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Sen. Townsend & Rep. Harris & Rep. K. Johnson
Sens. Hansen, Hoffner, Pinkney; Reps. Griffith, Lambert

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 23

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO HOUSING.

1 WHEREAS, accessory dwelling units (ADUs) are a valuable form of housing and can serve to increase the supply
2 of an affordable and diverse type of housing; and

3 WHEREAS, accessory dwelling units are also known as in-law units, secondary dwelling units, granny flats,
4 garage apartments, or carriage houses; and

5 WHEREAS, accessory dwelling units offer lower cost housing to meet the needs of existing and future residents
6 within existing neighborhoods, while respecting architectural character; and

7 WHEREAS, accessory dwelling units can create a convenient living arrangement that allows family members,
8 including seniors who would like to age in place in the community and students, or other persons to provide care and
9 support for someone in a semi-independent living arrangement while remaining in their community; and

10 WHEREAS, the creation of accessory dwelling units can promote more compact urban and suburban growth,
11 which reduces the loss of farm and forest lands, as well as natural areas and resources, while limiting increases in pollution
12 that contributes to climate instability; and

13 WHEREAS, the State can play an important role in reducing the barriers that prevent homeowners from building
14 ADUs; and

15 WHEREAS, Delaware is facing a severe housing crisis, with home prices and rents unaffordable to many
16 households of low and middle incomes; and

17 WHEREAS, the Delaware State Housing Authority's 2023 Housing Needs Assessment report finds that the State
18 is over 19,000 affordable units short to accommodate demand; and

19 WHEREAS, permitting the creation of accessory dwelling units will help diversify Delaware housing stock and
20 help alleviate Delaware's housing shortage.

21 NOW, THEREFORE:

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all
23 members elected to each house thereof concurring therein):

24 Section 1. Amend Title 25 of the Delaware Code by creating a new Chapter 17 and making deletions as shown by
25 strike through and insertions as shown by underline as follows:

26 CHAPTER 17. Accessory Dwelling Units

27 § 1701. Purpose.

28 Accessory dwelling units are a valuable form of housing that can serve to increase Delaware's supply of affordable
29 housing, promote compact urban and suburban growth, and provide the option for a convenient living arrangement for
30 seniors, students, and other residents. Through this chapter, local governments are required to permit the construction of
31 accessory dwelling units within their jurisdictions without prohibitive barriers or onerous application or zoning
32 requirements with the goal of expanding affordable housing stock, diversity, and access.

33 § 1702. Definitions.

34 1. "Accessory Dwelling Unit" (ADU) means a residential living unit on the same lot where the principal use is a
35 legally established single-dwelling unit. An ADU provides complete independent living facilities, including its
36 own cooking, sleeping, and sanitation facilities, for one or more persons. It may take various forms, including a
37 detached unit, a unit that is part of an accessory structure such as a detached garage, or a unit that is part of an
38 expanded or remodeled primary dwelling.

39 2. "By right" means the ability to be approved without requiring any of the following:

40 a. A public hearing.

41 b. A variance.

42 c. Conditional use permit, special permit, or special exemption.

43 d. Other discretionary zoning action other than a determination that a site plan conforms with applicable
44 zoning regulations.

45 3. "Gross floor area" means the interior habitable area of a single-family dwelling or an accessory dwelling unit.

46 4. "Local government" means a municipality, county, or other political subdivision of the State.

47 § 1703. Responsibilities of Local Governments

48 (a) Each local government must adopt ordinances under this chapter that do all of the following:

49 (1) Allow a minimum of one accessory dwelling unit by right on a lot or parcel that contains a single-
50 family dwelling.

51 (2) Allow an accessory dwelling unit that is currently constructed or may be constructed and that is any of
52 the following:

53 a. Attached to a single-family dwelling.

- 54 b. Detached from a single-family dwelling.
- 55 c. Contained within a single-family dwelling.
- 56 (3) Set a maximum gross floor area for accessory dwelling units that is the lesser of 1,000 square feet or
57 the gross floor area of the single-family dwelling.
- 58 (4) Allow an accessory dwelling unit to be used as rental housing.
- 59 (b) A local government may not do any of the following:
- 60 (1) Require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or
61 require fees in lieu of additional parking.
- 62 (2) Require that an accessory dwelling unit match the exterior design, roof pitch, or finishing materials of
63 the primary dwelling.
- 64 (3) Require that the single-family dwelling or the accessory dwelling unit be occupied by the owner,
65 unless the accessory dwelling unit is being used as a short-term rental, as defined by the local
66 government.
- 67 (4) Require a familial, marital, or employment relationship between the occupants of the single family
68 dwelling and the occupants of the accessory dwelling unit.
- 69 (5) Assess impact fees on the construction of an accessory dwelling unit.
- 70 (6) Require improvements to public streets as a condition of permitting an accessory dwelling unit.
- 71 (7) Impose additional zoning regulations on an accessory dwelling unit on a parcel zoned for residential
72 use by a single-family dwelling.
- 73 (c) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument
74 affecting the transfer or sale of any interest in real property, or any covenant, restriction, or condition contained in a deed or
75 declaration under the Unit Property Act, or any rule based thereon that is not in effect on April 1, 2024, is created after
76 April 1, 2024, or is used as the basis for any rule that is created or takes effect after April 1, 2024, which effectively
77 prohibits or unreasonably restricts the construction or use of an accessory dwelling unit on a lot zoned for single-family
78 residential use that otherwise meets the requirements of this section is void and unenforceable.
- 79 (d) In adopting an ordinance under this chapter, a local government may establish an application and permitting
80 process for accessory dwelling units that does not do any of the following:
- 81 (1) Require planning board approval.
- 82 (2) Create additional restrictions that would run contrary to the purpose and intent of this chapter.

SYNOPSIS

Accessory dwelling units (ADUs), also known as in-law units or garage apartments, are valuable and convenient forms of housing that can help to increase Delaware's housing supply.

This Act requires local governments to permit the construction of ADUs within their jurisdictions without prohibitive barriers or onerous application or zoning requirements with the goal of expanding affordable housing opportunities.

This Act carries a 2/3 vote requirement as it may indirectly affect municipal charters.

Author: Senator Huxtable