



May 18, 2023

REVIEW OF HOUSE BILL 409, REGULATION OF ACCESSORY DWELLING UNITS

This document provides review of HB409, Regulation of Accessory Dwelling Units, which was filed on 3/16/23, passed the House by a vote of 106 to 7 on 4/25/23, and is now in the Senate for consideration. The bill pre-empts local governments from regulation the locations where accessory dwelling units may be located, their setbacks, off-street parking requirements, and certain aspects related to utility connection.

The proposed bill language may be viewed here: <https://www.ncleg.gov/BillLookup/2023/HB409>

APANC agrees that there is a crisis of housing availability and affordability for North Carolinians that needs to be addressed, but pre-emption of local government regulations as the primary means of addressing these challenges falls short of the mark and is likely to produce more problems than it solves. HB409 seeks to establish additional housing opportunities but ignores important compatibility and health safety considerations. Further, the bill does little to ensure that these units remain a part of a community’s affordable housing stock. We offer the following observations about the proposed language of HB409.

HB409 REGULATION OF ACCESSORY DWELLING UNITS

MANDATES THE ALLOWANCE OF ACCESSORY DWELLING UNITS

HB409v3 - p. 1 §160D-917 (a)

Requires local governments to allow at least one accessory dwelling unit for each single-family dwelling in areas zoned for residential use and allowing for the development of single-family detached dwellings.

Fails to recognize small single-family lots where additional structures could be incompatible

Can create conflict with impervious surface limitations, particularly on small lots

Prevents the ability of local governments to properly regulate density or plan for infrastructure capacity

MANDATES THE ALLOWANCE OF ACCESSORY DWELLING UNITS

HB409v3 - p. 1 §160D-917 (a)

Fails to recognize federal limits on the placement of accessory dwelling units in flood hazard areas

Provides inadequate guidance to CAMA communities who are subject to state-approved maximum densities included in CAMA plans

Allows as many accessory dwelling units as there are manufactured or mobile homes within a manufactured or mobile home park

Confounds attempts by vacation and college communities to manage density and compatibility concerns

PRE-EMPTS USE OF CONDITIONAL ZONING

HB409v3 - p. 1 §160D-917 (b)

Prevents local governments from requiring conditional zoning to accommodate accessory dwelling units.

Ignores valid local government comprehensive planning regarding range of desired uses and densities

Ignores conditions of approval embodied in prior development approvals

Unclear how such units could be accommodated within an existing conditional zoning district

Fails to address potential for conversion to short term rental use

HB409 REGULATION OF ACCESSORY DWELLING UNITS

MANDATES A MAXIMUM SETBACK

HB409v3 - p. 1 §160D-917 (c)

Establishes that the lot line setback for accessory dwelling units may be no greater than ten (10) feet.

Creates a strong potential for haphazard setback patterns, particularly in existing neighborhoods

Fails to recognize multi-story accessory dwelling units that could be closer to a lot line than a principal dwelling unit

Provides insufficient guidance regarding minimum setbacks from on-site water and wastewater treatment features

Fails to recognize local setbacks from environmentally-sensitive areas

Could conflict with established conditions of approval regarding minimum setbacks

PROHIBITS MINIMUM PARKING REQUIREMENTS

HB409v3 - p. 1 §160D-917 (b)

Prohibits local governments from establishing minimum parking requirements or other parking restrictions.

Could conflict with on-street parking prohibitions

Creates potential erosion and sedimentation concerns given that parking areas, if provided, are not subject to surfacing, location, or stormwater management standards

Fails to recognize important neighborhood compatibility concerns regarding amount and location of off-street parking

Fails to address parking concerns related to recreational vehicles, boats, trailers, and heavy trucks, which could be permitted in neighborhoods with no standards

RUNS CONTRARY TO PRECEDENT CONCERNING ACCESSORY USES

HB409v3 - p. 1&2 §160D-917 (a)(f)

Permits an accessory use to be established prior to or concurrent with a principal use.

Definition of "accessory" turns solely on a square footage number which must be smaller than the principal use.

Most planning rules in North Carolina clarify that an accessory use must be subordinate to a principal use in terms of scope, intensity, and use, not just size

Many regulations limit the maximum size of an accessory dwelling unit to help ensure that it remains "affordable" relative to the principal use – the proposed bill does not clarify how much smaller an accessory dwelling unit must be

Accessory uses are an accessory to a principal use; they can not, by definition, be established prior to the principal use

We believe the legislation could be improved with the following revisions:

1. Allow local governments the ability to restrict accessory dwelling units to long-term occupancy only.
2. Allow local governments the ability to set reasonable minimum development standards for parking and setbacks for accessory dwelling units in recognition of existing community character.
3. Allow local governments to use the common and well-used conditional zoning process to consider accessory dwelling units in some contexts where deliberation and community discussion is necessary.

The North Carolina Chapter of the American Planning Association stands ready to assist and engage the Legislature and other groups in whatever capacity would be appropriate, including providing more detail on anticipated repercussions of the legislation or working to develop collaborative solutions to the State's affordable housing crisis. Thank you for your consideration and your hard work towards making North Carolina a better place to live.