

**TOWN OF CORNWALL
PLANNING & ZONING COMMISSION
Memorandum regarding Opting out of the Accessory Dwelling Unit Provisions of
Public Act 21-29**

Prepared by Janell Mullen, Planning Consulting
Issued to P&Z in advance of its regular meeting on May 10, 2022

BACKGROUND:

The Connecticut General Assembly passed Public Act No. 21-19 “An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and a Commission on Connecticut’s Development and Future”. Section 6 of PA 21-29 provides that zoning regulations in CT shall:

- (1) Designate locations or zoning districts within the municipality in which accessory apartments are allowed, provided at least one accessory apartment shall be allowed as of right on each lot that contains a single-family dwelling and no such accessory apartment shall be required to be an affordable accessory apartment;*
- (2) Allow accessory apartments to be attached to or located within the proposed or existing principal dwelling, or detached from the proposed or existing principal dwelling and located on the same lot as such dwelling;*
- (3) Set a maximum net floor area for an accessory apartment of not less than thirty per cent of the net floor area of the principal dwelling, or one thousand square feet, whichever is less, except that such regulations may allow a larger net floor area for such apartments;*
- (4) Require setbacks, lot size and building frontage less than or equal to that which is required for the principal dwelling, and require lot coverage greater than or equal to that which is required for the principal dwelling;*
- (5) Provide for height, landscaping and architectural design standards that do not exceed any such standards as they are applied to single-family dwellings in the municipality;*
- (6) Be prohibited from requiring (A) a passageway between any such accessory apartment and any such principal dwelling, (B) an exterior door for any such accessory apartment, except as required by the applicable building or fire code, (C) any more than one parking space for any such accessory apartment, or fees in lieu of parking otherwise allowed by section 8-2c of the general statutes, (D) a familial, marital or employment relationship between occupants of the principal dwelling and accessory apartment, (E) a minimum age for occupants of the accessory apartment, (F) separate billing of utilities otherwise connected to, or used by, the principal dwelling unit, or (G) periodic renewals for permits for such accessory apartments; and*
- (7) Be interpreted and enforced such that nothing in this section shall be in derogation of (A) applicable building code requirements, (B) the ability of a municipality to prohibit or limit the use of accessory apartments for short-term rentals or vacation stays, or (C) other requirements where a well or private sewerage system is being used, provided approval for any such accessory apartment shall not be unreasonably withheld.*

If a municipality fails to adopt new regulations or amend existing regulations that comply with the aforementioned provisions (as written), and unless such municipality opts out of the provisions of PA 21-29 pertaining to accessory apartments by January 1, 2023, any noncompliant existing regulation shall become null and void.

NEXT STEPS:

During the regular meetings of the Cornwall Planning and Zoning’s Commission in March, the Commissioners and its staff began discussing the implications of Public Act 21-29. Coincidentally, a public hearing that successfully permitted an accessory dwelling unit took place during April’s meeting and upon

Opting Out on Accessory Apartments

CT Public Act No. 21-29 was promulgated last fall. One of the sections of this act dealt with accessory apartments, which are now more properly referred to as ADUs, accessory dwelling units. The intention was to remove zoning obstacles to creating such apartments, either within a home or in an accessory dwelling. The long-term goal is an increase in affordable and attainable housing in Connecticut. Any town which does not wish to have the Accessory Apartment section of the law apply to them, must take steps to “opt out”, through a process involving a public hearing and votes by two-thirds of both the town’s Planning and Zoning Commission and Board of Selectmen. This must be done before January 1, 2023, when absent opting out, the new state regulation will supersede any local Accessory Apartment regulations.

While the new law was being crafted in Hartford, Cornwall was going through a one-year process of meetings and public forums by an Affordable Housing Subcommittee, culminating in a state-mandated Affordable Housing Plan that was adopted by the Board of Selectmen at the end of last year, after the Planning and Zoning Commission had determined that it was compatible with the Town’s 2020 Comprehensive Town Plan. One of the recommendations in the Affordable Housing Plan was that the Town of Cornwall **not** elect to opt out of the Accessory Apartment portion of Public Act 21-29. Both the Planning and Zoning Commission and the Board of Selectmen agreed that this was a reasonable recommendation since we all wanted to make it easier to have accessory apartments in Cornwall. Cornwall, too, needs more affordable and attainable housing.

