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## Rich May Obtains 5-0 Decision in Client's Favor at ZBA Hearing regarding Restrictive Use of an Accessory Dwelling Unit (ADU)

By: Rich May, Yana Zheng

Attorney [Yana Zheng](#) recently won a significant victory for our clients, a young couple in Winthrop, in a local zoning hearing regarding their accessory dwelling unit (ADU). This case stems from a prior variance that limited the use of their detached unit to "immediate family only." However, thanks to a newly enacted state law, the board lifted this restriction, allowing our clients to rent their ADU to non-family tenants.

Under the Massachusetts Affordable Homes Act, effective February 2, 2025, significant changes to M.G.L. c. 40A § 3 expands the use of ADUs in Massachusetts. The law states that ADUs are permitted by right in single-family zoning districts, provided specific dimensional requirements are met. Additionally, municipalities cannot impose bans or unreasonable restrictions on the rental of a single ADU in these zones.

### Understanding Accessory Dwelling Units

An ADU is a smaller, self-contained residential unit located on the same lot as a primary home. According to 760 CMR 71.02, an ADU must include sleeping, cooking, and sanitary facilities, and it must satisfy all applicable dimensional and parking requirements. Each unit must also feature a separate entrance, ensuring compliance with the Building Code for safe egress. Importantly, ADUs cannot exceed 900 square feet or 50% of the gross floor area of the principal dwelling, whichever is less.

While municipalities may adopt reasonable regulations, they cannot unreasonably restrict the creation or rental of an ADU, particularly if it is not intended as a short-term rental. Under 760 CMR 71.03(1), municipalities are prohibited from requiring special permits, variances, or discretionary approvals for qualifying ADUs, meaning that ADUs are allowed by right in single-family zoning districts. Furthermore, 760 CMR 71.03 prohibits municipalities from enforcing occupancy restrictions, allowing property owners the flexibility to rent their ADUs to anyone—not just family members.

### Looking Ahead: The Benefits of ADUs



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ADUs offer a wide range of benefits for property owners, renters, and communities across Massachusetts. For homeowners, ADUs can generate rental income to offset property expenses, provide affordable housing for family members, and offer flexible living arrangements for aging adults or caregivers. Renters benefit from increased access to smaller, more affordable units that allow them to remain in neighborhoods they know and work in. At a broader level, ADUs support the Commonwealth's goals of expanding diverse, affordable housing options, especially for seniors and people with disabilities, while promoting compact, sustainable development that effectively utilizes existing land, infrastructure, and resources.

This recent decision is not just a win for our clients; it's a positive step forward for all homeowners looking to maximize their property's potential while contributing to the community. If you are considering an ADU for your property or need assistance navigating the zoning process, [Yana Zheng](#) and [Anthony McGuinness](#) are here to help.