



HOUSE BILL 409: Regulation of Accessory Dwelling Units.

2023-2024 General Assembly

Committee:		Date:	April 25, 2023
Introduced by:	Reps. Winslow, Alston, Tyson, G. Brown	Prepared by:	Billy Godwin and Erika Churchill,
Analysis of:	Third Edition		Staff Attorneys

OVERVIEW: *House Bill 409 would require local governments to allow at least one accessory dwelling (ADU) unit for each single-family detached dwelling in areas zoned for residential use.*

[As introduced, this bill was identical to S374, as introduced by Sens. Moffitt, Mayfield, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: Local governments are required to consider temporary family health care structures as a permitted accessory use under local zoning regulations. The structure must be used to provide care for and be occupied by a mentally or physically impaired person under the care of a family caregiver. The structure must also be assembled off-site, be less than 300 square feet, comply with the State Building Code, and not be placed on a permanent foundation. Placement of the structure does not require a special use permit nor is it subject to any other zoning requirements beyond those imposed by the local government on other authorized accessory use structures except those enumerated above. The setback requirements are the same as for the primary structure and it may be required to connect to public utilities. The structure must be removed within 60 days of the date in which the mentally or physically impaired person is no longer receiving or in need of the caregiver's assistance. G.S. 160D-915.

BILL ANALYSIS: House Bill 409 would require local governments to allow at least one ADU for each single-family detached dwelling in areas zoned for single-family residential use. An ADU would be defined as an attached or detached residential structure that is used in connection with or that is accessory to a primary single family detached dwelling and that has less total square footage than the primary single family detached dwelling. The ADU would have conform to the Residential Building Code for One- and Two-Family Dwellings and could be built or sited before, during, or after the primary dwelling has been constructed. In the permitting of ADUs, local governments would be prohibited from:

- (1) Requiring owner-occupancy of the ADU.
- (2) Requiring placement in a conditional zoning district.
- (3) Establishing minimum parking requirements or other ADU parking restrictions.
- (4) Prohibiting ADU connection to the primary dwelling unit's existing utilities, unless capacity is insufficient to serve both dwellings.
- (5) Charging fees greater than those charged for single-family detached dwellings.

The local government could require the ADU to meet a setback that is the lesser of either 10 feet or the setback required for lots in the same zoning classification.

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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The requirement to allow ADU's would not apply to any of the following:

- The validity or enforceability of private covenants or other contractual agreements among property owners related to dwelling type restrictions.
- Properties located in a historic preservation district.
- Properties designated as a National Historic Landmark by the United States Department of Labor.

Authority of the local government to adopt and enforce environmental regulations under State and federal law would not be impaired nor would the validity or enforceability of private restrictive covenants.

Local governments would be required to conform their development regulations and comprehensive plans by October 1, 2023.

EFFECTIVE DATE: The act would be effective October 1, 2023, and apply to applications for accessory dwelling unit permits submitted on or after that date.