

DEPARTMENT OF PLANNING

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Hon. Fred W. Thiele, Jr., Chair
Assembly Committee on Local Governments
LOB 838
Albany, NY 12248

Hon. Steven Cymbrowitz, Chair
Assembly Committee on Housing
LOB 92
Albany, NY 12248

Hon. Edward C. Braunstein, Chair
Assembly Committee on Cities
LOB 843
Albany, NY 12248

Hon. Charles D. Lavine, Chair
Assembly Committee on Judiciary
LOB 832
Albany, NY 12248

RE: Public Hearing on the Role of Local Governments in Accessory Dwelling Unit Siting

Dear Chairpersons and Members of the Committees:

Thank you for the opportunity to submit comments on the role of local governments in determining the siting of accessory dwelling units (ADUs). The Rockland County Planning Department is submitting these comments at this time, but we are continuing to review the proposed legislation (Bill A4854) and anticipate having additional comments to provide as the bill continues to be considered.

As was noted in your public hearing notice, local governments have the authority to enact zoning laws governing siting of ADUs, and they also establish the permit parameters for ADUs. Home Rule legislation in New York State requires this local level of control. Our role as a County Planning Department is advisory to the towns and villages, as it relates to planning and zoning, and we are advisory only with regard to matters within our purview. This is also outlined and required by legislation.

While we understand there is a need throughout the State for more affordable housing options, Rockland County has grave concerns about some of the impacts the legislation would have, as currently proposed. The following items outline some of the Rockland County Planning Department's concerns:

- Generally, the proposed Assembly Bill A4854 does not consider the varying attributes of a region, as one moves from an urban to suburban to rural environment. It is more tailored to an urban environment, reflective in the use of borough rather than village in the language. An example of this is the inability to require parking requirements for a suburban area. The provision of adequate parking is critical in ensuring that traffic flow is not impeded, roadside parking along State or County highways does not occur, or that onsite circulation remains feasible. This Bill must address the varied living environments throughout NY State and the unique challenges they all present. Urban, suburban and rural residential zones are very different. This must be recognized.
- The proposed bill undermines the intent of New York State Home Rule regulations. The Bill takes away most variations or flexibility that a local municipality could implement to tailor the regulations to better reflect the goals and objectives of their zoning ordinances, comprehensive plans or other planning documents. Creating a bill that is to be a ministerial action seems to contradict the concept of Home Rule regulations and could make municipal zoning ordinances or comprehensive plans conflictive with the Bill. The local municipalities must retain jurisdiction over land use matters including the regulation of accessory dwelling units. Given the varying land uses throughout the State of New York, it is imperative that each region, county, city, town or village be given the opportunity to impose additional, more stringent regulations, as is done with other laws enacted at the State level.
- The proposed bill has many regulations that will undermine municipal zoning ordinances or comprehensive plans. Parking, density, square footage requirements, yard setbacks are just a few of the details within the Bill that will negatively affect the local municipalities' regulations. The Bill must be revised to ensure that adopted plans prepared by municipalities (and encouraged by other State agency regulations such as General Municipal Law (GML), that included public input and other agency oversight are not diminished or conflicted by its requirements. In some cases, the bill, as written, would trigger the need for amendments to municipal comprehensive plans that already address ADUs. In addition, Plans would need to be revisited to accurately assess realistic build-out scenarios to project population growth and the resulting impacts on infrastructure and schools. The bill does not adequately account for the potentially massive effects on public infrastructure (i.e: sewer, water, roads) and services (i.e: schools). At a minimum, housing units could nearly double if an ADU was created on every single-family lot. Clearly, infrastructure capacity would be affected.
- Rockland County and countless other parts of New York State must maintain standards to limit impacts on septic and well systems. The bill, as proposed, does not require these impacts to be considered comprehensively first (through a master plan) nor via the legal process in place under GML. A community should have the opportunity to assess the potential impacts, and counties should be afforded an opportunity to weigh the potential County-wide impacts.

- The bill's definition of "Local Agency" omits several types of municipalities within NY State. Again, this inaccurate definition seems to only apply to urban areas ("City", "Borough").
- Section 481(C) must include the allowance for parking requirements for areas/regions not located within an urban environment.
- Section 481 1.(D)IV provides criteria for accessory units and indicates that garages and accessory structures attached or detached are permissible – contradicting the definition of Living Area which excludes garages and accessory structures.
- Section 481 1.(D)V only limits the floor area of an accessory unit for a primary residence. Currently, some municipalities permit accessory units for multiple dwellings. This needs to be expanded so as to also limit the size of an accessory unit for multi-family residences.
- Section 481 4. prohibits parking requirements from being imposed for accessory units. This is problematic in suburban or rural locations. Parking requirements must be permitted to be regulated by the local municipalities to ensure sufficient space is allocated and that vehicles do not park within roadway rights-of-way. Many areas of Rockland, as in other areas, are already short on parking in dense areas. Inadequate parking already creates challenges and, in some instances, safety and circulation concerns for emergency services and transit.
- Section 481 5. is problematic for the same reason as stated immediately above. If existing parking spaces are removed, the local municipalities must be able to require that replacement parking areas be designated on the site to ensure that traffic flow is not negatively affected, internal circulation remains feasible, and that overflow parking is not required on the roadway, especially if it is a State or County highway.
- This proposed bill is very general and does not seem to consider the character of the broader, overall areas within New York State - such as whether an area is rural, suburban or urban in nature. The bill seems to only address the needs of an urban area such as New York City and its boroughs. A more rounded bill is needed that addresses the State as a whole. It must provide either more flexibility for towns and villages so that it is applicable to their environment, goals and objectives, or the bill should simply not apply to towns and villages.
- The bill's contents appear to supersede the local ordinance regulations and does not permit any board to review any application for an accessory dwelling (Section 481 6.).
- Many municipalities in Rockland County have already enacted local laws governing accessory units. These municipalities have gone through the effort to evaluate the impacts of ADUs within their communities and implemented what works best. In most instances, the proposed bill would undermine these existing codes, which are, in most cases and with good reasons, much more stringent than what is being proposed in this legislation.
- These local laws have incorporated specific criteria to ensure that the accessory unit regulations can be enforced and that they will maintain the community character of a neighborhood and meet the goals and objectives of their zoning ordinance or comprehensive plan. FAR and development coverage variances in single-family neighborhoods directly affect community character by creating larger building mass and less green space. This proposed legislation will make these negative impacts a certainty.
- The State Uniform Fire Prevention and Building Code must be administered and enforced in all municipalities in accordance with minimum standards set forth in 19 NYCRR part 1203. A serious concern is that the bill does not address municipalities that do not enforce the code

