



Town of Barnstable

Planning & Development Department

www.townofbarnstable.us/planninganddevelopment



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Executive Office of Housing
and Livable Communities
Seasonal Communities
EOHLCSeasonalCommunities@mass.gov

Re: Seasonal Communities Draft Regulations - Comments on 760 CMR 76

The Town of Barnstable appreciates the Commonwealth's initiative to recognize the distinct housing challenges faced by municipalities with seasonal economies. We share the goal of expanding affordable year-round housing opportunities while maintaining critical environmental protection for Cape Cod communities.

Barnstable's comments focus on ensuring that the proposed regulations are clear, internally consistent, and compatible with the Town's existing zoning, environmental, and wastewater-management frameworks.

1. Definition of "Lot" and Scope of Required As-of-Right Uses

The definition of Lot in Section 76.02 states: "An area of land with definite boundaries that is used, or available for use, as the site of a structure, or structures, regardless of whether the site conforms to the requirements of zoning." When read together with § 76.04(1)(a)(i), this appears to require municipalities to allow Tiny Houses as of right on any parcel of land, provided it qualifies as a Year-Round Housing Unit and complies with applicable state and local building codes. Further, the combination of Sections 76.02 and 76.04(1)(a)(ii) appears to require as-of-right residential use for Attainable Housing Units on any parcel of land, subject only to compliance with applicable floor-to-area ratio requirements and "laws governing wastewater and sewer systems."

While the Town agrees that loosening certain zoning restrictions will help promote affordable housing development, we suggest that a blanket exemption from all local zoning requirements goes too far. It is essential that a Seasonal Community designation not strip municipalities of the ability to regulate aspects of zoning that are critical to public safety and environmental protection—such as maintaining buffers, controlling stormwater runoff, and safeguarding local water supplies.

Although Section 76.04(1)(a)(ii)(3) requires compliance with "laws governing wastewater and sewer systems," the word "laws" could be interpreted narrowly to include only state and federal requirements, thereby excluding Barnstable's local groundwater-protection ordinances, nitrogen-loading limits, and resource-protection overlays. These local controls are fundamental to the Town's Comprehensive Wastewater Management Plan, Watershed Permit obligations, and the

nitrogen-reduction goals established through the Cape Cod Commission's Section 208 Plan.

Under the proposed language, substandard parcels could become buildable as-of-right even where development would exceed nitrogen-loading thresholds or conflict with protective overlay districts—undermining environmental and infrastructure objectives that are of critical concern to Barnstable and other Cape Cod municipalities.

Recommendations: 1) revise Section 76.04(1)(a)(i)–(ii) to expressly require compliance with local environmental, resource-protection, and wastewater-management bylaws and ordinances, or insert a savings clause confirming that nothing in 760 CMR 76 limits a Seasonal Community's authority to enforce such protections; 2) remove the broad exclusion from the definition of "Lot" in Section 76.02 that exempts parcels from all zoning requirements; and 3) clarify that, except for minimum lot-area requirements, all local dimensional and design standards remain applicable to development permitted under 760 CMR 76.00. As suggested below, we believe that reducing bulk regulations in proportion to the applicable lot area reduction will allow Seasonal Communities to regulate dimensional standards in a manner that does not defeat the purpose of the undersized lot mandate.

2. Absence of a Minimum Lot-Size Requirement

The definition of "undersized lot" in Section 76.02 does not contain a minimum lot size. The absence of such a requirement would enable construction of Tiny Houses and Attainable Housing Units on extremely small parcels—as small as 3,000 to 5,000 square feet. This outcome would be inconsistent with Barnstable's nitrogen-loading, stormwater, and infrastructure standards and could lead to significant impacts on groundwater and the natural environment. In addition, the lack of clarity may allow for "undersized lots" that are .001 square feet smaller than an existing lot area standard. While a one-size fits all approach may not be possible, to avoid outcomes inconsistent with the spirit of the law, we suggest allowing Seasonal Communities to set a minimum and maximum range for permissible lot area reductions calculated as a percentage of the applicable lot area requirement.

Recommendation: Establish a minimum lot-area threshold for undersized-lot eligibility or authorize Seasonal Communities to define an appropriate minimum based on local environmental and infrastructure constraints.

3. Ambiguities Regarding Tiny Houses

Section 76.04(1)(a)(i) requires Seasonal Communities to allow Tiny Houses as of right, but it does not specify whether they must be allowed as a principal structure, an accessory structure, or both. As written, the Section could be read to allow a Tiny House on a lot that is improved with an existing principal dwelling and an accessory dwelling. In addition, it is not clear whether multiple Tiny Houses could be permitted on a single lot as of right.

Recommendations: 1) expressly identify whether Tiny Houses are allowed as of right as principal dwellings, accessory dwellings, or both; 2) clarify whether a Tiny House must be allowed as of

right on a lot that is improved with a residential dwelling or a residential dwelling and an accessory dwelling; and 3) specify the number of Tiny Houses that may be located on a single lot as of right.

4. Limitation of Undersized-Lot Provision to “Attainable Housing Units”

Section 76.04 limits undersized-lot development to Attainable Housing Units ($\leq 250\%$ of Area Median Income), excluding Affordable Housing Units ($\leq 100\%$ AMI). This distinction excludes the lower-income housing the statute was intended to promote and may unintentionally favor market-rate attainable housing over truly affordable options.

Recommendation: Allow both Affordable and Attainable Housing Units to qualify for undersized-lot development, with appropriate income-restriction and monitoring mechanisms consistent with 760 CMR 56.00.

The Town of Barnstable supports the Commonwealth’s goal of addressing housing challenges in seasonal communities. However, as presently drafted, 760 CMR 76.00 contains ambiguities that may inadvertently preempt vital local and regional safeguards governing water quality, infrastructure, and land use. Clarification of these issues is essential to ensure that municipalities can participate in the Seasonal Community program without compromising local environmental protections or established planning objectives.

5. Seasonal Homes

Section 76.04 (1)(a)(ii)(4) requires that all residential uses on undersized lots comply with applicable limitations and requirements related to “seasonal homes” or short term rentals, “provided that in no event shall a Seasonal Community allow the use of any residential housing on an Undersized Lot as a seasonal home or short-term rental for less than six (6) months in a year.” The phrase “seasonal homes” is not defined in the proposed regulations. Further, the time limits imposed in this section are ambiguous and lack clarity. In addition, this section would prohibit a Seasonal Community from imposing a year-round deed restriction on residential uses that fall under Section 76.04 (1)(a)(ii).

Recommendation: 1) Define “seasonal home;” 2) Clarify the number of months a year that a “seasonal home” can be used as a short-term rental; and 3) Expressly state whether a Seasonal Community can put a year-round deed restriction on residences that fall under Section 76.04 (1)(a)(ii).

6. Seasonal Community Essential Public Employee Housing and Artist Housing

Sections 76.06 and 76.07 allow Seasonal Communities to include a preference for Seasonal Community essential public employees and artists for dwelling units acquired or developed by the Seasonal Community; however, there is no mechanism for ensuring that either preference is given to a subsequent purchaser or renter. Without the ability to ensure that the preferences apply to subsequent purchasers and tenants, we do not believe that we can report to the Town Council (or public) that accepting the Seasonal Community Designation will meaningfully increase the availability of affordable housing for essential public employees or artists in the long term.

Recommendation: Provide a mechanism for Seasonal Communities to ensure that the permitted preferences apply to subsequent purchasers and tenants.

Thank you again for your time and attention on this matter.

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