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February 9, 2022

Revised February 14, 2022

Honorable Peter Harckham
Senator, 40th District
188 State Street, Legislative Office Bldg
Room 812
Albany, NY 12247

Re: Budget Bill S. 8006/A. 9006
Part AA - Accessory Dwelling Units.

Dear Senator Harckham:

On behalf of the Town Board of the Town of Patterson, I am again writing to you express our concern over Bill 8006/A. 9006, Part AA - Accessory Dwelling Units in hopes that you will reconsider your support of the bill in its current form.

The Town of Patterson does not object to accessory dwelling units (ADUs) and has zoning which would allow ADUs by special use permits. Accessory apartments are permitted in any residential structure, and a separate accessory building for residential purposes is allowed where certain area requirements are met. But ADUs in Patterson are only allowed where infrastructure, environmental conditions, and safety issues are appropriate for their siting. The Town reviews any proposed ADU in the context of these criteria during review of a special use permit application. The current legislation proposed by the State would eliminate the Town's laws relative to ADUs [§481.9] and replace those laws with State imposed standards.

Those State standards create very real safety and environmental issues for the Town, more fully described below. The proposed legislation, as written does not allow for the flexibility needed by individual municipalities to address specific concerns within our communities, some of which include stormwater runoff and the NYC reservoir watershed, elevated nitrates in groundwater in Putnam Lake and street congestion due to on-street parking. To suggest that the legislation would allow a municipality to adopt standards that would address any environmental concerns is

misleading. In fact there are so many conflicting requirements in the legislation, municipalities will likely see endless litigation as the courts attempt to interpret the intent of the legislation. Some of these conflicting requirements are discussed below.

The proposed legislation mandates standards which must be accepted with no evaluation on their potential impact. How are we to reconcile our obligation to be good stewards of the air, water, land and living resources with standards for ADUs that directly impact these resources? How are municipalities to contend with the increase in impervious coverage, and the resultant increase in stormwater runoff in the NYC reservoir watershed, or increased nitrate levels in the groundwater due to over development? In the Putnam Lake area, increasing each residential unit by one ADU would increase wastewater flows into a challenged aquifer by 195,450 gallons per day.

The Bill proposes requirements that would be equally applicable to a city, a small village or a rural town. It imposes standards which may be appropriate in an urban neighborhood, but are completely inappropriate in a rural environment. New York's home rule authority recognized the uniqueness of the various municipalities throughout New York State, that we are not "one size fits all", and allows individual municipalities to build a zoning scheme specific to a community's unique characteristics and needs. This Bill fails to recognize this.

Comments on specific sections of the proposed Bill can be found attached. Please feel free to contact my Office if you have any questions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Richard Williams Sr.", written in a cursive style.

Richard Williams Sr.
SUPERVISOR

cc: Honorable Kevin Byrne

Comments on Accessory Dwelling units Bill S.8006/A. 9006

1. §481 "...a local agency shall, by ordinance, provide for the creation of accessory dwelling units. such ordinance shall:." In order for a municipality to adjust their zoning laws, they must do so in conformance with the State Environmental Quality Review Act (SEQRA). SEQRA requires a municipality to evaluate any changes to zoning, ensure that they will not have a negative environmental impact, or ensure that any negative environmental impact has been mitigated to the maximum extent practicable. The State mandating municipalities to provide for accessory dwelling units, which includes the State mandated criteria that clearly pose health, safety and environmental concerns, places local municipalities in an untenable position when we must adopt a law for AUDs that is violative of SEQRA.
2. The legislation itself is very confusing:

It allows a municipality to establish a minimum size for an ADU of 550 s.f., [§481.2(a)] but the Town must allow an ADU of at least 600 s.f. [§481.1(d)(iv)] and cannot establish any other minimum or maximum size requirement for an ADU that does not allow for an 800 s.f. unit with four-foot side and rear yard setbacks [§481.2(c)].