effectively. In some municipalities, lack of enforcement is such an issue that the Department of State has stepped in to provide oversight. The bill should include minimum requirements for local governments that have poor enforcement records and, at minimum, require that the municipality in which an ADU is proposed be in good standing with the NYS Department of State with regard to enforcement. The bill also appears to be silent on funding that will be required for enforcement.

- Requiring a municipality to nullify and void their existing regulations (Section 481 9.) if they do not comply with the proposed bill is arbitrary and capricious.
- Section 481 11. does not permit the accessory unit to be counted towards density of the parcel. This section of the bill would undermine the intent of many zoning ordinances, especially for parcels located in rural or suburban zoning districts. Single or multi-family residences could result in a doubling of its density with the inclusion of accessory apartments, but not have the amenities, parking, open space, or other required resources espoused in the zoning ordinance or comprehensive plan to conform with the vision of the municipality. Accessory units MUST be counted towards the density of a site, particularly for a multi-family residence.
- The maximum square footage requirement of 1,500 sq ft seems to potentially conflict with another section of the bill that states an attached ADU would be, at most, half the size of the existing dwelling.
- The proposed legislation appears to be in direct conflict with the requirements of the SEQRA process and the bill does not even mention SEQRA. In most cases, an ADU would be an unlisted or even a Type II action, but the potential environmental impacts must be considered. One ADU would not likely impact any environmental resources, but if every residence opted to provide one unit, then the ramifications would be extreme, impacting drainage, traffic, infrastructure capacities, community services, etc. This proposed legislation must abide by the State-enacted SEQRA regulations and not promote segmentation.
- This Bill will encourage smaller lots to be overbuilt, resulting in environmental concerns, the reduction of permeable surfaces, potential drainage concerns and impacts to water quality and quantity.
- Parcels located in designated critical environmental areas (CEA) should not be allowed to have ADUs sited without the proper and necessary impact reviews. This Bill would bypass the New York State Department of Environmental Conservation regulations that are in place to ensure the protection of the fragile environmental resources of CEAs.
- The bill does not indicate how ADU permit requests would be handled in the event the existing primary dwelling has an outstanding violation. The bill should require that no ADU permits be granted unless the primary dwelling has a clean bill of health with no existing violations or owed back taxes.
- This legislation, as proposed, creates tremendous concern for public safety. With such a massive, potential increase in ADUs, it will be increasingly more difficult to monitor legal versus illegal units. Firefighters will need to know how many ADUs are on any given site, where they are located and how they can be accessed. The proposed bill would not allow municipalities to require a second door for egress, which is gravely concerning. Section

481.2.g. is also concerning, because a four-foot side or rear yard setback could create fire and safety concerns.

- The bill should require appropriate identification and/or labeling of ADU doors for fire and emergency services personnel and should require that ADUs be assigned a unit number in all cases, for 911 purposes. Without proper 911 addressing and dwelling-location-door numbering/identification, no one will know that an additional living unit exists. Since there will not be a common doorway joining the ADU and main dwelling unit, a firefighter performing a search of the dwelling will not have access to the ADU. Without specific ADU labeling/identification, there would be no awareness of the need to search an ADU on-site. First responders must have a way to quickly and easily identify that there is a second dwelling.
- The bill should include a requirement for the coordination of main dwelling unit fire/burglar alarm systems with ADUs on the same parcel.

In the quest for affordable housing, a one-size-fits-all approach as proposed by Assembly Bill A4854 may not be the best approach, nor an approach that is feasible for all communities within New York State. The bill, in its current form, does not adequately account for the myriad ways that communities throughout the state differ from one another. Land use, zoning, community character and neighborhoods all differ for good reasons within rural, suburban and urban communities, and between towns, villages, hamlets and cities.

I urge the Committees to consider these concerns and, consequently, recommend the appropriate modifications to the bill in order to both differentiate between the types of communities in which ADUs may be sited, and to preserve the Home Rule powers at the local government level that can appropriately maintain the right balance of housing within their communities.

Sincerely,

Douglas J. Schuetz
Acting Commissioner

- C: Hon. Kenneth Zebrowski, NYS Assembly, 96th District
Hon. Mike Lawler, NYS Assembly, 97th District
Hon. Karl A. Brabenec, NYS Assembly, 98th District
Hon. Colin Schmitt, NYS Assembly, 99th District
Hon. Elijah Reichlin-Melnick, NYS Senate, 38th District
Hon. James Skoufis, NYS Senate, 39th District
Hon. Kathy Hochul, NYS Governor