

**Topic:** Affordable Housing; Accessory Uses; Zoning  
**Resource Type:** Regulations  
**State:** Massachusetts  
**Jurisdiction Type:** Municipal  
**Municipality:** Town of Barnstable  
**Year:** 2000-2002  
**Community Type:** Suburban  
**Title:** Chapter 9: Affordable Housing, Article II: Accessory Apartments and Apartment Units  
**Document Last Updated in Database:** August 2021

**Abstract:**

Seeks to create additional affordable housing through permitting unpermitted existing accessory dwelling units (ADUs) and encourage the creation of new ADUs. The ordinance also creates a local chapter of the states 40B, "Comprehensive Permit" program which "encourages the development of low- and moderate-income rental and owner-occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units." Additionally, the ordinance commits certain resources in accordance with the towns Comprehensive Plan and establishes criteria for amnesty an program for unpermitted ADUs and the creation of new ADUs including setting affordability standards in accordance with the Department of Housing and Urban Development's (HUD) established rates and committing the property to the affordability standards in perpetuity through deed restrictions.

**Resource:**

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

## **GENERAL REFERENCES**

Rental property — See Ch. 170.

Zoning— See Ch. 240.

Subdivision Rules and Regulations — See Ch. 801.

# **Article I Inclusionary Affordable Housing Requirements**

[Adopted 6-17-1999; amended 9-23-1999 (Ch. III, Art. LXIII, of the General Ordinance)]

## **§ 9-1 Purpose and intent.**

The purpose of this article is to define a coherent set of policies and objectives for the development of affordable housing in compliance with MGL, Ch. 40B, §§ 2023, the Cape Cod Commission's Regional Policy Plan for Cape Cod, the Town of Barnstable's Comprehensive Plan and various initiative programs developed by Federal State, County and Town government. It is intended that affordable housing units that result from this article be considered as affordable housing units for the purposes of MGL Ch. 40B §§ 20 - 23. This article is also intended to assure that an appropriate share of the remaining undeveloped land in the Town is used to meet the Town's critical need for affordable housing and to promote the inclusion of a fair share of the cost of construction of affordable housing in all residential and nonresidential land development activity in the Town of Barnstable.

## **§ 9-2 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

### **AFFORDABLE HOUSING REVIEW COMMITTEE**

The Housing Committee of the Town of Barnstable acting in an advisory capacity to the Town Council pursuant to § 9-6.

### **AFFORDABLE HOUSING UNIT**

A dwelling unit that by deed restriction is and will remain (a) available for sale and sold at a selling price that will result in an annual shelter cost of not more than 30% of the annual household income of a qualified affordable housing unit purchaser or (b) available for rental and rented at an annual rent that will result in an annual shelter cost of not more than 30% of the annual household income of a qualified affordable housing unit tenant, not including any unit rented to a tenant receiving rental assistance under 42 U.S.C. § 1437f or any similar rental assistance program.

### **ANNUAL SHELTER COST**

- A. For owners, the aggregate of annual charges for debt service on a purchase money mortgage, real estate taxes and homeowner's insurance.
- B. For tenants, the aggregate of annual charges for rent, utilities and tenant's insurance.

### **COMPREHENSIVE PLAN**

The Comprehensive Plan of the Town of Barnstable, adopted by the Town Council on October 30, 1997, and approved by the Cape Cod Commission on February 12, 1998, as amended from time to time.

### **DEED RESTRICTION**

A provision, acceptable in form and substance to the Town of Barnstable, in a deed to real property that runs with the land in perpetuity so as to be binding on and enforceable against any person claiming an interest in the property. Any restriction created under this article shall survive any bankruptcy, insolvency or other action, and shall not be subject to nullification for any reason.

### **DEVELOPMENT AGREEMENT**

An agreement between the Town acting through the Town Council and an applicant entered into in accordance with Section 14 of the Cape Cod Commission Act and this article which provides for the development of affordable housing in the Town and establishes the permitted uses, densities, location and other characteristics of the development.