Then came the rub. There were aspects of the new state law that were confusing, such as the language around the maximum size of accessory apartments. Lawyers all over the state weighed in on its interpretation and our Planning Consultant, Janell Mullen, was privy to those conversations. Through her, we discovered that unless Cornwall adopts the state regulation **as written**, that is unmodified by features that may be appropriate for our local needs, we would need to opt out. If the Town doesn't opt out it needs to adopt every standard that pertains to ADUs contained in Public Act 21-29. The most concerning element is the maximum size apartment allowable in this legislation and the limitation of possibly only having one apartment unit on a lot. Also, some of the language is less explanatory than what the Commission would like to adopt as their own rules.

Our intention all along had been to rewrite our own regulation with the less restrictive features of Public Act 21-29 but with other provisions more appropriate to our town’s history and culture. Now we will need to “opt out” before being able to do doing so.

That is why the Cornwall Planning and Zoning Commission will host a Public Hearing on June 14 at 7:00 pm to hear comments from the public about whether we should opt out or not. More information will be posted on the Cornwallct.org website before that time.

Karen Griswold Nelson

From: Jill Cutler <jill.cutler22@gmail.com>
Sent: Wednesday, May 18, 2022 2:33 PM
To: Cornwall Land Use
Subject: Accessory Apartment Opt Out

Dear Karen,

As a former chair of P & Z, I write in support of the Cornwall decision to opt out of the new State requirements regarding accessory apartments.

When the State plan in reference to accessory apartments was announced, it seemed that if a town DID NOT wish to have ANY accessory apartments they could opt out of the plan. Cornwall already has quite liberal regulations about accessory apartments, so we certainly did not think of opting out when the regulations were first proposed.

Now that the state plan has been made clearer and has been considered by our planner, Janell Mullin, it would appear that we hope to be more liberal in our square footage requirements and in the number of accessory units we are hoping to allow. For that reason—because we'd like to be more liberal and encouraging than the state would require us to be—we SHOULD opt out of the State requirements. We'd like to do better than the State would like us to do!

I therefore support having Cornwall opt out of the State accessory apartment plan.

Yours,
Jill Cutler

May 18, 2022

Planning and Zoning Commission
Cornwall Town Office
Pine Street, Cornwall, CT

Hello Commission Members,

I was a member of the Affordable Housing Town Plan steering committee which unanimously recommended that the Town NOT opt out of section 6 of PA 21-29. The final draft of the AHTP was also unanimously approved by the Board of Selectmen and accepted unanimously by your Commission as compatible with the POCD. We all thought we were doing the right thing.

It now appears that - on further reflection - zoning attorneys and land use professionals in the state feel that the new law as applied could actually work to restrict towns like Cornwall with progressive Accessory Apartment regs already on the books. Their weight is now placed behind the OPT OUT option.

I've watched the video of your April 12 meeting and read the various supporting statements provided by Anna Timell and Janell Mullen and would like formally to recant the position taken in the AHTP and say that I agree with your revised opinion that the wisest course is to OPT OUT. You do not want to get trapped in some of the more limited (and impenetrable) strictures of Section 6. Cornwall has historically been a leader in the field of affordable housing regulations, so let's keep that distinction.

I have really admired the meticulous work that you have been doing with Janell to reformat our existing Zoning Regulations. It seems certain that your word-by-word review will result in a much more understandable set of rules and standards for both consumers and Commissioners. However, I hope that if you do vote to OPT OUT you will take like a summer break from that assignment and focus on a comprehensive and 21-29-compatible Accessory Apartment reg without any delay.

As I wrote you on behalf of the Cornwall Housing Corporation before your April meeting, Accessory Apartments provide perhaps the simplest solution to the creation of more de facto affordable housing in town. Whether or not they "count" in the great scheme of things at the state level, they certainly count to the people lucky enough to live in them and to the rest of us who gain these new neighbors.

Maggie Cooley