



January 9, 2025

The Honorable Ed Augustus  
Secretary  
Executive Office of Housing and Livable Communities  
100 Cambridge Street, Suite 300  
Boston, MA 02114

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Dear Secretary Augustus:

Thank you for the opportunity to provide comments on draft regulations regarding the by-right permitting of Accessory Dwelling Units (ADUs) as established in the Affordable Homes Act (AHA). We appreciate the leadership of the Healey-Driscoll Administration on growing and diversifying the Commonwealth's housing stock to meet the wide range of needs of current and future residents

CHAPA's mission is to encourage the production and preservation of homes that are affordable to people with low and moderate incomes and to foster diverse and sustainable communities through planning and community development. At CHAPA, we believe that everyone should have a safe, healthy, accessible, and affordable home in the community they choose.

Housing is the single best investment we can make for the future of Massachusetts. The Commonwealth needs 200,000 new homes by 2030 to stabilize home prices and rents. To ensure housing for people across income levels, 40,000 of these new homes must be affordable for people with low and moderate incomes and 20,000 of these homes must be affordable for people with extremely low incomes, including 10,000 homes with supportive services.

ADUs present an important opportunity to expand the number of homes available across the Commonwealth. It is estimated that over the next five years, Massachusetts has the potential to create thousands of ADUs, an important tool to meet people's housing needs and advance the state's goal of creating 200,000 new homes. The regulations proposed by the Executive Office of Housing and Livable Communities (EOHLC) will go a long way toward making this a reality.

The draft regulations strike the right balance of setting clear statewide rules while allowing municipalities to shape local bylaws to reflect local context. By

*Mailing Address:* PO Box 961329, 31 Milk St Lobby, Boston, MA 02109  
*Physical address:* One Beacon Street, 5<sup>th</sup> Floor, Boston, MA 02108  
T (617) 742-0820 | [www.chapa.org](http://www.chapa.org)



clearly defining standards of reasonableness for local oversight, the processes for constructing ADUs will align with processes for constructing single-family homes.

To make this new law an effective housing production tool, CHAPA requests that EOHLC preserve the following elements of the draft regulations:

- A definition of a protected use ADU that includes a range of options: detached, attached, interior upper level, interior lower level, above garage, and garage conversion.
- Definitions of single-family residential zoning district and of principal structure that adhere to the letter and spirit of the law to encourage the production of ADUs with the goal of increasing housing production that will help address the Commonwealth's housing needs.
- The establishment of design standards that provide objective clarity to the ADU construction process.
- Guidance for municipalities that discourages the imposition of regulations, including site plan review and impact analyses, that go beyond those that would be applied to single family homes.
- An explicit allowance for municipalities to prohibit the use of ADUs as short-term rentals in recognition of the unique housing markets in some regions of Massachusetts.

As EOHLC moves to finalize these regulations, CHAPA encourages EOHLC to consider the following issues.

#### Non-Conforming Lots

In municipalities across the Commonwealth, many homes that would be considered primary residences under these regulations are situated closer to property lines than would be permitted under local zoning statutes. These non-conforming lots present a challenge for an ADU that is not converted from an existing structure or for a new structure constructed in the same location and to the same dimensions as an existing structure.

Forcing ADUs sited on non-conforming lots to comply with more stringent setback zoning requirements than existing structures on those lots would significantly limit the impact of this housing tool. For non-conforming lots, CHAPA recommends ADUs follow the setback of the existing primary structure or other existing accessory structures. Alternatively, CHAPA supports EOHLC aligning with AARP's recommendation<sup>1</sup> and setting a standard of four feet front and rear setbacks as the standard for non-conforming lots.