### **LOCAL HOUSING FUND**

An account established and operated for the purpose of creating or preserving affordable housing by the Town of Barnstable or the Barnstable Housing Authority, or a housing trust or community development corporation created under the laws of Massachusetts. Said funds can specifically be used to purchase and improve land, to purchase dwelling units or to develop new or rehabilitate existing dwelling units for purchase or rental by qualified affordable housing unit purchasers or tenants or to preserve existing affordable housing in the affordable housing inventory. Expenditures from the Local Housing Fund will be determined annually by the Town Council through the adoption of a housing action plan.

#### **PLANNING BOARD**

The Town of Barnstable Planning Board.

#### **QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER OR TENANT**

- A. An individual or household with total annual income that does not exceed the following percentages of the median income for the Town of Barnstable, as determined annually by the United States Department of Housing and Urban Development:
  - (1) For the purchaser of a single-family home: 80%.
  - (2) For the purchaser of a condominium unit: 65%.
  - (3) For the tenant in a rental unit: 65%.
- B. Income from part-time employment of full-time students enrolled in and attending a public school or accredited educational institution shall not be considered part of a household's total annual income.

#### **EXEMPT REPLACEMENT HOUSE**

Considered to be any of the following as determined by the Building Commissioner:

- A. A single-family house damaged or destroyed by causes not under the owner's control regardless of the length of ownership, provided the replacement house is not more than 20% larger in volume.
- B. A single-family home that has been owned for the last three years by the current owner or immediate family, and is being replaced for this owner's use.
- C. A single-family home where the portion saved and to be reused in the new design and construction represents at least 20% of the value of the existing structure.

[Amended 2-17-2000]

### **§ 9-3 Applicability.**

- A. This article shall apply to any division of land into two or more lots for residential use which requires action of the Planning Board under MGL Ch. 41, §§ 81K through 81GG or otherwise, whether or not subdivision approval is required.
- B. This article shall apply to the construction of single-family, multifamily and/or condominium residential units on any lot or lots under common ownership with a construction value of greater than \$100,000 per unit. The construction of affordable housing units, as defined in § 9-2 above, are specifically exempt, as are exempt replacement houses as defined under § 9-2 above.
- C. This article shall apply to any combination of land division and development activity stated in Subsections A and B above, except for the land development activities of a limited profit corporation, not-for-profit or Town agency engaged in providing affordable housing under MGL Ch. 40B, or any charitable, not-for-profit, tax exempt corporation or entity.
- D. This article shall apply to the construction of any nonresidential development or addition, or the nonresidential area of a mixed use development. It shall not apply to interior renovation, or reconstruction or replacement activities.

### **§ 9-4 Inclusionary affordable housing requirements.**

Any land division/development activity granted in accordance with § 9-3 shall be subject to the following requirements:

- A. In a development described in § 9-3A consisting of less than 10 acres, the applicant shall pay an inclusionary housing fee of \$500 per lot created. Such payments shall be made to the Local Housing Fund established under this article upon endorsement or approval by the Planning Board.

