs does not work when the original house is relatively small.

In response to a request from NMCOG for any ADU permits that had been considered in the last five years, the town provided a list of 15 properties and a link to a website that includes permit requests, board decisions, and property records for tax assessments.¹¹

Of the 15 properties on the list:

- The smallest ADU was a slight expansion of an existing shed to create a DADU – detached accessory dwelling unit – of just 360 square feet behind a small home. The permit said the project cost just \$11,500; the 1.045-acre property is assessed at \$538,700.
- The largest ADU slightly exceeded the town's size limit of 1200 square feet. When built in 2006, by remodeling a basement, the owner had failed to get a special permit from the zoning board. In 2016, the current board legitimized the 1251 square foot unit (six rooms!) with a permit. The home is on 4 acres and assessed at just under \$1 million.
- The most expensive ADU project was a 648-square foot addition and renovation in 2016 to a 1967 house. The building permit estimated the cost of the project at \$406,000, though the home is currently assessed at \$395,000. The database doesn't indicate what was finally built.
- Six of the projects were between 600 square feet and 800 square feet. Three were over 1,000 square feet. Two of the files lacked any way to estimate the size of the ADU.
- (The remaining three files on the list weren't related to ADUs.)
- This analysis includes no data on ADUs built or permitted before 2014 and no data on ADU projects that that might have been denied permits.

Although these records do not always provide details about the size of the ADU, its location within the home, or its count of bedrooms, they sometimes answer more basic questions about the status of ADUs in Westford.

For example:

In March 1995, the owner of the home at 13 Fletcher Road, petitioned the Zoning Board of Appeals for a special permit to convert his garage into an in-law suite and for a variance to add a larger garage to replace it. One of his neighbors sent four letters to the town¹² to oppose the project and to complain that the garage was intended to house the vehicles the owner drove in his limo service. The neighbor argued that the apartment would convert the property effectively

¹¹ <https://data.westfordma.gov/propertylookup/>

¹² The correspondence and permit applications are available on the town website at <https://dms.westfordma.gov/imageapi.php?docid=Qmx1ZVJpdmUxMDk0NjNyLVN5c3RlbXMgMTcgNg%253D%253D>.

into a two-family home and might be used to house drivers after late shifts. A month later, the neighbor followed up with a letter to the Zoning Board:

Since writing a protest on April 10 regarding Mr. David Reed's petition for a zoning variance at 13 Fletcher Road, I have talked with Mr. Reed. I am now convinced that the special permit he requested for conversion of his present garage and an addition for the purpose of housing his aging parents is, in fact, his intention. I am therefore pleased to learn that you are allowing him to proceed with this work.

I was even more pleased to learn that the Board has denied his request for a variance to build a 3-car garage and front porch. I have no idea why he wants this porch. But the garage clearly is for the limo and two vehicles he uses in his Logan airport taxi business. I should add that his parents don't own a car, his mother never learned to drive, and his father is now physically unable to.

In conclusion, I congratulate the Board for its fairness and reasonable caution in handling this matter.

Twenty five years later, in May 2014, another letter about the ADU was submitted to the Zoning Board of Appeals, this one from a woman who wanted to buy the house:

After visiting the town hall to research the property, we were told that the permit for the accessory dwelling was not current and needed to be modified as an approved in-law. We very much want to purchase the home for the separate living space for my parents but only if it's legally approved by the town of Westford.

The Board did approve the permit renewal and 13 Fletcher Road is currently assessed at \$800,600; the home from which the concerned neighbor wrote is assessed at \$388,900.

If neighbors formally opposed any of the other recent ADU permit applications, their complaints were not obvious in the permit decisions posted on line. In fact, the Zoning Board of Appeals frequently appeared to be working with applicants to find the best way for them to complete their projects. The board typically approved variances when relief was needed from the zoning bylaw standards.

For example, the zoning bylaw restricts the size of ADUs in two ways:

- They may not exceed 33 percent of the total square footage of the gross floor space of the structure or 800 square feet, whichever is greater.
- And an addition to a home to allow for an ADU may not increase the gross floor space by more than 15 percent.

A 2017 applicant owned a 1955 ranch house on a small lot and wanted to add a 780 square foot ADU in space over a two-year-old attached garage. The house was only 972 square feet so the ADU would be an 80 percent increase. The Board ultimately decided that it would be a hardship to expect the new ADU to be just 15 percent of the floor space – 175 square feet – so it granted a variance and the necessary special permit.

The Board typically lists its findings to demonstrate that special permits meet the bylaw's requirements. One of the generic requirements is that "social, economic, or community needs [will be] served by the proposal." In the ranch-house project above, the Board affirmed that the proposal met this standard because "The proposed ADU provides additional accommodations  for a family member." A finding more in keeping with the zoning bylaws, however, would simply be "The proposed ADU provides additional rental housing." Several of the permit applications and related documents still convey the sense that ADUs are only *supposed* to be for aging parents or caregivers even though this is not town policy.