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<sup>1</sup> <https://www.aarp.org/content/dam/aarp/livable-communities/housing/2021/AARP%20ADU%20Model%20State%20Act%20and%20Local%20Ordinance-0212021-08.pdf>

### Utility Connections

As fully functional homes, ADUs require full access to the same utilities as the primary residence needs. However, the presence of utility hookups for the primary residence means that there is an opportunity to utilize this pre-existing infrastructure to benefit ADU development. CHAPA is concerned that local burdensome requirements for access to utilities will discourage construction of ADUs. Likewise, the imposition of local septic regulations that exceed state standards might require a separate septic system for an ADU, likely placing a cost burden on the homeowner that would preclude that ADU construction.

CHAPA recommends that municipalities be prohibited from requiring separate utility hookups for an ADU where the hookups for the primary residence are available. Furthermore, local septic regulations should not be a barrier to ADU development and should not exceed state standards. Requiring ADUs to comply with regulations that exceed those of traditional single-family homes or established state standards would constitute an unreasonable restriction.

### Occupancy Restrictions

EOHLC's draft regulations are explicit with respect to use and occupancy restrictions that may or may not be imposed by municipalities – affordability, age, short-term rental, etc. Additionally, the law is clear that an owner-occupancy requirement is prohibited.

CHAPA urges EOHLC to consider other potential local occupancy limitations that would violate the spirit of the law. EOHLC should make clear that restrictions limiting occupants or tenants of an ADU to familial relations of the primary owner are prohibited. Otherwise, the utility of ADUs as a broad housing resource would be greatly limited. Should a homeowner choose to rent an ADU on their property, they should have the choice to rent to a non-familial tenant.

### ADU Owner Assistance

CHAPA urges EOHLC to offer financial and technical assistance for homeowners to help them understand the processes for designing and building ADUs, supporting the creation of accessible ADUs, and their rights and responsibilities as landlords.

Full development and construction costs for an ADU may be less than those of a traditional single-family home but will likely be more than most homeowners can afford without loans or other financial assistance. CHAPA understands that since the enactment of the Affordable Homes Act, private lenders have been working to develop loan products specifically to finance ADUs. But for low to moderate households, taking on the burden of an additional mortgage payment might be too great.

As ADUs become a larger part of the Massachusetts housing landscape, CHAPA hopes to work with EOHLC and other stakeholders to determine the feasibility and structure of a financial assistance program to help eligible homeowners construct ADUs.

Many homeowners who build an ADU on their property and choose to rent it out will be landlords for the first time and will need assistance to navigate this new role. To ease this process, EOHLC should develop a technical assistance program that encompasses key issues for new landlords, including Fair Housing. Having access to this information will serve to prevent significant issues in the future and will help both the landlord and tenant have more positive experiences.

### Accessibility

At a time when many individuals and families find it difficult to locate a home they can afford, persons living with disabilities and seniors who require accessible places to live are doubly challenged. ADUs are an opportunity to increase the Commonwealth's stock of homes that are accessible.

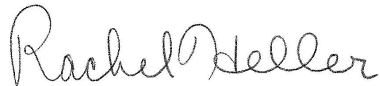
Incorporating accessibility and adaptability design features during initial construction is far less expensive than doing so after an ADU is already built. Additionally, having these features would expand the pool of potential tenants and would increase the number of homes available to persons living with disabilities and seniors who want to continue living in the community rather than in an institutional setting.

Should a state program for financing or development of ADUs be established, CHAPA would urge that the inclusion of accessibility and/or adaptability standards understands be part of award considerations.

Again, thank you for all your work in developing these regulations and for the process of stakeholder engagement undertaken by your office. ADUs are a remarkable opportunity for the Commonwealth and one that has the potential to move us toward addressing our considerable housing challenges.

We appreciate your team's thoughtful consideration of our comments and suggestions. If you have any questions or would like additional information, please do not hesitate to contact Matt Noyes, CHAPA's Director of Public Policy, at [mnoyes@chapa.org](mailto:mnoyes@chapa.org).

Sincerely,

A handwritten signature in cursive script that reads "Rachel Heller".

Rachel Heller  
CEO