- B.** In a development described in § 9-3A consisting of 10 or more acres at least 10% of the lots created shall be dedicated by deed restriction to affordable housing units, and the applicant and any successor in interest shall comply with Subsection E below. Any fraction of a whole lot resulting from this calculation shall require the payment of an inclusionary housing fee based on 10% of the average value of all lots created by the development less the value of any dedicated lots.
- C.** In a development described in § 9-3B, consisting of less than 10 housing units the applicant shall pay an inclusionary housing fee based on \$10 per \$1,000 of the building permit value of the units created. Such payments shall be made to the Local Housing Fund established under this article at the time of issuance of the building permit.
- D.** In a development described in § 9-3B, consisting of 10 or more units, at least 10% of the residential units constructed shall be dedicated by deed restriction to affordable housing units, and the applicant and any successor in interest shall comply with Subsection F below. Any fraction of a whole unit resulting from this calculation shall require the payment of an inclusionary housing fee based on 10% of the average value of all units created by the development less the value of any dedicated units.
- E.** Inclusionary housing fee.
- (1) In a development described in § 9-3D, the applicant shall contribute at the time of issuance of a building permit an inclusionary housing fee as follows:
- (a) All development of 5,000 square feet or less: \$0.10 per square foot.
- (b) All development of greater than 5,000 square feet: \$0.20 per square foot.
- (2) Such payments as set forth above shall be made at the time of issuance of the building permit to the Local Housing Fund established under this article. Such funds may be utilized for the continued development of appropriate methods and approaches to analyze the impacts of nonresidential development on the nature and quantity of affordable housing within the Town of Barnstable and the possible methods to mitigate and/or address same
- F.** When house lots and/or units are provided under Subsections B or D above, the applicant shall, subject to such deed restrictions and other requirements as the Town shall require in order to assure compliance with MGL Ch. 40B, § 20 to 23, either by:
- (1) Conveyance of such lots to a government agency or nonprofit organization approved by the Town for the construction of affordable housing units for the sale and/or lease to qualified affordable housing unit purchasers or tenants.
- (2) Conveyance of constructed affordable housing units to a government agency or nonprofit organization approved by the Town who shall offer said unit for sale and/or lease to qualified affordable housing unit purchasers or tenants. The proceeds of any such sale and/or lease shall be delivered to the applicant within 30 days of payment.
- G.** Appeals.
- (1) An applicant who is dissatisfied for the following reasons with the fee determination made by the Planning Board under Subsection A or the Building Commissioner under Subsection C may appeal said determination as follows:
- (2) Within 10 days after paying the fee, the applicant shall appeal in writing to the Town Manager, based upon one of the following specific criteria:
- (a) A mistake or error in the calculation in the land or building value;
- (b) Special circumstances relating to the physical or environmental conditions of the site that result in an excessive fee for this particular proposal;
- (c) The application of this article makes the development of any lot or parcel of land uneconomic or without reasonable alternative.
- (3) The Town Manager shall forthwith designate a hearing officer who shall hold a hearing and make a written determination within 21 days of the filing of the appeal. If the hearing officer determines that the fee is excessive, a rebate shall be made forthwith. Work on the project may proceed notwithstanding the filing of the appeal.

## § 9-5 Provisions applicable to all affordable housing units/lots.

All inclusionary affordable housing units and/or lots created under this article shall meet the following minimum requirements:

- A. Affordable housing units and/or lots within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with the other units and/or lots. Interior features of affordable units shall comply in all respects with the minimum design and construction standards set forth in the Local Initiative Guidelines, by the Division of Housing and Community Development, July 1996, or as amended.
- B. Affordable housing units and/or lots shall be provided coincident with the development of the market rate units and/or lots, but in no event shall the development of the affordable units and/or lots be delayed beyond the schedule below:

<b>Market Rate Unit/Lot %</b>	<b>Affordable Unit/Lot %</b>
Up to 30%	None required
30% + 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% + 1 unit	At least 70%
Up to 90%	100%