There were 8,637 housing units in Westford in 2017, according to the U.S. Census.¹³ The permit data suggests that the town allowed construction of eight new ADUs between 2014 and early 2019: a sum that represents less than 0.1% of the total housing units in Westford.

The permit documents also indicate that applicants, town officials, and volunteer board members are devoting considerable time and resources to getting projects approved (or renewed after a property's ownership transfers). Westford could streamline that process by making ADUs an approved use by right, rather than requiring a special permit. Applicants would still need a building permit and some might need variances, but if the notion of accessory apartments within single-family homes is now fully accepted, it might be time to amend the zoning bylaws accordingly.

The town might also drop the requirement ADU permits have to be renewed when a new owner purchases the home. Other towns with that provision have the rationale that they require  homeowners to prove that the ADU is being used by family members. Without that requirement in the bylaw, it's not clear what the renewal process is accomplishing beyond adding uncertainty to real estate transactions.

¹³ <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

VII. Observations, Questions, Recommendations

The housing market in the Northern Middlesex region is changing as household demographics, the economy, and transportation are changing. Should municipal regulation of ADUs change as well?

Ads on Craigslist suggests that the market has changed, even if the regulations haven't. Craigslist has lots of ads for apartments in the region, and occasionally some of these are identified as "in-law" apartments. The ads pop up and they disappear quickly, presumably because the apartments are snapped up in a day or two. (To find these ads, you have to click on the "housing type" button, then select "in-law" and "refresh search.") Some of these listings come from towns that explicitly forbid homeowners from advertising and renting out their ADUs. If apprehended, the town could revoke the apartment's permit. If some owners advertise on line anyway isn't it likely that far more are finding renters by word of mouth?

Clearly there is demand for ADUs that can be rented by people unrelated to the homeowner.

Arguably, ADUs rented to unrelated tenants are *adding* to the vitality and economy of the region's neighborhoods, not detracting from it.

The supply is limited by several factors: most homeowners don't want tenants sharing their space, adding an ADU is expensive, and most of the region's towns officially oppose open rentals.

The market appears unsure of how to respond to the temporary quality that towns impose on ADUs. By requiring permits to be renewed when the property changes hands, even the most liberal zoning in the region creates uncertainties that makes mortgage lenders uneasy, as seen by the number of permit requests generated by lenders' insistence. The mortgage market influences what value appraisers are willing to assign to a home, and that in turn influences tax assessors. The cycle depresses the value of homes with legally permitted ADUs, reducing the potential return that a homeowner might expect from a \$75,000 home improvement, according to Kol Peterson, the expert from Portland, Oregon.

The value problem is analogous to the problem faced by energy efficient homes, which cost much less to operate than inefficient homes and thus ought to appraise higher and sell for more. The market has been slow to incorporate that value because efficiency is invisible. To fix that market failure, the federal government has been promoting Home Energy Scores and Massachusetts has made home energy ratings standard for new homes. Getting the market to work starts with making efficiency *visible*.

Municipal policy is keeping ADUs invisible. The frequency that ZBAs hear petitions for permits for previously unpermitted apartments is a measure of this problem.

Across the region's northern border, homeowners now have a right to build an ADU. With New Hampshire only two years into its ADU statute, differences are not yet visible. Perhaps, though, this would be a good time to harmonize ADU zoning across the NMCOG region and into southern New Hampshire.

NMCOG recommends:

- That the Commonwealth adopt a land use code for ADUs and require all tax assessors to use it for any accessory dwelling unit that is permitted or occupied.
- That towns in the region review the model ADU zoning bylaw included in the Massachusetts Smart Growth/Smart Energy Toolkit published by the MA Executive Office of Energy and Environmental Affairs¹⁴ as well as the model zoning ordinance that accompanied New Hampshire's statute giving homeowners a right to add an accessory unit to their homes.¹⁵ These are good models and they would suit the region well if adopted here.
- That planning boards and municipal leaders talk about the issues raised in this report with residents, realtors, housing advocates, and AARP. They might find, as New Hampshire towns have, that enabling these changes has gone largely unnoticed, just as most ADUs have.
- That towns reallocate the time and expense that they now devote to issuing and renewing special permits to ensuring that ADUs are safe and accessible. Priority should be given to allowing ADUs by right. The special permit process is expensive and adds little if any value to the ADU process. Building permits and enforcement of safety codes remain important.
- That Dracut remove from its zoning bylaws and from all previously granted permits the prohibition of a direct exit from an ADU.

¹⁴ <https://www.mass.gov/files/documents/2017/11/03/Accessory%20Dwelling%20Units%20%28ADU%29.pdf>

¹⁵ https://www.nhhfa.org/assets/pdf/ADU_Guide_Municipalities_NHHFA.pdf