The legislation would allow the Town to impose a standard that the property owner reside on the property for at least one year. [§481.14]. Is the "one year" the maximum duration that can be imposed, or can a municipality impose the property owner to stay for a longer period, or even indefinitely?

Terms should be clearly defined. What is meant by "building envelope"? What is a "minor violation"? What is the definition of a "wetland" and does it include a body of water?

§481.2 "A local government shall not establish by any regulation any of the following" (h)"....the creation of such units comports with flood resiliency policies or efforts, and that such units are consistent with the protection of wetlands and watersheds, however 481.8. provides that "No policy or regulation other than the local law authorized under this section shall be the basis for the denial of a building permit...except to the extent necessary to protect the health and safety of the occupants of an accessory dwelling unit ". Can a municipality deny AUDs in an area of known groundwater issues, or to prevent additional impervious coverage from being created in order to protect a watershed?

Towns may limit AUDs to be constructed within an existing principal dwelling, or if detached from the principal dwelling unit in the same location, and same dimensions as an existing structure if one exists. What if an existing accessory structure does not exist? Do we have to allow a detached AUD? [§481.2(c)]

The proposed legislation is confusing at best. It mandates that municipalities must allow an ADU on each residential lot, but does not prevent municipalities from requiring that AUDs comport with flood resiliency policies or efforts, and that such

units are consistent with the protection of wetlands and watersheds. Are municipalities allowed to prohibit ADU's if we can demonstrate we are doing so in furtherance of watershed protection?

3. §481.1(a) "Designated areas shall include all areas zoned for single-family or multifamily residential use..." The legislation requires that the Town allow the creation of an ADU on each lot of a multi-family complex, although it is not clear how this would happen. Are we to allow a multifamily unit to be split in half? Should the property owner be allowed to expand their unit?
4. §481.1(a) "Designated areas shall include... and all lots with an existing residential use." Essentially the State law would mandate that nonconforming residential lots in a commercial zoning district be allowed to expand their nonconforming use of the lot. It is a well settled principal of zoning that nonconforming uses of property are a detriment to a zoning scheme, and the overriding public policy of zoning in New York State is aimed at their reasonable restriction and eventual elimination. Courts have decided that while nonconforming uses are generally permitted to continue, they may not be enlarged as a matter of right. This Bill, which would allow an ADU in any "lot with an existing residential use" including one in a commercial district used as a nonconforming residence, directly conflicts with that accepted public policy by allowing a nonconforming use to be expanded.
5. § 481.1(d)(iv) "If there is an existing primary residence, the total floor area of an accessory dwelling unit shall not exceed fifty percent of the existing primary residence, unless such limit would prevent the creation of an accessory dwelling unit that is no greater than six hundred square feet." In some instances the standards imposed within the law may result in ADU's bigger than the primary residence. There are at least 79 units in the Putnam Lake area that are less than 600 square feet.
6. §481.2.b (b) "A maximum square footage requirement for an accessory dwelling unit that is less than fifteen hundred square feet." For new construction the law provides that the Town cannot require a maximum area for an ADU of less than 1,500 square feet, essentially requiring that the Town allow two family homes on all vacant residential lots.
7. §481.2.b (b) "A maximum square footage requirement for an accessory dwelling unit that is less than fifteen hundred square feet." While most ADUs are usually a small studio or one-bedroom apartment in the back of a house, in a basement or on top of a garage, the proposed legislation would restrict a local municipality from establishing a maximum ADU size of less than a 1500 s.f. residential home on a lot. Fifteen hundred square feet is almost twice the size of a typical one-bedroom apartment and represents a small house.
8. §481.2(c) "A local agency shall not establish by ordinance any of the following: four foot side and rear yard setbacks..." A four foot side yard does not allow adequate distance for building maintenance or firefighter safety. Can you imagine a firefighter trying to squeeze between a property line fence and a fully-engulfed building of wood construction set back four feet from the fence. A four foot setback does not provide adequate distance on a property for maintenance without trespassing on your neighbors property. The safe angle for an extension ladder is 75 degree or 4' up-1' out. A four foot side yard setback does not allow for maintenance of a structure higher than eight feet.