**§ 9-6 Development agreement.**

- A. In lieu of applying the specific provisions of this article, a person seeking to undertake a development described in § 9-3 may apply to the Town to enter into a development agreement pursuant to the Town’s Development Agreement Ordinance. The Barnstable Housing Committee shall act as a reviewing body for any development agreement proposed under this section and shall advise the Town Council if such development agreement provides benefits to the Town that are at least as beneficial to the Town as the affordable housing benefits provided for in this article. In deliberating possible development agreement provisions, the Town shall take into consideration any combination of the following:
  - (1) Conveyance to the Town or the Town’s designee of land that the Town determines to be suitable for the construction of at least as many dwelling units as are required by § 9-4.
  - (2) The construction of required dwelling units at locations in the Town of Barnstable other than the location that is the subject of the application.
  - (3) Payment into the Local Housing Fund in lieu of dedication or construction of each whole residential lot or residential unit required by § 9-4B or D.
  - (4) Any dwelling units built or lots conveyed pursuant to this section shall be of a design and quality and in locations found by the Town to be consistent with the Comprehensive Plan, including the requirement that affordable housing be distributed throughout the Town.
  - (5) The need for any other requirements or restrictions in a development agreement that are necessary or appropriate to assure that the purposes of this article are carried out. Such requirements may include, but are not limited to, design standards, regulatory agreements, monitoring and reporting requirements, unrestricted access to the applicant’s financial records, periodic audits and penalties for noncompliance
- B. Development agreement applicants are encouraged to provide at least 70% of any dwelling units or house lots to be provided under a development agreement for persons or families living or working in the Town or having a substantial historical and current connection with the Town by reason of prior residence or attendance at Town schools and current residence of close relatives in the Town.

**§ 9-7 Establishment of maximum cost; income certification of potential purchasers.**

- A. The maximum housing cost for affordable units created under this article is as established by Massachusetts Division of Housing and Community Development, Local Initiative Program.
- B. Potential purchasers of affordable units created under this article are required to submit copies of the last three years federal and state income tax returns, and to certify, in writing prior to occupancy of the unit that his/her or their family’s income does not exceed the maximum.

### **§ 9-8 Preservation of affordability; restrictions on resale.**

Each affordable unit created under this article shall have restrictions governing its resale or reoccupancy to preserve the long-term affordability, to preserve its continued availability as affordable housing in perpetuity, including the following:

- A. A marketing plan or other method of advertisement for availability of the affordable unit(s) and selection of buyer or tenant of the affordable unit(s) to be created under this article shall be provided to the Town.
- B. Resale price. subsequent resale of an affordable unit shall be made to a qualified affordable housing purchaser and shall be based on the initial discount rate applied to the sales price of the unit, which shall be recorded at the time of initial sale, which shall be applied to any subsequent resale of the unit.
- C. Right of first refusal to purchase. The purchaser of an affordable unit shall execute a deed rider in a form provided by the Department of Housing and Community Development, granting the Town of Barnstable the right of first refusal to purchase the property in the event that a subsequent qualified purchaser can not be found.

### **§ 9-9 Creation of ad hoc Inclusionary Housing Study Committee.**

In order to review and analyze the application of a nonresidential inclusionary housing linkage fee, there is hereby created an ad hoc Inclusionary Housing Committee (IHC), as follows:

- A. The IHC shall be composed of one representative from the Barnstable Housing Committee, Barnstable Housing Authority, Barnstable Economic Development Commission, Hyannis Area Chamber of Commerce, Barnstable Town Manager and two representatives from the Barnstable Town Council.
- B. The IHC shall report back to the Town Council on the application of this article to nonresidential development no later than September 9, 1999.

### **§ 9-10 Effective dates.**

This article shall take effect on the following dates:

- A. For residential construction projects: building permits issued on or after August 2, 1999.
- B. For approval not required (ANR) plans: endorsement on or after August 2, 1999.
- C. For subdivisions (definitive plan approval): definitive plan approval on or after September 6, 1999.
- D. For open space residential development projects: development plans approved on or after October 4, 1999.
- E. For nonresidential construction projects: building permits issued on or after November 1, 1999.

### **§ 9-11 Conflict with other bylaws and ordinances; severability.**

- A. To the extent that a conflict of interest exists between this article and other ordinances of the Town of Barnstable, the more restrictive provisions shall apply.
- B. If any provision of this article is held invalid by a court of competent jurisdiction, the remainder of the article shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this article shall not affect the validity of the remaining sections or parts of sections or the other ordinances of the Town of Barnstable.

