



'Tiny houses' may be a good idea, but are they legal?

By: Justin M. Perrotta and Michael Pill July 21, 2016



How many square feet of living space does one need? Today there are many 2,000- to 3,000-square-foot "McMansions" on large lots. Three-bedroom houses built after World War II with less than 1,000 square feet and a single bathroom are now called starter homes, but they were spacious to children of immigrants who crowded into urban tenements.

Current prices prevent many hardworking people from buying a home. Are "tiny houses" a solution? One article answers the

question of its title — "What is the Tiny House Movement?" — this way:

"[I]t is a social movement where people are choosing to downsize the space they live in. The typical American home is around 2,600 square feet, whereas the typical small or tiny house is between 100 and 400 square feet. Tiny houses come in all shapes, sizes, and forms, but they enable simpler living in a smaller, more efficient space."

Plans, ebooks and links to other resource material are available at thetinylife.com website. The Tiny House Society website at smallhousesociety.net offers similar material and more. Greater Boston Tiny House Enthusiasts are online at www.meetup.com.

Depending on the number of occupants, a tiny house may meet the following "Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II) codified in 105 C.M.R. 410.400 "Minimum Square Footage":

"(A) Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

"(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

"(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant."

But a tiny house, especially one on wheels, is illegal under Massachusetts municipal zoning ordinances/bylaws that do not allow free-standing accessory dwellings or use of a mobile home as a permanent dwelling.

Zoning amendments authorizing tiny houses were adopted by the 2016 Nantucket Annual Town Meeting with an introductory statement that "[i]n order to relieve some of the pressure for affordable, available housing for year-round residents and seasonal workers, a new Zoning District shall be established."

The following definitions were added to the Nantucket zoning bylaw (Town Code, Chapter 139, §2):

TINY HOUSE UNIT OWNER OCCUPIED

"The primary residence of a person(s) or the individual beneficiaries of a legal entity that holds title, common title or land lease to the property, where such persons are year-round residents listed in the Town Clerk's Street List, physically present and living within dwelling units on said property or any direct relative of that individual. Properties owned by corporations and the like, time sharing interval dwelling units, or where all units are made available for rent do not qualify as tiny house owner occupied."

TINY HOUSE UNIT

"A detached structure of less than 500 square feet containing a single tiny house unit owner occupied dwelling unit, constructed on a moveable trailer, or a slab foundation. A tiny house may be accessory to an existing dwelling(s) on a lot at a density of one unit for each lot area. No commercial or other non-residential uses shall be permitted on a lot containing a tiny house. The Planning Board shall be the special permit granting authority."

The use chart in Nantucket zoning bylaw §7A was amended to authorize "a new use 'Tiny House' to be allowed by Special Permit (SP) or as an Accessory Use (A) in all zoning districts."

Zoning bylaw §7B(2) now exempts "structures designated as 'Tiny House Units'" from a prohibition against "Use of a trailer or a building-like container for residential purposes or as a principal or accessory building or structure"

Finally, zoning bylaw §18B requires one parking space for each tiny house.

A tiny house zoning proposal was rejected by the 2016 Annual Town Meeting in Hadley. Mt. Holyoke College graduate Sarah G. Hastings designed, built and lived in a 190-square-foot tiny house on wheels (described on her website www.rhizhome.com), parked on land rented from Hadley homeowners.

A neighbor's complaint precipitated a zoning enforcement order for removal of the structure, on the valid grounds that the local zoning bylaw allows an accessory apartment but not a separate accessory dwelling unit.



When so many working people cannot afford their own home, and allowing free-standing accessory dwellings may help homeowners supplement their income, the tiny house is a concept that merits serious consideration.

The Zoning Board of Appeals gave Hastings time to present a tiny house zoning amendment to the May 5 Annual Town Meeting, where the proposal was defeated.

Hadley Annual Town Meeting Warrant Article 29 is online. It referred to a tiny house as a "backyard cottage," defined as "a self-contained housing unit that is detached from a single-family dwelling that is a subordinate part of the single-family property."

Backyard cottages would have been allowed by a Planning Board special permit that would "expire after one year and every three years thereafter" with the proviso that "[t]he special permit is automatically revoked if an owner no longer lives on the premises." "Owner" is taken to mean the individual (or individuals) whose name appears on the deed as owner and one or more of whom reside on the premises.

As a further limitation, the proposed Hadley zoning amendment provided that "[t]he gross floor area of a backyard cottage shall not be greater than 410 square feet and must comply with Massachusetts building, plumbing, health, and electrical codes."

It also required that the "backyard cottage will be a complete, separate housekeeping unit containing both kitchen and bath." Board of Health approval also was required.

Not all Massachusetts zoning ordinances/bylaws prohibit tiny houses. In the rural town of Shutesbury, the zoning bylaw authorizes (§4.4-2 at pages 16-17) only an "accessory apartment," but provides (§4.4-2J) that "[a]n accessory apartment may be ... within a new accessory structure located no more than seventy-five feet from the principal one-family dwelling." The only size requirement (§4.4-2G) is that "[t]he accessory apartment shall contain no more than 800 square feet of floor area and no more than two bedrooms."

The Shutesbury zoning bylaw does require (§4.4-2H) that "[a]n accessory apartment shall be a complete dwelling unit with a separate entry; kitchen facilities; at least one bedroom; and a bathroom with sink, toilet and bathing facilities."

In a small town like Shutesbury, where all water comes from private wells and sewage disposal requires a septic system, that means a tiny house must tap into the primary dwelling's water supply and must be connected to the septic system (which in turn must have sufficient design capacity to handle the additional waste).

The property where an "accessory apartment" is located also must be owner-occupied, under §13.2 at page 61, which defines an "Accessory Apartment" as "[a] dwelling unit occupying a maximum of 800 square feet of floor area on an owner-occupied lot. For purposes of this definition, 'owner' shall mean any person holding an ownership interest of 10% or more in the property."

A tiny house in Shutesbury cannot be on wheels, because zoning bylaw §3.2-3 (at page 11) only allows use of "[a]n individual trailer of mobile home occupied as an accessory structure to a dwelling for a maximum of fourteen (14) days per year"

A tiny house on wheels is a "mobile home" under §13.2 at page 66, which defines a "Mobile Home" as "[a] dwelling unit, built on a moveable chassis that remains in place after installation, containing complete electrical, plumbing, and sanitary facilities, designed to be installed on a temporary or a permanent foundation."

Based on the foregoing review, it appears the following checklist may help determine whether a tiny house is allowed under a particular Massachusetts zoning ordinance or bylaw, and if not, identify provisions that must be amended to allow tiny houses:

- (1) Is an accessory dwelling unit allowed at all?
- (2) If so, can it be
 - (a) a free-standing structure?
 - (b) on wheels (e.g., trailer or mobile home)?
- (3) Is there a minimum area requirement?
- (4) Must it have its own water supply and kitchen/bath/toilet facilities?

When so many working people cannot afford their own home, and allowing free-standing accessory dwellings may help homeowners supplement their income, the tiny house is a concept that merits serious consideration.

Former Hadley resident Sarah Hastings has put her tiny house in storage while continuing her advocacy, stating as follows in an email to us:

"There will probably be continued prejudice surrounding the issue, as tiny homes are often viewed as glamorized trailers and some people don't believe they have a place in the residential model. Mobile homes were zoned out around World War II, but these changes can be seen as exclusionary. We now see diversity, whether it be in housing or in other economies, as an asset. Having another accessible option, especially one that is eco-friendly, is essential, and I know that the next generation of planners are taught exactly that."

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