9. §481.4 “ No parking requirement shall be imposed on an accessory dwelling unit.” If a two-bedroom ADU is constructed, is it reasonable to believe that the ADU will be occupied by a single individual with a single car. If not, where will the other car go except on the street. Where adequate on-site parking is not available occupants of accessory dwelling units will be forced to park on the street. While on-street parking may be appropriate for city areas, rural streets are not designed for on-street parking. They do not provide the street lighting, adequate street width or proper geometric design. For these reason street parking is limited to short durations (if it is allowed at all) and only during certain times of the day or year. Street parking is always prohibited during winter months to accommodate snow removal which will become more difficult, and more costly should street parking be allowed. The Town’s ability to provide adequate off-street parking will lead to an enforcement nightmare for the Town, and a dangerous condition for emergency service providers trying to navigate streets congested with parked cars. Suggesting that individuals who occupy an AUD and who will live within ½ mile of access to public transportation will not own a vehicle and therefore will not need a parking space is a fallacy that will lead to congestion on public streets.
10. §481.5 “The local agency shall not require that off-street parking spaces be replaced if a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit.” See the response to #9, above.
11. §481.12 “A local government shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit, the correction of nonconforming zoning conditions or minor violations of local law”. So if there are no smoke detector, appropriate egress, or a reasonable pathway to the apartment, the Town is barred from correcting these issues? The way to legalize apartments in existence that were installed illegally is not to grant them immunity from meeting Code requirements, which will only further to harm the safety of the occupants using the unit.
12. Environmental Conservation Law recognizes that “the capacity of the environment is limited”, and mandates that town’s in their decision making “identify any critical thresholds for the health and safety of the people of the State and take all coordinated actions necessary to prevent such thresholds from being reached” [ECL § 8-0103.5]. Yet this Bill mandates that towns adopt changes to their zoning laws to allow accessory dwelling units meeting State imposed design standards, and prohibits my Town from considering or mitigating any potential environmental impact as required under SEQRA. The State-mandated requirements for an accessory dwelling unit will negatively affect the character of our communities, its safety and the environment. Considering the potentially damaging aspects which this bill may have on the these three factors, each municipality will be required to complete a generic environmental impact statement to amend their Comprehensive Plans and zoning codes. It is unlikely that preparation of a GEIS, revisions to a comprehensive plan and adoption of a local law amending zoning can be completed within the 1 year set forth in the Bill. Even if possible, many Towns will find it difficult to reconcile the State imposed standards for AUDs with the requirements of SEQRA.

The Town is limited in the number of residential units that it can allow based on the carrying capacity of the land, which factors in such criteria as road infrastructure, groundwater resources, and the ability of the soils to handle sewage disposal. In order to determine appropriate zoning we have

conducted extensive analysis on the ability of the land to support residential and commercial uses at appropriate densities. For example, Putnam's Towns participated in an assessment of the ability of the land to provide drinking water from groundwater wells. A town will identify what is reasonable for the community through an extensive planning process.

There is no provision in the ADU legislation that would allow for local governments to include ADUs in their planning. Municipalities aren't able to craft their own ADU laws, specific to their own unique needs and characteristics under the State's proposal. The legislation mandates Towns to amend their zoning to allow at least one accessory dwelling unit on each residentially zoned lot, and each lot used as a residence, regardless of zoning [§481.1(b)]. Town's are allowed to adopt some standards, as long as the standards do not "unreasonably" prevent the development of ADUs, but most of the standards, such as 4' side and rear yard setbacks, are set by the State in the legislation.

Under the proposed legislation municipalities are mandated to allow an ADU on every residentially zoned lot, and all lots with an existing residential use with the following design standards imposed:

- Establishes a minimum ADU size of 600 s.f. regardless of the size of the primary residence. [§481.1(d)(iv)]
- Cannot require a maximum square footage of less than 1500 s.f. [§481.2(b)]
- Cannot require a limit on the size of the ADU based on lot size, lot coverage or the need to provide recreational space on the lot. [§481.2(c)]
- Side and rear yard setbacks are limited to four feet [§481.2(c)]
- Can only require one parking space, unless within ½ mile from public transportation. [§481.4]
- Cannot require replacement of parking spaces if existing garage is converted. [§481.5]
- Cannot require a certificate of occupancy [§481.6]
- Prohibits the Town from correcting any nonconforming zoning conditions or minor violations of local law [§481.12].