## **Article II Accessory Apartments and Apartment Units**

[Adopted 11-16-2000; amended 10-3-2002]

### **§ 9-12 Intent and purpose.**

- A. The intent of this article is to provide an opportunity to bring into compliance many of the currently unpermitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.

- B. This article recognizes that although unpermitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied.
- C. It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called unpermitted and illegal dwelling units can achieve lawful status, but only in the manner described below.
- D. It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in MGL c. 40B, §§ 20 to 23, the so-called "Comprehensive Permit" program. This provision of state law encourages the development of low- and moderate-income rental and owner-occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.
- E. The Local Comprehensive Plan states that the Town should commit appropriate resources to support affordable housing initiatives. Under this article, the Town commits the following resources to support this affordable housing initiative:
  - (1) Waiver of fees for the inspection and monitoring of the properties identified under this article;
  - (2) Designation of Town staff to assist the property owner in navigating through the process established under this article;
  - (3) To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment; and
  - (4) To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this article.
- F. The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing.
- G. Through the creation of a local Chapter 40B program, which uses state and federal subsidies, the Town can create a mechanism to utilize existing structures and to construct new accessory structures for the creation of affordable housing units that is consistent with the Town's identified housing needs.

### **§ 9-13 Creation of local Chapter 40B program.**

As part of the Town's efforts to create the type of affordable housing that best meets the needs of the Town and its residents, the Town Manager and staff designated by the Town Manager shall establish a screening process and criteria for the preexisting and unpermitted units described herein, as well as for the construction of new units accessory to single-family homes, as part of a local Chapter 40B program which program will provide the state or federal subsidy necessary to establish standing under Chapter 40B for units being created and/or permitted.

### **§ 9-14 Amnesty program.**

Recognizing that the success of this article depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town,<sup>[1]</sup> the Town hereby establishes the following amnesty program:

- A. The threshold criteria for units being considered as units potentially eligible for the amnesty program are:
  - (1) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, nonconforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or
  - (2) Real property containing a dwelling unit or dwelling units which were in existence as of January 1, 2000, and which have been cited by the Building Department as being in violation of the Zoning Ordinance; and
  - (3) The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either Subsection A(1) and/or (2) have been satisfied.
  - (4) If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the entity designated by the Town Manager and found to be in conformance with the State Building Code and State Sanitary Code.

- B.** The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:
- (1) The unit or units must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently unpermitted;
  - (2) The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;
  - (3) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.
  - (4) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).
  - (5) Upon receiving the site approval letter under Subsection B(2) above, the property owner shall within three months file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.
- C.** The procedure for obtaining amnesty is as follows:
- (1) No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the threshold criteria under Subsection A and further demonstrates that s/he is proceeding in good faith to comply with the procedures under Subsection B to obtain a comprehensive permit.
  - (2) Any protection from zoning enforcement under this article shall terminate when: (a) A written determination is issued under the local Chapter 40B program that the criteria under Subsection B and the local Chapter 40B program cannot be satisfied; or (b) it is determined that the property owner is not proceeding diligently with his/her Chapter 40B application; or (c) the property owner's Chapter 40B application is denied. A person is deemed "not to be proceeding diligently" if s/he does not receive a comprehensive permit within 12 months from the date of issuance of the site approval letter under the local Chapter 40B program.
  - (3) This amnesty program shall be reviewed by the Town Council no later than October 1, 2003.

[1] *Editor's Note: See Ch. 240, Zoning.*

### **§ 9-15 New units accessory to single-family owner-occupied dwellings.**

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit, accessory to an owner-occupied single-family dwelling, to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

- A.** The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;
- B.** The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agrees that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.
- C.** The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

- D. Upon receiving the site approval under Subsection A above, the property owner shall file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

### **§ 9-16 Quarterly reporting.**

The Town Manager shall report to the Town Council no less than quarterly as to the use of this article, paying particular regard to the level of participation.