If the intent is to allow municipalities a degree of flexibility in crafting a law which provides for ADUs, this is not it. This legislation would absolutely end local control over accessory dwelling units.

TOWN OF PATTERSON
COUNTY OF PUTNAM, STATE OF NEW YORK

RESOLUTION OPPOSING S. 8006/A. 9006
PROVIDING FOR
STATE CONTROL OF ACCESSORY DWELLING UNITS

R-0222-02

INTRODUCED BY: MR. RICHARD WILLIAMS

SECONDED BY: MR. SHAWN ROGAN

DATE OF CONSIDERATION/ADOPTION: February 9, 2022

WHEREAS, the Town of Patterson has provided for the creation and regulation of accessory dwelling units within the Town's Zoning pursuant to its authority provided in Town Law Article 16 and Municipal Home Rule Law, and

WHEREAS, Budget Bill S.8006/A. 9006 Part AA - Accessory Dwelling Units has been proposed which would amend Article 16 of Real Property Law to establish State-wide standards and regulations for accessory dwelling units, and

WHEREAS, Bill S.8006/A. 9006 would nullify the Town's zoning relative to accessory dwelling units, and replace it with the State's standards for accessory dwelling units, and

WHEREAS, Bill S.8006/A. 9006 would require the Town of Patterson to adopt the State-wide standards and regulations within 1 year of adoption of Bill S.8006/A. 9006, and

WHEREAS, the State's standards for accessory dwelling units do not account for the unique and special characteristics of the Town of Patterson, and

WHEREAS, Bill S.8006/A. 9006 would establish 4' side yard and rear yard setback requirements for Accessory Dwelling Units (ADU's) which is deemed unsafe and inadequate for maintenance, and

WHEREAS, Bill S.8006/A. 9006 prohibits a local municipality from ensuring that adequate off-street parking will exist for an ADU, and

WHEREAS, Bill S.8006/A. 9006 prohibits a local municipality from considering any potential impacts related to the ability of local roads to handle the increased traffic, and

WHEREAS, Bill S.8006/A. 9006 prohibits a local municipality from considering any potential environmental effects of ADUs related to congestion or the capacity of land to handle the increased residential density, and

WHEREAS, Bill S.8006/A. 9006 in establishing State-wide standards for Accessory Dwelling Units recognizes no distinction between the unique characteristics of the 40 cities and 1,481 towns and villages in New York State, and

WHEREAS, the Town Board of the Town of Patterson finds that the aforementioned State standards that would be imposed by Bill S.8006/A. 9006 would be a detriment to the health, safety and general welfare of our community, as described in a letter to Senator Peter Harckham dated February 9, 2022

NOW THEREFORE BE IT RESOLVED, the Town of Patterson is adamantly opposed to Bill S.8006/A. 9006 which would establish State-wide standards and regulations for accessory dwelling units, and

BE IT FURTHER RESOLVED, the Town of Patterson calls upon State elected officials to oppose Bill S.8006/A. 9006

UPON ROLL CALL VOTE:

Supervisor Williams: Yes
Councilman Dandreaano: Yes
Councilwoman Smith: Yes

Councilman Cook: Yes
Councilman Rogan: Yes

VOTE: RESOLUTION CARRIED BY VOTE OF 5 TO 0.

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

I, EILEEN FITZPATRICK, Town Clerk of the Town of Patterson, do hereby certify that the above is a true and exact copy of a Resolution adopted by the Town Board of the Town of Patterson at a meeting of said Board on February 9, 2022.


EILEEN FITZPATRICK, Town Clerk

Dated: February 10, 2022